

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION**

FEDERAL TRADE COMMISSION and :  
THE STATE OF GEORGIA, :

Plaintiffs, :

v. :

CASE NO.: 1:11-cv-58 (WLS)

PHOEBE PUTNEY HEALTH SYSTEM :  
INC., PHOEBE PUTNEY MEMORIAL :  
HOSPITAL, INC., PHOEBE NORTH, INC., :  
PALMYRA PARK HOSPITAL INC., and :  
HOSPITAL AUTHORITY OF ALBANY- :  
DOUGHERTY COUNTY, :

Defendants. :

**ORDER**

Before the Court are Defendants’ Request for Oral Argument on the Pending Motions to Dismiss and for Preliminary Injunction (hereinafter “Request for Oral Argument) (Doc. 66) and Plaintiffs’ Position Regarding Oral Argument on Plaintiffs’ Motion for Preliminary Injunction and Defendants’ Motions to Dismiss (Doc. 67). In their Request for Oral Argument, Defendants request: (1) a hearing during the week of June 13, 2011, on the issue of state action immunity raised in their Motions to Dismiss and in their Briefs in Opposition to Plaintiffs’ Motion for Preliminary Injunction and (2) if their Motions to Dismiss are denied, a separate evidentiary hearing, pursuant to Fed. R. Civ. P 65(b), on Plaintiffs’ Motion for Preliminary Injunction.<sup>1</sup> (Doc. 66 at 1-2).

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<sup>1</sup> In their Reply in Support of Their Request for Oral Argument, Defendants explain that they do not wish to hold a hearing on the Motions to Dismiss that is bifurcated from the Motion for Preliminary Injunction. (Doc. 68 at 1, 3). Rather, they request an opportunity to present live testimony at a subsequent hearing in opposition to Plaintiffs’ Motion for Preliminary Injunction and in Support of Defendants’ Motions to Dismiss, if the Court is unable to resolve the state action issue on the existing record. (Doc. 68 at 1, 3). The Court denies this clarified request,

Plaintiffs, however, believe that said Motions can be addressed in a single hearing. (Doc. 67 at 2, 3). According to Plaintiffs, the limited purpose of the requested hearing, which is intended to preserve the status quo pending a decision on the merits by the Federal Trade Commission (FTC), obviates the need for extensive presentations or live testimony in a hearing on the Motion for Preliminary Injunction that is separate from a hearing on the Motions to Dismiss. (*Id.* at 3). Accordingly, Plaintiffs ask the Court to hold oral argument during one hearing on Defendants' Motion to Dismiss, as well as the weighing of "the equities," which is the second element of the test for § 13(b) preliminary injunctive relief under the FTC Act.<sup>2</sup> (*Id.*).

The Court agrees with Plaintiffs' position, with the exception of the restriction of the scope of the hearing to the weighing of the equities, and finds that a single hearing is appropriate to address Plaintiffs' as well as Defendants' pending Motions. Thus, the Parties are **NOTICED** that a hearing on Defendants' Motions to Dismiss (Docs. 45, 46, 53) and Plaintiffs' Motion for Preliminary Injunction (Doc. 5) will take place on **Monday, June 13, 2011, at 9:00AM**. The Parties are hereby **ORDERED** to limit their arguments at the June 13, 2011 hearing to the following two issues, to be heard in the listed order: (1) state action immunity, and (2) the public interest standard of Section 13(b) preliminary injunctive relief under the FTC Act. The Parties are further **NOTICED** that they will be responsible for the preservation of any confidential and/or proprietary information presented at the hearing and that they must alert the Court as to any appropriate steps that must be taken to protect such information from the public view. Any

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however, as no additional hearing on the state action issue will be necessary. The Parties should be prepared to fully argue the state action issue at the June 13, 2011 hearing.

<sup>2</sup> Plaintiffs do not believe oral argument on the first element—Plaintiffs' likelihood of success on the merits—is needed because Defendants have conceded to this element. (*See* Doc. 67 at 2-3, 4-5). In their Reply in Support of their Request for Oral Argument, Defendants even state that they have chosen not to litigate "the competitive impact of the Hospital Authority's acquisition of Palmyra," as "the *only* questions the parties contest . . . are jurisdictional." (Doc. 68 at 2). At this time, however, the Court reserves its ruling on whether Plaintiffs have met their burden as to this element or whether Defendants have conceded thereto until argument on this element can be heard at the June 13, 2011 hearing.

evidence that was previously filed under seal with the Court will remain sealed pending any further order of the Court.

**SO ORDERED**, 8<sup>th</sup> day of June 2011.

/s/ W. Louis Sands  
**THE HONORABLE W. LOUIS SANDS,**  
**UNITED STATES DISTRICT COURT**