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in this matter, which will significantly impact, and even completely moot

Commission Act, 15 U.S.C. § 53(b), and Section 16 of the Clayton Act, 15 U.S.C. § 26, seeking a temporary restraining order and preliminary injunction regarding the merger that is the subject of this administrative proceeding until final resolution of the merits in the Commission proceeding. Pursuant to 15 C.F.R. § 201.35(b) of the Commission's Rules of Practice and Procedure, the Commission is hereby granting the Commission's Order for Temporary Restraining Order and Preliminary Injunction Pursuant to 15 C.F.R. § 201.35(b) of the Commission's Rules of Practice and Procedure, *FTC v. Advocate Health Care Network*, Civil Action No. 15-cv-11473 (N.D. Ill. Dec. 21, 2016). The preliminary injunction hearing is scheduled to begin on April 6, 2016 and run for nonconsecutive trial days, concluding on April 15, 2016. Joint Stipulated Case Management Order, ¶ 25 *FTC v. Advocate Health Care Network*, Civil Action No. 15-cv-11473 (N.D. Ill. Jan. 12, 2016). The parties' proposed findings of fact and conclusions of law are due no later than fourteen calendar days after the close of the hearing on April 29, 2016. ¶ 26. A final decision is expected within approximately 30 to 45 days thereafter.

The administrative hearing is being held in a public hearing room at the Commission's headquarters, 1400 Constitution Avenue, N.W., Washington, D.C. 20547. The hearing is being held in a public hearing room at the Commission's headquarters, 1400 Constitution Avenue, N.W., Washington, D.C. 20547.



ARGUMENT

- I. The Administrative Proceeding Should Be Stayed as It Is Likely to Be Mooted By the Federal Action

Based on the schedules in the respective actions, the decision in the Federal Action is expected to be issued during immediately following the hearing in the administrative action and moot the administrative hearing. The hearing in this matter is set to begin on May 24, 2016, and a decision from the Federal Action is expected in approximately early June 2016. In fact, there is a substantial likelihood that the Federal Action will issue its decision during the administrative hearing in this matter.

The FTC Rules of Practice allow the Commission to stay proceedings for good cause, pending U.S. District Court proceeding.

the Court would have good cause to issue a temporary stay, which will not prejudice the and will serve the interests of justice.

In the event that the District Court denies the FTC's preliminary injunction, the FTC is required to assess, on a case-by-case basis, whether to move forward with its administrative action. See Statement of the Federal Trade Commission Policy Regarding Administrative Merger Litigation Following Denial of a Preliminary Injunction, 160 Fed. Reg. 39,741, 39,743 (1995). In nearly every case since 1995 where a district court refused to issue a preliminary injunction, the FTC has subsequently abandoned its administrative complaint. See, e.g., *In re Steris Corp.*, Docket No. 9365, Order

Commission Rule 3.26 re: Part 3 proceedings following federal court denial of a preliminary injunction, Federal Trade Commission <https://www.ftc.gov/news/blogs/competition-matters/2015/03/changes-commission-rule-326-re-part-3-proceedings> (Mar. 16, 2015). Second, Respondents may move to dismiss the administrative complaint, automatically stay until the Commission rules on the motion. See 16 C.F.R. § 3.26(d). If Respondents prevail in the Federal Action, it is highly unlikely that this proceeding will continue to trial.

In the event that the District Court grants preliminary injunction, private litigants often similarly evaluate whether to proceed as evidenced by the number of respondents who have abandoned









CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2016, I caused a true and accurate copy of the foregoing to be served electronically through the E-File system and on February 2, 2016, I caused a true and accurate copy of the foregoing to be served as follows:

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The Honorable D. Michael Chappé  
Chief Administrative Law Judge  
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s/Laurie T. Curnes

Laurie T. Curnes

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 document which is available for review by the parties and the mediator.

Dated February 5, 2016

s/Laurie T. Curnes

Laurie T. Curnes

Notice of Electronic Service

**I hereby certify that on February 05, 2016, I filed an electronic copy of the foregoing Respondents' Motion to Stay the Administrative Hearing, with:**

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**I hereby certify that on February 05, 2016, I served via E-Service an electronic copy of the foregoing Respondents' Motion to Stay the Administrative Hearing, upon:**

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