

**UNITED STATES DISTRICT COURT  
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 I

MAGISTRATE JUDGE  
MICHAEL B. NORTH  
DIVISION 5

**DEFENDANTS’ MOTION TO CONSOLIDATE**

Pursuant to Federal Rule of Civil Procedure 42(a) and the local rules of this Court, defendants HCA Healthcare, Inc. (“HCA”) and Louisiana Children’s Medical Center (“LCMC”) hereby move to consolidate this case with *Louisiana Children’s Medical Center v. Attorney General of the United States et al.*, 2:23-cv-01305-LMA-MBN (the “*LCMC Litigation*”), pending before this Court.<sup>1</sup>

---

<sup>1</sup> On May 9, 2023, this Court consolidated two separate, but related cases into the *LCMC Litigation*. See Order, ECF No. 29, *Louisiana Children’s Medical Center v. Attorney General of the United States et al.*, 2:23-cv-01305-LMA-MBN (consolidating *Louisiana Children’s Medical Center v. Merrick Garland et al.*, 2:23-cv-01305-LMA-MBN and *HCA Healthcare, Inc. v. Merrick Garland et al.*, No. 2:23-cv-01311 (E.D. La.)). Additionally, this Court has granted a motion by the Attorney General of the State of Louisiana to intervene in the *LCMC Litigation*. See Order, ECF No. 17, *Louisiana Children’s Medical Center v. Attorney General of the United States et al.*, 2:23-cv-01305-LMA-MBN; Order, ECF No. 21, *HCA Healthcare, Inc. v. Merrick Garland et al.*, No. 2:23-cv-01311 (E.D. La.).

These cases present common questions of law and fact properly consolidated under Rule 42(a). All of these cases arise from LCMC's acquisition of Tulane University Medical Center, Lakeview Regional Medical center, and Tulane Lakeside Hospital. The cases raise legal questions regarding whether the acquisition is exempt from the Hart-Scott-Rodino Antitrust Improvements Act ("HSR Act") under the state action immunity doctrine and whether HCA and LCMC are subject to civil penalties or other relief for alleged non-compliance with the HSR Act. The Louisiana Attorney General has intervened in the *LCMC Litigation* and has moved to intervene in this case. Further, the *LCMC Litigation* has also already been allocated to Magistrate Judge Michael B. North and is before this Section. Accordingly, the cases present overlapping factual and legal issues, and consolidation would best serve the interests of judicial efficiency, fairness, and consistency. No prejudice will result.

WHEREFORE, Defendants HCA and LCMC respectfully request that this case be consolidated with *Louisiana Children's Medical Center v. Attorney General of the United States et al.*, 2:23-cv-01305-LMA-MBN.

Dated: June 13, 2023

Respectfully submitted,

/s/ Diana Cole Surprenant

E. Paige Sensenbrenner (#18429) – T.A.  
Diana Cole Surpreant (#33399)  
ADAMS AND REESE LLP  
Hancock Whitney Center  
701 Poydras Street, Suite 4500  
New Orleans, Louisiana 70139  
Tel: (504) 581-3234  
paige.sensenbrenner@arlaw.com  
diana.surprenant@arlaw.com

/s/ Judy Y. Barrasso

Judy Y. Barrasso (#2814)  
Christine Calogero (#36818)  
Stephen R. Klaffky (#36211)  
BARRASSO USDIN KUPPERMAN FREEMAN  
& SARVER, L.L.C.  
990 Poydras Street, Suite 2350  
New Orleans, LA 70112  
Tel: (504) 589-9700  
jbarrasso@barrassousdin.com  
ccalogero@barrassousdin.com  
sklaffky@barrassousdin.com

/s/ Kenneth W. Field

Kenneth W. Field (*pro hac vice forthcoming*)  
Benjamin F. Holt (*pro hac vice forthcoming*)  
Sean Marotta (*pro hac vice forthcoming*)  
Christopher M. Fitzpatrick (*pro hac vice  
forthcoming*)  
HOGAN LOVELLS US LLP  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004  
Tel: (202) 637-5600  
benjamin.holt@hoganlovells.com  
ken.field@hoganlovells.com  
sean.marotta@hoganlovells.com  
chris.fitzpatrick@hoganlovells.com

/s/ Harry Rosenberg

Harry Rosenberg (#11465)  
Phelps Dunbar, LLP  
Canal Place  
365 Canal Street, Suite 2000  
New Orleans, LA 70130  
Tel: (504) 584-9219  
harry.rosenberg@phelps.com

Robert N. Stander (*pro hac vice forthcoming*)  
JONES DAY  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001  
Tel: (202) 879-7628  
rstander@jonesday.com

/s/ Sara Y. Razi

Sara Y. Razi (*pro hac vice forthcoming*)  
Abram J. Ellis (*pro hac vice forthcoming*)  
Joshua Hazan (*pro hac vice forthcoming*)  
Simpson Thacher & Bartlett LLP  
900 G. Street, N.W.  
Washington, D.C. 20001  
Tel (202) 636-5582  
sara.razi@stblaw.com  
aellis@stblaw.com  
joshua.hazan@stblaw.com

*Counsel for Louisiana Children's  
Medical Center*

*Counsel for HCA Healthcare, Inc.*

**UNITED STATES DISTRICT COURT  
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 I

MAGISTRATE JUDGE  
MICHAEL B. NORTH  
DIVISION 5

**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANTS’ MOTION TO CONSOLIDATE**

Defendants HCA Healthcare, Inc. (“HCA”) and Louisiana Children’s Medical Center (“LCMC”) (collectively, “Defendants”) respectfully submit this memorandum of law in support of their motion to consolidate this action, pursuant to Federal Rule of Civil Procedure 42(a) and the local rules of this Court, with *Louisiana Children’s Medical Center v. Attorney General of the United States et al.*, 2:23-cv-01305-LMA-MBN (the “*LCMC Litigation*”).

The actions all arise from LCMC’s acquisition of Tulane University Medical Center, Lakeview Regional Medical center, and Tulane Lakeside Hospital (the “Acquisition”), which is already the subject of a consolidated action in this section. On April 19, 2023, LCMC and HCA each filed a complaint in the Eastern District of Louisiana seeking declaratory judgments that the parties to the Acquisition, including HCA and LCMC, are: (1) not obligated to submit a filing

under the Hart-Scott-Rodino Antitrust Improvements Act (“HSR Act”) (a “HSR Filing”) concerning the Acquisition or to pay a related filing fee or (2) subject to any fine or penalty under 15 U.S.C. § 18a(g)(1) or any other antitrust law in connection with the Acquisition (the “Declaratory Judgment Actions”).

On April 20, 2023, the day after the Declaratory Judgment Actions were filed, the FTC filed this case in the District of Columbia. This Court has since granted motions by the Attorney General of the State of Louisiana to intervene in each of the Declaratory Judgment Actions. *See* Order, ECF No. 17, *Louisiana Children’s Medical Center v. Attorney General of the United States et al.*, 2:23-cv-01305-LMA-MBN; Order, ECF No. 21, *HCA Healthcare, Inc. v. Merrick Garland et al.*, No. 2:23-cv-01311 (E.D. La.). Additionally, on May 9, 2023, this Court consolidated the Declaratory Judgment Actions into the *LCMC Litigation*. *See* Order, ECF No. 29, *Louisiana Children’s Medical Center v. Attorney General of the United States et al.*, 2:23-cv-01305-LMA-MBN (E.D. La. May 9, 2023) (consolidating *Louisiana Children’s Medical Center v. Merrick Garland et al.*, 2:23-cv-01305-LMA-MBN (E.D. La.) and *HCA Healthcare, Inc. v. Merrick Garland et al.*, No. 2:23-cv-01311 (E.D. La.)). On May 23, 2023, following briefing from the parties, the District Court of the District of Columbia granted HCA and LCMC’s motion to transfer this case to the Eastern District of Louisiana. *See* Memorandum Opinion & Order, ECF No. 31, *Federal Trade Commission v. Louisiana Children’s Medical Center*, (D.D.C May 23, 2023); Plaintiffs’ Supplemental Memorandum in Further Support of Motion for Expedited Status Conference and Briefing Schedule, ECF No. 54 at 2, *Louisiana Children’s Medical Center v. Attorney General of the United States et al.*, 2:23-cv-01305-LMA-MBN (notifying this Court that the D.D.C. has now transferred this case to the E.D. La.).

Federal Rule of Civil Procedure 42(a) provides that actions “involv[ing] a common question of law or fact,” may be “consolidate[d]” by a court. Consolidation is a “procedural device used to promote judicial efficiency and economy” and district courts have “broad discretion in deciding whether two matters are proper for consolidation.” *Johnson v. Chevron USA Inc.*, No. 6:20-CV-00454, 2020 U.S. Dist. LEXIS 140851, at \*2 (W.D. La. Aug. 5, 2020). The Fifth Circuit has encouraged district courts to “make good use of Rule 42(a) . . . to expedite the trial and eliminate unnecessary repetition and confusion.” *In re Air Crash Disaster at Fla. Everglades*, 549 F.2d 1006, 1013 (5th Cir. 1977) (citation omitted). In determining whether consolidation is appropriate, courts will consider the following factors: (1) whether the actions are pending in the same court; (2) the common identity of the parties; (3) the existence of common questions of law or fact; (4) the risk of confusion or prejudice that may result from consolidation; and (5) the extent to which consolidation would promote juridical efficiency. *Moran v. Landrum-Johnson*, No. 19-13553, 2020 U.S. Dist. LEXIS 98843, at \*5 (E.D. La. June 4, 2020).

All of these factors favor consolidation here. *First*, both this action and the *LCMC Litigation* are pending in the Eastern District of Louisiana. Additionally, both actions are currently pending before this Court and Magistrate Judge Michael B. North. *Second*, all of the parties in this action are parties to the *LCMC Litigation*. Indeed, the Federal Trade Commission (the “FTC”), HCA and LCMC are all parties to this action and the *LCMC litigation*. Further, the Louisiana Attorney General has intervened in the *LCMC Litigation* and recently moved to intervene in this action. *See* ECF No. 37. The fact that there are additional parties—namely the Department of Justice and the Attorney General of the United States—in the *LCMC Litigation* does not weigh against consolidation given the close interaction those parties have with the FTC. *Nielsen v. United States*, No. 7:21-cv-00328, 2022 U.S. Dist. LEXIS 45436, at \*5 (S.D. Tex. Mar. 15, 2022) (finding

that consolidation will reduce prejudice and conserve judicial and party resources where many cases involve many of the same related parties and common issues of law and fact). *Third*, the actions arise out of the same set of facts and raise common questions of law. Like the *LCMC Litigation*, this case arises out of the same Acquisition as does the *LCMC Litigation* and raises the same legal questions regarding whether the Acquisition is exempt from the HSR Act under the state action immunity doctrine and whether HCA and LCMC are subject to civil penalties or other relief for alleged non-compliance with the HSR Act. Notably, Defendants in the *LCMC Litigation*, including the FTC, recently referred to this action as a “parallel case” to the *LCMC Litigation* and explained that this case involves “the same legal question involved in [the *LCMC Litigation*].” See ECF No. 36, *Louisiana Children’s Medical Center v. Attorney General of the United States et al.*, 2:23-cv-01305-LMA-MBN, at 2 (E.D. La. May 11, 2023). Because the two actions involve the same set of facts and the same key legal questions, consolidation is warranted. *United States Football, Inc. v. Robinson*, Nos. H-03-4858 (NFA), V-03-0132 (JDR), 2004 U.S. Dist. LEXIS 28089, at \*5 (S.D. Tex. Feb. 3, 2004) (consolidation served the interest of judicial economy and efficiency where Plaintiffs filed a declaratory judgment action and Plaintiffs in separate case filed an infringement action as there the two cases had substantial overlap). *Fourth*, there would be no risk of confusion or prejudice that would result from consolidation, in fact, consolidating the two actions would prevent possible prejudices in inconsistent judgments. See *Arnold & Co., LLC v. David K. Young Consulting, LLC*, No. SA-13-CV-00146-DAE, 2013 U.S. Dist. LEXIS 50103, at \*5 (W.D. Tex. Apr. 8, 2013) (consolidation of cases with common questions of law and fact, and essentially the same parties would eliminate unnecessary repetition and confusion); see also *Coates v. Saia Motor Freight Line, LLC*, No. 3:20-CV-25-DMB-RP, 2020 U.S. Dist. LEXIS 60972, at \*4 (N.D. Miss. Apr. 7, 2020) (consolidation warranted where it was “in the interest of

judicial economy, [would] conserve the time and resources of the parties, and [would] avoid the risk of inconsistent judgments”). *Finally*, consolidation would best serve the interests of judicial efficiency, fairness, and consistency as these actions involve the same legal questions and parties.

For the foregoing reasons, consolidation is warranted. Accordingly, HCA and LCMC respectfully request that this case be consolidated with *Louisiana Children’s Medical Center v. Attorney General of the United States et al.*, 2:23-cv-01305-LMA-MBN.

Dated: June 13, 2023

Respectfully submitted,

/s/ Diana Cole Surprenant

E. Paige Sensenbrenner (#18429) – T.A.  
Diana Cole Surpreant (#33399)  
ADAMS AND REESE LLP  
Hancock Whitney Center  
701 Poydras Street, Suite 4500  
New Orleans, Louisiana 70139  
Tel: (504) 581-3234  
paige.sensenbrenner@arlaw.com  
diana.surprenant@arlaw.com

/s/ Judy Y. Barrasso

Judy Y. Barrasso (#2814)  
Christine Calogero (#36818)  
Stephen R. Klaffky (#36211)  
BARRASSO USDIN KUPPERMAN FREEMAN  
& SARVER, L.L.C.  
990 Poydras Street, Suite 2350  
New Orleans, LA 70112  
Tel: (504) 589-9700  
jbarrasso@barrassousdin.com  
ccalogero@barrassousdin.com  
sklaffky@barrassousdin.com



/s/ Kenneth W. Field

Kenneth W. Field (*pro hac vice forthcoming*)  
Benjamin F. Holt (*pro hac vice forthcoming*)  
Sean Marotta (*pro hac vice forthcoming*)  
Christopher M. Fitzpatrick (*pro hac vice forthcoming*)  
HOGAN LOVELLS US LLP  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004  
Tel: (202) 637-5600  
benjamin.holt@hoganlovells.com  
ken.field@hoganlovells.com  
sean.marotta@hoganlovells.com  
chris.fitzpatrick@hoganlovells.com

Robert N. Stander (*pro hac vice forthcoming*)  
JONES DAY  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001  
Tel: (202) 879-7628  
rstander@jonesday.com

*Counsel for Louisiana Children's  
Medical Center*

/s/ Harry Rosenberg

Harry Rosenberg (#11465)  
Phelps Dunbar, LLP  
Canal Place  
365 Canal Street, Suite 2000  
New Orleans, LA 70130  
Tel: (504) 584-9219  
harry.rosenberg@phelps.com

/s/ Sara Y. Razi

Sara Y. Razi (*pro hac vice forthcoming*)  
Abram J. Ellis (*pro hac vice forthcoming*)  
Joshua Hazan (*pro hac vice forthcoming*)  
Simpson Thacher & Bartlett LLP  
900 G. Street, N.W.  
Washington, D.C. 20001  
Tel: (202) 636-5582  
sara.razi@stblaw.com  
aellis@stblaw.com  
joshua.hazan@stblaw.com

*Counsel for HCA Healthcare, Inc.*

#1893139

**UNITED STATES DISTRICT COURT  
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 I

MAGISTRATE JUDGE  
MICHAEL B. NORTH  
DIVISION 5

**ORDER**

Defendants HCA Healthcare, Inc.'s ("HCA") and Louisiana Children's Medical Center's ("LCMC") Motion to Consolidate having come before the Court, **IT IS ORDERED** that the Motion is **GRANTED** and this case is hereby consolidated with *Louisiana Children's Medical Center v. Attorney General of the United States et al.*, 2:23-cv-01305-LMA-MBN.

---

LANCE M. AFRICK  
UNITED STATES DISTRICT COURT JUDGE

**UNITED STATES DISTRICT COURT  
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 CARL J. BARBIER  
SECTION J

MAGISTRATE JUDGE  
MICHAEL B. NORTH  
DIVISION 5

**DEFENDANTS' NOTICE OF SUBMISSION**

**PLEASE TAKE NOTICE** HCA Healthcare, Inc. and Louisiana Children's Medical Center submit for consideration their Motion to Consolidate before the Honorable Carl J. Barbier, United States District Judge, on June 28, 2023, at 9:30 a.m.

Dated: June 13, 2023

Respectfully submitted,

/s/ Diana Cole Surprenant

E. Paige Sensenbrenner (#18429) – T.A.  
Diana Cole Surpreant (#33399)  
ADAMS AND REESE LLP  
Hancock Whitney Center  
701 Poydras Street, Suite 4500  
New Orleans, Louisiana 70139  
Tel: (504) 581-3234  
paige.sensenbrenner@arlaw.com  
[diana.surprenant@arlaw.com](mailto:diana.surprenant@arlaw.com)

/s/ Judy Y. Barrasso

Judy Y. Barrasso (#2814)  
Stephen R. Klaffky (#36211)  
BARRASSO USDIN KUPPERMAN FREEMAN  
& SARVER, L.L.C.  
990 Poydras Street, Suite 2350  
New Orleans, LA 70112  
Tel: (504) 589-9700  
jbarrasso@barrassousdin.com  
[sklaffky@barrassousdin.com](mailto:sklaffky@barrassousdin.com)

/s/ Kenneth W. Field

Kenneth W. Field (*pro hac vice forthcoming*)  
Benjamin F. Holt (*pro hac vice forthcoming*)  
Sean Marotta (*pro hac vice forthcoming*)  
Christopher M. Fitzpatrick (*pro hac vice forthcoming*)  
HOGAN LOVELLS US LLP  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004  
Tel: (202) 637-5600  
benjamin.holt@hoganlovells.com  
ken.field@hoganlovells.com  
sean.marotta@hoganlovells.com  
chris.fitzpatrick@hoganlovells.com

Robert N. Stander (*pro hac vice forthcoming*)  
JONES DAY  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001  
Tel: (202) 879-7628  
rstander@jonesday.com

*Counsel for Louisiana Children's  
Medical Center*

/s/ Harry Rosenberg

Harry Rosenberg (#11465)  
Phelps Dunbar, LLP  
Canal Place  
365 Canal Street, Suite 2000  
New Orleans, LA 70130  
Tel: (504) 584-9219  
harry.rosenberg@phelps.com

/s/ Sara Y. Razi

Sara Y. Razi (*pro hac vice forthcoming*)  
Abram J. Ellis (*pro hac vice forthcoming*)  
Joshua Hazan (*pro hac vice forthcoming*)  
Simpson Thacher & Bartlett LLP  
900 G. Street, N.W.  
Washington, D.C. 20001  
Tel: (202) 636-5582  
sara.razi@stblaw.com  
aellis@stblaw.com  
joshua.hazan@stblaw.com

*Counsel for HCA Healthcare, Inc.*