

ORIGINAL

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



In the Matter of)
)
LabMD, Inc.,)
 a corporation,)
 Respondent.)

DOCKET NO. 9357

REVISED SCHEDULING ORDER

In accordance with the September 30, 2013 Commission Order and due to the partial shutdown of the federal government from October 1-16, 2013, the remaining dates in the September 25, 2013 Scheduling Order are hereby revised as follows:

- December 19, 2013 - Complaint Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
- January 2, 2014 - Respondent's Counsel provides preliminary witness lists (not including experts) with a brief summary of the proposed testimony.
- January 30, 2014 - Deadline for issuing document requests, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.
- February 3, 2014 - Complaint Counsel provides expert witness list.
- February 11, 2014 - Respondent's Counsel provides expert witness list.
- February 19, 2014 - Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.
- March 5, 2014 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
- March 18, 2014 - Deadline for Complaint Counsel to provide expert witness reports.

- March 26, 2014 - Complaint Counsel provides to Respondent's Counsel its final proposed witness and exhibit lists, including depositions or designated portions thereof, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.
- Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
- April 1, 2014 - Deadline for Respondent's Counsel to provide expert witness reports. Respondent's expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
- April 9, 2014 - Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions or designated portions thereof, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.
- Respondent's Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
- April 10, 2014 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b). *See* Additional Provision 7.
- April 11, 2014 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondent).
- April 14, 2014 - Exchange deposition transcript counter-designations.
- April 18, 2014 - Deadline for depositions of experts (including rebuttal experts) and

exchange of expert related exhibits.

- April 22, 2014 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- April 22, 2014 - Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 9.
- April 25, 2014 - Deadline for filing motions for *in camera* treatment of proposed expert related exhibits.
- April 29, 2014 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- April 29, 2014 - Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
- April 30, 2014 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.
- April 30, 2014 - Exchange objections to the designated testimony to be presented by deposition and counter-designations.
- May 2, 2014 - Deadline for filing responses to motions for *in camera* treatment of proposed expert related exhibits.
- May 2, 2014 - Complaint Counsel files pretrial brief supported by legal authority.
- May 5, 2014 - Exchange proposed stipulations of law, facts, and authenticity.
- May 9, 2014 - Respondent's Counsel files pretrial brief supported by legal authority.
- May 14, 2014 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be offered as agreed by the parties.
- May 15, 2014 - Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits and any designated deposition testimony. To the extent the parties stipulate to certain issues, the parties shall prepare a Joint Exhibit which lists the agreed stipulations.

Counsel may present any objections to the final proposed witness lists and exhibits, including to any designated deposition testimony. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a Joint Exhibit which lists the exhibits to which neither side objects. Any Joint Exhibit will be signed by each party. (Do not include a signature line for the ALJ.)

May 20, 2014

- Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

All Additional Provisions to the September 25, 2013 Scheduling Order remain in effect.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: October 22, 2013