

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
Office of Administrative Law Judges**

In the matter of)

**Evanston Northwestern Healthcare
Corporation,**)
and)

ENH Medical Group, Inc.,)
Respondents)

Docket No. 9315
PUBLIC VERSION

**COMPLAINT COUNSEL'S MOTION FOR RECONSIDERATION OF
MOTION TO COMPEL DISCOVERY**

Pursuant to the Federal Trade Commission's Rules of Practice ("FTC Rules"), 16 C.F.R. §§ 3.22, Complaint Counsel respectfully move for reconsideration of the Court's Order, dated November 30, 2004, denying Complaint Counsel's Motion to Compel Discovery and For Extension of Time to File Econometric Rebuttal Report ("Motion to Compel"). That Order rested on the Court's conclusion that the existence of the discovery dispute was obvious by November 11, 2004, and that Complaint Counsel had not explained why they waited until November 26, 2004, to file the motion to compel. Complaint Counsel respectfully suggest that

the existing schedule. Thus, while Complaint Counsel may ask the Court for leave for its experts to file amended reports, that request (and any potential impact it might have on the overall

~~schedule for this case) can be separately assessed at an appropriate time.~~

**RECONSIDERATION OF THE COURT'S
NOVEMBER 30, 2004, ORDER IS WARRANTED**

~~The Court's~~ November 30 Order is based on the mistaken premise that Complaint

Counsel should (or could) have brought this matter to the Court as early as November 11, 2004. Here, however, pursuant to Paragraph 5 of the original Scheduling Order and the FTC Rules, Complaint Counsel may not file a motion to compel production of discovery until the parties

In short, Complaint Counsel filed their November 26 Motion to Compel promptly, *only 48 hours after (i) they exhausted Respondents' alternative approaches for generating the disputed processed data files, and (ii) they made one last request to Respondents to produce the processed data files directly.* Under these circumstances, Complaint Counsel's motion to compel was timely.

Totally apart from its concerns about equity for the parties, it is in the Court's own ~~anomalous interest to re-evaluate the basis for its decision denying the motion to compel.~~ As the

[REDACTED]

**ON RECONSIDERATION THE COURT SHOULD GRANT
COMPLAINT COUNSEL'S MOTION TO COMPEL**

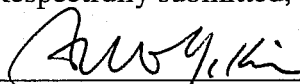
In *Complaint Counsel v. [Redacted]*, No. [Redacted], 2018 WL [Redacted], [Redacted] (S.D. [Redacted]), [Redacted] (2018).

Under the discovery rules, [Redacted] is required to produce the documents [Redacted] in its possession, custody, or control.

testimony without confirming that the underlying data are reliable. See *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 149 (1999) (“[W]here such [expert] testimony’s factual basis, data, principles, methods, or their application are called sufficiently into question . . . , the trial judge

December 3, 2004

Respectfully submitted,



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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
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_____)
In the matter of _____)
_____)

Docket No. 9315

Corporation, _____)
and _____)
_____)

ORDER

UPON RECONSIDERATION,

Of this Court's Order, dated November 30, 2004, denying Complaint Counsel's Motion to Compel Discovery and For Extension of Time to File Econometric Rebuttal Report:

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing documents was hand delivered to
The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW (H-106)
Washington, D.C. 20580

EXHIBIT A [redacted]

EXHIBIT B [redacted]

EXHIBIT C [redacted]

EXHIBIT D [redacted]

EXHIBIT E [redacted]
