

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

The Penn State Hershey Medical Center,
a corporation,
and
Pinnacle Health System,
a corporation.

Docket No. 9368

PUBLIC DOCUMENT



JOINT MOTION TO AMEND THE SCHEDULING ORDER

Complaint Counsel and Respondents, Penn State Hershey Medical Center (“Hershey”) and PinnacleHealth System (“Pinnacle”), jointly move to amend the Scheduling Order in the above-referenced matter.

On December 9, 2015, the Commission filed a complaint in the United States District Court for the Middle District of Pennsylvania seeking a temporary restraining order and a preliminary injunction to prevent Respondents from consummating the transaction that is the subject of this case. *FTC et al. v. Penn State Hershey Med. Ctr. et al.*, No. 1:15-cv-2362-JEJ (M.D. Pa.) (Dec. 9, 2015). The preliminary injunction hearing commenced on Monday, April 11, before Judge John E. Jones III, and was completed on Friday, April 15. Judge Jones has committed, to the best of his ability, to issue an opinion on the preliminary injunction motion before the administrative hearing begins: “It is my intention to and I’ll make every effort to render a determination by the start of the – the scheduled start of the administrative proceeding. I understand that that’s important to everybody, and so I’m going to make every attempt to do that.” *Id.*, Hearing Transcript at 995:6-10, Apr. 15, 2016.

In light of Judge Jones’ statement, the parties respectfully request that the Scheduling Order be amended to move certain deadlines to the week of May 9. Following are the proposed amendments to the Scheduling Order:

Event	Current Deadline	Proposed Deadline
Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s).	April 25	May 9
Deadline for filing motions <i>in limine</i> to preclude admission of evidence.	May 2	May 9
Deadline for filing motions for <i>in camera</i> treatment of proposed trial exhibits.	May 2	May 9
Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.	May 2	May 9
Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.	May 3	May 10
Complaint Counsel files pretrial brief supported by legal authority.	May 3	May 10
Deadline for filing responses to motions <i>in limine</i> to preclude admission of evidence.	May 6	May 11
Deadline for filing responses to motions for <i>in camera</i> treatment of proposed trial exhibits.	May 6	May 11
Exchange proposed stipulations of law, facts, and authenticity.	May 6	May 11
Respondents' Counsel files pretrial brief supported by legal authority.	May 10	May 12
By 1:00 p.m., file final stipulations of law, facts, and authenticity.	May 11	May 12
Final prehearing conference to begin at 10:00 a.m.	May 12	May 12

Dated: April 22, 2016

Respectfully submitted,

/s/ Adrian Wager-Zito

/s/ William H. Efron (with consent)

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Counsel Supporting the Complaint

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EXHIBIT A

1 THE COURT: Because be careful.

2 THE WITNESS: So the question is asking why I don't
3 use the root mean squared error term that Ms. McEvoy was just
4 asking about, and that's a single numerical metric of assessing
5 accuracy.

6 I thought it was more informative to use a data
7 visualization approach that allowed us to really see where our
8 respective models were proving to be accurate versus inaccurate
9 and the ways in which we were accurate or not so accurate.

10 MR. PLATT: I would have done the same thing. Thank
11 you very much.

12 THE COURT: I bet you would. I assume no recross.

13 MS. McEVOY: Extremely tempting, Your Honor, but no.

14 THE COURT: We're finished with Dr. Wilson. You can
15 step down, sir. Thank you very much.

16 THE WITNESS: Thank you very much.

17 THE COURT: Any other rebuttal?

18 MR. EFRON: No, Your Honor.

19 THE COURT: You rest?

20 MR. EFRON: Yes.

21 THE COURT: All right. Let me say a couple things as
22 we wrap up. And we have wrapped up the testimony.

23 I had a discussion with counsel in chambers, and just
24 to note that on the record, we will issue an order, having
25 collaborated with counsel on the best course from this point,

1 and we will ask for accelerated submissions, the plaintiffs'
2 by -- I believe it's the 25th, I think, of April, which is the
3 Monday following this coming Monday, and then we'll give an
4 equal amount of time, unless filed sooner, for the defense, a
5 submission, no reply. We just don't have time for that.

6 It is my intention to and I'll make every effort to
7 render a determination by the start of the -- the scheduled
8 start of the administrative proceeding. I understand that
9 that's important to everybody, and so I'm going to make every
10 attempt to do that.

11 I want to say publicly that I've been living with this
12 case not quite as long as all of you have, but for quite some
13 time. And it is important to note that counsel in this case
14 have conducted themselves with the highest degree of
15 professionalism, each and every one of you.

16 It was a pleasure, it is a pleasure having you on my
17 docket. The collaborative, collegial spirit in a legal world
18 where you don't see that, unfortunately, every day was really
19 heartening to me to watch.

20 This is a very, very important case from the public
21 standpoint, from the standpoint of the hospitals. I understand
22 that. It falls to me to make a very difficult decision. But
23 this case demonstrates what I have seen in some of the
24 toughest, most contentious cases, which is that lawyers can
25 fight hard and professionally -- and you have, and you will,

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[PROPOSED] ORDER GRANTING
JOINT MOTION TO AMEND THE SCHEDULING ORDER

This matter having come before the Commission upon the Joint Motion to Amend the Scheduling Order, and having considered the position of the parties, it is hereby ORDERED that the Scheduling Order in the above-captioned matter is amended to reflect the agreed-upon dates provided in the Joint Motion. All other deadlines in the Scheduling Order remain in effect.

SO ORDERED.

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2016, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., N.W., Rm. H-113
Washington, DC 20580

The Honorable D. Michael Chappell
Chief Administrative Law Judge
FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW, Rm. H-110
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*Counsel Supporting the Complaint
Federal Trade Commission*

CERTIFICATE FOR ELECTRONIC 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 documents that is available for review by the parties and the adjudicator.

Dated: April 22, 2016

/s/ Adrian Wager-Zito
Adrian Wager-Zito

Notice of Electronic Service

I hereby certify that on April 22, 2016, I filed an electronic copy of the foregoing Joint Motion to Amend Scheduling Order, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
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Washington, DC, 20580

I hereby certify that on April 22, 2016, I served via E-Service an electronic copy of the foregoing Joint Motion to Amend Scheduling Order, upon:

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