



injunction hearing that it will be my goal to get you a decision before Thanksgiving, but it's sure not going to be much before that." Exhibit A, PI Hearing Transcript Vol. 4 at 251.

On November 3, 2017, the Commission ordered a fourteen-day continuance of the administrative hearing and all remaining pre-hearing deadlines. Exhibit B, Order Granting 14-Day Continuance. In its order, the Commission noted that "the public interest is not ideally served if litigants and third parties bear expenses that later prove unnecessary." Exhibit B, Order Granting 14-Day Continuance, at 2. Therefore, the administrative hearing is currently scheduled to begin on December 12, 2017.

In light of the forthcoming ruling on the motion for preliminary injunction, Complaint Counsel and Respondents respectfully request that the Scheduling Order be amended to move the deadlines for filing motions and responses to motions for camera treatment of proposed trial exhibits. Concurrently, Complaint Counsel and Respondents are filing a motion with the Commission to delay the start of the administrative hearing until January 17, 2018. In particular, amending the Scheduling Order will avoid significant burden and expense for third parties, who would need to file motions for camera treatment of proposed trial exhibits by November 27, 2017, the Monday following Thanksgiving. Following are the proposed amendments to the Scheduling Order:

If the Commission does not move the trial date, these amended pre-trial deadlines will still enable the Parties to commence the trial as scheduled, on December 12, 2017. In the event that the Commission grants the requested motion, by the start of the hearing until January 17, 2018, the parties intend to request further modification of the Scheduling Order.

A Proposed Order is attached.

Dated: November 14, 2017

Respectfully Submitted,

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UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of	)	
	)	
Sanford Health,	)	
a corporation;	)	
Sanford Bismarck,	)	
a corporation;	)	Docket No. 9376
and	)	
Mid Dakota Clinic, P.C.,	)	
a corporation.	)	
Respondents.	)	

[PROPOSED] ORDER AMENDING SCHEDULING ORDER

This matter having come before the Court 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.

Action	Current Deadline	Proposed Deadline
Deadline for filing motions for in camera treatment of proposed trial exhibits	November 27, 2017	December 5, 2017
Deadline for filing responses to motions for in camera treatment of proposed trial exhibits.	November 30, 2017	December 7, 2017
Complaint Counsel files pretrial brief supported by legal authority.	November 30, 2017	December 5, 2017
Respondents' Counsel files pretrial brief supported by legal authority	December 6, 2017	December 11, 2017

ORDERED:

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D. Michael Chappell  
Chief Administrative Law Judge

Date:

# EXHIBIT A

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

Federal Trade Commission, )  
and State of North Dakota, )

Plaintiffs, )

vs. )

File No. 1:17-cv-133

Sanford Health, Sanford )  
Bismarck and Mid Dakota )  
Clinic, P.C., )

Defendants. )

TRANSCRIPT OF PRELIMINARY INJUNCTION  
VOLUME IV

Taken at  
United States Courthouse  
Bismarck, North Dakota  
November 3, 2017

BEFORE THE HONORABLE ALICE R. SENECHAL  
-- UNITED STATES DISTRICT COURT MAGISTRATE JUDGE --



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1 THE COURT: All right.

2 MR. DILLICKRATH: I'll speak on behalf of the State  
3 of North Dakota as well.

4 THE COURT: Thank you. Then your proposed findings

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1 MR. COOPER: Fourteen days, December 12th.

2 THE COURT: Oh, well, all kinds of time then. Okay.  
3 I will do my best to do it as quickly as possible.

4 MR. COOPER: And I also noted, as Mr. Feinstein just  
04:02 5 said, the possibility of seeking further stays, so --

6 THE COURT: Okay.

7 MR. COOPER: -- we'll keep the Court informed of that  
8 process.

9 THE COURT: I appreciate that. And I expect that  
04:02 10 there will be some portions of that that might be need to be  
11 redacted as well, so I'll deal with that. And it might even be  
12 the case that you get a very brief order initially, with a  
13 memorandum opinion to follow but I haven't decided that yet.

14 Do you have any other questions or any other  
04:02 15 housekeeping matters that you would like to address?

16 MR. COOPER: Not for us, Your Honor.

17 MR. DILLICKRATH: Not for us, Your Honor.

18 THE COURT: All right. Then you may proceed,  
19 Mr. Dillickrath.

04:02 20 MR. DILLICKRATH: All right. So thank you, Your  
21 Honor. May it please the Court. First --

22 (The court reporter reminded Mr. Dillickrath to put  
23 his microphone on.)

24 MR. DILLICKRATH: Oh, I'm sorry.

04:03 25 Well, thank you again, Your Honor. And may it please

# EXHIBIT B



Commission Rule 3.41(f) provides, in relevant part, that a pending “collateral federal court action that relates to the administrative adjudication shall not stay the proceeding . . . [u]nless a court of competent jurisdiction, or the Commission for good cause, so directs.” 16 C.F.R. § 3.41(f). The administrative hearing is scheduled to begin November 28, 2017. The proposed findings of fact for the preliminary injunction hearing are due to be filed on November 10, 2017, and a decision is expected sometime thereafter. Presently, it is not clear whether the two proceedings will in fact overlap.

As reflected in its Rules of Practice, the Commission has committed to moving forward as expeditiously as possible with administrative hearings on the merits. *See, e.g.*, 16 C.F.R. §§ 3.1, 3.11(b)(4), 3.41, 3.46, 3.51-3.52. A two-month delay of the long-scheduled administrative hearing would interfere with that objective in a manner not warranted by present circumstances. At the same time, the public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary. Under the circumstances presented, we find that a short continuance is justified. Deferring the start of trial by fourteen days – to December 12, 2017 – and extending remaining pre-hearing deadlines by the same fourteen-day interval – provide additional time for resolution of the district court action without materially delaying the Commission proceeding. We have granted similar, short continuances under comparable circumstances in the past. *See In re Advocate Health Care Network*, 2016 WL 2997850 (F.T.C. May 6, 2016) (granting continuance when “the district court hearing on the Commission's motion for preliminary injunction ha[d] yet to conclude”). Respondents and/or Complaint Counsel, of course, may seek extension of this continuance based on future circumstances. Accordingly,

**IT IS HEREBY ORDERED** that Respondents’ Expedited Motion for a Two-Month Stay of Administrative Proceedings is **GRANTED IN PART** ; and

**IT IS FURTHER ORDERED** that the evidentiary hearing in this proceeding shall commence on December 12, 2017, and that, unless modified by the Chief Administrative Law Judge, all related pre-hearing deadlines shall be extended by 14 days.

By the Commission.

Donald S. Clark,  
Secretary

SEAL:

ISSUED: November 3, 2017

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2017, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
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Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing document to:

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November 14, 2017

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Emily Bowne, Attorney

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