

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**LOUISIANA CHILDREN’S MEDICAL
CENTER,**

and

HCA HEALTHCARE, INC.,

Defendants.

CIVIL ACTION

No. 2:23-cv-01890-CJB-MBN

JUDGE LANCE M. AFRICK
SECTION L

MAGISTRATE JUDGE:
MICHAEL NORTH
DIVISION 5

**DEFENDANT HCA HEALTHCARE, INC.’S ANSWER TO PLAINTIFF’S PETITION
FOR INJUNCTIVE RELIEF PURSUANT TO SECTION 7A(g)(2) OF THE CLAYTON
ACT AND SECTION 13(b) OF THE FEDERAL TRADE COMMISSION ACT**

Defendant HCA Healthcare, Inc. (“HCA”), by and through its undersigned attorneys, responds to Plaintiff’s Petition for Injunctive Relief Pursuant to Section 7A(g)(2) of the Clayton Act and Section 13(b) of the Federal Trade Commission Act (the “Complaint”) as follows. To the extent not specifically admitted in the following paragraphs, the allegations in the Complaint are denied.

GENERAL DENIAL

HCA denies any and all liability under 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 (the “HSR Act”); 15 U.S.C. § 18a(g)(2); and Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), as amended.

Any allegations in the Complaint that state a legal conclusion do not require a response and, to the extent any response is required, HCA denies the allegations.

Use herein of any terms defined in the Complaint is not an acknowledgement or admission of any definition or characterization the FTC may ascribe to the terms.

HCA denies any averments in the Complaint's headings, subheadings, and unnumbered paragraphs.

STATEMENT WITH RESPECT TO PUBLICLY AVAILABLE AND THIRD-PARTY DOCUMENTS

The Complaint cites to and purports to quote from a number of publicly available and/or third-party documents. Such documents speak for themselves, and HCA refers the Court to those documents for the statements made therein. HCA did not search for or review those documents to determine whether Plaintiff correctly quoted or interpreted them, or whether the information contained in them is accurate.

SPECIFIC RESPONSES

ANSWER TO THE INTRODUCTION: HCA admits that the Plaintiff in this action is the Federal Trade Commission (the "FTC" or "Commission"), that it has filed the Complaint, which speaks for itself, and that the HSR Act contains certain provisions regarding the submission of premerger notification filings and related activities. HCA denies all other allegations in the introduction.

ANSWER TO JURISDICTION AND VENUE: HCA admits that the United States District Court for the Eastern District of Louisiana has jurisdiction over HCA and over the subject matter of this action, that venue is proper in that jurisdiction and that the cause of action arose in that jurisdiction. To the extent the Complaint alleges that jurisdiction and venue are proper in the

United States District Court for the District of Columbia, and that the cause of action arose in that jurisdiction, HCA denies those allegations.

1. HCA admits that (1) the FTC is an administrative agency of the United States government with its principal offices at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580; and (2) the Commission has certain authority and responsibilities delegated pursuant to the Clayton Act and the FTC Act. HCA denies the remaining allegations in Paragraph 1.

2. HCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2, and on that basis denies the allegations.

3. HCA admits that (1) it is a for-profit company incorporated under the laws of Delaware, with its principal place of business located at One Park Plaza, Nashville, Tennessee; (2) it is affiliated with more than 182 hospitals in and/or outside the United States; and (3) it recognized revenues of more than \$60.2 billion in its fiscal year 2022.

4. HCA admits the allegations in Paragraph 4.

5. HCA denies the allegations in Paragraph 5 except HCA admits that LCMC purchased the Acquired Hospitals for a valuation of approximately \$150 million.

6. HCA admits that the HSR Act requires certain persons, in certain circumstances and with respect to certain transactions, to file premerger notification reports, but denies that Paragraph 6 completely and accurately paraphrases or characterizes the HSR Act. HCA denies the remaining allegations in Paragraph 6.

7. HCA admits that the HSR Act contains provisions related to filing premerger notification reports and other related provisions, including references to a “waiting period,” but denies that Paragraph 7 completely and accurately paraphrases or characterizes the HSR Act. HCA denies the remaining allegations in Paragraph 7.

8. HCA admits that the Clayton Act contains provisions related to filing premerger notification reports and other related provisions, including provisions relating to the authority of United States district courts to order compliance with the Clayton Act, but denies that Paragraph 8 completely and accurately paraphrases or characterizes the Clayton Act. HCA denies the remaining allegations in Paragraph 8.

9. HCA admits that (1) the Acquisition had a total value of approximately \$150 million; (2) HCA recognized revenues of more than \$60.2 billion in its fiscal year 2022; and (3) HCA has never claimed that it or the Acquisition fell below the requisite thresholds for an HSR Act premerger notification filing. To the extent the allegations in Paragraph 9 are directed at LCMC, HCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9, and on that basis denies the allegations. HCA denies the remaining allegations in Paragraph 9.

10. HCA denies the allegations in Paragraph 10.

11. HCA admits that neither HCA nor LCMC has submitted a premerger notification filing. HCA denies the remaining allegations in Paragraph 11.

12. HCA denies the allegations in Paragraph 12.

13. HCA denies that further investigation is needed to determine whether the Acquisition violates the antitrust laws, and that every day that the hospitals are combined, or that services are consolidated or terminated, may cause additional harm to consumers of those hospitals, and states that the FTC is not entitled to any relief. HCA lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 13, and on that basis denies the allegations.

14. HCA denies that any corrective steps are required. To the extent the allegations in Paragraph 14 are directed at LCMC, HCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14, and on that basis denies the allegations. HCA denies the remaining allegations in Paragraph 14.

15. HCA admits that counsel for HCA explained its position to counsel from the FTC's Compliance Division staff that the Attorney General of Louisiana approved a Certificate of Public Advantage (or "COPA") for the Acquisition under Louisiana state law and that the duly awarded COPA confers state action immunity for the Acquisition under federal and state antitrust laws, including the HSR and Clayton Acts. To the extent the allegations in Paragraph 15 are directed at LCMC, HCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15, and on that basis denies the allegations. HCA lacks knowledge or information sufficient to form a belief as to the truth of the allegation that the Commission will investigate and seek from HCA and LCMC information needed for the Commission to determine the parameters of the COPA and whether it shields the Acquisition from liability under Section 7 of the Clayton Act. HCA denies the remaining allegations in Paragraph 15.

16. HCA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16, and on that basis denies the allegations.

17. HCA denies that a hold separate is necessary to allow the Court sufficient time to decide whether HCA and LCMC have violated the HSR Act, secure HCA and LCMC's adherence to the HSR Act, or order any other relief. HCA lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 17, and on that basis denies the allegations.

ANSWER TO PRAYER FOR RELIEF: HCA denies that Plaintiff is entitled to any form of relief, judgment or recovery for the allegations set forth in the Complaint.

HCA’S AFFIRMATIVE DEFENSES

Without assuming any burden of proof, persuasion, or production not otherwise legally assigned to HCA as to any element of Plaintiff’s claims, HCA asserts the following defenses:

1. The Complaint fails to state a claim, in whole or in part, for which relief can be granted.
2. Granting the relief sought in the Complaint is inequitable and contrary to the public interest.
3. Plaintiff’s claims are barred, in whole or in part, by the provisions of La. R.S. § 40:2254.1 *et seq.*, the statute pursuant to which Respondents were issued a COPA.
4. Plaintiff’s claims are barred, in whole or in part, by the state action immunity doctrine.
5. The FTC is equitably estopped from asserting its claims.
6. HCA adopts and incorporates by reference any applicable affirmative defense set forth by any other Defendant in this action not expressly set forth herein.

RESERVATION OF RIGHT TO SERVE ADDITIONAL DEFENSES

HCA has not knowingly or intentionally waived any applicable defenses, and it reserves the right to assert and rely upon any additional defenses, cross-claims, and third-party claims not

asserted herein that may become available or apparent throughout the course of the action. HCA reserves the right to amend, or seek to amend, its answer or affirmative defenses.

WHEREFORE, HCA respectfully prays the Court for the following relief:

- A. That the Complaint be dismissed with prejudice;
- B. That none of the Complaint's contemplated relief be issued to the Federal Trade Commission;
- C. For an order that the Acquisition is exempt from the HSR Act under the state action immunity doctrine and because of the duly-awarded COPA for the Acquisition;
- D. For an order that the Acquisition is exempt from challenge under Section 7 of the Clayton Act under the state action immunity doctrine and because of the duly-awarded COPA for the Acquisition;
- E. That the costs of this action, including attorney's fees as may be allowed by law, be awarded to Defendant; and
- F. For any such other and further relief as the Court deems just and proper.

Dated: June 20, 2023

Respectfully submitted,

/s/ Sara Y. Razi

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