



**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney**

In the Matter of)
)
 Advocate Health Care Network,) **Docket No. 9369**
 a corporation;)
)
 Advocate Health and Hospitals Corporation,)
 a corporation;)
)
 and)
)
 NorthShore University HealthSystem,)
 a corporation.)

**JOINT EXPEDITED MOTION FOR A 22-DAY STAY OF ADMINISTRATIVE
PROCEEDINGS**

Pursuant to Rule 3.41 of the Federal Trade Commission’s (“FTC” or “Commission”) Rules of Practice, Complaint Counsel and Respondents, Advocate Health Care Network (“AHCN”), Advocate Health and Hospitals Corporation (“AHCN,” and together with AHCN, “Advocate”), and NorthShore University HealthSystem (“NorthShore”), jointly move for a 22-day postponement of the commencement of the administrative trial currently scheduled to begin on May 24, 2016, to June 15, 2016. This brief postponement may avoid significant expense and

burden on non-parties whose confidential information has been designated for use in the administrative trial. Additionally, it may allow the Parties to avoid additional expenses, such as expert depositions, in the event the administrative proceedings are suspended.

The Respondents' previously filed a Motion to Stay the Administrative Hearing on February 5, 2016, and the Commission denied this motion on March 18, 2016, on the grounds that at the time there was "no conflict between the two proceedings" – the preliminary injunction action in federal district court, *FTC et al. v. Advocate Health Care Network et al.*, No. 1:15-cv-11473 (N.D. Ill.), and the administrative hearing scheduled for May 24, 2016. Since the denial of the Respondents' original Motion to Stay, circumstances have changed.

The requested relief will not prejudice the Commission's ability to discharge its duties. The parallel proceedings in federal district court on the Commission's motion for a preliminary injunction in *FTC et al. v. Advocate Health Care Network et al.*, will now conclude sometime after May 6, 2016.¹ Although the District Court has not yet determined when it will issue its ruling, it is expected that this ruling will issue within a short time of the beginning of the administrative trial currently set for May 24, 2016. *See* Exhibit A, PI Hearing Transcript 1384:6-1385:12. If the preliminary injunction is granted, Respondents have consistently stated—and hereby reaffirm—that they do not intend to proceed with the proposed transaction. Under the recent revisions to Rule 3.26, if the PI is denied, the administrative proceeding will be

¹ The District Court paused the preliminary injunction hearing on April 20, 2016 due to issues with the Plaintiffs' witness availability and the Court's schedule. The hearing will be completed on May 6, 2016. The District Court has not yet set a date for closing arguments.

automatically stayed or withdrawn on the request of the Respondents. *See also* FTC Revisions to Rules of Practice, 80 Fed. Reg. 15,157, 15,158 (Mar. 23, 2015). Therefore, regardless of whether the District Court grants or denies the injunction, the administrative proceeding either will be rendered moot by the merging parties abandoning the transaction or may be stayed pending any appeal. Even if the Commission determines to proceed with the administrative litigation following denial of the preliminary injunction motion, this brief stay will not hamper the Commission's ultimate ability to obtain relief and will avoid starting the trial only to have it likely stayed pursuant to Rule 3.26.

ARGUMENT

Expedited consideration is appropriate because, unless this brief stay of the administrative proceedings is granted, numerous non-parties that have been notified by the Parties that their confidential material may be used at the trial are required to move by May 16, 2016, for *in camera* treatment of any material they do not want presented on the public record.² 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 non-parties may avoid the substantial burden of reviewing voluminous documents, performing line-by-line proposed redactions of confidential information, preparing legal

² On April 26, 2016, the Parties also moved the Chief Administrative Law Judge to amend the schedule to give the non-parties an additional eleven days in which to file their motions. On April 27, 2016, Judge Chappell granted the Parties' request and extended the date until May 16, 2016.

memoranda requesting in camera treatment of those materials, and filing copies of all such materials with the Court. Additionally, the Parties have identified approximately 24 non-parties as witnesses that may be called live at the administrative trial. A brief stay will postpone the need for those witnesses to prepare to testify. Moreover, because the administrative trial may become moot, a temporary stay may allow the Parties to avoid additional expenses, such as the expense for up to nine expert depositions.

The brief postponement of the administrative trial will not prejudice the Commission. As Respondents have represented repeatedly and again represent now, if the District Court grants the preliminary injunction, the Respondents do not intend to proceed with their merger and this administrative proceeding will be moot. *See* Exhibit B, PI Hearing Transcript 59:1-7. If the District Court denies the motion for preliminary injunction, Respondents will file a motion pursuant to Rule 3.26 to withdraw the case from adjudication or dismiss the complaint. Rule 3.26(b)-(d). Once a respondent files such a motion, “the new rule now provides for an automatic withdrawal or automatic stay” of the administrative proceeding, depending on the type of motion. FTC Revisions to Rules of Practice, 80 Fed. Reg. 15,157, 15,158 (Mar. 23, 2015) (emphasis added); *see also* Rule 3.26(c); Rule 3.26(d)(2). Imposing a brief stay now avoids the inefficiency of 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.

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 postpone commencement of the administrative hearing by 22 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-trial deadlines be stayed for 22 days.

Dated: April 27, 2016

Respectfully submitted,

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FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
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and)	
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NorthShore University HealthSystem,)	
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**[PROPOSED] ORDER GRANTING JOINT EXPEDITED MOTION FOR A 22-DAY
STAY OF ADMINISTRATIVE PROCEEDINGS**

Good cause having been shown,

IT IS HEREBY ORDERED THAT Complaint Counsel’s and Respondents’ Joint Expedited Motion for a 22-Day Stay of Administrative Proceedings is **GRANTED**; and

- (1) Commencement of the evidentiary hearing in this matter is moved from May 24, 2016 to June 15, 2016; and

(2) All other proceedings in this matter are stayed for 22 days from the date of this order.

By the Commission.

Donald S. Clark
Secretary

ISSUED:

EXHIBIT A

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IN THE United STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION and)
STATE OF ILLINOIS,)
)
Plaintiffs,)
)
v.) No. 15 C 11473
)
ADVOCATE HEALTH CARE NETWORK,)
ADVOCATE HEALTH AND HOSPITALS)
CORPORATION, and NORTHSHORE)
UNIVERSITY HEALTHSYSTEM,) Chicago, Illinois
) April 20, 2016
Defendants.) 10:15 a.m.

VOLUME 7
TRANSCRIPT OF PROCEEDINGS - PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE JORGE L. ALONSO

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10:21:52 1 servants in this. But if it were our druthers, I believe both
10:21:56 2 sides thought an hour and a half a side was probably the right
10:21:59 3 answer in terms of that.

10:22:00 4 MR. WEBB: That's right.

10:22:03 5 MR. GREENE: So I think that's our --

10:22:04 6 THE COURT: I think an hour would be more helpful

10:22:08 7 to --

8 MR. GREENE: Okay.

10:22:08 9 THE COURT: -- me. To the extent the parties

10:22:10 10 condense it, that would actually be more helpful. Doesn't

10:22:14 11 sound logical but it actually is in my experience. So let's

10:22:18 12 make it an hour for closing. Let's set 5/13 for those

10:22:24 13 post-trial briefings. And we've talked about what exactly

10:22:28 14 those will -- or what they may possibly include. And then I

10:22:34 15 will have to look, and Ms. Fratto will have to look, at the

10:22:37 16 calendar to get you guys in here shortly thereafter for

10:22:42 17 closing arguments or -- I should say after 5/6. We'll look at

10:22:48 18 the calendar to see what date after 5/6 makes sense for

10:22:52 19 closing arguments.

10:22:54 20 MR. GREENE: Yeah, I think our collective view -- I

10:22:56 21 mean, it's whatever helps you. But I think our view is that

10:22:59 22 giving you some opportunity to look at the findings of fact,

10:23:02 23 conclusions of law and then we could -- you could ask us the

10:23:06 24 hard questions, which I think is really the point of this kind

10:23:08 25 of thing.

10:23:08 1 THE COURT: So after 5/13 is your sense?

10:23:11 2 MR. GREENE: That would be my sense, yes, Your Honor.

10:23:13 3 MR. WEBB: We had the same view.

10:23:14 4 THE COURT: Okay.

10:23:16 5 MR. GREENE: And then, again, just for the record,

10:23:18 6 you know, the administrative trial begins on the 24th

10:23:21 7 currently so --

10:23:22 8 THE COURT: Right. Okay.

10:23:28 9 MR. ROBERTSON: Mr. Greene is going.

10:23:31 10 THE COURT: Right. Okay. So I'll get you that

10:23:35 11 information, the sooner the better. Is it too late to include

10:23:40 12 tomorrow, or no, in terms of witness availability?

10:23:45 13 MR. ROBERTSON: We hadn't planned on it, Your Honor.

10:23:47 14 MR. GREENE: Yeah, that's correct.

10:23:48 15 THE COURT: So forget about tomorrow. We are looking

10:23:50 16 at 5/6, and hopefully we have enough time allotted on 5/6.

10:23:55 17 MR. ROBERTSON: Yes, sir.

10:23:55 18 MR. DAHLQUIST: We think we do.

10:23:57 19 MR. GREENE: And, absolutely, I think our time

10:23:58 20 budgets will be essentially very limited by the end of today

10:24:02 21 so --

10:24:03 22 MR. WEBB: There may be only like an hour. We may

10:24:05 23 only have each like an hour or -- so as far as how much

10:24:10 24 testimony there will actually be on May 6th, it looks like

10:24:13 25 maybe it's going to be an hour on each side if I had to

EXHIBIT B

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION and)
STATE OF ILLINOIS,)
)
Plaintiffs,)
)
v.) No. 15 C 11473
)
ADVOCATE HEALTH CARE NETWORK,)
ADVOCATE HEALTH AND HOSPITALS)
CORPORATION, and NORTHSHORE)
UNIVERSITY HEALTHSYSTEM,) Chicago, Illinois
) April 11, 2016
Defendants.) 1:00 p.m.

VOLUME 1
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BEFORE THE HONORABLE JORGE L. ALONSO

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1 quotes, well, that's a -- not an equity. It's a fact. It's
2 only that your Honor is here because this is the only court
3 that's going to decide this. We can't wait for two years for
4 the AOJ to do a decision, have an argument to the commission,
02:39:07 5 and then briefs, and then finally go to a court after all that
6 -- and it takes a long time to get to a court after all that.
7 By that time this case -- this deal is done.

8 If the FTC still thinks that they're right, give our
9 merger a chance; they can come back and sue us two years from
02:39:24 10 now if they want to. Most of the cases I tried, your Honor,
11 were post acquisition cases. The last case they talk about in
12 this region was a post acquisition case. They do it all the
13 time.

14 Now, at this point --

02:39:37 15 THE COURT: Is that the Evanston --

16 MR. ROBERTSON: -- let me --

17 THE COURT: -- Evanston case you're referencing?

18 MR. ROBERTSON: Sir?

19 THE COURT: Evanston?

02:39:45 20 MR. ROBERTSON: Yes, sir. That was a post
21 acquisition case. It was long after the acquisition, in fact,
22 about 12 years ago. The market has changed a lot since then.
23 Northwestern Memorial has all these new places up and along
24 the lakeshore. That's in the last four years. It wasn't
02:39:59 25 there 12 years ago.

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2016, I caused the foregoing document to be electronically filed with the Secretary of the Commission using the Federal Trade Commission's e-filing system, causing the document to be served on all of the following registered participants:

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Secretary
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The Honorable D. Michael Chappell
Administrative Law Judge
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CERTIFICATE FOR ELECTONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

April 27, 2016

By: s/ Emily Bowne

Notice of Electronic Service

I hereby certify that on April 27, 2016, I filed an electronic copy of the foregoing Advocate - Joint Motion for 22 Day Stay, with:

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