

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION,
600 Pennsylvania Ave., N.W.
Washington, DC 20580

Petitioner,

v.

**LOUISIANA CHILDREN’S MEDICAL
CENTER,**
1100 Poydras St.
New Orleans, LA 70163

And

HCA HEALTHCARE, INC.,
One Park Plaza
Nashville, TN 37203

Respondents.

Case No.:

**PETITIONER FEDERAL TRADE COMMISSION’S MOTION FOR AN ORDER TO
SHOW CAUSE AND FOR A TEMPORARY RESTRAINING ORDER**

Petitioner Federal Trade Commission (“Commission”) has filed this action pursuant to Section 7A(g)(2) of the Clayton Act and Section 13(b) of the Federal Trade Commission Act for an Order To Show Cause and for a Temporary Restraining Order (“TRO”) to preserve the status quo by requiring Respondent Louisiana Children’s Medical Center (“LCMC”) to halt integration and hold separate three hospitals that LCMC acquired from Respondent HCA (the “Acquisition”) until further order of the Court following a hearing on the Commission’s motion for an order pursuant to Section 7A(g)(2) of the Clayton Act. With this motion, the Commission

does not seek a ruling or relief going to the merits of whether the consummated transaction violates the antitrust laws.

A TRO enjoining further consummation of the Acquisition until a hearing is conducted by the Court is necessary to ensure Respondents' compliance with the premerger reporting requirements and the appropriate waiting period so that the Commission can obtain the data, documents, and testimony required to evaluate whether the Acquisition has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18, and—if appropriate—to seek relief.

The Respondents have already unlawfully closed the Acquisition; LCMC is planning to begin to integrate the three hospitals into LCMC's operations. LCMC has stated that it will continue such integration efforts, including repurposing one of the hospitals. Unless a TRO is issued, LCMC may integrate or dispose of the assets such that it will be difficult for the Commission to obtain relief after a trial on the merits, if appropriate.

This motion is supported by a statement of points and authorities filed with the motion. A proposed order is attached.

Dated: April 20, 2023

Respectfully submitted,

Neal J. Perlman

Neal J. Perlman
Federal Trade Commission
600 Pennsylvania Avenue
Washington, DC 20580
Tel.: (202) 326-2567
Email: nperlman@ftc.gov
*Counsel for Petitioner Federal
Trade Commission*

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served on the below persons on April 20, 2023 via e-mail.

Ken Field
Hogan Lovells US LLP
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Counsel for Louisiana Children's Medical Center

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Respectfully submitted,

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Counsel for Petitioner Federal Trade Commission

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**CERTIFICATE OF COUNSEL PURSUANT TO LCvR 65.1 OF NOTICE OF
APPLICATION FOR TEMPORARY RESTRAINING ORDER**

Pursuant to LCvR 65.1, I, Neal J. Perlman, hereby certify that on April 20, 2023, I notified counsel for Respondents Louisiana Children’s Medical Center (“LCMC”) and HCA Healthcare, Inc. (“HCA”) of the time and place of the filing of a motion seeking Temporary Restraining Order (“TRO”) and of the Federal Trade Commission’s (“Commission”) intention to seek an immediate hearing on the motion. I further certify that on April 20, 2023, I caused one copy of all the pleadings and papers filed by the Commission in this action on April 20, 2023, to be sent via e-mail to Ken Field, Hogan Lovells US LLP, 555 Thirteenth Street, NW;

Washington, D.C. 20004 (Counsel for LCMC) and Sara Razi, Simpson Thatcher & Bartlett LLP,
900 G Street, NW, Washington, D.C. 20001 (Counsel for HCA).

Dated: April 20, 2023

Respectfully submitted,

Neal J. Perlman

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Federal Trade Commission
600 Pennsylvania Avenue
Washington, DC 20580
Tel.: (202) 326-2567
Email: nperlman@ftc.gov
*Counsel for Petitioner Federal
Trade Commission*

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Case No.:

[PROPOSED] ORDER TO SHOW CAUSE

This Cause arising upon the application of Petitioner, Federal Trade Commission, for an order to show cause why a temporary restraining order and an order pursuant to Section 7A(g)(2) of the Clayton Act and Section 13(b) of the Federal Trade Commission Act should not issue, and it appearing from the allegations of the complaint and from the exhibits submitted in support of the application, that Petitioner is entitled to such relief unless good cause to the contrary be shown, it is hereby,

ORDERED, that Respondent Louisiana Children's Medical Center ("LCMC") appear before the Honorable _____, a judge of this court, in Courtroom ____ of the United States District Court for the District of Columbia, 333 Constitution Ave., N.W., Washington, D.C. 20001, on _____ at _____ or as soon thereafter as counsel can be heard, and show cause why an order, pursuant to Rule 65 of the Federal Rules of Civil Procedure, 18 U.S.C.

§ 18A(g)(2), and 15 U.S.C. § 53(b), should not issue, temporarily restraining LCMC from further integrating the assets acquired by the acquisition of three hospitals by LCMC from HCA until a hearing can be held on the Commission's motion for an injunction requiring LCMC and HCA to comply with the premerger reporting requirements of Section 7A of the Clayton Act and the waiting periods mandated by that statute.

Service of this order upon LCMC by Petitioner shall be effected on or before _____ am/pm on April __, 2023.

Entered this _ day of April __ 2023 at __ a.m./p.m.

United States District Judge

Presented by:

Holly Vedova
Director

Rahul Rao
Deputy Director

Maribeth Petrizzi
Assistant Director, Compliance Division

Neal J. Perlman
Attorney

Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

April 20, 2023

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Case No.:

**[PROPOSED] TEMPORARY RESTRAINING ORDER TO HOLD SEPARATE AND
MAINTAIN ASSETS PURSUANT TO SECTION 7A(g)(2) OF THE CLAYTON ACT
AND SECTION 13(b) OF THE FEDERAL TRADE COMMISSION ACT**

WHEREAS, Petitioner, the Federal Trade Commission (the “Commission”), filed its Application in this matter on April 20, 2023, seeking, among other relief, an order requiring Respondents to comply with the notification requirements under Section 7A(a) and an order and preliminary injunction pursuant to Section 7A(g)(2) of the Clayton Act, 15 U.S.C. § 18(a), enacted as Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”), 15 U.S.C. § 18a(g)(2), as amended, and pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), as amended, to require Louisiana Children’s Medical Center (“LCMC”) to cease further integration with, and hold separate and maintain the assets acquired

from HCA Healthcare, Inc. (“HCA”) (“the Acquisition”). Pending this Court’s decision on the merits of the Application, the Commission requests this Court to enter a Temporary Restraining Order to Hold Separate and Maintain Assets (“Temporary Restraining Order”) to LCMC.

NOW, THEREFORE, IT IS ORDERED THAT, LCMC shall hold separate and maintain the business, assets, and confidentiality of the assets from the Acquisition, pursuant to the following definitions, terms and commitments:

Definitions

1. The following definitions shall apply to this Temporary Restraining Order:
 - a. “Acquisition Date” means January 3, 2023.
 - b. “Commission” means the United States Federal Trade Commission.
 - c. “Effective Date” means either (1) the Acquisition Date (for activities or functions of the Tulane Hospitals that LCMC has not changed since the Acquisition Date), or (2) the date the Court grants this Temporary Restraining Order (for activities or functions of the Tulane Hospitals that LCMC has changed since the Acquisition Date).
 - d. “Health Plan” means any Person that pays, or arranges for payment, for all or any part of any hospital services for itself or for any other Person.
 - e. “TRO Hold Separate Period” means the period from the date this Order is granted until the Court dismisses this Petition, or the Court enters the Preliminary Injunction Order to Hold Separate and Maintain Assets.
 - f. “LCMC” shall mean LCMC Health, its domestic and foreign parents, predecessors, successors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any Person in which there is partial (25% or more) or total ownership or control between LCMC and any other Person.
 - g. “Person” means any natural person, corporation, partnership, association, governmental organization, or other legal entity, including all officers, members, predecessors, assigns, divisions, affiliates, and subsidiaries.
 - h. “Preexisting Business” means LCMC hospital business existing prior to the acquisition of the Tulane Hospitals.

- i. “Tulane Hospitals” means the Tulane Medical Center in New Orleans, LA, the Tulane Lakeside Hospital in Metairie, LA, and the Lakeview Regional Medical Center in Covington, LA, which were acquired by LCMC from HCA Healthcare on January 3, 2023.

Asset Maintenance

2. During the TRO Hold Separate Period, LCMC shall ensure that the Tulane Hospitals are operated and maintained in the ordinary course of business consistent with the practices on the Effective Date. In addition to any other steps necessary to comply with this section, LCMC shall:
 - a. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Tulane Hospitals to minimize the risk of any loss of its competitive potential;
 - b. Maintain all clinical services available on the Effective Date and not eliminate, transfer, consolidate, or reduce clinical services, equipment, or facilities and, without limitation, maintain office space, services, and any other assets or businesses relating to the Tulane Hospitals transferred to or controlled by LCMC as of the Effective Date;
 - c. Not sell, transfer, encumber, or otherwise impair the assets used by the Tulane Hospitals and prevent the destruction, wasting, or deterioration of the Tulane Hospitals, except in the ordinary course of business, and not take any action that might create a material change in the operations of the Tulane Hospitals;
 - d. Provide the Tulane Hospitals with sufficient capital to maintain the viability, competitiveness, and marketability of the business;
 - e. Preserve the existing relationships with Health Plans, suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Tulane Hospitals. In the event that a contract with the Tulane Hospitals expires during the term of this Temporary Restraining Order, the Tulane Hospitals shall offer to continue to do business on the same material terms as are in the contract for the remaining term of this Temporary Restraining Order;
 - f. Permit the Tulane Hospitals to grant privileges to new physicians in the ordinary course of business and consistent with the practices and procedures in place at the Tulane Hospitals on the Effective Date; and
 - g. Not modify, change, or cancel any physician privileges at the Tulane Hospitals, such that all physicians with privileges at the Tulane Hospitals on the Effective Date shall retain their privileges; *provided however*, that a Tulane Hospital may

revoke privileges of any individual physician consistent with professional medical standards, and LCMC shall provide written notice to Commission staff within 24 hours of any revocation of privileges.

Hold Separate

3. During the TRO Hold Separate Period, LCMC:

- a. Shall not further consolidate, integrate or otherwise combine the services, locations, employees, operations, or businesses of the Tulane Hospitals into or with any of LCMC's other hospitals, services, locations, employees, operations, or businesses;
- b. Shall allow the Tulane Hospitals to operate separately, apart, and independently of LCMC's other businesses and assets as configured on the Effective Date, and vest the Tulane Hospitals with all rights, powers, and authority necessary to conduct business in a manner consistent with this Temporary Restraining Order;
- c. Shall continue to keep separate those contracting activities of the Tulane Hospitals with Health Plans that are separate from the Pre-existing Business as of the Effective Date, including maintaining separate contracts for Health Plans of the Tulane Hospitals that are also customers of the Preexisting Business; and
- d. From the Effective Date, shall create firewalls to prohibit employees of the:
 - i. Preexisting Business from disclosing price and cost information, including reimbursement rates, relating to the services offered by the Preexisting Business to employees of the Tulane Hospitals;
 - ii. Tulane Hospitals from disclosing price and cost information, including reimbursement rates, relating to the services offered by Tulane Hospitals to employees of the Preexisting Business; and
 - iii. Preexisting Business and the Tulane Hospitals from coordinating on any pricing-related decisions for services offered by either.

Employees of the Tulane Hospitals

4. LCMC shall maintain a workforce of physicians, nurses, and medical support staff for the Tulane Hospitals, that is at least equivalent in size, training, specialty, and expertise, to that of the business as of the Effective Date. It is further ordered that:
 - a. LCMC shall not terminate, or cause the termination of, any contract between the Tulane Hospitals and any employee except for good cause as allowed by contract. If a contract expires during the term of this Temporary Restraining Order, LCMC

shall offer to continue to do business on the same material terms as are in the contract for the TRO Hold Separate Period;

- b. LCMC shall provide employee benefits to employees of the Tulane Hospitals that are at least equal to those provided as of the Effective Date. These benefits shall include regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives reasonably necessary to preserve the viability, competitiveness, and marketability of the Tulane Hospitals;
- c. For any employee of a Tulane Hospital terminated for good cause after the date this Temporary Restraining Order is granted, LCMC shall provide written notice to a duly authorized representative of the Commission within 24 hours of any termination (including the cause for such termination); and
- d. Consistent with past practice as of the Effective Date, the Tulane Hospitals shall replace any departing or departed employee with an individual who has similar experience, specialty, and expertise.

Cooperation With the Commission

- 5. LCMC shall cooperate with any reasonable request by a duly authorized representative of the Commission for information regarding its compliance with the terms of this Temporary Restraining Order, including the following:
 - a. Thirty days after the date this Temporary Restraining Order is granted, LCMC shall submit a report describing how it will implement and is implementing the terms of this Temporary Restraining Order and shall submit subsequent reports every 30 days thereafter until this Temporary Restraining Order terminates. Each report shall:
 - i. Describe how LCMC has complied and is complying with the terms of this Temporary Restraining Order;
 - ii. Provide sufficient information and documentation to enable the Commission to determine independently whether LCMC is in compliance with this Temporary Restraining Order;
 - iii. Be verified by a notarized signature or sworn statement of a person specifically authorized to perform this function on behalf of LCMC, as applicable, or self-verified in the manner set forth in 28 U.S.C. § 1746; and
 - iv. Be filed directly with the Bureau of Competition's Compliance Division at bccompliance@ftc.gov, with copies to Christine Tasso at ctasso@ftc.gov and Adam Pergament at apergament@ftc.gov.

- b. For purposes of notifying the Commission as required in this Order, LCMC and Tulane University shall contact Christine Tasso and Adam Pergament at the emails listed above.

Termination

6. This Temporary Restraining Order shall remain in effect until the end of the TRO Hold Separate Period.

ISSUED this _____ day of _____, 2023, at _____ a.m./p.m.

SO ORDERED:

United States District Court Judge