

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

FEDERAL TRADE COMMISSION,

Petitioner,

v.

**LOUISIANA CHILDREN’S MEDICAL
CENTER,**

and

HCA HEALTHCARE, INC.,

Respondents.

Case No. 1:23-cv-01103-ABJ

**LCMC’S MOTION TO DISMISS OR, ALTERNATIVELY, TRANSFER THE ACTION
FOR WANT OF JURISDICTION**

Respondent Louisiana Children’s Medical Center (LCMC) moves to dismiss the claims against it for lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). In the alternative, LCMC moves to transfer this action to the United States District Court for the Eastern District of Louisiana under 28 U.S.C. § 1631.

LCMC separately has filed a joint motion to transfer this action under 28 U.S.C. § 1404 with co-respondent HCA Healthcare Inc. (HCA). For the reasons explained in that motion, this Court should transfer the entire case to the Eastern District of Louisiana and pretermitt the personal-jurisdiction issue. *See Mathis v. Geo Grp., Inc.*, 535 F. Supp. 2d 83, 86 (D.D.C. 2008) (“Where a ‘sound prudential justification’ exists, a court may consider venue without deciding the question of personal jurisdiction.”) (quoting *Cameron v. Thornburgh*, 983 F.2d 253, 257 n.3 (D.C. Cir. 1993)). LCMC independently submits this motion to explain that dismissal of the claims against

it or transfer of the entire action is mandatory because of the Court’s lack of personal jurisdiction over LCMC.

BACKGROUND

On April 19, 2023, LCMC—a non-profit health system based in New Orleans, Louisiana—filed a declaratory judgment action against the Federal Trade Commission (FTC) and other federal defendants in the United States District Court for the Eastern District of Louisiana. *See* Complaint (ECF No. 1), *Louisiana Children’s Medical v. Garland*, 2:23-cv-01305 (E.D. La.).¹ In that action, LCMC seeks a declaration that its acquisition of certain New Orleans-area hospitals that HCA previously owned and operated is exempt from filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act under the state action immunity doctrine. The FTC was aware of LCMC’s Louisiana action when it filed its action for a temporary restraining order and preliminary injunction, but it did not mention the action in its papers to this Court.

LCMC operates nine hospitals and a number of locations in Louisiana, and also has a small presence in Mississippi. *Martin Decl.* ¶¶ 4-5. LCMC is organized under Louisiana law and has its principal base of business at 1100 Poydras Street in New Orleans. *Id.* at ¶ 4. The overwhelming bulk of LCMC’s operations are in the greater New Orleans region, and the Tulane University Medical Center, Lakeview Regional Medical Center, and Tulane Lakeside Hospital that LCMC acquired from HCA in the challenged transaction are all located within the Eastern District of Louisiana. *Id.* at ¶¶ 5, 8. LCMC does not have any operations or presence in the District of Columbia and it does not transact business in the District of Columbia. *Id.* at ¶ 9.

¹ HCA filed a similar, separate action in the U.S. District Court for Eastern District of Louisiana. *See* Complaint (ECF No. 1), *HCA Healthcare, Inc. v. Garland*, 2:23-cv-01311 (E.D. La.). This Court is entitled to take judicial notice of the relevant proceedings in that district. *See Gharb v. Mitsubishi Elec. Corp.*, 148 F. Supp. 3d 44, 46 n.1, 55 (D.D.C. 2015) (taking judicial notice of prior related litigation on grounds that “[t]he court may take judicial notice of public records from other court proceedings”).

ARGUMENT

I. The FTC’s Claims Against LCMC Should Be Dismissed For Lack Of Personal Jurisdiction.

This Court may dismiss claims against a party for lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). On a Rule 12(b)(2) motion to dismiss, “the plaintiff bears the burden of establishing a basis for exercising personal jurisdiction over the defendant.” *Cockrum v. Donald J. Trump for President, Inc.*, 319 F. Supp. 3d 158, 172 (D.D.C. 2018). The plaintiff must also “establish[] a factual basis for the exercise of personal jurisdiction over *each defendant*.” *Michigan Welfare Rights Organization v. Trump*, 600 F. Supp. 3d 85, 97 (D.D.C. 2022) (emphasis added). That is, “the plaintiff must alleged specific facts that connect *each defendant* with the forum.” *Id.* (emphasis added). And the Court “may consider, receive, and weigh affidavits and other relevant materials outside the pleadings to assist it in determining the pertinent jurisdictional facts.” *Id.*

To prove personal jurisdiction over LCMC, the FTC must first identify “a statutory basis for . . . service of process” on LCMC. *GSS Group Ltd. v. Nat’l Port Auth.*, 774 F.Supp.2d 134, 137 (D.D.C. 2011) (citing *Mwani v. Bin Laden*, 417 F.3d 1, 8 (D.C. Cir. 2005); *see also GTE New Media Servs. v. BellSouth Corp.*, 199 F.3d 1343, 1347 (D.C. Cir. 2000)). The FTC has not carried that burden. Although the FTC’s petition does not identify a basis for personal jurisdiction over LCMC, its petition (at p. 4) invokes Section 12 of the Clayton Act, 15 U.S.C. § 22, which provides for venue and personal jurisdiction in two separate parts. First, “[a]ny suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business.” *Id.* Then, “all process in *such cases* may be served in the district of which it is an inhabitant, or wherever it may be found.” *Id.* (emphasis added).

All agree that the second half of Section 12 provides for nationwide service of process in some cases. But Section 12 authorizes nationwide service of process *only* when venue is proper in the district of suit under the *first* half of Section 12. *GTE New Media Servs.*, 199 F.3d at 1350. The D.C. Circuit has explained that “[t]he language of the statute is plain” and that the first clause “relates to a supplemental basis for venue in actions under the Clayton Act,” while the second clause “relates to nationwide service of process in antitrust cases; and invocation of the nationwide service clause rests on satisfying the venue provision.” *Id.* The upshot? For the FTC to permissively invoke Section 12’s nationwide-service-of-process provision, it must show that LCMC was an inhabitant of, may be found in, or transacted business in the District of Columbia “as required by Section 12’s first clause.” *Id.* at 1351.

The FTC here goes zero-for-three. *First*, LCMC is not an inhabitant of the District. “To demonstrate inhabitancy in the District of Columbia [under Section 12], a plaintiff must show that the defendant is incorporated here.” *City of Moundridge v. Exxon Mobil Corp.*, 471 F. Supp. 2d 20, 35 (D.D.C. 2007). But, as even FTC admits, LCMC is organized under the laws of Louisiana. *See* Pet. ¶ 2; Martin Decl. ¶¶ 4-5.

Second, LCMC is not “found in” the District. To show a defendant is “found in” the District under Section 12, “[a] plaintiff must show that a corporation has ‘presence’ and ‘continuous local activity’ in the District of Columbia.” *City of Moundridge*, 471 F. Supp. 2d at 35. But LCMC “has no operations or presence in the District of Columbia,” Martin Decl. ¶ 9, and the FTC does not contend otherwise.

Third, LCMC does not transact business in the District. “Whether a defendant has transacted business is largely a factual question”; “courts look for tangible manifestations of doing business . . . [and] [t]he business transacted must be of a substantial character.” *City of*

Moundridge, 471 F. Supp. 2d at 36 (internal quotation marks omitted). The FTC once again does not identify any business that LCMC transacts in the District, and it is hard to imagine any business that LCMC *can* transact in the District when its facilities are all in Louisiana and Mississippi and it has no presence or operations in the District of Columbia. Martin Decl. ¶¶ 5, 8-9.

In sum, there is no basis to lay venue in this District on the FTC's claims against LCMC under Section 12 of the Clayton Act. And because there is no basis to lay venue in the District on the FTC's claims against LCMC under Section 12, there is no basis to exercise personal jurisdiction over LCMC in the District under Section 12. *GTE New Media Servs.*, 199 F.3d at 1351 (holding that "because [plaintiff] has not shown that the defendants were inhabitants of, may be found in, or transacted business in the District, as required by Section 12's first clause, it cannot avail itself of Section 12's second clause").

II. In The Alternative, The Court Should Transfer The Entire Action To The Eastern District Of Louisiana Under 28 U.S.C. § 1631.

Under 28 U.S.C. § 1631, this Court may transfer an action from a district where jurisdiction is lacking to a district "in which the action or appeal could have been brought at the time it was filed or noticed." Section 1631 allows for transfers on the basis of personal jurisdiction as well as subject-matter jurisdiction, *Freedman v. Suntrust Banks, Inc.*, 139 F. Supp. 3d 271, 285-286 (D.D.C. 2015). Unlike other circuits, however, *see, e.g., D'Jamoos ex rel. Estate of Weingeroff v. Pilatus Aircraft Ltd.*, 566 F.3d 94, 111 (D.C. Cir. 2009), the D.C. Circuit limits transfers under § 1631 to transfers of an *entire* action, *Hill v. U.S. Air Force*, 795 F.2d 1067, 1070-71 (D.C. Cir. 1986). There are three requirements for a § 1631 transfer: "(1) there must be a lack of jurisdiction in the district court; (2) the transfer must be in the interest of justice; and (3) the transfer may be made only to a court in which the action could have been brought at the time it was filed or noticed." *Does 1-144 v. Chiquita Brands Int'l, Inc.*, 285 F. Supp. 3d 228, 233 (D.D.C. 2018). In

turn, “whether transfer is in the interest of justice rests within the sound discretion of the district court.” *Id.* at 235 (internal quotation omitted).

All three requirements are met here. *First*, for reasons presented above, this Court lacks personal jurisdiction over the LCMC. *See supra* pp. 3-5.

Second, it is in the interest of justice to transfer the action. In *Does 1-144*, the Court considered a number of factors in making the interest-of-justice determination. As relevant here, it concluded that transfer was in the interest of justice where the parties would not be unfairly prejudiced by such transfer and where transfer was to “districts where [most of the parties] reside, where they conducted their business, or where the acts giving rise to the liability occurred.” *Does 1-144*, 285 F. Supp. 3d at 235-37. It also noted that transfer would not “prejudice the [non-movants’] position on the merits.” *Id.* at 237. The same is true here. The locus of the parties’ residence, places of business, and relevant acts is in the Eastern District of Louisiana—not the District. Moreover, the FTC can press its claims on the merits as well in Louisiana as in the District. And transfer serves the interest of justice because the Louisiana Attorney General has moved to intervene in LCMC’s Louisiana action, presenting there the State’s case in support of the Acquisition and the state action immunity doctrine. And it is efficient to transfer the action to Louisiana, because there are already two relevant actions there, as well as the overwhelming majority of property, witnesses, and patients impacted by the Acquisition.

Third, the FTC could have brought this action in the Eastern District of Louisiana. LCMC and HCA are both subject to personal jurisdiction in that court on the FTC’s claims, and venue would be proper because both LCMC and HCA “reside” in the Eastern District of Louisiana for purposes of the FTC’s claims and because the relevant events took place in the Eastern District of Louisiana. *See* 28 U.S.C. §1391(b)(1)-(2).

CONCLUSION

For these reasons, LCMC respectfully requests that this Court dismiss the FTC's claims against it for lack of personal jurisdiction. In the alternative, the Court should transfer the action to the Eastern District of Louisiana under 28 U.S.C. § 1631.

Dated: April 24, 2023

Respectfully submitted,

/s/ Benjamin F. Holt

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DECLARATION OF JODY B. MARTIN

I, JODY B. MARTIN, declare the following:

1. I am a United States citizen over the age of eighteen. I am competent to make this Declaration, and I am not a party to this litigation in my individual capacity. I make and submit this Declaration pursuant to 28 U.S.C. § 1746.

2. If called upon as a witness, I could testify to the matters to which this Declaration refers and would be competent to do so.

3. I am CHIEF LEGAL OFFICER at Respondent LCMC Health ("LCMC"), where I have been employed since 2017. In that role, I serve as the system's primary legal advisor and manage the many legal situations that arise for the system, including compliance and risk management functions. I have lived in New Orleans since 2013. Prior to this position I served as regional general counsel for another non-profit health system and prior to that acted as deputy

general counsel for a privately owned company that operated ambulatory surgery centers around the country.

4. LCMC is a non-profit health system, organized under the laws of Louisiana, which operates nine hospitals and a number of other locations in Louisiana. LCMC is based in New Orleans, with its principal place of business at 1100 Poydras Street.

5. From the beginning, LCMC has been deeply tied to the greater New Orleans community. LCMC was formed in 2009 through a partnership between Children's Hospital and the Touro Infirmary in New Orleans. Since then, we have been dedicated to providing the best possible care for our community. The overwhelming bulk of LCMC's operations are in the greater New Orleans region, though we have a small presence in Mississippi as well. LCMC has no employees in the District of Columbia.

6. On January 1, 2023, LCMC acquired Tulane University Medical Center, Lakeview Regional Medical Center, and Tulane Lakeside Hospital (the "Acquisition"). Prior to the Acquisition, those hospitals were operated by HCA Healthcare, Inc. ("HCA")—a for-profit provider network.

7. The Acquisition was publicly announced on October 10, 2022, the day the formal agreements were signed. The announcement was widely reported in the local and trade press at the time.

8. Tulane University Medical Center is located in Orleans Parish. Lakeview Regional Medical Center is located in St. Tammany Parish. Tulane Lakeside Hospital is located in Jefferson Parish. I understand from the website cited below that each of these parishes falls within the

geographic boundaries of the United States District Court for the Eastern District of Louisiana, as does the city of New Orleans, which is the hub of LCMC operations.¹

9. LCMC has no operations or presence in the District of Columbia. LCMC does not transact business in the District of Columbia.

10. Prior to the Acquisition, the parties to the transaction sought a Certificate of Public Advantage (“COPA”) from the Louisiana Attorney General. I understand that the Louisiana legislature has empowered the Attorney General to grant such COPAs, which exempt transactions from regulation under the antitrust laws where such transactions serve the important State interest in the health and welfare of its citizens.

11. It was no secret that LCMC was seeking a COPA for the Acquisition. The process was subject to a period of public notice and comment, and a well-attended public hearing at which dozens of citizens spoke. The Louisiana Attorney General publicly considered and approved the COPA. Yet, LCMC heard nothing about the Acquisition from the Federal Trade Commission (“FTC”) or the United States Department of Justice while in the process of seeking a COPA.

12. The application process for COPA approval was intensive. LCMC submitted voluminous documents to the State Attorney General, including detailed descriptions of the parties and hospital systems, the proposed acquisition, and its anticipated effects on competition and health care in Louisiana. LCMC also responded to inquiries and participated in meetings with the Attorney General and the team of experts hired by the Attorney General to help the State review the transaction. The Attorney General then issued public notice of the proposed acquisition, asked for comments from the public, and received comments from a wide range of stakeholders. Finally,

¹ <https://www.laed.uscourts.gov/court-information>.

the Attorney General held a public hearing on December 8, 2022, at which any interested member of the public was invited to attend.

13. The public hearing was attended by members of the public and press and covered widely in local media in December 2022. The January 1, 2023 closing was also widely publicized through the parties' press releases and in local and national media.

14. On December 28, 2022, the State of Louisiana granted a COPA approving the agreements and merger effectuating the Acquisition. The COPA was subject to a number of terms and conditions, which evince the State Attorney General's on-going active supervision of the Acquisition and LCMC's subsequent operations.

15. This issuance of the COPA made sense. The State of Louisiana has long trusted LCMC as a critical part of its health policy, particularly for the greater New Orleans region. For example, in 2012, LCMC partnered with the State to operate the Interim LSU Hospital, which preserved services and access to care in New Orleans, and also averted a significant disruption in university teaching programs. Likewise in 2015, the State contracted with LCMC to operate the new University Medical Center New Orleans. In addition, the Acquisition is designed to benefit the people of Louisiana by providing increased access to high quality, affordable health care.

16. As a result of the COPA issuance and the Louisiana legislature's clear articulation of the intent and purpose of the COPA statute, LCMC understood that it was not subject to the antitrust laws—including any requirement to submit a notification of the Acquisition to federal regulators prior to closing the transaction. On that basis, the Acquisition closed on January 1, 2023 without any such notice.

17. Months later, the FTC contacted LCMC through counsel to inquire why it had not submitted a notice prior to closing the Acquisition. LCMC explained that the transaction was

subject to the Louisiana COPA and therefore exempt from antitrust scrutiny, but the FTC ordered LCMC to submit a notice anyway and threatened that LCMC was incurring an expensive daily penalty for each day that it did not submit.

18. I understand that submitting a notice at this point would be expensive and burdensome. Despite the COPA, the FTC's order would have LCMC submit the filing, pay a significant filing fee, and then pay a penalty for the alleged delay in doing so. I also understand that the FTC believes filing the HSR would begin a potential long and protracted investigation potentially leading to additional litigation. The FTC has demanded that LCMC pause the transaction and stop integrating during the pendency of any such investigation related to the demanded HSR filing.

19. To protect itself from those significant harms, on April 19, 2023, LCMC filed in the United States District Court for the Eastern District of Louisiana an action for a declaratory judgment (the "Louisiana Action"), seeking a ruling that it need not submit the filing, pay the filing fee, or pay any penalty.

20. I also understand that Louisiana Attorney General Jeff Landry has moved to intervene in the Louisiana action in order to present the State's view on why the Acquisition is not subject to federal antitrust regulation and otherwise support LCMC's plea for a declaratory judgment.

21. Halting integration (beyond the stipulated agreement that LCMC has entered into with the FTC and that this Court approved) would impair patient care, impede Louisiana's goals of improving access to quality and affordable health care via the Acquisition, and impose massive burden on LCMC, all at the expense of its focused attempts to improve quality of and access to health care in the greater New Orleans region.

22. As part of the COPA process, LCMC made commitments to the State of Louisiana to improve the quality of and access to health care in the greater New Orleans region. Among other things, LCMC promised to relocate advanced clinical services and certain academic medical specialty care currently provided at Tulane University Medical Center to East Jefferson General Hospital to make more efficient use of the locations, enhance quality by sharing clinical expertise and practices, and support the establishment of the academic medical center at East Jefferson General Hospital. For example, today, both Tulane University Medical Center and East Jefferson General Hospital have significant excess capacity, and relocating the services will increase volume at a single site—increased patient volumes correspond with increased quality for many clinical services. Halting integration efforts for an indefinite period of time would mean that LCMC could not deliver on these promised benefits to the State and the people of Louisiana.

23. Other examples of the harms to the State of Louisiana and LCMC that could result from a further delay in integration include:

- a. Impeding the development of higher quality centers of excellence at Tulane's new home at East Jefferson General Hospital.
- b. Delaying the modernization of hospital assets, including transformation of East Jefferson General Hospital into a premier academic medical center. LCMC has planned for a capital investment of at least \$220 million. This investment is critical to improving quality and access of care in the community, but cannot be undertaken while integration is paused.
- c. Making it more difficult for patients to easily transfer their medical information across facilities and providers. Relatedly, delays on implementing EPIC—a software system for managing medical records—would result, denying patients' access to better services and shared medical records on the planned timeframe.
- d. Hindering Tulane's and LCMC's ability to recruit and retain providers, which could impact patient access to care.

24. Overall, the State of Louisiana, its citizens, and LCMC would be needlessly harmed by further delay in integration.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ JODY B. MARTIN

Jody B. Martin

Executed on April 24, 2023

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**[PROPOSED] ORDER GRANTING LCMC'S MOTION TO DISMISS OR,
ALTERNATIVELY, TRANSFER THE ACTION FOR WANT OF JURISDICTION**

The Court has considered the motion to dismiss or, alternatively, transfer the action for want of jurisdiction, filed by Respondent Louisiana Children's Medical Center (LCMC), along with all relevant briefs and evidence. Having considered the arguments of counsel:

It is hereby **ORDERED** that the Federal Trade Commission's claims against LCMC are **DISMISSED** without prejudice; and

It is further **ORDERED** that this Court's Order of April 21, 2023 (Dkt. No. 12) is vacated and no longer binds any party.

IT IS SO ORDERED.

DATE: April ____, 2023

Hon. Amy Berman Jackson, U.S.D.J.