

No. 24-1526

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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FEDERAL TRADE COMMISSION,  
*Plaintiff-Appellant,*

v.

NOVANT HEALTH, INC., ET AL.,  
*Defendants-Appellees.*

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On Appeal from the United States District Court  
for the Western District of North Carolina  
5:24-cv-00028-KDB-SCR (Hon. Kenneth D. Bell)

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**FEDERAL TRADE COMMISSION'S UNOPPOSED MOTION TO  
VACATE THE DISTRICT COURT'S DECISION AND TO DISMISS  
APPEAL AS MOOT**

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The Federal Trade Commission (FTC) moves to vacate the district court's decision denying a preliminary injunction, *see* ECF 227, and to dismiss this appeal as moot. Defendants-appellees Novant Health, Inc. (Novant) and Community Health Systems (CHS) recently announced that they have abandoned the proposed transaction that was the subject of this appeal. Under the Supreme Court's decision in *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), vacatur of a district court's decision is "the duty of the appellate court" when an appeal "has become moot while on its way here or pending our decision on the merits." *Id.* at 39.

On June 18, 2024, this Court granted the FTC's motion for an injunction pending appeal, preventing defendants-appellees Novant and CHS from consummating Novant's planned acquisition of Lake Norman Regional and Davis Hospitals from CHS. Dkt. 15. Later that day, Novant announced that the parties would not proceed with the transaction. CHS made a similar announcement the following day. On June 28, Novant withdrew its Hart-Scott-Rodino filings related to the transaction, ending the FTC's merger review process. This appeal is moot because of defendants-appellees' unilateral actions to abandon the proposed transaction. Accordingly, the FTC asks this Court to dismiss the appeal, vacate the order of the district court, and remand with directions to dismiss, pursuant to 28

U.S.C. § 2106 and *Munsingwear*, 340 U.S. 36 (1950). Counsel for Novant and for CHS have informed the FTC that they take no position on this motion.

“Once a case is rendered moot on appeal,” courts “customarily vacate the opinions and remand with directions to dismiss.” *Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 14 F.4th 322, 325 (4th Cir. 2021) (citing *Munsingwear*, 340 U.S. at 39-40); *see also* 13C Charles Alan Wright, Arthur R. Miller, et al., *Fed. Practice and Procedure* § 3553.10 (3d ed. 2024) (“If a proper request is made ... it is the duty of the appellate court to vacate the judgment with directions to dismiss the action as moot.”). This Court has previously granted the FTC’s motion to vacate a district court order denying a preliminary injunction when the parties abandoned a merger after the Court’s grant of an injunction pending appeal, and the same result is warranted here. *FTC v. Food Town Stores, Inc.*, 547 F.2d 247, 248-9 (4th Cir. 1977) (courts of appeal “ordinarily vacate as moot the judgment appealed from where the case becomes moot pending appeal”); *see also, e.g., United States v. Sabre Corp.*, No. 20-1767, 2020 WL 4915824, at \*1 (3d Cir. July 20, 2020) (vacating district court decision after merger was abandoned).

Defendants-appellees’ unilateral decision to abandon the acquisition here has rendered the case and the FTC’s appeal moot. Now “deprived of a review on the merits” of the adverse decision below, the FTC “ought not to be forced to

acquiesce” in that decision. *Old Bridge Owners Co-op. Corp. v. Twp. of Old Bridge*, 246 F.3d 310, 314 (3d Cir. 2001). And this Court has expressed reluctance to leave standing a decision “against a federal agency responsible for enforcing federal law while cutting off the appellate process.” *Hirschfeld*, 14 F.4th at 328. Vacatur is especially warranted here, where this Court necessarily determined that the FTC was likely to succeed on the merits in the course of granting an injunction pending appeal. Dkt. 15.

Accordingly, this Court should dismiss the appeal as moot, vacate the district court’s decision, and remand the case to the district court with directions to dismiss.

July 11, 2024

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(g), I certify that the foregoing motion complies with the type-volume limitations of Fed. R. App. P. 27(d) and 32(a)(5) because it is in 14-point Times New Roman type and contains 578 words, as counted by Microsoft Word, excluding the items that may be excluded under Fed. R. App. P. 32(f).

July 11, 2024

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