

**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

**PETITIONER’S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION
TO LCMC’S MOTION TO DISMISS, OR ALTERNATIVELY TRANSFER THE
ACTION FOR LACK OF JURISDICTION**

Respondents failed to notify the FTC and the Department of Justice before consummating their merger, in violation of the Hart-Scott-Rodino amendments to the Clayton Act, 15 U.S.C. § 18a, et seq. (“HSR Act”). The FTC sued for an injunction to enforce compliance, relying on two statutes for authority: Section 13(b) of the FTC Act, which empowers the FTC to seek a permanent injunction when a person is violating any provision of law enforced by the FTC, 15 U.S.C. § 53(b), and the HSR Act itself, which allows a court to order compliance with reporting provisions, 15 U.S.C. § 18a(g)(2). Section 13(b) plainly provides personal jurisdiction over Respondents. The statute authorizes service of process “[i]n any suit under this section” on “any

person, partnership, or corporation wherever it may be found,” and it establishes venue anywhere appropriate under 28 U.S.C. § 1391. 15 U.S.C. § 53(b). As we show in our opposition to LCMC’s motion to transfer, this Court has venue. Thus, Section 13(b) gives this Court personal jurisdiction over LCMC.

LCMC moves to dismiss for lack of jurisdiction on the ground that the Clayton Act does not give the Court personal jurisdiction. LCMC ignores Section 13(b) of the FTC Act entirely. Its motion should therefore be denied because personal jurisdiction lies under the FTC Act.

BACKGROUND

LCMC operates a network of hospitals in southern Louisiana. *See* ECF 4 (Statement P. & A. Supp. Pet’r’s Mot.), at 4. HCA is a for-profit corporation that operates 182 hospitals nationwide, including, until recently, three in the greater New Orleans area. *Id.* at 5. In January 2023, LCMC announced that it acquired HCA’s stake in HCA’s New Orleans-area hospitals, stating it would transition “the majority of services” of HCA’s former Tulane Medical Center to LCMC’s nearby hospitals over the next two years. *Id.* The HSR Act requires that all mergers above a specific monetary threshold, not within statutorily specified exemptions, be reported to the FTC and the Department of Justice and may not be consummated until the expiration of a specified waiting period. 15 U.S.C. § 18a. With a price tag of \$150 million, HCA’s sale of the hospitals to LCMC meets the HSR Act’s financial threshold requirements for notifying federal authorities about the acquisition, and the transaction does not fit within any exemption to those requirements. *Id.* at 6. Petitioner FTC alleges that this failure to provide notice before merging violates the HSR Act, and it asks the Court to order the hospitals to comply with the HSR Act and to prohibit consolidation of the hospitals in the meantime. ECF 1 (Pet.).

ARGUMENT

The Commission has filed suit under Section 13(b) of the FTC Act, and the Court should assess whether it has personal jurisdiction over LCMC under that statute. It does. Section 13(b) allows the Commission to bring suit for a “permanent injunction” when “any person, partnership, or corporation is violating or is about to violate, any provision of law enforced by the Federal Trade Commission.” 15 U.S.C. § 53(b).¹ The statute further provides that “any suit may be brought ... wherever venue is proper under [28 U.S.C. § 1391].” Here, the Commission sued under Section 13(b) to seek to enjoin Respondents from violating the HSR amendments to the Clayton Act, and venue is proper because the “events or omissions giving rise to the claim occurred” in the District of Columbia. 28 U.S.C. § 1391(b)(2); *see* FTC’s Opposition to Motion to Transfer. The FTC’s petition states that the Court’s “jurisdiction over the Respondents” is rooted in “Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).” ECF 1 (Pet.), at 4. LCMC is wrong in contending that “the FTC’s petition does not identify a basis for personal jurisdiction over LCMC.” ECF 19 (LCMC’s Motion to Dismiss for Want of Personal Jurisdiction) (“Mem.”), at 3.

The Court has personal jurisdiction over Respondents under Section 13(b) of the FTC Act. To start the jurisdictional analysis, Rule 4(k)(1)(C) provides that “serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant . . . when authorized by a federal statute.”² Section 13(b) of the FTC Act authorizes the Commission to serve a summons on “any person, partnership, or corporation wherever it may be found.” 15 U.S.C.

¹ The permanent injunction provision, contained in a “provided further” clause in the statute, is separate and distinct from the preliminary injunction provision that constitutes the bulk of the statute and is intended to secure preliminary relief when the Commission intends to conduct an administrative proceeding under Section 5 of the FTC Act.

² LCMC waived service of process. ECF 16.

§ 53(b)(2). “This language, and similar language from other federal statutes, has been interpreted to permit nationwide service of process.” *FTC v. Cleverlink Trading Ltd.*, 2006 WL 1735276, at *4 (N.D. Ill. June 19, 2006). And, as mentioned, venue is appropriate under Section 1391. Because the FTC Act is a federal statute authorizing nationwide service of process, the Commission has met its burden of establishing that the Court has personal jurisdiction when it serves a defendant who has “minimum contacts with the United States.” *FTC v. Mallett*, 818 F. Supp. 2d 142, 147 (D.D.C. 2011) (citing *SEC v. Bilzerian*, 378 F.3d 1100, 1106 n.8 (D.C. Cir. 2004)).

There is no dispute that LCMC has sufficient minimum contacts with the United States to sustain personal jurisdiction under the FTC Act. LCMC is organized under Louisiana law, with its hospitals and facilities concentrated in the greater New Orleans area, with others elsewhere in Louisiana and in Mississippi. *See* ECF 1 (Pet.), ¶ 2; ECF 19 (Mot. to Dismiss), at 4-5. LCMC further admits that it is subject to personal jurisdiction in the Eastern District of Louisiana. ECF 19 (Mot. to Dismiss), at 6. These contacts with the United States are sufficient to provide this Court with personal jurisdiction over LCMC. Here, “the FTC has met its relatively light burden at this stage of the proceedings by establishing a *prima facie* case of personal jurisdiction.” *FTC v. Mallett*, 818 F. Supp. 2d 142, 147 (D.D.C. 2011).

LCMC’s argument that this Court lacks personal jurisdiction rests entirely on an analysis of whether the court may exercise personal jurisdiction under the Clayton Act. *See* ECF 19 (Mot. to Dismiss), at 3-5. Whether or not the Clayton Act provides personal jurisdiction is of no moment because the Court plainly has personal jurisdiction under Section 13(b), which LCMC ignores. LCMC provides no basis or explanation for why the Court does not have personal jurisdiction under the FTC Act. The FTC Act allows the Commission to enforce the HSR Act

through Section 13(b), so the question whether the Clayton Act also provides personal jurisdiction is of no moment.

Personal jurisdiction under the Clayton Act itself is not necessary here, but even if it were, because the Court has personal jurisdiction over the hospitals under Section 13(b), the Court may exercise personal jurisdiction over them under the “pendent personal jurisdiction” doctrine. That doctrine permits a court to exercise personal jurisdiction over a defendant “with respect to a claim for which there is no independent basis of personal jurisdiction so long as it arises out of a common nucleus of operative facts with a claim in the same suit over which the court does have personal jurisdiction.” *Geier v. Conway, Homer & Chin-Caplan, P.C.*, 983 F. Supp. 2d 22, 31 (D.D.C. 2013); *see Oetiker v. Jurid Werke, G. m. b. H.*, 556 F.2d 1, 4 (D.C. Cir. 1977). The claims under the FTC Act enforcing the HSR Act and directly under the HSR Act are identical and arise from LCMC’s failure to provide the required notice under the HSR Act.

CONCLUSION

For the foregoing reasons, the Court should deny the Motion to Dismiss.³

³ A transfer to the Eastern District of Louisiana is not warranted here. *See* FTC’s Opposition to Motion to Transfer. Even if jurisdiction were genuinely at issue—which it is not for the reasons set out above—the Commission agrees that the appropriate remedy to correct such deficiencies would be a transfer of the action rather than a dismissal under Rule 12(b)(2).

Dated: April 26, 2023

Respectfully submitted,

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