

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

**In the Matter of**

**Thomas Jefferson University  
a corporation,**

**and**

**Albert Einstein Healthcare Network  
a corporation.**

**Docket No. 9392**

**JOINT MOTION TO AMEND THE SCHEDULING ORDER**

Complaint Counsel and Respondents, Thomas Jefferson University (“Jefferson”), and Albert Einstein Healthcare Network (“Einstein”), jointly move the Court for an order amending the Scheduling Order in the above-referenced matter. The Parties are concurrently filing a joint motion with the Federal Trade Commission to reschedule the start of the administrative hearing for March 8, 2021. The proposed schedule set forth below would coincide with the new March 8, 2021 hearing date. This is the first request the Parties have made to revise the Court’s July 13, 2020, Scheduling Order.

On February 27, 2020, the Commission filed a complaint in the United States District Court for the Eastern District of Pennsylvania seeking a temporary restraining order and a preliminary injunction to enjoin Respondents from consummating the transaction that is the subject of this case. *FTC et al. v. Thomas Jefferson University et al.*, No. 20-cv-01113 (E.D. Pa.) (Feb. 27, 2020). The Parties completed the presentation of testimony and closing arguments before Judge Gerald J. Pappert on October 26, 2020.

Respondents have affirmed that if, after all appeals in the federal proceeding are exhausted, they are enjoined from consummating the transaction, they will abandon the transaction. So as to avoid potentially unnecessary expense and burden on the Court, third parties, and the Parties, Complaint Counsel and Respondents respectfully request to extend all deadlines by 60 days in the Scheduling Order issued on July 13, 2020. In addition, many of these third parties are healthcare providers who are on the front lines dealing with the global pandemic, and the new schedule could significantly reduce the potential interference with their efforts.

The Parties propose the following schedule:

Action	Current Deadline	Proposed Deadline
Close of Discovery	November 10, 2020	January 11, 2021
Deadline for Complaint Counsel to provide expert witness reports	November 17, 2020	January 19, 2021
Complaint Counsel provides to Respondents' Counsel its final proposed witness and exhibit lists	November 24, 2020	January 25, 2021
Deadline for Respondents' Counsel to provide expert witness reports	December 1, 2020	February 1, 2021
Respondents' Counsel provides to Complaint Counsel its final proposed witness and exhibit lists	December 3, 2020	February 3, 2021
Parties that intend to offer confidential materials as evidence at the hearing must provide notice	December 3, 2020	February 3, 2021
Complaint Counsel to provide rebuttal expert report(s)	December 11, 2020	February 9, 2021
Deadline for filing motions <i>in limine</i> to preclude admission of evidence	December 15, 2020	February 16, 2021
Deadline for filing motions for <i>in camera</i> treatment of proposed trial exhibits	December 15, 2020	February 16, 2021
Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits	December 16, 2020	February 17, 2021

Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists	December 18, 2020	February 19, 2021
Complaint Counsel files pretrial brief supported by legal authority	December 18, 2020	February 19, 2021
Deadline for filing responses to motions <i>in limine</i> to preclude admission of evidence	December 21, 2020	February 22, 2021
Deadline for filing responses to motions for <i>in camera</i> treatment of proposed trial exhibits	December 21, 2020	February 22, 2021
Exchange proposed stipulations of law, facts, and authenticity	December 28, 2020	February 26, 2021
Respondents' Counsel files pretrial brief supported by legal authority	December 29, 2020	March 1, 2021
By 1:00 p.m., file final stipulations of law, facts, and authenticity	January 3, 2021	March 4, 2021
Final prehearing conference	January 4, 2021	March 5, 2021

A copy of the motion filed with the Commission is attached.

Dated: October 29, 2020

Respectfully submitted,

/s/ Kenneth M. Vorrasi

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*Counsel for Respondent Albert Einstein Healthcare  
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**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**In the Matter of**

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a corporation,**

**and**

**Albert Einstein Healthcare Network  
a corporation.**

**Docket No. 9392**

**[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 provisions in the Scheduling Order remain in effect.

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By 1:00 p.m., file final stipulations of law, facts, and authenticity	January 3, 2021	March 4, 2021
Final prehearing conference	January 4, 2021	March 5, 2021

SO ORDERED.

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date:

# ATTACHMENT

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

**COMMISSIONERS:**        **Joseph J. Simons, Chairman**  
                                 **Noah J. Phillips**  
                                 **Rohit Chopra**  
                                 **Rebecca K. Slaughter**  
                                 **Christine S. Wilson**

**In the Matter of**

**Thomas Jefferson University  
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**Albert Einstein Healthcare Network  
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**Docket No. 9392**

**JOINT EXPEDITED MOTION FOR A CONTINUANCE  
OF ADMINISTRATIVE PROCEEDINGS**

Pursuant to Rule 3.41 of the Federal Trade Commission (“FTC” or “Commission”) Rules of Practice, Complaint Counsel and Respondents, Thomas Jefferson University and Albert Einstein Healthcare Network, jointly move for a 60-day continuance of the commencement of the administrative hearing currently scheduled to begin on January 5, 2021. Complaint Counsel and Respondents also move for a corresponding stay of related pre-hearing deadlines.

## BACKGROUND

On February 27, 2020, Complaint Counsel filed this action and, together with Commonwealth of Pennsylvania, a complaint in the United States District Court for the Eastern District of Pennsylvania seeking a preliminary injunction to enjoin the proposed transaction between Respondents until completion of this administrative proceeding. Respondents stipulated to the entry of a temporary restraining order in the federal litigation, which provides that the proposed transaction may not be consummated “until after 11:59 PM Eastern Time on the seventh calendar day after the Court rules on Plaintiffs’ motion for a preliminary injunction.” Order [Docket No. 11], *FTC, et al. v. Thomas Jefferson University, et al.*, No. 2:20-cv-01113-GJP (E.D. Pa.). A six-day preliminary injunction hearing concluded on October 1, 2020, the Parties filed proposed findings of fact and conclusions of law on October 12, 2020, and the District Court heard closing arguments on October 26, 2020. The District Court has now taken the matter under advisement following closing arguments, and though it has not announced when it will issue a ruling, the Parties anticipate a decision before the end of the year.

Respondents now affirm that, if they are enjoined from consummating the transaction after all appeals in the federal proceeding are exhausted, they will abandon the proposed transaction.

## ARGUMENT

Under Rule 3.41 of the Commission’s Rules of Practice, “[t]he Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence.” 16

C.F.R. § 3.41(b). Here, good cause exists for a continuance of the commencement of the administrative hearing for several reasons:

1. The third-party and Respondent witnesses who may be called to testify live at the administrative hearing are involved in the healthcare industry in an unprecedented time of a global pandemic. These witnesses include operators of skilled nursing facilities, hospitals, and clinicians themselves. A brief stay will allow these healthcare providers sufficient time to juggle the demands of their already-disrupted schedules with the needs of this litigation, and may even obviate the need to impose any additional burdens should the administrative hearing become moot. “The public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary.” Order Granting 14-Day Continuance, *In the matter of Sanford Health* (Nov. 3, 2017).
2. Absent the continuance, third parties and the Parties will be required to devote significant resources to meeting various interim deadlines between now and January 5, 2021 (the current commencement date for the administrative hearing), including extensive document and data review and redaction, depositions, and motion practice. For example, numerous third parties whose confidential material may be used at the hearing will be required to move by December 15, 2020, for *in camera* treatment of any material they do not want presented on the public record. Such motions will address significant volumes of competitively and commercially sensitive documents and data that were produced during the course of the preliminary injunction proceeding and the FTC’s merger review.

If the Commission grants this motion for a brief stay, then the third parties may avoid the substantial burden of reviewing voluminous documents, performing line-by-line proposed redactions of confidential information, preparing legal memoranda requesting in camera treatment of those materials, and filing copies of all such materials with the Court.

3. Absent the continuance, third-party and 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 the administrative hearing and potential travel costs. These expenses will be particularly burdensome in the midst of a global pandemic and because the administrative hearing is scheduled to overlap with holiday-related travel and disruptions. The Parties have identified approximately 69 third parties as witnesses that may be called live at the administrative hearing. Already, six third-party and four party fact witnesses have been called to testify at a deposition, and there may be at least seven expert depositions. A temporary stay may allow these third parties and the Parties to avoid these additional expenses entirely should the administrative hearing become moot.
4. Absent the requested continuance, the Office of the Administrative Law Judge will be required to devote time and resources to pre-hearing preparation and adjudication of issues for a hearing that it may not have to conduct.

The requested relief will serve the public interest and will not prejudice the Commission's ability to discharge its duties. If after all appeals in the federal proceeding are exhausted, they are enjoined from consummating the transaction, Respondents do not intend to proceed with their merger and this administrative proceeding will be moot. If the motion for preliminary injunction is denied, Respondents will file a motion pursuant to Rule 3.26 to withdraw the case from adjudication or dismiss the complaint. Rule 3.26(b)-(d). Once a respondent files such a motion, "the new rule now provides for an automatic withdrawal or automatic stay" of the administrative proceeding, depending on the type of motion. FTC Revisions to Rules of Practice, 80 Fed. Reg. 15,157, 15,158 (Mar. 23, 2015); *see also* Rule 3.26(c); Rule 3.26(d)(2). Imposing a brief stay now avoids the inefficiency of conducting discovery and other pre-hearing matters only to suspend the proceeding following the ruling by the District Court, without prejudicing the Commission. A 60-day continuance is appropriate so that, if necessary, interim deadlines for fact discovery would occur after the holidays.

### **RELIEF REQUESTED**

For all the reasons foregoing, Complaint Counsel and Respondents jointly and respectfully request that the Commission exercise its discretion under Rule 3.41(b) and/or Rule 3.41(f) to continue commencement of the administrative hearing by 60-days, or until such later date as may be convenient for the Chief Administrative Law Judge and the Commission. Complaint Counsel and Respondents also request that interim pre-hearing deadlines be stayed for 60-days.

Dated: October 29, 2020

Respectfully submitted,

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*Counsel for Respondent Albert Einstein Healthcare  
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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Joseph J. Simons, Chairman**  
                                  **Noah J. Phillips**  
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**In the Matter of**

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**Docket No. 9392**

**[PROPOSED] ORDER GRANTING JOINT EXPEDITED MOTION FOR A 60-DAY  
CONTINUANCE OF ADMINISTRATIVE PROCEEDINGS**

Good cause having been shown,

**IT IS HEREBY ORDERED THAT** Complaint Counsel's and Respondents' Joint Expedited Motion for a 60-Day Continuance of Administrative Proceedings is **GRANTED**; and

- (1) Commencement of the evidentiary hearing in this matter is moved from January 5, 2021, to March 8, 2021;
- (2) All other proceedings in this matter are stayed for 60 days from the date of this order. And

(3) The Administrative Law Judge shall issue a revised Scheduling Order consistent with the terms of this order.

By the Commission.

April J. Tabor  
Acting Secretary

ISSUED:

## CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2020, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor  
Acting Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580  
[ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov)

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

I also certify that I caused the foregoing document to be served via email to:

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*Counsel Supporting the Complaint*

### 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 that is available for review by the parties and the adjudicator.

October 29, 2020

By: s/ Mark Seidman  
Mark Seidman

## CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2020, 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  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

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*Counsel for Respondent Albert Einstein Healthcare Network*

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Mark Seidman

*Counsel Supporting the Complaint*

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