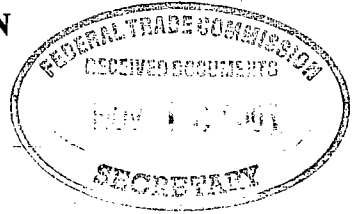


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of

CALIFORNIA PACIFIC MEDICAL GROUP, INC., dba
BROWN AND TOLAND MEDICAL GROUP,

a corporation.

Docket No. 9306

**COMPLAINT COUNSEL'S OPPOSITION
TO RESPONDENT'S MOTION TO EXTEND
DISCOVERY AND HEARING DATE**

INTRODUCTION

Complaint counsel oppose respondent California Pacific Medical Group, Inc.'s ("Brown and Toland") motion to extend the time for discovery and to delay the hearing date. The deadlines for discovery and the hearing date in the scheduling order issued by Your Honor already give both parties ample time to develop their evidence, and the respondent has failed to make an adequate showing to justify its requested extension.

The complaint alleges that competing Brown and Toland physicians collectively agreed on the rates at which they would sell their individual services,¹ and that Brown and Toland lacks any legitimate justification for this conduct.² Brown & Toland already has admitted the

¹ See *Arizona v. Maricopa County Medical Society*, 457 U.S. 332 (1982) (condemning as per se illegal agreements among competing physicians to collectively set rates at which they sell their individual services).

² See *Polygram Holding, Inc.* ("Three Tenors"), FTC D. 9298 (July 2003) (in the absence of legally cognizable and economically plausible justifications, agreements on price between competitors are condemned).

underlying facts necessary to prove price fixing: (1) some of its affiliated physicians are in competition with one another;³ (2) the physicians in its PPO network agreed to fees at or above specified rates;⁴ and (3) Brown & Toland negotiated contracts with health plans on behalf of its physicians.⁵ Because these facts are not in dispute, discovery on this issue is largely unnecessary. Additionally, Brown and Toland and its affiliated physicians control virtually all the evidence related to whether Brown and Toland has a legally cognizable and economically plausible justification for its conduct. As such, the existing discovery deadline has provided sufficient time for the parties to gather information relating to the claim of price fixing by competing Brown and Toland physicians and any justifications for that conduct. Moreover, further delay will harm consumers by allowing the Brown and Toland physicians to continue to charge higher prices for their services--prices which were set through illegally, collectively negotiated contracts. Accordingly, for the reasons stated below, we respectfully request that Your Honor deny Brown and Toland's motion to extend the discovery period and delay the hearing date.

ARGUMENT

I. Brown and Toland's Motion Should Be Denied Because It Fails to Establish the "Extraordinary Circumstances" Necessary to Affect This Court's Obligation to Render a Decision in One Year

Brown and Toland's request for a seven-week extension of the discovery period fails to take into account this Court's responsibility under section 3.51(a) of the FTC's Rules of Practice ("FTC rules"), which mandates that absent "extraordinary circumstances," the administrative law

³ Answer at ¶ 4.

⁴ Answer at ¶ 14.

⁵ Answer at ¶ 17.

