

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Federal Trade Commission and)
State of North Dakota,)
)
Plaintiffs,)
)
vs.)
)
Sanford Health, Sanford Bismarck,)
and Mid Dakota Clinic, P.C.,)
)
Defendants.)

Case No. 1:17-cv-133

SCHEDULING ORDER

Plaintiffs Federal Trade Commission and the State of North Dakota bring this action to enjoin consummation of a proposed transaction between the defendant health care providers—Sanford Health/Sanford Bismarck and Mid Dakota Clinic, P.C.

The plaintiffs allege that the proposed transaction would substantially lessen competition and cause significant harm to consumers, in violation of federal law. The parties stipulated to entry of a temporary restraining order, pursuant to which the proposed transaction cannot be closed until five business days after the court rules on the plaintiffs’ motion for a preliminary injunction. (See Doc. #7).

Now before the court are the parties’ proposals for a scheduling order. The plaintiffs’ proposal is based on a two-day preliminary injunction hearing, beginning no later than September 27, 2017. The defendants ask for a four-day hearing on that motion, to begin October 30, 2017. Both sides also propose deadlines for various prehearing milestones.

The scheduling dispute centers on the length of time necessary for pre-hearing discovery. The plaintiffs advise that they provided “complete non-privileged investigatory files” to the plaintiffs by June 27, 2017, and assert that their proposal is

consistent with recent practice in similar cases. (Doc. #44, p. 2). The defendants acknowledge receipt of those investigative files, the volume of which they describe as requiring “significant resources to process, review and analyze.” (Doc. #45, p. 1). The defendants state that they have served document and deposition subpoenas on several third parties and that they intend to serve more subpoenas. Additionally, the defendants contend that the plaintiffs have had “a substantial head start” in obtaining expert opinion. Id. at 2.

As the defendants assert, to begin a hearing one month later than the plaintiffs desire will not prejudice the plaintiffs, since the TRO prohibits consummation of the Sanford-MDC transaction until after a ruling on the preliminary injunction motion. Moreover, the defendants assert that the court should not consider the schedule of the parallel administrative proceeding—where a hearing is scheduled to begin on November 28, 2017—since the administrative law judge advised the parties that they could seek a stay of that hearing pending appeal of an order on the motion for a preliminary injunction.

Having considered the parties’ positions, the court’s schedule, and counsel’s reported availability, the court will schedule the hearing to begin October 31, 2017. Depending on courtroom availability, the hearing will be held in either Bismarck or in Fargo. The court will allow up to four days for presentation of evidence. The court adopts the following prehearing schedule:

Simultaneous Exchange of Preliminary Fact Witness Lists	8/3/2017
Close of Fact Discovery	9/15/2017
Simultaneous Exchange of Initial Expert Report(s)	9/25/2017

Plaintiffs File Memorandum of Law in Support of Motion for Preliminary Injunction	10/2/2017
Simultaneous Exchange of Rebuttal Expert Report(s)	10/9/2017
Simultaneous Exchange of Final Witness Lists	10/16/2017
Defendants File Memorandum in Opposition to Motion for Preliminary Injunction	10/16/2017
Simultaneous Exchange of Exhibit Lists <u>and</u> Deposition Designations	10/18/2017
Simultaneous Exchange of Deposition Counter-Designations <u>and</u> Objections to Exhibit Lists	10/23/2017
Close of Expert Discovery	10/20/2017
Plaintiffs File Reply to Memorandum in Opposition to Motion for Preliminary Injunction	10/23/2017
Proposed Findings and Conclusions of Law Filed	11/10/2017

IT IS SO ORDERED.

Dated this 1st day of August, 2017.

/s/ Alice R. Senechal
Alice R. Senechal
United States Magistrate Judge