

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina Khan, Chair**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

Hackensack Meridian Health, Inc.,

and

Englewood Healthcare Foundation.

Docket No. 9399

**JOINT EXPEDITED MOTION FOR A CONTINUANCE
OF ADMINISTRATIVE PROCEEDINGS**

Pursuant to Rule 3.41 of the Federal Trade Commission (“FTC” or “Commission”) Rules of Practice, Complaint Counsel and Respondents, Hackensack Meridian Health, Inc. and Englewood Healthcare Foundation, jointly move for a 30-day continuance of the commencement of the administrative hearing currently scheduled to begin on August 16, 2021. Complaint Counsel and Respondents also move for a corresponding stay of related pre-hearing deadlines. This brief postponement will avoid significant expense and burden to approximately two dozen non-parties whose confidential information has been designated for use in the administrative trial, and will not hamper the Commission’s ultimate ability to obtain relief.

BACKGROUND

On December 4, 2020, Complaint Counsel filed this action and a complaint in the United States District Court for the District of New Jersey seeking a preliminary injunction to enjoin the

proposed transaction between Respondents until completion of this administrative proceeding. Respondents stipulated to the entry of a temporary restraining order in the federal litigation, which provides that the proposed transaction may not be consummated “until after 11:59 PM Eastern Time on the fifth business day after the Court rules on Plaintiff’s motion for a preliminary injunction.” Order [Docket No. 4], *FTC v. Hackensack Meridian Health, Inc., et al.*, No. 20-cv-18140 (D.N.J.). A seven-day preliminary injunction hearing concluded on May 18, 2021, the Parties filed proposed findings of fact and conclusions of law on May 28, 2021, and the District Court heard closing arguments on June 2, 2021. The District Court has taken the matter under advisement, and the Parties anticipate a decision within the next several months.

On May 25, 2021, the Commission granted a 30-day continuance of this action to “provide additional time for resolution of the district court action, which could obviate the need for an administrative hearing, without unduly delaying the Commission proceeding.” *See* Order Granting Continuance [Docket No. 9399], May 25, 2021. On July 1, 2021, The Commission granted a further continuance of the hearing to August 16, 2021 for “reasons similar to those expressed in [the] May 25 Order.” *See* Order Granting Continuance [Docket No. 9399], July 1, 2021.

ARGUMENT

Under Rule 3.41 of the Commission’s Rules of Practice, “[t]he Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence.” 16 C.F.R. § 3.41(b). Here, for nearly identical reasons upon which the Commission previously granted continuances, good cause exists for a continuance of the commencement of the administrative hearing:

1. The third party and Respondent witnesses who may be called to testify live at the administrative hearing are involved in the healthcare industry in an unprecedented time of

a global pandemic. These witnesses include operators of hospitals and clinicians themselves. A brief stay will allow these healthcare providers sufficient time to juggle the demands of their already-disrupted schedules with the needs of this litigation, and may even obviate the need to impose any additional burdens should the administrative hearing become moot. “The public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary.” Order Granting 14-Day Continuance, *In the matter of Sanford Health* (Nov. 3, 2017).

2. Absent the continuance, third parties and the Parties will be required to devote significant resources to meeting various interim deadlines between now and August 16, 2021 (the current commencement date for the administrative hearing), including extensive document and data review and redaction, and motion practice. For example, numerous third parties whose confidential material may be used at the hearing will be required to move by August 9, 2021, for *in camera* treatment of any material they do not want presented on the public record. Such motions will address significant volumes of competitively and commercially sensitive documents and data that were produced during the course of the preliminary injunction proceeding and the FTC’s merger review. If the Commission grants this motion for a brief stay, then the third parties may avoid the substantial burden of reviewing voluminous documents, performing line-by-line proposed redactions of confidential information, preparing legal memoranda requesting *in camera* treatment of those materials, and filing copies of all such materials with the Court.
3. Absent the continuance, third party and party witnesses—virtually all of whom reside outside of the Washington, D.C. area—will need to incur significant expenses, including legal fees, associated with preparation for the administrative hearing and potential travel

costs if in-person testimony will be heard. These expenses will be particularly burdensome in the midst of a global pandemic. The Parties have identified approximately twenty-eight third parties as witnesses that may be called live at the administrative hearing. A temporary stay may allow these third parties and the Parties to avoid these additional expenses entirely should the administrative hearing become moot.

4. Absent the requested continuance, the Office of the Administrative Law Judge will be required to devote time and resources to pre-hearing preparation and adjudication of issues for a hearing that it may not have to conduct.

The requested relief will serve the public interest and will not prejudice the Commission's ability to discharge its duties. A brief stay in light of the forthcoming ruling in the preliminary injunction proceeding will allow the Parties to evaluate their options following that decision. It is highly likely that ruling will cause these administrative proceedings to be suspended or rendered moot. Therefore, imposing a brief stay now avoids the inefficiency of completing all pre-hearing matters and beginning the presentation of evidence in the administrative trial only to suspend the proceeding following the ruling by the District Court, without prejudicing the Commission. A 30-day continuance is appropriate so that, if necessary, interim deadlines and the start of the administrative trial would occur after a ruling in the pending federal litigation.

RELIEF REQUESTED

For all the reasons foregoing, Complaint Counsel and Respondents jointly and respectfully request that the Commission exercise its discretion under Rule 3.41(b) and/or Rule 3.41(f) to continue commencement of the administrative hearing by 30 days, or until such later date as may be convenient for the Chief Administrative Law Judge and the Commission. Complaint Counsel and Respondents also request that interim pre-hearing deadlines be stayed for 30 days.

PUBLIC

Dated: July 20, 2021

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**[PROPOSED] ORDER GRANTING JOINT EXPEDITED MOTION FOR A 30-DAY
CONTINUANCE OF ADMINISTRATIVE PROCEEDINGS**

Good cause having been shown,

IT IS HEREBY ORDERED THAT Complaint Counsel's and Respondents' Joint Expedited Motion for a 30-Day Continuance of Administrative Proceedings is **GRANTED**; and

- (1) Commencement of the evidentiary hearing in this matter is moved from August 16, 2021, to September 15, 2021;
- (2) All other proceedings in this matter are stayed for 30 days from the date of this order; and
- (3) The Administrative Law Judge shall issue a revised Scheduling Order consistent with the terms of this order.

By the Commission.

April J. Tabor
Secretary

ISSUED:

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2021, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
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The Honorable D. Michael Chappell
Administrative Law Judge
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I also certify that I caused the foregoing document to be served via email to:

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