

UNITED STATES DISTRICT COURT

IN THE DISTRICT OF IDAHO

SAINT ALPHONSUS MEDICAL CENTER - NAMPA,
INC., TREASURE VALLEY HOSPITAL LIMITED
PARTNERSHIP, SAINT ALPHONSUS HEALTH
SYSTEM, INC., AND SAINT ALPHONSUS REGIONAL
MEDICAL CENTER, INC.

Plaintiffs,

v.

ST. LUKE'S HEALTH SYSTEM, LTD.

Defendant.

Case No. 1:12-CV-00560-BLW

CASE MANAGEMENT ORDER

In accordance with the agreements reached in the Telephone Scheduling Conference on December 18, 2012, and to further the efficient administration of this matter,

NOW THEREFORE IT IS HEREBY ORDERED, that the following recitation of deadlines and procedures shall govern this litigation:

DATE (Hearing dates in bold)	ACTION/DEADLINE
January 4, 2013	Parties to exchange subpoenas and civil investigative demands from FTC and State of Idaho as originally served prior to narrowing.
January 4, 2013	Parties produce a copy of their most recent organizational chart
January 7, 2012	Finalize and submit proposed protective order
January 11, 2013	Deadline for all motions to amend pleadings and join parties, except for allegations of punitive damages. This is not a deadline for third parties to file motions to intervene.
January 11, 2013	Finalize and submit proposed ESI order
January 11, 2013	Parties to produce all documents and CID responses already given to the FTC and State of Idaho (with further documents and CID responses produced as they are produced to the FTC and State of Idaho) relevant to the issues in the case, excluding any database containing personal health information. Production will proceed under a protective order including provisions for attorney-eyes-only confidentiality and for the clawback of privileged material, as explained below.
January 11, 2013	Exchange Rule 26(a)(1) disclosures
January 11, 2013	Finalize number (no less than 15 for St. Luke's and Saint Alphonsus and no less than 5 for Treasure Valley Hospital) and identification of custodians whose files will be searched and whose documents will be produced
January 11, 2013	Fact discovery commences
January 25, 2013	Deadline for serving document requests, interrogatories and Rule 45 subpoenas, subject to supplementation if reasonably necessary.
February 13, 2013 , at 1:30 pm by telephone with plaintiff to either provide a call-in number or arrange for an operator.	Status Conference with Court
March 4, 2013	Parties may begin fact depositions
March 22, 2013	Deadline for producing all documents; provided that production should be rolling, beginning as soon as possible.

April 12, 2013	Deadline for plaintiffs to file expert witness reports and disclosures under Rule 26(a)(2)(B).
April 23, 2013	Provisional witness list, including only witnesses who are reasonably likely to be called at trial.
April 30, 2013 , at 1:30 pm by telephone with plaintiff to either provide a call-in number or arrange for an operator.	Status conference with Court
May 7, 2013	Deadline for defendant to file expert witness reports and disclosures.
May 14, 2013	Deadline for plaintiffs to file expert reply reports
May 24, 2013	Deadline to depose expert witnesses
June 4, 2013	Close of discovery
Jun 11, 2013	Deadline to file all dispositive motions
June 11, 2013	Final witness list
June 25, 2013	Deadline to file a response to any dispositive motion
June 25, 2013	Deadline to file <i>Daubert</i> motions or other non-dispositive motions
July 3, 2013	Deadline to file response to any <i>Daubert</i> or other non-dispositive motions
July 11, 2013 , at 3:00 p.m. by telephone with plaintiff to either provide a call-in number or arrange for an operator.	Final Pretrial Conference
July 29, 2013 , at 1:30 p.m. in the Federal Courthouse in Boise, Idaho.	Trial begins

Amendment of Pleadings and Joinder of Parties:

This deadline shall only be extended for good cause shown.¹ All parties are entitled to know the claims and parties well-before trial rather than be forced to pursue or

¹ The Ninth Circuit has held that motions to amend filed after the Scheduling Order deadline are governed, not by the liberal provisions of Fed. R. Civ. P. 15(a), but instead, by the more restrictive provisions of Fed. R. Civ. P. 16(b) requiring a showing of “good cause.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992).

defend against a moving target. Although this deadline precedes the general discovery deadline, the parties are directed to send out all discovery requests that might relate to amendment or joinder enough in advance of this amendment and joinder deadline to obtain the responses needed to make an informed decision on amendment and joinder.

Alternative Dispute Resolution Plan:

To discuss ADR options, the parties must contact the Court's ADR Coordinator Susie Headlee at (208) 334-9067.

Discovery Plan:

Discovery shall be in accordance with the Federal Rules of Civil Procedure and the Local Rules. No more than 30 fact depositions, not including expert depositions, will be allowed. Rule 30(b)(6) depositions count towards the total according to the time taken in such deposition. For example, two Rule 30(b)(6) depositions lasting three and four hours, respectively, count as one deposition.

Completion of Discovery:

The discovery deadline is a deadline for the completion of all discovery; it is not a deadline for discovery requests. Discovery requests must be made far enough in advance of this deadline to allow completion of the discovery by the deadline date. The parties may, by stipulation, agree to defer some trial-related discovery, such as discovery related to damages issue, until after I have ruled on any dispositive issues.

Disclosure of Experts:

The plaintiffs request that the timing of the disclosure of experts proceed according to burdens of proof. The defense responds that the Court should use its standard timing, with plaintiff to identify experts first, defense to respond, and plaintiff to file a rebuttal. The Court finds that the defendant's proposal is best. The defendant's affirmative defenses have largely been identified, and plaintiffs' experts can opine on them in their original report. The Court will not allow sur-rebuttal experts for the defendants at this time but will consider a defense motion to allow it if necessary.

Rules Governing Disclosure of Expert Witnesses:

Within the deadlines for the disclosure of expert witnesses set out above, the parties shall also provide – for each expert disclosed – the report described in Fed. R. Civ. P. 26(a)(2)(B), as modified by Local Rule 26.2(b). Supplementation to the expert witness report shall be done in accordance with Fed. R. Civ. P. 26(e)(1). Pursuant to Local Rule 26.2(b), expert witnesses will not be allowed to offer any opinion not disclosed in the mandatory Rule 26 disclosures, supplementation, or deposition. This includes rebuttal experts. No undisclosed expert rebuttal opinion testimony will be allowed at trial.

Law Clerk:

If counsel has a procedural or legal question that needs to be brought to my attention, please contact Dave Metcalf, the law clerk assigned to this case at (208) 334-9025 or at dave_metcalf@id.uscourts.gov.

Handling of Discovery Disputes and Non-disposition Motion:

Magistrate Judge Ronald E. Bush will handle all discovery motions. His Law Clerk assigned to this case is Kate Ball. She can be reached at 208-334-9013 and her e-mail address is kate_ball@id.uscourts.gov. Judge Bush will provide counsel with his procedures for handling discovery disputes.

Investigation Documents:

The plaintiffs asked that the parties produce all documents they provided to the FTC and the State of Idaho in response to their investigatory subpoenas. It appears that St. Luke's production was far larger than St. Al's. Apparently, the FTC demanded that St. Luke's produce documentation for deals going back a decade or more. Because of the tight deadlines, St. Luke's did not have time to do a comprehensive privilege check and so produced the documents under a clawback agreement. Consequently, the documents contain privileged information, and also contain sensitive competitive information and personal health information. St. Luke's argues that it would take weeks or months to cull out all the irrelevant, privileged, and confidential material.

St. Al's responds that (1) the documents would be produced under an attorney-eyes-only provision of a forthcoming protective order and thus no competitive information would be shared with St. Al's officials; (2) it has withdrawn its request for any data base that contains any personal health information; and (3) the tight deadlines in this case require the large-scale production of documents on a quick schedule with clawback provisions, and that could work here just as well as it worked with the FTC.

The Court finds St. Al's argument more persuasive. Much of this material would be initial disclosure material under Rule 26, and the tight deadlines demand an expedited discovery process. The privileged material can be clawed back, the sensitive business information will be kept confidential, and the databases with personal health information can be deleted wholesale from the production. The Court will therefore order the production sought by St. Al's, once a protective order is in place that (1) ensures that the documents will be shown only to the attorneys, and (2) contains a clawback provision to protect privileged material.

Calendaring Clerk:

With regard to any scheduling matters or calendar issues, please contact my deputy clerk, Jamie Gearhart at (208) 334-9021.

Docketing Clerk:

If you have a docketing question, please contact a docket clerk at (208) 334-1361.



DATED: December 20, 2012

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill
Chief Judge
United States District Court