

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FEDERAL TRADE COMMISSION,

Plaintiff,

Civil No. 08-6379 (JNE/JJG)

v.

OVATION PHARMACEUTICALS, INC.,

Defendant.

PRETRIAL SCHEDULING ORDER

STATE OF MINNESOTA,

Plaintiff,

Civil No. 08-6381 (JNE/JJG)

v.

OVATION PHARMACEUTICALS, INC.,

Defendant.

Pursuant to Rule 16 of the Federal Rules of Civil Procedure and the Local Rules of this Court, and in order to secure the just, speedy and inexpensive determination of this action, the following schedule shall govern these proceedings. This schedule may be modified only upon formal motion and a showing of good cause as required by Local Rule 16.3.

DISCOVERY SCHEDULE/DEADLINES

1. All pre-discovery disclosures required by Rule 26(a)(1) have been completed.
2. Fact discovery shall be commenced in time to be completed on or before April 17, 2009.

DISCOVERY LIMITATIONS

The parties agree that the Court should limit the use of discovery as follows:

1. **Interrogatories:** The Federal Trade Commission (“FTC”) and the State of Minnesota (“Minnesota”) may serve a total of **twenty-five (25)** interrogatories between them; Ovation may serve a combined total of **twenty-five (25)** on both the FTC and Minnesota. No more than **fifteen (15)** of the twenty-five (25) interrogatories shall be contention interrogatories. The parties shall serve responses to the interrogatories within **fifteen (15)** business days of receipt of the request.
2. **Document Requests:** No limit on the number of document requests. For document requests served after the date of this report, the parties shall serve their objections no more than **ten (10)** days following receipt of a request, and produce documents responsive to the document requests on a rolling basis, beginning no more than **twenty-five (25)** days following receipt of a request. The parties agree to endeavor to produce all documents responsive to the document requests within **forty-five (45)** days. All document production shall be completed before the cut off for factual discovery and no document requests may be made less than **thirty (30)** days prior to the factual discovery cut off date.
3. **Factual Depositions:** The FTC and Minnesota may notice and take a total of **fifteen (15)** depositions between them; Ovation may notice and take **fifteen (15)** depositions. In addition, factual depositions may be taken of any additional persons who appear on a final witness list that were not previously deposed. The parties reserve the right to request more factual depositions, for a total of up to **twenty (20)** factual depositions, to be determined upon the receipt of opposing party’s Rule 26(a) Initial Disclosures.

The parties must serve deposition notices to party witnesses no less than **five (5)** business days in advance of the date set for deposition. The parties must serve notices of third-party witness depositions to the other parties no less than **eleven (11)** days in advance of the date set for deposition.

The parties shall endeavor to depose every fact witness within a single day. Depositions of party witnesses shall be limited to **seven (7)** hours of testimony, exclusive of breaks. Depositions of third-party witnesses shall be limited to **seven (7)** hours of testimony, exclusive of breaks, with **five (5)** hours allocated to the noticing party and **two (2)** hours reserved for the other side. To the extent that the deponent's schedule necessitates splitting a deposition into multiple days, the parties shall complete the deposition in no more than **three (3)** consecutive working days.

The parties shall strive to avoid taking duplicative depositions.

4. **Requests for Admissions:** No limit on the number of requests for admissions. The parties shall serve responses to the requests for admission within **fifteen (15)** business days of receipt of the request.
5. **Medical Examinations:** There will be no rule 35 medical examinations.
6. **Information Not Subject to Discovery:** The parties agree that the following types of information, relating to experts and consultants, shall not be subject to discovery:
 - (a) The content of communications between and among:
 - (i) counsel and expert witnesses;
 - (ii) counsel and consultants;
 - (iii) expert witnesses and other expert witnesses or consultants;
 - (iv) expert witnesses and their staffs; and/or
 - (v) consultants and their staffs;
 - (b) Notes, drafts, written communications or other types of preliminary work created by, or for, expert witnesses; and
 - (c) The parties further agree that the discovery limitations contained in this section will not apply to any communications or documents upon which an expert specifically relies as a basis for any of his or her opinions or reports.

EXPERTS

1. Each side may call up to **five (5)** expert witnesses. Accordingly, each party may take one deposition per expert.

2. Disclosure of the identity of expert witnesses under Rule 26(a)(2)(A) and the full disclosures required by Rule 26 (a)(2)(B), accompanied by the written report prepared and signed by the expert witness, shall be made as follows:

Identification by the Party bearing the burden of proof on or before **April 24, 2009**.

Report by the Party bearing the burden of proof on or before **April 24, 2009**.

Identification by the Rebuttal party on or before **May 29, 2009**.

Report by the Rebuttal on or before **May 29, 2009**.

3. Expert discovery, including depositions, shall be completed by **June 30, 2009**.

NON-DISPOSITIVE MOTIONS

All non-dispositive motions shall be scheduled, filed and served in compliance with the Electronic Case Filing Procedures for the District of Minnesota, with Local Rules 7.1 and 37.1, **and in the form prescribed by Local Rule 37.2**. The “Meet and Confer” requirement should include attempts to do so through personal contact, rather than solely through correspondence. All non-dispositive motions shall be scheduled for hearing by calling Judith Kirby, Judicial Assistant to Magistrate Judge Graham, at (651) 848-1890, prior to filing, except when all parties are in agreement that no hearing is required. Such an agreement shall be expressly set forth in the notice of motion.

1. All motions which seek to amend the pleadings or to add parties must be filed and served on or before **March 6, 2009**.
2. Non-dispositive motions and supporting documents, including those which relate to fact discovery, shall be filed and served on or before **April 30, 2009**.
3. All non-dispositive motions and supporting documents which relate to expert discovery shall be filed and served on or before **June 30, 2009**.

4. Counsel are advised not to notice additional motions for hearing on an already existing hearing date without first contacting the Court for permission to do so. All motions must be filed and served within the time periods set forth in the local rules.

INFORMAL DISPUTE RESOLUTION (IDR)

Prior to scheduling any non-dispositive motion, parties should consider whether the motion can be informally resolved through Informal Dispute Resolution (IDR). There is no transcript or other recording of IDR proceedings. Therefore, all parties should be in agreement to participate in IDR and the Court will first determine whether the matter may be handled informally. The “moving party” shall electronically file a letter representing that the parties wish to engage in IDR and setting forth the well-defined issue to be resolved. If it is determined that IDR may be used, the parties will be contacted by the Court to schedule a telephone conference and allow for position letters to be filed by each party.

For leave to proceed in a manner other than that outlined above, the requesting party shall electronically file a letter setting forth the specific request.

DISPOSITIVE MOTIONS

All dispositive motions shall be filed and served in compliance with the Electronic Case Filing Procedures for the District of Minnesota and Local Rule 7.1. Dispositive motions shall be scheduled for a hearing by calling **Sherri Frette**, Calendar Clerk for the Honorable Joan N. Ericksen at **(612) 664-5890**. Counsel are reminded that they must anticipate the time required for obtaining hearing dates. All dispositive motions shall be filed and served on or before **May 22, 2009**.

TRIAL

This case shall be ready for a **bench** trial on **September 21, 2009**. The anticipated length of trial is **ten (10)** days.

Dated: February 12, 2008

s/ Jeanne J. Graham

JEANNE J. GRAHAM
United States Magistrate Judge