

**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 REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS OR,
ALTERNATIVELY, TRANSFER THE ACTION FOR WANT OF JURISDICTION**

The FTC misapprehends the jurisdictional reach of both the FTC Act and Clayton Act, neither of which supports the exercise of personal jurisdiction over LCMC. Dismissal is appropriate because (1) the FTC did not sufficiently plead Section 13(b) of the FTC Act as a basis for personal jurisdiction; (2) Section 13(b) cannot support personal jurisdiction over LCMC; and (3) the FTC fails to contest LCMC’s arguments concerning Section 12 of the Clayton Act.

As an initial matter, the Court need not reach these complex jurisdictional issues. Indeed, transfer under 28 U.S.C § 1404(a) would be particularly appropriate given the thorny questions presented and the relative efficiency of adjudicating the FTC’s claims in the Eastern District of Louisiana. *See Aftab v. Gonzalez*, 597 F. Supp. 2d 76, 79 (D.D.C. 2009) (bypassing jurisdictional questions and transferring the action under § 1404(a) where “considerations of convenience, fairness, and judicial economy” warranted it); *Gage v. Somerset County*, 369 F. Supp. 3d 252, 259

(D.D.C. 2019) (considering venue before jurisdiction because “courts may address certain nonjurisdictional, threshold issues before examining jurisdictional questions”) (quotation omitted). Whether by dismissal or § 1631 transfer for lack of jurisdiction or whether by transfer under § 1404(a), the result is the same: this case belongs in the Eastern District of Louisiana.

ARGUMENT

1. The FTC’s assertion of personal jurisdiction under Section 13(b) of the FTC Act is insufficiently pleaded.

The FTC’s opposition faults LCMC’s motion for not analyzing personal jurisdiction under Section 13(b) of the FTC Act. Opp. 2, 4–5. But LCMC did not raise that statute because the FTC’s conclusory and vague pleadings did not make clear that the Commission sought to rely on Section 13(b) as a basis for personal jurisdiction.

In fact, the pleadings are ambiguous on that point. The FTC’s reference to Section 13(b) appears to be an attempt to establish *subject matter* jurisdiction for a permanent injunction, not a basis for personal jurisdiction over LCMC, as evidenced by the FTC’s briefing. *See* Stmt. of P. & A. in Supp. of Pet’r’s Mot. (“Pet’r’s Stmt.”) (ECF No. 4) 8-10. This understanding is also reasonable because, although both Section 12 of the Clayton Act and Section 13(b) of the FTC Act premise personal jurisdiction on the propriety of venue, *see infra* pp. 3–5, the FTC pleads only that “[v]enue is proper pursuant to Section 12 of the Clayton Act” and “28 U.S.C. § 1391(b) and (c).” Pet. 5. LCMC addressed venue under Section 12 of the Clayton Act in its individual motion and explained why the FTC could not rely on both Section 12 and Section 1391 for venue purposes in Respondents’ joint venue motion. *See* LCMC’s Mot. To Dismiss or, Alternatively, Transfer the Action for Want of Jurisdiction (“Mot. To Dismiss”) (ECF No.19) 4-5; Mem. of Law in Supp. of Resp’ts’ Mot. to Transfer Venue 13 (ECF No. 20-1). Finally, it makes little sense for the FTC to

employ Section 13(b) as grounds for personal jurisdiction in this action, because the full relief the agency purports to seek here is not available under that statute. *See infra* pp. 5–6.

The FTC “must plead specific facts to establish personal jurisdiction,” and it “cannot rely on conclusory statements” to do so. *Capel v. Capel*, 272 F. Supp. 3d 33, 38 (D.D.C. 2017) (cleaned up). The FTC has not satisfied this burden with its vague, two-sentence assertion of jurisdiction.

2. Section 13(b) of the FTC Act does not provide for personal jurisdiction over LCMC.

Section 13(b) of the FTC Act provides for personal jurisdiction only where the relevant defendant “resides or transacts business” in the given district, or where venue is proper under 28 U.S.C. § 1391. 15 U.S.C. § 53(b).¹ The FTC posits that personal jurisdiction exists under the latter provision, but this argument fails for two independent reasons: (1) venue is—in fact—*not* proper in this district; and (2) Section 13(b) does not permit the FTC to seek preliminary injunctive relief in these circumstances.

First, venue is not proper in this district; therefore, this Court lacks personal jurisdiction over LCMC as to any claim under Section 13(b). Distilled to simplest terms, the FTC argues that Section 13(b) establishes nationwide service of process where venue is proper, and that this service supplies personal jurisdiction.² *See* Opp. 3–4. The FTC advances only one argument to suggest that this case is properly venued: that the relevant “events or omissions giving rise to the claim occurred in the District of Columbia.” Opp. 3 (cleaned up). This is wrong. A claim originates “in the location where the corporate decisions underlying those claims were made or where most

¹ LCMC explained in its motion that LCMC does not reside or transact business in the District of Columbia. *See* Mot. to Dismiss (ECF No. 19) 4-5. The FTC does not contend otherwise in its Opposition.

² It is irrelevant that, as the FTC points out (Opp. 3 n.2), LCMC waived service of process. Waiver of service “does not waive any objection to personal jurisdiction or venue.” Fed. R. Civ. P. 4(d)(5).

of the significant events giving rise to the claims occurred.” *Beall v. Edwards Lifesciences LLC*, 310 F. Supp. 3d 97, 104 (D.D.C. 2018); *see also Berenson v. Nat’l Fin. Servs., LLC*, 319 F. Supp. 2d 1, 4 (D.D.C. 2004) (same). Additionally, as argued in LCMC and HCA’s brief in support of the joint motion to transfer, the plain text of the statute upon which the FTC’s complaint is founded—Section 7A of the Clayton Act, codified at 15 U.S.C. § 18(a)—establishes that the allegedly prohibited conduct is the *affirmative* act of acquiring of assets without notification, not the *negative* act of omitting a filing. *See* Mot. to Transfer (ECF 20) 10. That affirmative act would have taken place in the Eastern District of Louisiana.

Because venue is not properly laid in this district, the FTC cannot rely on Section 13(b) of the FTC Act for personal jurisdiction over LCMC. Just as with nationwide service under Section 12 of the Clayton Act, the requirement of proper venue necessarily precedes the availability of nationwide service under Section 13(b). *See FTC v. Mallett*, 818 F. Supp. 2d 142, 147 n.4 (D.D.C. 2011) (“Under Section 13(b) of the FTC Act, the propriety of nationwide service of process is tied in part to the question of proper venue”); *cf. GTE New Media Servs. v. BellSouth Corp.*, 199 F.3d 1343, 1350 (D.C. Cir. 2000) (concluding in Clayton Act context that “invocation of the nationwide service clause rests on satisfying the venue provision”). This requirement is reflected in the plain language of Section 13(b):

Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28. . . . In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found.

15 U.S.C. § 53(b). The structure of the statute—with the nationwide-service provision following the venue requirement and with repetition of the phrase “any suit”—demonstrates that the nationwide service provision is subject to satisfaction of the venue provision. *See* Mot. to Dismiss (ECF No. 19).

Second, and at a more basic level, the FTC can take advantage of the nationwide-service-and-venue provisions in Section 13(b) only if this action is a “suit under” Section 13(b). But this is not a “suit under” Section 13(b); Section 13(b) is the wrong vehicle for this action. The FTC cannot obtain the full relief it purports to seek in this case under Section 13(b) alone, and in any event, violations of the HSR Act must proceed through the HSR Act’s judicial relief mechanism, not through Section 13(b).

Unavailable Remedy. This is not a “suit under” Section 13(b) because it seeks a remedy that Section 13(b) bars. The FTC’s opening brief makes clear that it is asking the Court to grant injunctive relief under Section 7A(g)(2) of the HSR Act, 15 U.S.C. § 18a(g)(2), including *preliminary* relief in the form of a hold-separate order. [Pet’r’s Stmt. 10] The FTC also purports to seek *permanent* injunctive relief under Section 13(b). *Id.* Although some cases have interpreted Section 13(b) to permit the FTC to go directly to district court when it is seeking permanent injunctive relief,³ preliminary relief under Section 13(b) is available only in circumstances where the FTC plans to file an administrative complaint under Part 3 of the FTC Act, and the preliminary relief expires if the FTC does not file the complaint within 20 days of the grant of preliminary

³ The FTC’s interpretation of 13(b) as permitting suits for permanent injunctive relief in federal district court entirely unrelated to administrative proceedings, which the FTC seeks to do here, may no longer be viable after *AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341, 1347–48 (2021). In rejecting the FTC’s claim that it can seek monetary relief under Section 13(b), the Court stated that “[i]n light of the historical importance of administrative proceedings,” allowing the FTC to go directly to court to seek monetary relief without first engaging in administrative proceedings “would allow a small statutory tail to wag a very large dog.” *Id.* The same logic applies to permanent injunctions; given the primacy of administrative proceedings, allowing the FTC to go directly to court to seek a permanent injunction would also allow a small statutory tail to wag a very large dog. *Id.* The Court did not decide the question in *AMG Capital Management*, saying only that Section 13(b) “might . . . be read . . . as granting authority for the Commission to go one step beyond the provision and (‘in proper cases’) dispense with administrative proceedings to seek what the words literally say (namely, an *injunction*).” *Id.* at 1348. The questionable availability of the permanent relief the FTC seeks under Section 13(b) is yet another reason to bypass the personal-jurisdiction question.

relief. 15 U.S.C. § 53(b); *see also* Opp. 3 n.1. The FTC cannot bring its Section 7A(g)(2) claim of an HSR Act violation in an administrative proceeding, because such a claim can only be brought in federal court. *See* 15 U.S.C. § 18a(g)(2)(A), (C) (“[T]he *United States district court* may order compliance. . . . and may grant such other equitable relief as the court in its discretion determines necessary or appropriate.”) (emphasis added). This petition lacks the connection to an administrative proceeding necessary for the Court to issue preliminary relief under Section 13(b).

Exclusive Vehicle. This is not a “suit under” Section 13(b), for which Section 13(b) permits nationwide service of process, for an additional reason: Congress created a specific vehicle for judicial redress of violations of the HSR Act, and the FTC must use that vehicle in this action exclusively alleging HSR Act violations.

Section 7A(g) of the HSR Act, 15 U.S.C. § 18a(g), lays out a specific, detailed remedial scheme for violations of the HSR Act. The United States may seek civil fines for violations of any provision of Section 7A, and upon failure “substantially to comply with the notification requirement” or additional document requests “within the waiting period specified in subsection (b)(1) and as may be extended under subsection (e)(2),” the FTC or the United States may apply to a district court for a compliance order, an extension of the waiting period (with some limitations), or “other equitable relief.” 15 U.S.C. § 18a(g)(1)–(2). And because Section 7A does not have its own provisions for venue or service of process, Section 12 of the Clayton Act, 15 U.S.C. § 22, supplies the rule.

The FTC cannot put Section 7A(g)(2) to the side and instead proceed under Section 13(b). Indeed, the Supreme Court recently unanimously rejected the same argument when the FTC sought to proceed under Section 13(b) instead of under a more specific (and more limited) enforcement vehicle. *See AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341, 1348–50 (2021). The FTC argued

that the two provisions were simply “separate, parallel enforcement paths.” *Id.* at 1350. But that position would merely let the FTC “avoid the conditions and limitations laid out in” the other section; the Court could not “believe that Congress merely intended to enact a more onerous alternative to § 13(b) when it enacted” the more specific enforcement vehicle at issue in that case. *Id.* at 1351. That is, after all, “a basic principle of statutory construction”: “a statute dealing with a narrow, precise, and specific subject is not submerged by a . . . statute covering a more generalized spectrum.” *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976); *see also ConArt, Inc. v. Hellmuth, Obata + Kassabaum, Inc.*, 504 F.3d 1208, 1210 (11th Cir. 2007) (“[W]hen presented with a potential overlap between the broadly sweeping terms of a statute of general application that appear to apply to an entire class, and the narrow but specific terms of a statute that apply to only a subgroup of that class, we avoid conflict between the two by reading the specific as an exception to the general.”). Nor can the FTC proceed under Section 7A(g)(2) but somehow borrow the service provision from Section 13(b); that provision applies only to “suits[s] under this section”—that is, under Section 13(b).

Thus, if the FTC seeks to enforce the HSR Act—as it does here—then it must proceed under the HSR Act’s enforcement vehicle, Section 7A(g)(2), and it must establish venue under a provision other than Section 13(b). Here, the only potentially viable basis for venue cited by the FTC is Section 12 of the Clayton Act.⁴ For the reasons argued in the opening brief and undisputed by the FTC, the FTC cannot establish venue under Section 12 of the Clayton Act and therefore cannot establish personal jurisdiction over LCMC.

⁴ As explained in the memorandum in support of Respondents’ joint transfer motion, Dkt. 20-1, the FTC cannot rely on a combination of Section 12 of the Clayton Act and 28 U.S.C. § 1391(b) and (c) to establish personal jurisdiction and venue. *See GTE New Media Servs.*, 199 F.3d at 1350–51.

3. The FTC fails to contest LCMC's arguments that Section 12 of the Clayton Act does not establish jurisdiction.

The FTC's opposition does not respond to any of LCMC's arguments concerning the inapplicability of Clayton Act Section 12 as a basis for personal jurisdiction. Instead, the FTC merely states that "[w]hether or not the Clayton Act provides personal jurisdiction is of no moment because the Court plainly has personal jurisdiction under Section 13(b)." Opp. 4. Section 12 authorizes nationwide service of process *only* when venue is proper in the district of suit. *GTE New Media Servs.*, 199 F.3d at 1350. As argued above and in separate briefing, there is no basis to lay venue in this Court. *See supra* pp. 3–4. The FTC's allegation of jurisdiction under the Clayton Act is therefore unavailing.

At the conclusion of its quick mention of the Clayton Act, the FTC offers a short argument concerning the "pendent personal jurisdiction" doctrine. Opp. 5. The FTC posits that, because the Court has personal jurisdiction "over the hospitals under Section 13(b)," it may exercise personal jurisdiction more broadly. *Id.* If the FTC is arguing that jurisdiction over the HSR Act claim is permissible because jurisdiction is proper under Section 13(b), that argument is beside the point; the FTC can prevail on that argument only if it also prevails on its arguments that personal jurisdiction exists under Section 13(b) at all. As explained above, it does not. The pendent personal jurisdiction argument rises and falls with the rest of the argument about whether personal jurisdiction is proper under Section 13(b) in the first place. And to the extent the FTC is arguing that there is personal jurisdiction over Respondent HCA, and there is therefore some form of pendant jurisdiction over LCMC, that argument too must fail because the FTC has neither cited any case in which personal jurisdiction over one defendant allowed a court to exercise personal jurisdiction over another nor alleged any facts demonstrating that HCA is subject to personal jurisdiction here. *See* Petition 5 (alleging only that HCA is "incorporated under the laws of

Delaware, with its principal place of business located at . . . Nashville, TN” and that it “operates 182 hospitals in the United States and abroad”). Either way, the FTC’s pendant personal jurisdiction theory is unavailing.

* * * *

For these reasons, LCMC respectfully requests that the Court dismiss all claims against it or transfer this case to the Eastern District of Louisiana.

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Respectfully submitted,

/s/ Benjamin F. Holt

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