

ORIGINAL

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



In the Matter of)

PUBLIC

LabMD, Inc.,)
a corporation,)
Respondent.)
_____)

Docket No. 9357

JOINT MOTION TO EXTEND DEADLINE FOR EXPERT DEPOSITIONS

Pursuant to Rule 3.21(c)(2), 16 C.F.R. § 3.21(c)(2), Complaint Counsel and Respondent LabMD, Inc. jointly request an Order by the Court extending the April 18, 2014 deadline for depositions of experts to April 23, 2014 for the deposition of Respondent's expert Adam Fisk and Complaint Counsel's rebuttal expert Clay Shields. *See* Oct. 22, 2013 Revised Scheduling Order.

On February 11, 2014, Respondent provided Complaint Counsel with its expert witness list, identifying Adam Fisk as an expert it may call at the evidentiary hearing. On April 1, 2014, Respondent served an expert report by Mr. Fisk. On April 3, 2014, Complaint Counsel stated by letter to Counsel for Respondent that it was identifying Clay Shields as its rebuttal expert. In that letter, Complaint Counsel provided dates upon which Prof. Shields could be made available for deposition, but also noted that Prof. Shields would not be available for deposition between April 15–18, 2014. In light of his unavailability on those days, Complaint Counsel also offered to produce Prof. Shields on April 23, 2014. In a teleconference on April 4, 2014, counsel for Respondent agreed to the April 23, 2014 date for Mr. Shields' deposition.

On April 8, 2014, Counsel for Respondent informed Complaint Counsel that Mr. Fisk is not available for deposition until April 21–24, 2014. During an April 10, 2014 teleconference, Complaint Counsel agreed to a date of April 22, 2014 for the deposition of Mr. Fisk, pending an Order by the Court extending time for that purpose, and agreed to file the instant Joint Motion.

The Court may extend this deadline for good cause shown. Rule 3.21(c)(2), 16 C.F.R. § 3.21(c)(2). Good cause exists for this extension because personal and professional commitments prevent both Mr. Fisk and Prof. Shields from being deposed on several days before the April 18, 2014 deadline. Furthermore, this extension will not impact the hearing date in this matter, or any other deadlines established by the Revised Scheduling Order, and is agreed-upon by the parties. Prior to this request, the parties have not requested any extensions to the deadlines set out in the scheduling order.¹

Accordingly, Complaint Counsel and Counsel for Respondent respectfully request that the Court grant their Joint Motion, and issue an order extending the deadline for depositions of experts to April 23, 2014 for the depositions of Adam Fisk and Clay Shields.

¹ The Court has granted extensions to the close of discovery for depositions that were the subject of unresolved motions at the close of discovery: the deposition of the Bureau of Consumer Protection under Rule 3.33 and the re-deposition of Detective Karina Jestes. But neither party has moved for an extension of the dates set out in the Revised Scheduling Order.

Dated: April 10, 2014

William Sherman / M. Harris

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Respectfully submitted,

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Complaint Counsel

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[PROPOSED] ORDER

Having carefully considered Complaint Counsel's and Counsel for Respondent's Joint Motion to Extend Deadline for Expert Depositions, it is hereby

ORDERED, that the April 18, 2014 Deadline for Depositions of Experts is extended to April 23, 2014 for the depositions of Clay Shields and Adam Fisk.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2014, I filed the foregoing document electronically through the Office of the Secretary's FTC E-filing system, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-113
Washington, DC 20580

I also certify that I caused a copy of the foregoing document to be delivered *via* electronic mail and by hand to:

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

I further certify that I caused a copy of the foregoing document to be served *via* electronic mail to:

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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.

April 10, 2014

By:



Jarad Brown
Federal Trade Commission
Bureau of Consumer Protection