

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

LOUISIANA CHILDREN'S MEDICAL
CENTER, d/b/a LCMC HEALTH,

Plaintiff

v.

MERRICK GARLAND, in his official
capacity as ATTORNEY GENERAL OF
THE UNITED STATES,

UNITED STATES DEPARTMENT OF
JUSTICE

FEDERAL TRADE COMMISSION,

and

UNITED STATES OF AMERICA,

Defendants

CIVIL ACTION NO. 23-1305 c/w
NO. 23-1311

JUDGE LANCE M. AFRICK

MAGISTRATE JUDGE NORTH

**INTERVENOR STATE OF LOUISIANA'S MOTION FOR LEAVE TO FILE
RESPONSE TO DEFENDANT UNITED STATES' OPPOSITION TO
EXPEDITED STATUS CONFERENCE AND BRIEFING SCHEDULE**

The State of Louisiana, by and through Attorney General Jeff Landry, moves for leave to file a response in support of Plaintiffs' Motion for Expedited Status Conference and Briefing Schedule and against the position taken by Defendant United States.

On May 9, 2023, Plaintiffs Louisiana Children’s Medical Center (“LCMC”) and HCA Healthcare, Inc. (“HCA”) filed a motion seeking a status conference at which to request permission for an expedited briefing schedule for their anticipated motion for summary judgment. ECF Doc. Nos. 27, 34. On May 11th, the United States filed an opposition to that motion. ECF Doc. No. 36. The State of Louisiana, which was accepted by this Court as an Intervenor Plaintiff on May 2nd, ECF Doc. No. 17, respectfully requests leave to file the attached brief in further support of LCMC’s and HCA’s motion and in response to the United States’ opposition.

Dated: May 15, 2023

Respectfully Submitted,

Jeff Landry
Louisiana Attorney General

/s/ Angelique Duhon Freel
Elizabeth B. Murrill (LSBA No. 20685)
Solicitor General
Angelique Duhon Freel (LSBA No.
28561)
Carey Tom Jones (LSBA No. 07474)
Terrence J. Donahue, Jr. (LSBA No.
32126)
ASSISTANT ATTORNEYS GENERAL
OFFICE OF THE ATTORNEY
GENERAL
LOUISIANA DEPARTMENT OF
JUSTICE
1885 N. Third St.
Baton Rouge, LA 70804
(225) 326-6000 phone
(225) 326-6098 fax
murrille@ag.louisiana.gov
freela@ag.louisiana.gov

jonescar@ag.louisiana.gov
donahuet@ag.louisiana.gov

CERTIFICATE OF SERVICE

I do hereby certify that, on this 15th day of May 2023, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which gives notice of filing to all counsel of record.

/s/ Angelique Duhon Freel
Angelique Duhon Freel

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MAGISTRATE JUDGE NORTH

**INTERVENOR STATE OF LOUISIANA'S MEMORANDUM IN FURTHER
SUPPORT OF PLAINTIFFS' MOTION FOR EXPEDITED STATUS
CONFERENCE AND BRIEFING SCHEDULE**

The State of Louisiana, by and through Attorney General Jeff Landry, supports Plaintiffs' Motion for Expedited Status Conference and Briefing Schedule.

The United States asks this Court to forego progressing this case out of deference to the "mirror-image case" in the United States District Court for the District of Columbia ("DDC"), *Federal Trade Commission v. LCMC et al.*, No. 23-cv-

1103 (D.D.C.), which, the United States argues, already has meaningfully advanced. Opp. at 5. The DDC case is not a “mirror image” of this matter. The State of Louisiana – a critical party to this action with unique sovereign interests at stake – is not a party to the DDC case and has not had an opportunity to weigh in there. Moreover, as set out below, the DDC case is simultaneously too narrow and too broad to facilitate prompt disposition of this dispute, so the progress of that case does not justify holding this one in abeyance. Summary judgment by this Court, meanwhile, could provide global resolution in short order based on input from the full spectrum of stakeholders. The Court should hold a status conference to set the schedule for the parties to proceed to that stage.

As set out in Louisiana’s Petition for Intervention, the State has an interest in LCMC integrating the acquired “[h]ospitals and physician clinics into its health care network to deliver on the promised benefits for the people of Louisiana,” but the “FTC’s action is interfering with the State’s right to implement and actively supervise the COPA.” ECF Doc. No. 18, at ¶¶ 34, 37. Specifically, the FTC’s order that LCMC halt the acquisition threatens to frustrate or even derail the reductions in health care costs and improvements in health care access and quality that the State expects its citizens to realize as a result of the acquisition. *Id.* ¶ 31. In addition, the FTC’s position that Louisiana’s COPA statute is not capable of exempting acquisitions from the notice and waiting period requirements of the HSR Antitrust Act threatens to undermine the efficacy of Louisiana’s COPA program and, more generally, Louisiana’s sovereignty to structure its local healthcare markets how it deems best.

This Court granted Louisiana's motion to intervene in recognition of the State's important interests in this litigation both in terms of the benefits of these transactions to its citizens and in its supervision of the COPA. ECF Doc. No. 17. If this Court pauses the instant litigation while the DDC action proceeds, doing so would obstruct the State of Louisiana from defending its interests in all these matters. The State of Louisiana is not a party to the DDC case and has not been afforded an opportunity to submit briefing on the preliminary injunction motion that is currently before that court.

In addition, even if the DDC court could appropriately resolve the ultimate merits question without input from all relevant stakeholders, the United States oversells the likelihood that the DDC could do so before this Court could resolve the merits. First, the questions before the DDC court are broader than Defendant lets on. The United States mentions only in a footnote that LCMC and HCA have moved the DDC court to transfer the case here, Opp. at 4, and it neglects to mention at all that LCMC has separately moved to dismiss the DDC action for lack of personal jurisdiction on the ground that it "does not have any operations or presence in the District of Columbia and it does not transact business in the District of Columbia." *Federal Trade Commission v. LCMC et al.*, No. 23-cv-1103, ECF Doc. No. 19, at *2 (D.D.C. Apr. 24, 2023). Those motions raise complicated legal questions and may require significant time to resolve. Since the motions are also gating items—even the merits issue is being considered only on a preliminary basis—to any merits

adjudication in the District of Columbia, they also create obstacles to early resolution that do not exist in this Court.

At the same time, United States' assertion that the merits question in DDC was already fully briefed, *see* Opp. at 4, ignores the fact that the FTC's motion for a preliminary injunction is the only piece of that case that is proceeding on an expedited basis. LCMC and HCA, in contrast, have indicated that they intend to move expeditiously to summary judgment following a status conference, which would fully resolve this litigation. ECF Doc. No. 29 at *2. The United States' contention that "[t]he DDC's ruling on [the preliminary injunction] will be dispositive in this case," Opp. at 4, is wishful thinking and depends upon the DDC first reaching the merits and then agreeing with the FTC that state action antitrust immunity can never exempt parties from the notification and waiting period requirements of the HSR Antitrust Act. If the DDC concludes from the preliminary injunction briefing that the issue of state action immunity from the HSR Antitrust Act is case-specific—as it is for all other antitrust laws—then the DDC would need to review and analyze the particulars of Louisiana's COPA law and the COPA at issue here. It is the same inquiry that this Court would make on a summary judgment motion, and the DDC would be no closer than this Court to completing it.

Finally, we note that delay by this Court could be misperceived by the United States and/or the DDC. In its opposition in DDC to LCMC's and HCA's motion to transfer the case here, the FTC expressed concern that court congestion in the Eastern District of Louisiana could impede the parties' ability to obtain prompt

resolution in this matter. *See Federal Trade Commission v. LCMC et al.*, No. 23-cv-1103, ECF Doc. No. 25, at *17 (D.D.C. Apr. 26, 2023). In our experience as regular litigants in this district, this Court is capable of advancing this case as swiftly as practicable and doing so here would demonstrate that the FTC's concerns about timeliness expressed in DDC are without merit and need not concern the DDC.

For the foregoing reasons, the State of Louisiana supports LCMC's and HCA's request for an expedited status conference.

Dated: May 15, 2023

Respectfully Submitted,

Jeff Landry
Louisiana Attorney General

/s/ Angelique Duhon Freel
Elizabeth B. Murrill (LSBA No. 20685)
Solicitor General
Angelique Duhon Freel (LSBA No. 28561)
Carey Tom Jones (LSBA No. 07474)
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ASSISTANT ATTORNEYS GENERAL
OFFICE OF THE ATTORNEY
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1885 N. Third St.
Baton Rouge, LA 70804
(225) 326-6000 phone
(225) 326-6098 fax
murrille@ag.louisiana.gov
freela@ag.louisiana.gov
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/s/ Angelique Duhon Freel

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MAGISTRATE JUDGE NORTH

ORDER

Considering the foregoing motion filed by the State of Louisiana, by and through Attorney General Jeff Landry, for leave to file response to Defendant United States' Opposition to Expedited Status Conference and Briefing Schedule,

IT IS ORDERED that the motion is GRANTED.

New Orleans, Louisiana, May ____, 2023.

LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE