

12 18 2017
589083

ORIGINAL

ARGUMENT

In August 2016, Sanford and MDC agreed that Sanford would acquire MDC. At the time, the parties agreed to make reasonable best efforts to close the transaction by January 1, 2017. In early November 2016, MDC and Sanford learned that the Federal T

The Commission has issued prior continuances in this case in light of Respondents' representation that they intend to abandon the transaction if the transaction is enjoined after exhaustion of appeals, and because of the public interest in avoiding sizeable costs in preparing for and holding a hearing that would be entirely unnecessary if the injunction is upheld. On November 3, 2017, the Commission issued an Order Granting 14-Day Continuance in this proceeding ("Nov. 3 Order") [Exhibit 2]. The Commission cited declarations from Sanford's Chief Legal Officer and MDC's CEO—"that if, after all appeals in the injunction proceedings are exhausted, they are enjoined from consummating the acquisition, they will abandon the transaction." *Id.* at 1 (citing Respondents' October 6, 2017 Expedited Motion for a Two-Month Stay of Administrative Proceedings at 2-3, Exhibits A-B). The order further stated that "the public interest is not ideally served if litigants and third parties bear expenditures that later prove *ØD* unnecessary." *G*

1. If after all appeals in the injunction proceedings are exhausted Respondents are enjoined from consummating the acquisition, the Respondents will abandon their merger and this administrative proceeding will be moot. *See* Respondents' October 6, 2017 Expedited Motion for a Two-Month Stay of Administrative Proceedings at 2-3, Exhibits A-B.
2. Absent an extension of the continuance, the parties—and, importantly, third parties—will be required to devote significant resources to meeting various interim deadlines between now and January 17, 2018 (the current commencement date for the administrative hearing), including extensive document and data review, redaction and motion practice relating to the *in camera* treatment of commercially sensitive information, much of which comes from non-parties to this matter. Incurrence of these costs would be unnecessary if the District Court's PI Order is upheld.
3. Absent an extension of the continuance, non-party witnesses (as well as party witnesses)—virtually all of whom reside outside of the Washington, D.C. area—will need to incur significant expenses, including legal fees, associated with preparation for

3. • ~ ^ T æ • ^ ^ † ã Â Â ã &
H È

of issues for the hearing, and conducting the hearing. Incurrence of these costs would be unnecessary if the District Court's PI Order is upheld.

6. In this proceeding, the Commission has twice correctly observed that "the public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary." Nov. 3 Order at 2; Nov. 21 Order at 2.
7. Under the existing schedule, and even though Respondents filed their notice of appeal less than 48 hours after the District Court's PI Order, the administrative hearing is certain to commence before the Eighth Circuit Court of Appeals can adjudicate the appeal of the injunction. Thus, only a further continuance can obviate the incurrence of the various costs discussed above.
8. Today, and throughout the pendency of the appeal, the transaction will be enjoined; thus, there will be no prejudice from granting the stay.
9. Accordingly, granting the stay will prevent the parties, third parties, and Office of the Administrative Law Judge from incurring sizeable costs that would be entirely unnecessary if the injunction is upheld following exhaustion of appellate options, without causing any prejudice.
10. Complaint Counsel has authorized Respondents' to represent to the Commission that Complaint Counsel does not oppose this motion.

Moreover, granting the further continuance sought here is consistent with prior Commission decisions to stay administrative proceedings in *In the matter of Advocate Health Care Network*, Docket No. 9369, Order Granting Continuance, at 2 (June 28, 2016) (noting Respondents' commitment to abandon the transaction if the FTC prevailed in federal court) and *In the matter of The Penn State Hershey Medical Center*, Docket No. 9368, Commission Order

* UDQWLQJ & RQWLQXDQFH -XQH

/s/ Loren Hansen

Loren Hansen
Gregory R. Merz
Gray, Plant, Mooty, Mooty & Bennett, P.A.
500 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 632-3208
loren.hansen@gpmlaw.com
gregory.merz@gpmlaw.com

Counsel to Mid Dakota Clinic, P.C.

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney**

In the Matter of

**Sanford Health,
a corporation;**

**Sanford Bismarck,
a corporation;**

and

**Mid Dakota Clinic, P.C.,
a corporation.**

Docket No. 9376

**[PROPOSED] ORDER GRANTING UNOPPOSED MOTION FOR FURTHER
CONTINUANCE OF ADMINISTRATIVE**

CERTIFICATE OF SERVICE

I certify that on December 18, 2017, 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., NW, Rm. H-113
Washington, DC 20580

The Honorable S. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

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

Thomas Dillickrath, Esq.
Kevin Hahm, Esq.
Chris Caputo, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: (202) 326-3680
tdillickrath@ftc.gov
khahm@ftc.gov
ccaputo@ftc.gov

Attorneys for Plaintiff Federal Trade Commission

Loren Hansen
Gregory R. Merz
Gray, Plant, Mooty, Mooty & Bennett, P.A.
500 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 632-3208
loren.hansen@gpmlaw.com
gregory.merz@gpmlaw.com

Counsel to Mid Dakota Clinic, P.C.

Dated: December 18, 2017

By: /s/ Hershel Wancjer
Hershel Wancjer

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

FEDERAL TRADE COMMISSION

and

STATE OF NORTH DAKOTA,

Plaintiffs,

v.

SANFORD HEALTH,

SANFORD BISMARCK,

and

MID-DAKOTA CLINIC, P.C.,

Defendants.

Case No. 1:17cv-00133ARS

Notice of Appeal

DEFENDANTS' NOTICE OF APPEAL

Notice is hereby given that Sanford Health, Sanford Bismarck, and Mid-Dakota Clinic,

Nicholas A. Widnell, pro hac vice
Boies, Schiller Flexner LLP
1401 New York Ave, NW
Washington, D.C. 20005
T: (202) 237-2727
F: (202) 237-6131
rcooper@bsfllp.com
rfeinstein@bsfllp.com
skaplan@bsfllp.com
hwancjer@bsfllp.com
nwidnell@bsfllp.com

Cynthia M. Christian, pro hac vice
Boies, Schiller Flexner LLP
121 South Orange Avenue Suite 840
Orlando, FL 32801
T: (407) 425-7118
cchristian@bsfllp.com

Ronald H. McLean
ND. Bar No. 03260
Serkland Law Firm Fargo
10 Robert St.
P.O. Box 5017
Fargo, ND 58108
T: (701) 232-8957
F: (701) 237-4049

Attorneys for Defendant Sanford Health and
Sanford Bismarck

/s/ Loren Hansen
Loren Hansen, (ND Atty No. 08233)
Gregory R. Merz, pro hac vice
500 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402
Telephone: (612) 632-3000
Facsimile: (612) 632-4444
Loren.hansen@gpmlaw.com
Gregory.merz@gpmlaw.com

Attorneys for Mid Dakota Clinic P.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 15, 2017, I electronically filed the foregoing document via the Court's electronic filing system, which will automatically send e-mail notification of this filing to all attorneys of record in this action.

/s/

EXHIBIT 2

Commission Rule 3.41(f) provides, in relevant part, that a pending “collateral federal

EXHIBIT 3

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
 Terrell McSweeney**

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

**ORDER GRANTING FURTHER CONTINUANCE
OF ADMINISTRATIVE PROCEEDINGS**

On November 14, 2017, Complaint Counsel and Respondents Sanford Health, Sanford Bismarck, and Mid Dakota Clinic, P.C. jointly moved to postpone commencement of the administrative hearing in this proceeding from December 12, 2017 to January 17, 2018, and to st

hearing that she had a goal to provide a decision within a few weeks. *Id.* The administrative hearing before Judge Chappell is currently scheduled to begin December 12, 2017.

Notice of Electronic Service

I hereby certify that on December 18, 2017, I filed an electronic copy of the foregoing Unopposed Expedited Motion for Further Continuance of Administrative Proceedings, with:

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

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on December 18, 2017, I served via E-Service an electronic copy of the foregoing Unopposed Expedited Motion for Further Continuance of Administrative Proceedings, upon:

Emily Bowne
Attorney
Federal Trade Commission
ebowne@ftc.gov
Complaint

Alexander Bryson
Attorney
Federal Trade Commission
abryson@ftc.gov
Complaint

Christopher Caputo
Attorney
Federal Trade Commission
ccaputo@ftc.gov
Complaint

Stephanie Cummings
Attorney
Federal Trade Commission
srcummings@ftc.gov
Complaint

Jamie France
Attorney
Federal Trade Commission
jfrance@ftc.gov
Complaint

Kevin Hahm
Attorney
Federal Trade Commission
khahm@ftc.gov
Complaint

Melissa Hill
Attorney
Federal Trade Commission
mchill@ftc.gov

Complaint

Laura Krachman
Attorney
Federal Trade Commission
lkrachman@ftc.gov
Complaint

Rohan Pai
Attorney
Federal Trade Commission
rpai@ftc.gov
Complaint

Neal Perlman
Attorney
Federal Trade Commission

Hershel Wancjer
Attorney