



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

June 22, 2023

The Honorable Troy A. Carter, Sr.
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Carter:

Thank you for your letter regarding the recent acquisition by Louisiana Children's Medical Center ("LCMC") of three Tulane University hospitals in the New Orleans area from HCA Healthcare ("HCA").

I fully agree that robust, faithful, and even-handed enforcement of antitrust laws and associated federal pre-merger reporting requirements is critical to protect Americans and the growth and dynamism of our economy. Accordingly, the Federal Trade Commission ("FTC" or "Commission") sued in federal district court to stop LCMC from integrating the three competing hospitals pending federal merger review, explaining that LCMC and HCA defied the federal Hart-Scott-Rodino ("HSR") Act by consummating the \$150 million acquisition without reporting it to U.S. antitrust authorities and without observing the mandatory waiting period.¹

Complying with the laws that Congress passes is not optional. Accordingly, the FTC seeks a temporary restraining order and a preliminary injunction requiring that LCMC and HCA comply with the HSR Act, that LCMC hold the three acquired hospitals and related assets separate from its existing hospital system pending an FTC investigation into the transaction, and that LCMC give the FTC prior notice of certain transactions while the court resolves the proceeding.

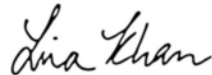
The Commission noted in its court petition that LCMC and HCA have taken the position that the notification and waiting period requirements of the HSR Act do not apply because the Attorney General of Louisiana approved a Certificate of Public Advantage (COPA) for the acquisitions under Louisiana state law. However, the Commission pointed out that the state's grant of a COPA is not among the statutory exemptions under HSR Act and has not been recognized by any court as a basis for refusing to comply with the HSR Act.

¹ Press Release, Fed. Trade Comm'n, FTC Sues to Stop the Potentially Illegal Integration of New Orleans Area Hospitals Over Failure to Follow Federal Reporting Law (Apr. 20, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-sues-stop-potentially-illegal-integration-new-orleans-area-hospitals-over-failure-follow-federal-reporting-law>.

As the FTC continues to faithfully discharge its statutory obligations and enforce the laws Congress has passed, the Commission hews closely to the legal standards set by judicial precedent and takes seriously the need for companies to comply with their obligations to file the premerger notification required by the HSR Act.

Thank you again for your letter. If you or your staff have any questions, please don't hesitate to contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in cursive script that reads "Lina Khan".

Lina M. Khan
Chair, Federal Trade Commission



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

June 22, 2023

The Honorable Joseph D. Morelle
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Morelle:

Thank you for your letter regarding the proposed affiliation between the University of Rochester Medical Center and Finger Lakes Regional Health System.

While I cannot comment on the existence or details of any Commission investigations, I fully agree that robust, faithful, and even-handed antitrust enforcement across all industries is critical to the growth and dynamism of our economy. Congress has outlawed mergers of any type that may substantially lessen competition or tend to create a monopoly, and I am fully committed to ensuring the FTC is faithfully discharging its statutory obligation and enforcing the laws Congress has passed.

Accordingly, we pursue the Commission's merger enforcement work with the objective of fulfilling our statutory mandate and protecting Americans from unlawful mergers. We hew closely to the legal standards set by judicial precedent, and we are revising our merger guidelines to further ensure that our enforcement manual fully conforms to legal precedent and the text of our statutes. As the FTC continues to challenge only those mergers that may substantially lessen competition or tend to create a monopoly in any market, we take seriously the need for our investigations to be thorough, accurate, and as expeditious as our limited resources permit.

Thank you again for your letter. If you or your staff have any questions, please do not hesitate to contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

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Chair, Federal Trade Commission



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June 22, 2023

The Honorable Earl L. “Buddy” Carter
United States House of Representatives
Washington, DC 20515

Dear Representative Carter:

Thank you for your April 17, 2023 letter regarding alternative funding vendors (“AFVs”). It was good to see you the following day at the Energy and Commerce hearing. In your letter, you provide the FTC with information regarding the practices of AFVs and your concerns about fraud, deception, and the potential impact on consumers. We appreciate your taking the time to communicate these concerns.

Rooting out unfair or deceptive practices and other unlawful business activity within the health care industry is a key priority for me. An act or practice is deceptive if it is material and would likely mislead consumers acting reasonably under the circumstances.¹ A practice is unfair if it causes or is likely to cause substantial consumer injury which consumers cannot reasonably avoid, and which is not outweighed by benefits to consumers or competition.²

I also wanted to take the opportunity to mention two measures essential for a robust FTC that can fully protect Americans from unlawful business practices: restoring the Commission’s full authority to return money to harmed consumers,³ and providing the Commission with the funding necessary for us to fulfill our vital mission. The Commission’s loss of its ability to obtain monetary relief under Section 13(b) of the FTC Act has already had a profound effect on consumers and honest businesses: by conservative estimates, this court decision has already caused consumers to lose out on more than \$1.5 billion of relief that the agency previously could have obtained under Section 13(b), and the losses increase with each passing day.⁴

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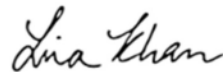
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⁴ Statement of Commissioner Rebecca Kelly Slaughter Joined by Chair Lina M. Khan Regarding Section 13(b) of the FTC Act (Apr. 28, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Statement%20of%20Comm%27r%20Slaughter%20Joined%20by%20Chair%20Khan%20Regarding%20Section%2013%28b%29%20of%20the%20FTC%20Act_April%202022.pdf.

Furthermore, despite having a broad mandate from Congress and being on the front lines of many of the most pressing issues Americans face today, the agency's funding has not kept up with the additional demands on its resources. Indeed, the number of full-time employees at the FTC is about two-thirds of what it was at the beginning of 1980, even as the nation's GDP has increased six-fold. Demands on the Commission continue to grow as we receive more consumer complaints, review more corporate mergers, conduct more complex and expensive litigation, and respond to burgeoning requests for research and investigation of various economic sectors. While we constantly strive to enforce the law to the best of our capabilities, there is no doubt that, even with the increased appropriations Congress has provided in recent years, we continue to lack sufficient funding. I look forward to continuing to work with you to ensure that the Commission has the resources and tools it needs to vigorously protect Americans from unlawful business practices throughout the economy.

Thank you again for raising this topic. We will keep your office apprised if or when any information regarding this matter becomes public. If you or your staff has additional questions or comments, please do not hesitate to contact Jeanne Bumpus, Director of our Office of Congressional Relations, at (202) 326-2946.

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Lina M. Khan
Chair, Federal Trade Commission



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UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

June 22, 2023

The Honorable Neal P. Dunn, M.D.
United States House of Representatives
Washington, DC 20515

Dear Representative Dunn:

Thank you for your April 17, 2023 letter regarding alternative funding vendors (“AFVs”). It was good to see you the following day at the Energy and Commerce hearing. In your letter, you provide the FTC with information regarding the practices of AFVs and your concerns about fraud, deception, and the potential impact on consumers. We appreciate your taking the time to communicate these concerns.

Rooting out unfair or deceptive practices and other unlawful business activity within the health care industry is a key priority for me. An act or practice is deceptive if it is material and would likely mislead consumers acting reasonably under the circumstances.¹ A practice is unfair if it causes or is likely to cause substantial consumer injury which consumers cannot reasonably avoid, and which is not outweighed by benefits to consumers or competition.²

I also wanted to take the opportunity to mention two measures essential for a robust FTC that can fully protect Americans from unlawful business practices: restoring the Commission’s full authority to return money to harmed consumers,³ and providing the Commission with the funding necessary for us to fulfill our vital mission. The Commission’s loss of its ability to obtain monetary relief under Section 13(b) of the FTC Act has already had a profound effect on consumers and honest businesses: by conservative estimates, this court decision has already caused consumers to lose out on more than \$1.5 billion of relief that the agency previously could have obtained under Section 13(b), and the losses increase with each passing day.⁴

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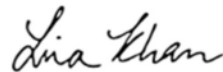
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June 22, 2023

The Honorable Brian Fitzpatrick
United States House of Representatives
Washington, DC 20515

Dear Representative Fitzpatrick:

Thank you for your April 17, 2023 letter regarding alternative funding vendors (“AFVs”). It was good to see you the following day at the Energy and Commerce hearing. In your letter, you provide the FTC with information regarding the practices of AFVs and your concerns about fraud, deception, and the potential impact on consumers. We appreciate your taking the time to communicate these concerns.

Rooting out unfair or deceptive practices and other unlawful business activity within the health care industry is a key priority for me. An act or practice is deceptive if it is material and would likely mislead consumers acting reasonably under the circumstances.¹ A practice is unfair if it causes or is likely to cause substantial consumer injury which consumers cannot reasonably avoid, and which is not outweighed by benefits to consumers or competition.²

I also wanted to take the opportunity to mention two measures essential for a robust FTC that can fully protect Americans from unlawful business practices: restoring the Commission’s full authority to return money to harmed consumers,³ and providing the Commission with the funding necessary for us to fulfill our vital mission. The Commission’s loss of its ability to obtain monetary relief under Section 13(b) of the FTC Act has already had a profound effect on consumers and honest businesses: by conservative estimates, this court decision has already caused consumers to lose out on more than \$1.5 billion of relief that the agency previously could have obtained under Section 13(b), and the losses increase with each passing day.⁴

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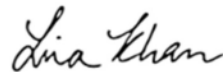
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June 22, 2023

The Honorable John Joyce, M.D.
United States House of Representatives
Washington, DC 20515

Dear Representative Joyce:

Thank you for your April 17, 2023 letter regarding alternative funding vendors (“AFVs”). It was good to see you the following day at the Energy and Commerce hearing. In your letter, you provide the FTC with information regarding the practices of AFVs and your concerns about fraud, deception, and the potential impact on consumers. We appreciate your taking the time to communicate these concerns.

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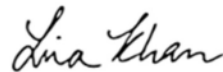
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June 22, 2023

The Honorable Nancy Mace
United States House of Representatives
Washington, DC 20515

Dear Representative Mace:

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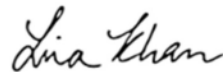
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Lina M. Khan
Chair, Federal Trade Commission



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the Chair

June 22, 2023

The Honorable Tammy Duckworth
United States Senate
Washington, DC 20510

Dear Senator Duckworth:

Thank you for your letter to the Federal Trade Commission (“FTC” or “Commission”) requesting an investigation of any recent decision or plan by AmerisourceBergen to sell the medication Mifepristone only to health care providers and not to retail pharmacies in certain states.

I share your concern about unlawful business practices in pharmaceutical markets. I am fully committed to ensuring that the FTC vigorously enforces the statutes it is charged with administering.¹ That includes bringing actions against all manner of law violations throughout the entire pharmaceutical supply chain, aided by ongoing efforts to strengthen its law enforcement approaches and tools.² Given the high stakes for American consumers, workers,

¹ See Oversight of the Enforcement of Antitrust Laws: Hearing Before the Comm. on the Judiciary, Subcomm. On Antitrust, Competition Policy and Consumer Rights (Sept. 20, 2022) (Prepared Statement of the Fed. Trade Comm’n), https://www.ftc.gov/system/files/ftc_gov/pdf/P210100SenateAntitrustTestimony09202022.pdf.
² See, e.g., Press Release, Fed. Trade Comm’n, FTC Restores Rigorous Enforcement of Law Banning Unfair Methods of Competition (Nov. 10, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/11/ftc-restores-rigorous-enforcement-law-banning-unfair-methods-competition>; Fed. Trade Comm’n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act (Nov. 10, 2022), <https://www.ftc.gov/legal-library/browse/policy-statement-regarding-scope-unfair-methods-competition-under-section-5-federal-trade-commission>; Press Release, Fed. Trade Comm’n, FTC to Ramp Up Enforcement Against Any Illegal Rebate Schemes, Bribes to Prescription Drug Middleman That Block Cheaper Drugs (Jun. 16, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-ramp-up-enforcement-against-illegal-rebate-schemes>; Fed. Trade Comm’n, The Future of Pharmaceuticals: Examining the Analysis of Pharmaceutical Mergers (June 14–15, 2022), <https://www.ftc.gov/news-events/events/2022/06/future-pharmaceuticals-examining-analysis-pharmaceutical-mergers>; Press Release, Fed. Trade Comm’n, FTC Launches Inquiry Into Prescription Drug Middlemen Industry (June 7, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-launches-inquiry-prescription-drug-middlemen-industry>; Press Release, Fed. Trade Comm’n, Federal Trade Commission and Justice Department Seek to Strengthen Enforcement Against Illegal Mergers (Jan. 18, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/federal-trade-commission-justice-department-seek-strengthen-enforcement-against-illegal-mergers>; Press Release, Fed. Trade Comm’n, FTC Streamlines Consumer Protection and Competition Investigations in Eight Key Enforcement Areas to Enable Higher Caseload (Sept. 14, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/09/ftc-streamlines-consumer-protection-competition-investigations-eight-key-enforcement-areas-enable>; Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter on Actions to Expedite Staff Investigations (Sept. 14, 2021), https://www.ftc.gov/system/files/documents/public_statements/1596260/p859900omnibuslmkrksconcur.pdf; Press Release, FTC Authorizes Investigations into Key Enforcement Priorities (July 1, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-authorizes-investigations-key-enforcement-priorities>; Press Release, Fed. Trade Comm’n, FTC Announces Multilateral Working Group to Build a New Approach to Pharmaceutical Mergers (Mar. 16, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/03/ftc-announces-multilateral-working-group-build-new-approach-pharmaceutical-mergers>.

honest businesses, local communities, and the nation's economy, policing potentially unlawful conduct in health care industries continues to be a top Commission priority.

Thank you again for raising this topic and your vigilance in promoting fair competition. If you or your staff have any questions, please contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in cursive script that reads "Lina Khan".

Lina M. Khan
Chair, Federal Trade Commission



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June 22, 2023

The Honorable Elizabeth Warren
United States Senate
Washington, DC 20510

Dear Senator Warren:

Thank you for your letter to the Federal Trade Commission (“Commission” or “FTC”) requesting robust antitrust enforcement against unlawful consolidation in health care markets.

I am fully committed to ensuring that the FTC marshals its complete set of tools and authorities to vigorously challenge illegal deals. Given the high stakes for American consumers, workers, honest businesses, local communities, and the nation’s economy, policing merger activity and other forms of potentially anticompetitive conduct in the health care industry continues to be a top Commission priority.

Although I cannot comment on the existence or details of non-public investigations, the Commission is taking steps to update our law enforcement approaches and tools to keep pace with new market realities and the full set of ways in which mergers can harm competition. Central to this effort is placing greater weight on assessing mergers involving firms at different levels of the supply chain (i.e., non-horizontal mergers) and anticipating future competition concerns before markets are dominated by only a few firms. This includes orienting our enforcement efforts around targeting root causes of competitive harm, such as looking upstream for structural conditions and incentives that enable and motivate unlawful conduct. This approach is being incorporated into FTC merger review generally and has been reflected in several recent merger challenges.¹ We are focusing not only on the output side of markets, such as the goods and services offered to consumers, but on the input side as well to ensure competitive markets for workers’ labor.² The Commission has a long history of promoting competition in health care markets and will continue to diligently pursue that essential endeavor.³

¹ See, e.g., Press Release, Fed. Trade Comm’n, FTC Orders Illumina to Divest Cancer Detection Test Maker GRAIL to Protect Competition in Life-Saving Technology Market (Apr. 3, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-orders-illumina-divest-cancer-detection-test-maker-grail-protect-competition-life-saving>.

² See Fed. Trade Comm’n, Prepared Statement of the Federal Trade Commission Before the United States Senate Committee on the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights “Oversight of the Enforcement of Antitrust Laws” (Sept. 20, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P210100SenateAntitrustTestimony09202022.pdf.

³ See Health Care Division, Bur. of Competition, Fed. Trade Comm’n, Overview of FTC Actions in Health Care Services and Products (Oct. 2022),

https://www.ftc.gov/system/files/ftc_gov/pdf/2022.10.28OverviewHealthcare.pdf.

See also Health Care Division, Bur. of Competition, Fed. Trade Commission, Overview of FTC Actions in Pharmaceutical Products and Distribution (July 2022),

https://www.ftc.gov/system/files/ftc_gov/pdf/2022.07.12OverviewPharmafinalupdated.pdf.

We have taken the liberty of forwarding your letter to the Department of Justice Antitrust Division (DOJ) for consideration. To avoid duplication and maximize the effectiveness of concurrent federal antitrust jurisdiction, the Commission and the DOJ have long maintained an arrangement through which we divide responsibility for antitrust review based on several factors. Pursuant to that arrangement, the FTC will defer to the DOJ with respect to your request for an investigation of CVS Health's proposed acquisition of Oak Street Health.

Thank you again for raising this topic and your vigilance in promoting fair competition. If you or your staff have any questions, please contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

Sincerely,



Lina M. Khan
Chair, Federal Trade Commission

cc: The Honorable Jonathan Kanter
Assistant Attorney General for Antitrust
U.S. Department of Justice

United States Senate

WASHINGTON, DC 20510

June 23, 2023

Lina Kahn
Chair
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Dear Chair Khan:

We write to support the Federal Trade Commission's effort to revise its Negative Option Rule, as outlined in the Notice of Proposed Rulemaking published on April 24, 2023. We commend the Commission's efforts through individual enforcement actions and policy statements to address illegal practices sometimes used by unscrupulous sellers in automatic renewal subscriptions, continuity plans, free-to-pay conversions, and pre-notification plans. Nevertheless, problems persist. Industry, consumers, and regulators need a consistent legal framework to address negative option marketing across media and offers.

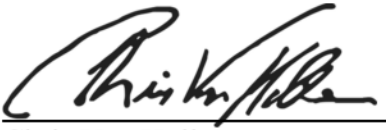
Every year, our constituents submit thousands of complaints to the Commission about negative option transactions, in which sellers interpret their failure to take affirmative action, either to reject an offer or cancel an agreement, as assent to be charged for goods or services. While negative option billing can be legitimate and beneficial with proper disclosure and consent, many consumers fall victim to deceptive tactics and suffer financial harm when marketers fail to be transparent or make cancellation difficult or impossible.

The proposed rule would help address these problems. Updating and strengthening existing regulations will safeguard consumers from deceptive practices and allow the Commission to adapt to market changes. Providing key information on trial periods, subsequent charges, and cancellation processes will enable customers to make informed decisions. The proposed rule focuses on clear disclosures in negative option marketing, ensuring consumers are fully informed about trial offers to prevent unintentional enrollment in recurring payments. The rule emphasizes the importance of transparency and fairness by requiring businesses to obtain explicit consent before charging consumers. It recognizes that accessible cancellation mechanisms like "click to cancel" are essential to protect consumer rights and foster trust in the marketplace. And critically, prohibiting businesses from sharing billing information without consent safeguards personal and financial privacy and prevents unauthorized charges.

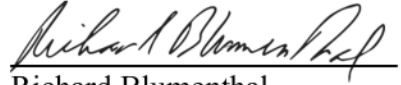
The Consumer Online Payment Transparency and Integrity Act (Consumer OPT-IN Act) that we co-sponsor in Congress aligns closely with these objectives. We believe that our collective efforts can effectively address the challenges associated with negative option marketing.

Thank you for your determined enforcement efforts and continued attention to consumer welfare and a fair and transparent marketplace.

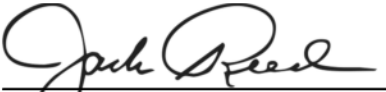
Sincerely,



Chris Van Hollen
United States Senator



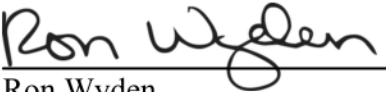
Richard Blumenthal
United States Senator



Jack Reed
United States Senator



Peter Welch
United States Senator



Ron Wyden
United States Senator

MARIA CANTWELL, WASHINGTON, CHAIR

AMY KLOBUCHAR, MINNESOTA
RICHARD BLUMENTHAL, CONNECTICUT
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SHELLEY MOORE CAPITO, WEST VIRGINIA
RICK SCOTT, FLORIDA
CYNTHIA LUMMIS, WYOMING

DAVID STRICKLAND, STAFF DIRECTOR
JOHN KEAST, REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <https://commerce.senate.gov>

June 16, 2023

Chairwoman Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave NW
Washington, DC 20580

Dear Chairwoman Khan:

I write to request a confidential staff briefing for the purpose of an *in camera* review of the DOJ/FTC letter sent to the USTR regarding competition and digital trade provisions in trade agreements.

I understand the sensitivity of discussing such matters and my staff, any other Senate staff attending the briefing, and I will not disclose any non-public information that your staff provides during the briefing.

Sincerely,



MARIA CANTWELL
Chair

AMY KLOBUCHAR, MINNESOTA
BRIAN SCHATZ, HAWAII
EDWARD MARKEY, MASSACHUSETTS
GARY PETERS, MICHIGAN
TAMMY BALDWIN, WISCONSIN
TAMMY DUCKWORTH, ILLINOIS
JON TESTER, MONTANA
KYRSTEN SINEMA, ARIZONA
JACKY ROSEN, NEVADA
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JERRY MORAN, KANSAS
DAN SULLIVAN, ALASKA
MARSHA BLACKBURN, TENNESSEE
TODD YOUNG, INDIANA
TED BUDD, NORTH CAROLINA
ERIC SCHMITT, MISSOURI
J.D. VANCE, OHIO
SHELLEY MOORE CAPITO, WEST VIRGINIA
CYNTHIA LUMMIS, WYOMING

LILA HELMS, MAJORITY STAFF DIRECTOR
BRAD GRANTZ, REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <https://commerce.senate.gov>

June 19, 2023

The Honorable Lina Khan
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairwoman Khan,

As a former Federal Trade Commission (“FTC”) Director of the Office of Policy Planning, I am troubled by recent reports regarding FTC employees’ sinking morale and deepening lack of confidence in FTC leadership. Despite your promises to address the situation, the problem appears to be worsening. I therefore write to inform you and FTC employees that the minority staff of the U.S. Senate Committee on Commerce, Science, and Transportation (“Committee”) is opening an investigation into allegations of mismanagement of the agency and mistreatment of staffers.

The data alone is disheartening. According to the 2022 Office of Personnel Management Federal Employee Viewpoint Survey, which was released in January 2023, less than half (49 percent) of FTC employees agreed that FTC “leaders maintain high standards of honesty and integrity.”¹ That number is four points lower than it was in the 2021 survey² and 38 points lower than it was in 2020—when 87 percent of FTC employees believed that the agency’s leaders “maintain[ed] high standards of honesty and integrity.”³ Moreover, just 44 percent of FTC employees surveyed in 2022 said that they have “a high level of respect” for the FTC’s senior leaders.⁴ Across the board, the data tells the same story: In 2022, 40 percent of employees strongly agreed that the FTC “is successful at accomplishing its mission,” down 24 percent from

¹ 2022 *Office of Personnel Management Federal Employee Viewpoint Survey: Report by Agency* (“2022 Survey”), Office of Personnel Management (2022), <https://www.opm.gov/fevs/reports/data-reports/data-reports/report-by-agency/2022/2022-agency-report.pdf>.

² 2021 *Office of Personnel Management Federal Employee Viewpoint Survey: Report by Agency* (“2021 Survey”), Office of Personnel Management (2021), <https://www.opm.gov/fevs/reports/data-reports/data-reports/report-by-agency/2021/2021-agency-report.pdf>.

³ 2020 *Office of Personnel Management Federal Employee Viewpoint Survey: Report by Agency* (“2020 Survey”), Office of Personnel Management (2020), <https://www.opm.gov/fevs/reports/data-reports/data-reports/report-by-agency/2020/2020-agency-report.pdf>.

⁴ 2022 Survey, *supra* note 1.

2020.⁵ In 2022, just 62 percent of employees said they were satisfied with the FTC, compared to 85 percent in 2020.⁶

FTC staffers' personal stories underscore the data. Reporters who interviewed FTC staffers in June 2022 said that they "were notably emotional," and "admitted to a deep sadness and ... to a kind of angry grief" over recent changes at the FTC.⁷ Employees explained that they "fe[lt] marginalized and afraid to speak truth to power, for fear of being frozen out for not being 'on board' with Khan's mission."⁸ One "veteran staffer" stated that FTC leaders have "no regard to people's quality of life and what they are dealing with."⁹ Others described the agency as a "toxic environment."¹⁰

It is no surprise then that employees are leaving the FTC. Seventy-one non-leadership, senior attorneys left the agency in the two-year period between 2021 and 2022—the highest number of senior attorneys to leave during a similar period since 2000.¹¹ And seven of the twenty-eight leadership attorneys left in 2021. Indeed, despite the FTC's repeated requests for more staff—110 additional staffers for FY 2022 (1,250), 300 additional staffers for FY 2023 (1,440), and 310 additional staffers for FY 2024 (1,690)—which Congress has (so far) granted, the number of FTC staffers has continued to decline from 2020 levels, falling to 1,128 in 2022.¹²

Some have offered possible explanations for the plunge in morale. One possibility is the FTC's recent insistence of investigating every merger application, without prioritizing those that are likely to harm consumers, has unnecessarily "maxed out staff."¹³ Another is the reported general "fear of reprisals and pressure for ideological loyalty." Still others posit that "there is a lack of managerial experience and expertise at the top."

Whatever the reason, the FTC cannot accomplish its mission to "protect[] the public from deceptive or unfair business practices and from unfair methods of competition" with a demoralized and depleted staff. In order to understand the causes of the deepening dissatisfaction among FTC employees, please provide written responses and responsive documents to the initial requests listed below no later than July 3, 2023.

⁵ 2022 Survey, *supra* note 1; 2020 Survey, *supra* note 3.

⁶ *Id.*

⁷ Mike Swift, Kathleen Murphy, Michael Acton, *Under Khan's Leadership, Staffers Air Frustrations in Wake of Survey*, mlex (Jun. 6, 2022), <https://mlexmarketinsight.com/news-hub/editors-picks/area-of-expertise/antitrust/under-khans-leadership-staffers-air-frustrations-in-wake-of-survey>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Kathleen Murphy, *FTC Plummets in Best Workplace Rankings*, FTC Watch (Jul. 25, 2022), <https://www.mlexwatch.com/articles/16875/print?section=ftcwatch>.

¹¹ Dan Papsuncun, *FTC Lawyers Leave at Fastest Rate in Years as Khan Sets New Tone*, BLOOMBERG LAW (Mar. 16, 2023), <https://news.bloomberglaw.com/antitrust/senior-ftc-staff-departures-spike-as-ambitious-agenda-looms>.

¹² *FTC Appropriation and Full-Equivalent (FTE) History*, <https://www.ftc.gov/about-ftc/bureaus-offices/office-executive-director/financial-management-office/ftc-appropriation>.

¹³ Swift et al. *supra* note 7.

1. Please provide the number of individuals employed/full-time equivalents (“FTE”) by the FTC from January 1, 2021 to present, broken down by month. Out of the total number of employees/FTE in a given month, please indicate how many are leadership attorneys and how many are senior attorneys.
2. How many employees/FTEs have left the FTC from January 1, 2021 to present? Please break that figure down by month and indicate how many of those departures were leadership attorneys and how many were senior attorneys.
3. Please identify any actions that the Chairwoman’s Office has taken to improve staff morale.
4. Please provide any and all complaints, both formal and informal, that the Chairwoman’s Office has received from FTC employees from January 1, 2021 to present.

In addition, please be advised that the minority staff of the Committee has established a whistleblower email and hotline for FTC employees to report any concerns. Concerned employees may anonymously reach out to my staff at Republican_Whistleblower@commerce.senate.gov or 202-224-5115.

Please provide unedited and unredacted copies of this letter to all employees and contractors of the FTC. In doing so, please also inform them of their right to communicate with Congress and that it is against the law to deny or interfere with their rights to furnish information to Congress or to retaliate against whistleblowers.¹⁴

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ted Cruz', written over a horizontal line.

Ted Cruz
Ranking Member

¹⁴ See 5 U.S.C. §§ 7211, 2302(b)(8).

Congress of the United States
House of Representatives
Washington, DC

June 23, 2023

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

RE: Kroger-Albertsons Merger

Dear Chair Khan:

Kroger's acquisition of Albertsons can be an opportunity to support good jobs, low prices, and food access if it is done right.

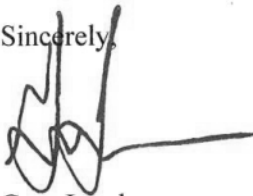
Of course, Kroger is a hometown company. Some of my favorite memories are shopping with my father. For a while, my son would come with me to Kroger every weekend. Now that he's eleven, he tags along with me every once and a while, but not every weekend. Still, like so many families, Kroger is a big part of our lives. As a member of Congress now, the company has even greater meaning for me, our communities, our workers, and American consumers. Kroger is a good corporate citizen and can ensure both good jobs and fair prices.

Kroger and Albertsons are union companies. In the past ten years, Kroger has created over 100,000 union jobs in partnership with the United Food and Commercial Workers. As a result of this merger, Kroger may become the nation's largest union company, which is a big deal for our region and the country. Kroger is in a position to prove that good business and good jobs are absolutely linked. In Kroger, we have an American and hometown company that could show folks how to grow responsibly.

Kroger has a long history of keeping prices low, and at a time when families need lower prices at the grocery store, they must stand by that commitment on pricing, because it will help families across the country. I appreciate that Kroger has already pledged to continue lowering prices after the merger. Having a hometown company, one that is accountable to its community, workers, and customers – not just shareholders – operate America's grocery stores makes a difference in protecting union jobs and keeping food prices low.

Again, protecting good union jobs and lower prices will be key measures of whether the Kroger-Albertsons merger is deemed a success. Kroger leadership has said that is their goal, and getting this right is absolutely necessary for workers and consumers, for our region, and for the country.

Sincerely,



Greg Landsman
Member of Congress



Congress of the United States
House of Representatives
Washington, DC 20515

June 30, 2023

Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan,

We write to express concern regarding a lawsuit filed on June 21, 2023 in Los Angeles County Superior Court by plaintiffs Nina Baek and Megan Ramsey, which alleges that defendant Marriott International began charging a “junk fee” to customers under the guise of covering compliance with a hotel worker protection law that took effect on August 12, 2022 in the City of Los Angeles.

We commend the Biden Administration and the Federal Trade Commission (FTC) for its efforts to improve transparency and minimize junk fees in the airline, event and hospitality industries. However, if allowed to persist, the so-called “Hotel Worker Protection Ordinance Costs Surcharge” would set a dangerous precedent, potentially permitting hospitality companies to overcharge guests for alleged compliance with laws that protect workers from sexual harassment and assault by providing panic buttons, ensure fair pay for heavy workloads, and provide minimum wages.

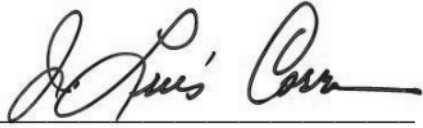
The fee ranges from \$10-14 per night and would enable Marriott to collect an estimated \$3.6 million per year at only one hotel, the 1,004-room Los Angeles Airport Marriott. Meanwhile, Marriott’s profits are soaring. The company’s adjusted earnings before interest, taxes, depreciation, and amortization (EBITDA) totaled \$1,098 million in the 2023 first quarter, compared to first quarter 2022 adjusted EBITDA of \$759 million.

Marriott International has numerous properties in our districts, including the 1,030-room Marriott Anaheim, the 490-room Sheraton Hotel Park at the Anaheim Resort and the 309-room Marriott Long Beach. Long Beach has similar legislation to the City of Los Angeles that protects workers from sexual harassment and assault by providing panic buttons, ensure fair pay for heavy workloads, and provide minimum wages. Similar legislation will also be on the ballot in Anaheim later this year. We want to make sure that the kind of “junk fee” that appeared in Los Angeles does not spread to our cities in response to efforts to protect hospitality workers.

The FTC should investigate whether Marriott International has imposed a similar surcharge in other cities that have passed hotel worker protection laws, including Long Beach, Santa Monica,

Glendale, West Hollywood, Irvine, Emeryville and Seattle and should make it clear that these fees are unacceptable.

Regards,

Handwritten signature of J. Luis Correa in black ink, written in a cursive style.

J. Luis Correa
Member of Congress

Handwritten signature of Robert Garcia in black ink, written in a cursive style.

Robert Garcia
Member of Congress

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

May 31, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Dear Chair Khan:

The Committee on the Judiciary is conducting oversight of the programs and operations of the Federal Trade Commission (FTC). On February 14, 2023, the Committee wrote to you requesting documents and information related to the FTC's proposed ban on voluntary non-compete clauses, including the manner in which the FTC developed the proposed rule, and how the FTC assessed its impact throughout the economy.¹ To date, the FTC's document production has included little more than non-substantive calendar invites and material already publicly available, along with a vague promise to "submit additional productions on a rolling basis as [the FTC] locate[s] responsive documents."² We have recently learned, however, that the FTC has deleted material likely responsive to the Committee's requests.

The Committee's requests seek, among other things, documents related to the litigation risks due to the rulemaking, economic analyses related to the rulemaking, and communications between the FTC and third parties about the rulemaking.³ In its initial response, the FTC stated that 47 employees, contractors, advisors or consultants worked on or contributed to the rulemaking.⁴ The FTC also identified eight individuals who are expected to play or have played a supervisory role related to the rulemaking.⁵ One such individual was a Consumer Financial Protection Bureau (CFPB) employee detailed to the Commission, who "led the team on a daily

¹ See Letter from Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. to Hon. Lina M. Khan, Chair, FTC, et al. (Feb. 14, 2023) (*hereinafter* "Committee Feb. 14 Letter"). See also Non-Compete Clause Rule, 88 Fed. Reg. 3482, 3482-83 (Jan. 19, 2023) (to be codified at 16 C.F.R. pt. 910).

² See Letter from Hon. April J. Tabor, Secretary, FTC to Jim Jordan, Chairman, H. Comm. on the Judiciary (Feb. 28, 2023) (*hereinafter* "FTC Feb. 28 Letter")

³ See Committee Feb. 14 Letter at 3-4.

⁴ See FTC Feb. 28 Letter at 2.

⁵ *Id.*

