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-001103-ABJ**

PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO RESPONDENTS' MOTION FOR A CHANGE OF VENUE

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PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO RESPONDENTS' MOTION FOR A CHANGE OF VENUE

Respondents' Motion to Transfer this case to the Eastern District of Louisiana might have merit if this case were about whether their transaction violates the antitrust laws. But that is not what this case is about. Rather, Petitioner Federal Trade Commission filed this case in this Court to remedy Respondents' decision to disregard the Hart-Scott-Rodino Act's notification requirements. *See* 15 U.S.C. § 18a et seq. ("HSR Act"). Deciding this case requires resolving a single legal question: does a potential state-action defense exempt parties from the HSR Act's requirement to submit notice of their transaction to federal authorities located in the District of Columbia? The actual case at hand should be decided here, where Petitioner FTC filed it, where the predicate failure to file giving rise to the case occurred, and where the requested relief will be performed.

As a general matter, a petitioner's choice of forum deserves substantial weight. That principle applies with even great force when the petitioner is the government choosing venue in a case seeking to require Respondents to perform a statutorily required act in this District. Respondents bear a heavy burden to overcome that choice of forum. Their burden can be met only by showing that transfer is necessary "in the interest of justice." 28 U.S.C. § 1404(a). Respondents cannot meet that burden for many reasons, including:

- This District is Petitioner's home forum;
- The predicate conduct—Respondents' failure to file pursuant to the HSR Act—happened in this District.
- Resolution of this case requires no discovery.
- Nearly all of the FTC's and Respondents' counsel work in this District.
- This Court has personal jurisdiction over Respondents under Section 13(b) of the FTC Act.
- Whatever the State of Louisiana's interests in the antitrust merits of Respondents' transaction, those interests are not particular to this case, which poses a question

> of wider application to parties potentially subject to the HSR Act's notice and filing requirements.

In addition, Respondents sought to manufacture a controversy in Louisiana with an action under the Declaratory Judgment Act and then have this case moved. This tactic, commonly called a preemptive strike or procedural fencing, is a waste of judicial resources and a misuse of the Declaratory Judgment Act. The use of this tactic is another reason why transfer is inappropriate.

FACTUAL AND PROCEDURAL BACKGROUND

On April 20, 2023, the Commission filed a petition alleging that Respondents failed to comply with the HSR Act's requirement that they file notice of their $150 million transaction with federal authorities in the District of Columbia. ECF 1 (Pet.). Respondents are two hospital systems: Louisiana Children's Medical Center (LCMC) and HCA Healthcare, Inc. (HCA). In early January 2023, LCMC acquired several hospitals from HCA. ECF 1 (Pet.) ¶ 5. Under the HSR Act, parties to a transaction of this size must first notify the FTC and Department of Justice before consummating. 15 U.S.C. § 18a(a). LCMC and HCA did not. ECF 1 (Pet.) ¶ 11. Instead, they closed the transaction and refused to file the requisite notice, even after the FTC notified them of their delinquency. ECF 1 (Pet.) ¶¶ 12-15. Then, rather than engage with the FTC, Respondents filed a preemptive strike against the agency in the Eastern District of Louisiana. ECF 20-4 (Ex. A of Mem.); 20-5 (Ex. B of Mem.).

Also on April 20, 2023, the Commission sought a temporary restraining order and preliminary injunction while the Court determined whether the HSR Act obligates Respondents to make the requisite filing to the federal authorities located here in the District. At the Court's direction, the parties submitted a stipulated temporary restraining order holding the parties

separate for the duration of the resolution of this motion and Petitioner's motion for a preliminary injunction. ECF 12 (Temp. Restraining Order).

ARGUMENT

I. Respondents' preemptive strike filing in the Eastern District of Louisiana should be disregarded.

Respondents rely throughout their Motion on the fact that they beat the FTC to the courthouse by filing their declaratory judgment suits in the Eastern District of Louisiana. *See, e.g.*, Memo of Law in Support of Respondents' Motion to Transfer Venue, ECF 20-1 (Mem.), 1–3, 6–8, 8–9, 12–13. Respondents' rush to file a declaratory judgment action is entitled to no weight in deciding venue. "One consideration in determining which action should proceed is whether it appears that the declaratory judgment action was filed in anticipation of litigation by the other party." *Lewis v. Nat'l Football League*, 813 F. Supp. 1, 4 (D.D.C. 1992). "Courts have held that such a preemptive strike should be disregarded in selecting the proper forum if equitable concerns so merit." *Id.* "The court must be rigorous in determining whether one party has launched a preemptive strike against the other. *Blackhawk Consulting, LLC v. Fed. Nat'l Mortg. Ass'n*, 975 F. Supp. 2d 57, 63 (D.D.C. 2013). "[C]ourts take a dim view of declaratory plaintiffs who file their suits mere days or weeks before the coercive suits filed by a 'natural plaintiff' and who seem to have done so for the purpose of acquiring a favorable forum." *Swish Mktg., Inc. v. FTC*, 669 F. Supp. 2d 72, 78 (D.D.C. 2009).

The Louisiana action "has all the makings of a preemptive strike." *Thayer/Patricof Educ. Funding, L.L.C. v. Pryor Res., Inc.*, 196 F. Supp. 2d 21, 30 (D.D.C. 2002). After learning about LCMC's acquisition of the HCA hospitals, the FTC informed LCMC (and later HCA) that the HSR Act obligated them to file notice and wait before consummating the transaction. ECF 5 (Petrizzi Decl.), ¶¶ 15–31. To that end, the FTC requested that LCMC agree to hold the acquired

assets separate from its original hospital assets to prevent commingling while the FTC conducted its investigation. ECF 5 (Petrizzi Decl.), ¶ 21. Counsel to LCMC committed to discussing the issue with his client. ECF 5 (Petrizzi Decl.), ¶ 25. But during the next discussion with the FTC, nearly a week later, counsel to LCMC "stated that he was not authorized to make any commitments." ECF 5, (Petrizzi Decl.), ¶ 29. The next day, without notice to the FTC, both LCMC and HCA filed declaratory judgment actions against the FTC, the Attorney General, and the United States. 20-1 (Mem.), at 3. This indicates that Respondents sought to misuse the Declaratory Judgment Act, which "is not a tactical device," to deprive the FTC from its choice of forum. *Swish Mktg., Inc.*, 669 F. Supp. 2d at 78.

Even if the Louisiana filings had any weight (which they do not), this case should continue in this Court. When there are two lawsuits on the same issues, "the time of the hearing of the motion to dismiss or transfer, not the time of filing, determines the relevant procedural posture." *Lewis*, 813 F. Supp. at 4. In this action, the Court has set an expedited briefing schedule to preliminarily determine whether Respondents should file under the HSR Act. In contrast, the FTC has 60 days to respond to the declaratory judgment action once served. Fed. R. Civ. P. 12(a)(2). This Court is much likelier to resolve the issues in a timely manner than the Eastern District of Louisiana.

The case law that Respondents cite does not move the needle. While it is true that plaintiffs have been transferred to the site of ongoing related litigation, each of the cases Respondents cite involve ongoing litigation between the defendant and other parties. *Holland v. A.T. Massey Coal*, 360 F. Supp. 2d 72, 75 (D.D.C. 2004) (transferring to location of litigation against same defendants with different plaintiffs); *California Farm Bureau Fed'n v. Badgley*, No. CIV.A.02-2328 (RCL), 2005 WL 1532718, at *2 (D.D.C. June 29, 2005) (same); *FTC v.*

Cephalon, *Inc.* 551 F. Supp. 2d 21 (D.D.C. 2008) (same). These cases do not involve the "procedural fencing at issue here." *Gravity Defyer Med. Tech. Corp. v. FTC*, No. CV 22-1157 (RDM), 2023 WL 2571758, at *6 (D.D.C. Mar. 20, 2023).

Because there is a "judicial interest in preventing" preemptive strikes, Respondents' misuse of the Declaratory Judgment Act counsels against transfer. *Gravity Defyer Med. Tech. Corp. v. FTC*, No. CV 22-1157 (RDM), 2023 WL 2571758, at *6 (D.D.C. Mar. 20, 2023).

II. Venue is proper in this District

There is no serious dispute that the FTC Act governs whether venue is proper. *See* ECF 20-1 (Mem.), at 4, n.3 (applying 15 U.S.C. § 53(b)(2) to evaluate venue).[1] The FTC Act's venue provision incorporates by reference the general venue statute for federal litigation: 28 U.S.C. § 1391. 15 U.S.C. § 53(b)(2) ("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."). Section 1391, and therefore the FTC Act, provides two alternate bases for venue.

First, "a substantial part of the events or omissions giving rise to the claim occurred" in this District. 28 U.S.C. § 1391(b)(2). This matter involves two transacting parties' failure to provide the FTC the required notice under the HSR Act before merging. This represents the only omission giving rise to the FTC's claim.

Second, in the alternative, because LCMC and HCA are "subject to personal jurisdiction" in the District for the District of Columbia, they are "deemed to reside in this district, and venue

[1] The Commission does not dispute that venue also would be proper in the Eastern District of Louisiana. Respondents move exclusively under 28 U.S.C. § 1404(a). Other than a half-hearted gesture in the concluding paragraphs in their brief related to the Court's personal jurisdiction, Respondents do not dispute that venue is proper here. Respondents do not mention Federal Rule of Civil Procedure 12(b)(3) anywhere in their brief.

is proper in this district" under Section 1391(b)(1) of the general venue statute. *FTC v. Bay Area Bus. Council, Inc.*, No. 02 C 5762, 2003 WL 21003711, at *2 (N.D. Ill. May 1, 2003) (cleaned up) (citing 28 U.S.C. § 1391(b)(1)); *see generally* Petitioner's Opp. to Mot. to Transfer for Lack of Personal Jurisdiction.

III. The relevant factors weigh against transfer to the Eastern District of Louisiana.

Section 1404(a) gives a district court discretion to transfer a case to another district "[f]or the convenience of parties and witnesses, [and] in the interest of justice." 28 U.S.C. § 1404(a). This District has a well-established standard for whether a court should grant a motion to transfer venue, under which the court weighs a series of public and private interest factors. *See Thayer/Patricof*, 196 F. Supp. 2d at 31. "[C]ourts have imposed a heavy burden on those who seek transfer and a court will not order transfer unless the balance is strongly in favor of the defendant." *United States v. H&R Block, Inc.*, 789 F. Supp. 2d 74, 78 (D.D.C. 2011) (citation omitted).

A. The private factors weigh against transfer

In evaluating whether a motion to transfer is appropriate under 28 U.S.C. § 1404(a), courts in this District typically consider six private factors: "(1) the plaintiffs' choice of forum, unless the balance of convenience is strongly in favor of the defendants; (2) the defendants' choice of forum; (3) whether the claim arose elsewhere; (4) the convenience of the parties; (5) the convenience of the witnesses of the plaintiff and defendant but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and (6) the ease of access to sources of proof." *SEC v. RPM Int'l, Inc.*, 223 F. Supp. 3d 110, 115 (D.D.C. 2016). Here, all of these factors weigh against transferring this action to the Eastern District of Louisiana.

i. Petitioners' choice of forum deserves substantial deference

"The plaintiff's choice of a forum is 'a paramount consideration' in any determination of a transfer request." *Thayer/Patricof*, 196 F. Supp. 2d at 31 (D.D.C. 2002) (quoting *Sheraton Operating Corp. v. Just Corporate Travel*, 984 F. Supp. 22, 25 (D.D.C. 1997)). As such, the "moving party bear[s] a heavy burden of establishing that plaintiff['s] choice of forum is inappropriate." *Malveaux v. Christian Bros. Servs.*, 753 F. Supp. 2d 35, 40 (D.D.C. 2010) (internal quotations omitted). Deference to the petitioner's choice of forum is particularly strong where the petitioner has chosen its home forum, as the FTC has here. *RPM Int'l*, 223 F. Supp. 3d at 115; *see also H&R Block*, 789 F. Supp. 2d at 80 n.3 (noting that the Department of Justice's choice of forum deserved deference because "in this case, the DOJ has filed in its home district").

"[M]any courts, pointing to the liberal venue requirements for the government bringing an antitrust suit, have held that in such suits, plaintiffs' choice of forum is entitled to heightened respect." *United States v. Brown Univ. in Providence in State of R.I. & Providence Plantations*, 772 F. Supp. 241, 242 (E.D. Pa. 1991). This is because Congress, in Section 13(b) of the FTC Act, provided the FTC with broad powers to choose the venue. 15 U.S.C. § 53(b)(2) ("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."). As one court described an analogous provision from the securities laws, a "liberal venue provision 'represents an affirmative congressional policy choice to allow plaintiffs in securities cases the widest possible choice of forums in which to sue.'" *Thayer/Patricof*, 196 F. Supp. 2d at 35 n.9 (citing Section 27 of the Securities Exchange Act of 1934, which establishes proper venue where "any act or transaction constituting the violation occurred.").

The only event relevant to deciding this case—Respondents' failure to file under the HSR Act—took place in this District. Because the Commission sued in its home district, where the only relevant omission occurred, this factor weighs heavily against transfer.

ii. LCMC's choice of forum does not weigh in favor of transfer

"Defendants' choice of forum is not ordinarily entitled to deference, so defendants must establish that the added convenience and justice of litigating in its chosen forum overcomes the deference ordinarily given to the plaintiff's choice." *RPM Int'l*, 223 F. Supp. 3d at 116 (cleaned up). For the reasons further discussed below, the narrow legal issue presented in this case means that there is no added convenience to litigating this claim in the District of Eastern Louisiana. For this reason, LCMC has not shown that its choice of forum weighs in favor of transfer.

iii. The Commission's claims did not arise in Louisiana

Respondents failed to file notice of their pending transaction with the FTC, which is indisputably located in this District. *SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1155 (D.C. Cir. 1978). This omission gave rise to the FTC's claim under Section 7A(g)(2) of the Clayton Act that Respondents "fail[ed] substantially to comply with the notification requirement," which provides the statutory basis for this action. 15 U.S.C. § 18a(g)(2). Respondents selectively cite a different section of the HSR Act, Section 7A(a) to claim that the consummation of the transaction, not the failure to file, gives rise to the FTC's cause of action. ECF 20-1 (Mem.), at 10. When read completely, and in context, this provision makes clear that "no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) *file notification* pursuant to rules under subsection (d)(1) and the waiting period described in subsection (b)(1) has expired." 15

U.S.C. § 18a(a) (emphasis added). Section 7A(a) is therefore consistent with 7A(g)(2): the failure to provide the required notice gives rise to the claim here.

Respondents claim that other relevant events took place outside of this District. Again, not so. The Commission's only claim here is that Respondents violated the HSR Act by failing to provide notice before consummating their transaction—not whether the acquisition itself violated the antitrust laws. As a result, many of the "events" that Respondents cite—including the location of the merger negotiations, the process for seeking state approval, and any state efforts to supervise LCMC— are irrelevant to resolution of this case. ECF 20-1 (Mem.), at 7, 11. There is no need for discovery into any of those events to resolve the narrow legal issue presented in this case. For a similar reason, the cases they cite—in which a court transferred a case from this District to the location of the events giving rise to the substantive legal claim—are inapposite because in those cases, the relevant events occurred elsewhere. *Comptroller of Currency v. Calhoun First Nat'l Bank*, 626 F. Supp. 137, 141 (D.D.C. 1985) (cited in ECF 20-1 (Mem.), at 11) (transferring to location of securities fraud); *FTC v. Graco Inc.*, No. 11-CV-02239 RLW, 2012 WL 3584683, at *19 (D.D.C. Jan. 26, 2012) (cited in ECF 20-1 (Mem.), at 12) (transferring to location of illegal merger).

The cases that Respondents cite concerning transfer to the location of corporate decision-making are similarly misplaced. In those cases, the corporate decision-making—and the related discussions—were highly relevant to the substantive analysis. *FTC v. Illumina, Inc.*, No. CV 21-873 (RC), 2021 WL 1546542, at *4 (D.D.C. Apr. 20, 2021) (transferring to location of merger agreement negotiations); *Berenson v. Nat'l Fin. Servs., LLC*, 319 F. Supp. 2d 1, 4 (D.D.C. 2004) (similar). In contrast, the discussions about why Respondents did not comply with their statutory obligation to file notice in this District are irrelevant to the resolution of this action.

Put simply, no events, other than the undisputed failure to file, bear on narrow legal question presented here. This factor also weighs against transfer.

iv. The convenience of the parties does not weigh in favor of transfer

In comparing the convenience of the Petitioner's chosen forum with the Respondents' preferred forum, the relevant question is whether the transfer will be more convenient for everyone, not only a single defendant. Transfer is appropriate only where "litigating in the transferee district [does] not merely shift inconvenience to [another party], but rather . . . lead[s] to an overall increase in convenience for the parties." *H&R Block*, 789 F. Supp. 2d at 80–81 (quoting *United States ex rel. Westrick v. Second Chance Body Armor, Inc.*, 771 F. Supp. 2d 42, 48 (D.D.C. 2011)) (internal quotation marks omitted) (second alteration in original).

Here, a substantial majority of both the Commission's counsel and Respondents' lawyers work in this District. It would be inconvenient for all counsel to travel to Louisiana to resolve the narrow legal question whether the HSR Act required Respondents to provide the FTC notice and wait before consummating the acquisition. Conversely, LCMC does not need to bring its Louisiana-based executives to provide testimony in this District to resolve this legal issue. Because LCMC and HCA have hired lawyers that are "able to litigate in the District of Columbia, a transfer would operate to shift inconvenience to the" FTC. *RPM Int'l, Inc.*, 223 F. Supp. 3d at 117.

This factor weighs against transfer.

v. The convenience of the witnesses does not weigh in favor of transfer

The convenience of the witnesses is relevant only when there are actual witnesses involved. Here, there are none. Resolution of this dispute will not require testimony from witnesses or any other proffer of factual evidence. Instead, the only relevant factual issue—the failure to file the required HSR notices—is undisputed.

In any event, the convenience of witnesses is relevant "only to the extent that the witnesses may actually be unavailable for trial in one of the fora." *Thayer/Patricof Educ. Funding, L.L.C. v. Pryor Res., Inc.*, 196 F. Supp. 2d 21, 31 (D.D.C. 2002) (citation omitted). "Generally, a naked allegation that witnesses will be inconvenienced by trial in a distant forum will not suffice for transfer . . . . [T]ransfer motions must identify the inconvenienced witnesses whom defendants propose to call and contain a 'showing' of the proposed witnesses' testimony." *United States v. Bowdoin*, 770 F. Supp. 2d 133, 139 (D.D.C. 2011) (citations omitted). While Respondents maintain that they will call witnesses, they do not identify them, let alone make a "showing" of what their testimony will be. Any testimony related to how the state regulations work in practice are irrelevant to resolution of this narrow legal issue. Instead, Respondents baldly claim that the "principal witnesses" are located in Louisiana.

Because this matter is unlikely to require testimony and Respondents fail to make any showing at all as to who their prospective witnesses are, this factor weighs against transfer.

vi. Access to sources of proof does not weigh in favor of transfer

Again, this action presents a legal question with little need for evidentiary proof. And Courts in this District have noted that "modern technology has made the location of documents

much less important to a determination of convenience than it once was." *RPM Int'l*, 223 F. Supp. 3d at 118 (cleaned up). For these reasons, this factor has minimal weight.

B. The public interest factors weigh against transfer

In addition to private factors, courts examine whether transferring the case to another venue would serve the public interest. Public interest factors include: "(1) the local interest in making local decisions regarding local controversies; (2) the relative congestion of the transferee and transferor courts; and (3) the potential transferee court's familiarity with the governing law." *Bederson v. United States*, 756 F. Supp. 2d 38, 46 (D.D.C. 2010). None of these factors supports transferring this case to Louisiana.

i. The interest in resolving local controversies does not weigh in favor of a transfer

"[W]hen national significance attaches to a controversy, local interest can sometimes be diminished." *Sheffer v. Novartis Pharms. Corp.*, 873 F. Supp. 2d 371, 381 (D.D.C. 2012). This case arises out of Respondents' failure to comply with the HSR Act, which thwarted the FTC from investigating the transaction before LCMC acquired hospitals from HCA. This omission has national significance because it will bear directly on the FTC's ability to investigate other similar transactions under the HSR Act. If parties to a transaction can avoid filing under the HSR Act using the color of the state action defense, the FTC will be left to scramble to detect and investigate the transaction before it is consummated. This is precisely what Congress sought to avoid through passing the HSR Act.

Further, because this case does not involve an adjudication of whether LCMC's acquisition from HCA is illegal, its local impact is limited. Respondents' string cite of hospital merger cases in their home districts ignores that all those cases involved the substantive antitrust

merits, not a procedural violation of the kind at issue here. ECF 20-1 (Mem.), at 6. Were the Commission to challenge Respondents' merger in federal court on the antitrust merits, it is likely the Commission would file such a case in the Eastern District of Louisiana. But this case has no relation to an ultimate antitrust challenge of the merger.

Respondents dedicate a significant portion of their memorandum rehashing statements from the Louisiana Attorney General in his motion to intervene in Respondents' declaratory judgment case. ECF 20-1 (Mem.), at 2, 7–8. But comments about the state approval process and Respondents' related claims about the acquisition's impact on the New Orleans community are not relevant to the issue here of whether the Respondents violated the HSR Act's procedural requirements. Here, the FTC simply asks that the Respondents be required to file the documents required under the HSR Act and hold assets separate for the duration of the investigation, which is consistent with their obligations had they followed the HSR Act in the first place. During that investigation, the FTC will evaluate the merits of Respondents' claims. This pause in integration—which will maintain the hospitals at their current level of service and operation—is not sufficient to transform this into a local controversy.

ii. Concerns about court congestion weigh against transfer

When considering the congestion of the courts, the Court compares "the districts' median times from filing to disposition or trial." *RPM Int'l,* 223 F. Supp. 3d at 118 (citation omitted). Based on the 2022 case load statistics, the District for the District of Columbia has a shorter time to disposition than the Eastern District of Louisiana by a significant margin. In this District, cases are resolved on average within 5 months. Ex. A. This is the fourth fastest time in the country. By contrast, cases in the Eastern District of Louisiana reach disposition within 70.8 months, which ranks as 94th out of the 94 judicial districts. Because this case will not involve a

lengthy trial or discovery, time to trial is less relevant than time to disposition. Given the congestion present in the Eastern District of Louisiana, this factor weighs against transfer.

iii. Familiarity with applicable laws weighs against transfer

Courts generally view this factor as neutral, on the presumption that all federal courts have equal familiarity with federal law. *See, e.g.*, *H&R Block*, 789 F. Supp. 2d at 74, 84.

Contrary to the Respondents' assertions, resolving this case does not require any familiarity or analysis of Louisiana law. Mem. at 7. Whether the Louisiana COPA legislation and implementation met the strictures of the state action defense is not ripe in this action. That question applies to the analysis of the legality of Respondents' underlying merger—the Commission has no position on the legality of the merger or the applicability of the state action doctrine; those determinations are premature for both the FTC and this Court.

iv. Respondents' personal jurisdiction argument holds little weight

Not content with their preemptive strike through the declaratory judgment action, Respondents gin up another basis for transfer: their own manufactured controversy related to the court's exercise of personal jurisdiction. LCMC argues in its motion to dismiss that the Court lacks personal jurisdiction, ECF 19 (Mot. to Dismiss), at 3–5, and then Respondents urge the Court not to resolve that issue and instead transfer this action. ECF 20-1 (Mem.), at 12–13. This tactical maneuver does not support transfer. In any event, as the FTC explains in its separate response to the motion to dismiss for lack of personal jurisdiction, the Court's exercise of personal jurisdiction is based on the FTC Act.

CONCLUSION

Respondents have not come close to meeting the "heavy burden" of demonstrating that the balance of transfer factors weighs in their favor. The Court should deny Respondents' motion.

Dated: April 26, 2023

Respectfully submitted,

/s/ Neal J. Perlman
Neal J. Perlman
Susan Musser, D.C. Bar No. 1531486
Adam Pergament, D.C. Bar No. 998082
Mark Seidman, D.C. Bar No. 980662
James H. Weingarten, D.C. Bar No. 985070
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
(202) 326-2567

EXHIBIT A

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**

DECLARATION OF NEAL J. PERLMAN IN SUPPORT OF PETITIONER'S OPPOSITION TO MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)

I, Neal J. Perlman, declare the following:

1. I am an attorney employed by the Federal Trade Commission and represent the Commission in this case.
2. I make this Declaration in support of Petitioner Federal Trade Commission's Opposition to Respondents' Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a).
3. On April 26, 2023, I downloaded a copy of the "National Judicial Caseload Profile" from the website for the U.S. Courts. At my direction, FTC staff excerpted the pages describing the caseloads for the District of Columbia and the District for Eastern Louisiana. These excerpted pages are attached as Exhibit B.

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

Executed on April 26, 2023

Neal J. Perlman

Neal J. Perlman
Federal Trade Commission
600 Pennsylvania Avenue
Washington, DC 20580

EXHIBIT B

Excerpt from *United States District Courts — National Judicial Caseload Profile*, Pages 2 & 29

U.S. District Court — Judicial Caseload Profile

DISTRICT OF COLUMBIA

			12-Month Periods Ending						Numerical Standing Within	
			Dec 31 2017	Dec 31 2018	Dec 31 2019	Dec 31 2020	Dec 31 2021	Dec 31 2022	U.S.	Circuit
Overall Caseload Statistics	Filings [1]		3,351	3,801	4,629	4,412	4,259	4,464		
	Terminations		2,959	3,258	4,105	3,849	4,135	4,149		
	Pending		4,199	4,746	5,236	5,748	5,796	6,010		
	Percent Change in Total Filings Current Year Over Earlier Year		33.2	17.4	-3.6	1.2	4.8		20	-
Number of Judgeships			15	15	15	15	15	15		
Vacant Judgeship Months [2]			40.8	0.0	4.6	0.0	16.8	3.3		
Actions per Judgeship	**Filings**	Total	223	253	309	294	284	298	77	-
		Civil	193	212	263	261	230	262	52	-
		Criminal Felony	18	33	32	23	44	26	90	-
		Supervised Release Hearings	12	9	13	11	10	9	86	-
	Pending Cases [2]		280	316	349	383	386	401	60	-
	Weighted Filings [2]		234	272	303	285	295	282	77	-
	Terminations		197	217	274	257	276	277	82	-
	Trials Completed		5	9	9	5	7	11	69	-
Median Time (Months)	From Filing to Disposition	Criminal Felony	12.6	9.7	11.0	13.5	13.5	17.9	71	-
		Civil [2]	6.7	6.3	4.7	5.3	5.5	5.0	4	-
	From Filing to Trial [2] (Civil Only)		49.3	42.5	44.8	-	42.7	54.4	60	-
Other	Number (and %) of Civil Cases Over 3 Years Old [2]		428 12.7	588 15.9	676 16.4	743 16.1	874 20.2	1,031 22.6	80	-
	Average Number of Felony Defendants Filed per Case		1.2	1.4	1.2	1.3	1.4	1.3		
	Jurors	Avg. Present for Jury Selection	89.4	84.0	99.0	59.3	66.0	119.2		
		Percent Not Selected or Challenged	60.2	56.2	56.2	44.1	59.5	57.6		

2022 Civil Case and Criminal Felony Defendant Filings by Nature of Suit and Offense

Type of	Total	A	B	C	D	E	F	G	H	I	J	K	L
Civil	3,937	40	11	326	9	21	108	143	184	63	669	10	2,353
Criminal [1]	385	20	74	-	69	28	57	33	-	5	46	25	28

NOTE: Criminal data in this profile count defendants rather than cases and therefore will not match previously published numbers.

[1] Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings by "Nature of Offense" do not.

[2] See "Explanation of Selected Terms."

U.S. District Court — Judicial Caseload Profile

LOUISIANA EASTERN

			12-Month Periods Ending						Numerical Standing Within	
			Dec 31 2017	Dec 31 2018	Dec 31 2019	Dec 31 2020	Dec 31 2021	Dec 31 2022	U.S.	Circuit
Overall Caseload Statistics	Filings [1]		17,797	14,253	14,713	3,196	2,343	5,419		
	Terminations		4,684	7,089	12,253	18,296	10,237	9,406		
	Pending		35,276	42,506	44,841	29,759	21,877	17,900		
	Percent Change in Total Filings Current Year Over Earlier Year		-69.6	-62.0	-63.2	69.6	131.3		1	1
	Number of Judgeships		12	12	12	12	12	12		
	Vacant Judgeship Months [2]		24.0	27.6	10.0	0.0	0.0	11.1		
Actions per Judgeship	**Filings**	Total	1,483	1,188	1,226	266	195	452	43	6
		Civil	1,450	1,152	1,189	243	167	419	19	3
		Criminal Felony	25	26	28	20	23	27	89	9
		Supervised Release Hearings	8	9	10	4	5	6	89	8
	Pending Cases [2]		2,940	3,542	3,737	2,480	1,823	1,492	5	1
	Weighted Filings [2]		1,182	1,029	969	239	184	512	21	6
	Terminations		390	591	1,021	1,525	853	784	7	3
	Trials Completed		8	7	9	3	6	7	88	9
Median Time (Months)	From Filing to Disposition	Criminal Felony	17.4	12.7	12.9	15.1	22.3	19.5	79	9
		Civil [2]	6.8	10.0	7.7	34.9	25.0	70.8	94	9
	From Filing to Trial [2] (Civil Only)		17.9	20.4	19.2	18.8	25.8	29.5	16	3
Other	Number (and %) of Civil Cases Over 3 Years Old [2]		2,536 7.3	5,350 12.7	14,450 32.5	16,011 54.8	17,158 80.4	12,760 73.5	93	9
	Average Number of Felony Defendants Filed per Case		1.5	1.4	1.4	1.7	1.5	1.2		
	Jurors	Avg. Present for Jury Selection	43.8	46.4	49.2	27.7	68.7	49.7		
		Percent Not Selected or Challenged	40.0	43.6	50.7	24.1	67.1	39.2		

2022 Civil Case and Criminal Felony Defendant Filings by Nature of Suit and Offense

Type of	Total	A	B	C	D	E	F	G	H	I	J	K	L
Civil	5,030	31	259	340	4	23	71	3,214	735	18	208	1	126
Criminal [1]	320	6	77	13	101	53	16	13	-	19	2	7	13

NOTE: Criminal data in this profile count defendants rather than cases and therefore will not match previously published numbers.

[1] Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings by "Nature of Offense" do not.

[2] See "Explanation of Selected Terms."