

The Commission issued an order on May 6, 2016 (“May 6 Order”) continuing the commencement of the hearing from May 24, 2016 to June 15, 2016. However, the Parties respectfully submit that a further continuance is now necessary due to the timing of the preliminary injunction action in federal district court, *FTC et al. v. Advocate Health Care Network et al.*, No. 1:15-cv-11473 (N.D. Ill.). At the time of the Commission’s May 6 Order, the District Court proceedings had not yet concluded and the Court had not yet set a date for closing arguments. The preliminary injunction proceedings only recently concluded with closing arguments on May 25, 2016.

The requested relief will not prejudice the Commission’s ability to discharge its duties. If the preliminary injunction is granted, Respondents have consistently stated—and hereby reaffirm—that they do not intend to proceed with the proposed transaction. Under the recent revisions to Rule 3.26, if the PI is denied, the administrative proceeding will be automatically stayed or withdrawn on the request of the Respondents. FTC Revisions to Rules of Practice, 80 Fed. Reg. 15,157, 15,158 (Mar. 23, 2015). Therefore, regardless of whether the District Court grants or denies the injunction, the administrative proceeding either will be rendered moot by the merging parties abandoning the transaction or may be stayed pending any appeal. Even if the Commission determines to proceed with the administrative litigation following denial of the preliminary injunction motion, this brief continuance will not hamper the Commission’s ultimate ability to obtain relief and will avoid starting the trial only to have it likely stayed pursuant to Rule 3.26.

BACKGROUND

An evaluation of this motion requires a brief summary of the status of the judicial proceedings brought by the FTC and the status of the Part 3 proceedings now pending before the Chief Administrative Law Judge.

When it issued the administrative complaint in this action, the Commission originally scheduled the Part 3 hearing to begin on May 24, 2016. On April 27, 2016, the Parties moved the Commission for a stay of the administrative hearing to June 15, 2016. *See* Exhibit A, Joint Expedited Motion for a 22-Day Stay of Administrative Proceedings. The purpose of that motion was to avoid potentially unnecessary expense and burden to non-parties and the Parties while the Commission's motion for preliminary injunction to enjoin the consummation of the proposed merger pending the completion of these was *sub judice* at the United States District Court for the Northern District of Illinois.

On May 6, 2016, the Commission granted the continuance, stating that, "Although the Commission is committed to moving forward as expeditiously as possible with adjudicative proceedings, we find there is good cause here to grant the requested continuance of the administrative hearing and related deadlines." *See* Exhibit B, FTC Order Granting Continuing Administrative Hearing at 2. At the time of the Commission's May 6 Order, the parallel proceedings in *FTC et al v. Advocate Health Care Network et al.* had not yet concluded.

Plaintiffs presented their rebuttal case in the preliminary injunction proceedings on May 6, 2016. The Parties then submitted post-hearing evidentiary submissions on May 9 and 11,

2016, submitted post-hearing briefs and proposed findings of facts and conclusions of law on May 18, 2016, and presented closing arguments on May 25, 2016. The District Court has now taken the matter under advisement, though it has not announced when it will issue a ruling.

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 further continuance of the commencement of the administrative trial because a brief postponement may avoid significant expense and burden on non-parties whose confidential information has been designated for use in the administrative trial. Additionally, it may allow the Parties to avoid additional expenses in the event the administrative proceedings are suspended.

When the Commission rescheduled the Part 3 hearing to commence on June 15, 2016, it contemplated that this extension, "would allow additional time for the district court to complete its proceeding and issue a ruling, which could obviate the need for an administrative hearing." See Exhibit B, FTC Order Granting Continuing Administrative Hearing at 2. However, given the timing of the District Court proceedings, trial preparations for an administrative hearing beginning June 15 will require a significant expenditure of resources over the next three weeks for a proceeding that may become moot. For example, June 7, 2016 is the deadline for non-party motions for *in camera* treatment, expert rebuttal reports, and expert depositions. The burden on non-parties will be especially onerous given that they are required to move for *in camera*

treatment of any material they do not want presented on the public record. The Parties have also identified approximately 24 non-parties as witnesses that may be called live at the administrative trial. Moreover, because the administrative trial may become moot, a temporary continuance may allow the Parties to avoid additional expenses, such as the expense for up to nine expert depositions, as well as the expenses associated with generating three or more rebuttal expert reports.

Granting a shorter continuance of 14 or 21 days would also create a hardship for non-parties over the July 4 holiday weekend. Up to 24 non-parties will need to travel to Washington, D.C. to testify at the hearing, and many of these witnesses will need to be in the city for a number of days in advance of their testimony. Beginning the Part 3 proceedings in late June or the first week of July will require many of these non-parties to travel during or immediately preceding the holiday.

The brief postponement of the administrative trial will not prejudice the Commission. As Respondents have represented repeatedly and again represent now, if the District Court grants the preliminary injunction, the Respondents do not intend to proceed with their merger and this administrative proceeding will be moot. *See* Exhibit C, PI Hearing Transcript 59:1-7. If the District Court denies the motion for preliminary injunction, 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) (emphasis added); *see also* Rule 3.26(c); Rule 3.26(d)(2). While the Commission stated in its May 6 Order that, “a more significant delay may not be justified,” the Parties believe providing a brief continuance now avoids the inefficiency of beginning the presentation of evidence in the administrative trial only to suspend the proceeding following the ruling by the District Court, without prejudicing the Commission.

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 postpone commencement of the administrative hearing by 26 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-trial deadlines be continued for 26 days.

Dated: May 27, 2016

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Counsel Supporting the Complaint

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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In the Matter of)	
)	
Advocate Health Care Network, a corporation;)	Docket No. 9369
)	
Advocate Health and Hospitals Corporation, a corporation;)	
)	
and)	
)	
NorthShore University HealthSystem, a corporation.)	
)	

[PROPOSED] ORDER GRANTING JOINT EXPEDITED MOTION FOR A 26-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 26-Day Continuance of Administrative Proceedings is **GRANTED**; and

(1) Commencement of the evidentiary hearing in this matter is moved from June 15, 2016 to July 11, 2016; and

(2) All other proceedings in this matter are continued for 26 days from the date of this order.

By the Commission.

Donald S. Clark
Secretary

ISSUED:

EXHIBIT A

burden on non-parties whose confidential information has been designated for use in the administrative trial. Additionally, it may allow the Parties to avoid additional expenses, such as expert depositions, in the event the administrative proceedings are suspended.

The Respondents' previously filed a Motion to Stay the Administrative Hearing on February 5, 2016, and the Commission denied this motion on March 18, 2016, on the grounds that at the time there was "no conflict between the two proceedings" – the preliminary injunction action in federal district court, *FTC et al. v. Advocate Health Care Network et al.*, No. 1:15-cv-11473 (N.D. Ill.), and the administrative hearing scheduled for May 24, 2016. Since the denial of the Respondents' original Motion to Stay, circumstances have changed.

The requested relief will not prejudice the Commission's ability to discharge its duties. The parallel proceedings in federal district court on the Commission's motion for a preliminary injunction in *FTC et al. v. Advocate Health Care Network et al.*, will now conclude sometime after May 6, 2016.¹ Although the District Court has not yet determined when it will issue its ruling, it is expected that this ruling will issue within a short time of the beginning of the administrative trial currently set for May 24, 2016. *See* Exhibit A, PI Hearing Transcript 1384:6-1385:12. If the preliminary injunction is granted, Respondents have consistently stated—and hereby reaffirm—that they do not intend to proceed with the proposed transaction. Under the recent revisions to Rule 3.26, if the PI is denied, the administrative proceeding will be

¹ The District Court paused the preliminary injunction hearing on April 20, 2016 due to issues with the Plaintiffs' witness availability and the Court's schedule. The hearing will be completed on May 6, 2016. The District Court has not yet set a date for closing arguments.

automatically stayed or withdrawn on the request of the Respondents. *See also* FTC Revisions to Rules of Practice, 80 Fed. Reg. 15,157, 15,158 (Mar. 23, 2015). Therefore, regardless of whether the District Court grants or denies the injunction, the administrative proceeding either will be rendered moot by the merging parties abandoning the transaction or may be stayed pending any appeal. Even if the Commission determines to proceed with the administrative litigation following denial of the preliminary injunction motion, this brief stay will not hamper the Commission's ultimate ability to obtain relief and will avoid starting the trial only to have it likely stayed pursuant to Rule 3.26.

ARGUMENT

Expedited consideration is appropriate because, unless this brief stay of the administrative proceedings is granted, numerous non-parties that have been notified by the Parties that their confidential material may be used at the trial are required to move by May 16, 2016, for *in camera* treatment of any material they do not want presented on the public record.² 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 non-parties may avoid the substantial burden of reviewing voluminous documents, performing line-by-line proposed redactions of confidential information, preparing legal

² On April 26, 2016, the Parties also moved the Chief Administrative Law Judge to amend the schedule to give the non-parties an additional eleven days in which to file their motions. On April 27, 2016, Judge Chappell granted the Parties' request and extended the date until May 16, 2016.

memoranda requesting in camera treatment of those materials, and filing copies of all such materials with the Court. Additionally, the Parties have identified approximately 24 non-parties as witnesses that may be called live at the administrative trial. A brief stay will postpone the need for those witnesses to prepare to testify. Moreover, because the administrative trial may become moot, a temporary stay may allow the Parties to avoid additional expenses, such as the expense for up to nine expert depositions.

The brief postponement of the administrative trial will not prejudice the Commission. As Respondents have represented repeatedly and again represent now, if the District Court grants the preliminary injunction, the Respondents do not intend to proceed with their merger and this administrative proceeding will be moot. *See* Exhibit B, PI Hearing Transcript 59:1-7. If the District Court denies the motion for preliminary injunction, 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) (emphasis added); *see also* Rule 3.26(c); Rule 3.26(d)(2). Imposing a brief stay now avoids the inefficiency of beginning the presentation of evidence in the administrative trial only to suspend the proceeding following the ruling by the District Court, without prejudicing the Commission.

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 postpone commencement of the administrative hearing by 22 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-trial deadlines be stayed for 22 days.

Dated: April 27, 2016

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**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney**

_____)	
In the Matter of)	
)	
Advocate Health Care Network,	)	Docket No. 9369
a corporation;)	
)	
Advocate Health and Hospitals Corporation,)	
a corporation;)	
)	
and)	
)	
NorthShore University HealthSystem,)	
a corporation.)	
_____)	

**[PROPOSED] ORDER GRANTING JOINT EXPEDITED MOTION FOR A 22-DAY
STAY OF ADMINISTRATIVE PROCEEDINGS**

Good cause having been shown,

IT IS HEREBY ORDERED THAT Complaint Counsel’s and Respondents’ Joint Expedited Motion for a 22-Day Stay of Administrative Proceedings is **GRANTED**; and

- (1) Commencement of the evidentiary hearing in this matter is moved from May 24, 2016 to June 15, 2016; and

(2) All other proceedings in this matter are stayed for 22 days from the date of this order.

By the Commission.

Donald S. Clark
Secretary

ISSUED:

EXHIBIT A

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IN THE United STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION and)	
STATE OF ILLINOIS,)	
)	
Plaintiffs,)	
)	
v.	)	No. 15 C 11473
)	
ADVOCATE HEALTH CARE NETWORK,)	
ADVOCATE HEALTH AND HOSPITALS)	
CORPORATION, and NORTHSHORE)	
UNIVERSITY HEALTHSYSTEM,	)	Chicago, Illinois
	)	April 20, 2016
Defendants.	)	10:15 a.m.

VOLUME 7
TRANSCRIPT OF PROCEEDINGS - PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE JORGE L. ALONSO

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10:21:52 1 servants in this. But if it were our druthers, I believe both
10:21:56 2 sides thought an hour and a half a side was probably the right
10:21:59 3 answer in terms of that.

10:22:00 4 MR. WEBB: That's right.

10:22:03 5 MR. GREENE: So I think that's our --

10:22:04 6 THE COURT: I think an hour would be more helpful
10:22:08 7 to --

8 MR. GREENE: Okay.

10:22:08 9 THE COURT: -- me. To the extent the parties
10:22:10 10 condense it, that would actually be more helpful. Doesn't
10:22:14 11 sound logical but it actually is in my experience. So let's
10:22:18 12 make it an hour for closing. Let's set 5/13 for those
10:22:24 13 post-trial briefings. And we've talked about what exactly
10:22:28 14 those will -- or what they may possibly include. And then I
10:22:34 15 will have to look, and Ms. Fratto will have to look, at the
10:22:37 16 calendar to get you guys in here shortly thereafter for
10:22:42 17 closing arguments or -- I should say after 5/6. We'll look at
10:22:48 18 the calendar to see what date after 5/6 makes sense for
10:22:52 19 closing arguments.

10:22:54 20 MR. GREENE: Yeah, I think our collective view -- I
10:22:56 21 mean, it's whatever helps you. But I think our view is that
10:22:59 22 giving you some opportunity to look at the findings of fact,
10:23:02 23 conclusions of law and then we could -- you could ask us the
10:23:06 24 hard questions, which I think is really the point of this kind
10:23:08 25 of thing.

10:23:08 1 THE COURT: So after 5/13 is your sense?

10:23:11 2 MR. GREENE: That would be my sense, yes, Your Honor.

10:23:13 3 MR. WEBB: We had the same view.

10:23:14 4 THE COURT: Okay.

10:23:16 5 MR. GREENE: And then, again, just for the record,

10:23:18 6 you know, the administrative trial begins on the 24th

10:23:21 7 currently so --

10:23:22 8 THE COURT: Right. Okay.

10:23:28 9 MR. ROBERTSON: Mr. Greene is going.

10:23:31 10 THE COURT: Right. Okay. So I'll get you that

10:23:35 11 information, the sooner the better. Is it too late to include

10:23:40 12 tomorrow, or no, in terms of witness availability?

10:23:45 13 MR. ROBERTSON: We hadn't planned on it, Your Honor.

10:23:47 14 MR. GREENE: Yeah, that's correct.

10:23:48 15 THE COURT: So forget about tomorrow. We are looking

10:23:50 16 at 5/6, and hopefully we have enough time allotted on 5/6.

10:23:55 17 MR. ROBERTSON: Yes, sir.

10:23:55 18 MR. DAHLQUIST: We think we do.

10:23:57 19 MR. GREENE: And, absolutely, I think our time

10:23:58 20 budgets will be essentially very limited by the end of today

10:24:02 21 so --

10:24:03 22 MR. WEBB: There may be only like an hour. We may

10:24:05 23 only have each like an hour or -- so as far as how much

10:24:10 24 testimony there will actually be on May 6th, it looks like

10:24:13 25 maybe it's going to be an hour on each side if I had to

EXHIBIT B

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION and)	
STATE OF ILLINOIS,)	
)	
Plaintiffs,)	
)	
v.	)	No. 15 C 11473
)	
ADVOCATE HEALTH CARE NETWORK,)	
ADVOCATE HEALTH AND HOSPITALS)	
CORPORATION, and NORTHSHORE)	
UNIVERSITY HEALTHSYSTEM,	)	Chicago, Illinois
	)	April 11, 2016
Defendants.	)	1:00 p.m.

VOLUME 1
TRANSCRIPT OF PROCEEDINGS - PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE JORGE L. ALONSO

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1 quotes, well, that's a -- not an equity. It's a fact. It's
2 only that your Honor is here because this is the only court
3 that's going to decide this. We can't wait for two years for
4 the AOJ to do a decision, have an argument to the commission,
02:39:07 5 and then briefs, and then finally go to a court after all that
6 -- and it takes a long time to get to a court after all that.
7 By that time this case -- this deal is done.

8 If the FTC still thinks that they're right, give our
9 merger a chance; they can come back and sue us two years from
02:39:24 10 now if they want to. Most of the cases I tried, your Honor,
11 were post acquisition cases. The last case they talk about in
12 this region was a post acquisition case. They do it all the
13 time.

14 Now, at this point --

02:39:37 15 THE COURT: Is that the Evanston --

16 MR. ROBERTSON: -- let me --

17 THE COURT: -- Evanston case you're referencing?

18 MR. ROBERTSON: Sir?

19 THE COURT: Evanston?

02:39:45 20 MR. ROBERTSON: Yes, sir. That was a post
21 acquisition case. It was long after the acquisition, in fact,
22 about 12 years ago. The market has changed a lot since then.
23 Northwestern Memorial has all these new places up and along
24 the lakeshore. That's in the last four years. It wasn't
02:39:59 25 there 12 years ago.

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2016, I caused the foregoing document to be electronically filed with the Secretary of the Commission using the Federal Trade Commission's e-filing system, causing the document to be served on all of the following registered participants:

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The Honorable D. Michael Chappell
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I also certify that I delivered via electronic mail a copy of the foregoing document

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HealthSystem*

CERTIFICATE FOR ELECTONIC 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 27, 2016

By: s/ Emily Bowne

EXHIBIT B

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

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Maureen K. Ohlhausen
 Terrell McSweeney

In the Matter of)	
)	
Advocate Health Care Network, a corporation;	)	Docket No. 9369
)	
Advocate Health and Hospitals Corporation, a corporation;)	
)	
and)	
)	
NorthShore University HealthSystem, a corporation.)	
)	

ORDER GRANTING CONTINUANCE

On December 17, 2015, the Commission issued an administrative complaint alleging that an affiliation agreement by the Respondents violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act. On December 21, 2015, pursuant to Section 13(b) of the FTC Act and Section 16 of the Clayton Act, the Commission filed a complaint in United States District Court for the Northern District of Illinois seeking a temporary restraining order and a preliminary injunction to prevent Respondents from consummating their proposed merger until final resolution of this administrative proceeding. Compl., *FTC v. Advocate Health Care Network*, No. 1:15-cv-11473 (N.D. Ill.) (Dec. 21, 2015). In accordance with Commission Rule 3.11(b) (4), the evidentiary hearing is scheduled to begin on May 24, 2016.

On March 18, 2016, the Commission denied without prejudice a motion by Respondents to stay the administrative hearing pending a ruling by the district court on the Commission's request for a preliminary injunction.¹ The parties have now filed a Joint Expedited Motion

¹ *Advocate Health Care Network*, Docket No. 9369, Commission Order Denying Motion To Stay the Administrative Hearing (Mar. 18, 2016).

seeking a 22-day continuance of the administrative hearing and related pre-hearing deadlines,² citing the fact that the district court hearing on the Commission's motion for preliminary injunction has yet to conclude.³ Respondents represent that if the district court grants the preliminary injunction motion, they will abandon the proposed transaction. They further assert that, if the district court denies the preliminary injunction motion, they will file a motion pursuant to Commission Rule 3.26, which would trigger either a possible withdrawal of this matter from adjudication or a stay, pending further action by the Commission.

In support of their request for a continuance, the parties argue that, should the evidentiary hearing become moot, the requested continuance could relieve third parties of the burden and cost associated with preparing witnesses to testify and filing motions for *in camera* treatment of their confidential materials, which would need to commence soon under the current schedule. The parties also argue that a continuance would not prejudice the Commission, even if the adjudication of this matter were to proceed.

Although the Commission is committed to moving forward as expeditiously as possible with adjudicative proceedings,⁴ we find there is good cause here to grant the requested continuance of the administrative hearing and related deadlines. A short continuance would allow additional time for the district court to complete its proceeding and issue a ruling, which could obviate the need for an administrative hearing. Additionally, a short delay in the start of the administrative hearing would not harm the Commission or the public interest should it be necessary for the administrative adjudication to go forward. We note, however, that a more significant delay may not be justified as our rules contemplate that both district court and administrative proceedings can proceed in parallel.

Accordingly, **IT IS HEREBY ORDERED** that the evidentiary hearing shall commence on June 15, 2016 and all related pre-hearing deadlines shall be extended by 22 days.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: May 6, 2016

² The parties have styled their Joint Motion as one seeking a stay of administrative proceedings, but their request makes clear that what they seek is a continuance of the evidentiary hearing and related deadlines, which we have the authority to grant under Commission Rule 3.41(b). 16 C.F.R. § 3.41(b) (“The Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence . . .”).

³ The parties note that the evidentiary portion of the hearing will conclude on May 6, but that no date has been set for closing arguments.

⁴ See Commission Rule 3.1, 16 C.F.R. § 3.1 (“[T]he Commission’s policy is to conduct [adjudicative] proceedings expeditiously.”); Commission Rule 3.41(b), 16 C.F.R. § 3.41(b) (“Hearings shall proceed with all reasonable expedition . . .”).

EXHIBIT C

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION and)	
STATE OF ILLINOIS,)	
)	
Plaintiffs,)	
)	
v.	)	No. 15 C 11473
)	
ADVOCATE HEALTH CARE NETWORK,)	
ADVOCATE HEALTH AND HOSPITALS)	
CORPORATION, and NORTHSHORE)	
UNIVERSITY HEALTHSYSTEM,	)	Chicago, Illinois
	)	April 11, 2016
Defendants.	)	1:00 p.m.

VOLUME 1
TRANSCRIPT OF PROCEEDINGS - PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE JORGE L. ALONSO

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1 quotes, well, that's a -- not an equity. It's a fact. It's
2 only that your Honor is here because this is the only court
3 that's going to decide this. We can't wait for two years for
4 the AOJ to do a decision, have an argument to the commission,
02:39:07 5 and then briefs, and then finally go to a court after all that
6 -- and it takes a long time to get to a court after all that.
7 By that time this case -- this deal is done.

8 If the FTC still thinks that they're right, give our
9 merger a chance; they can come back and sue us two years from
02:39:24 10 now if they want to. Most of the cases I tried, your Honor,
11 were post acquisition cases. The last case they talk about in
12 this region was a post acquisition case. They do it all the
13 time.

14 Now, at this point --

02:39:37 15 THE COURT: Is that the Evanston --

16 MR. ROBERTSON: -- let me --

17 THE COURT: -- Evanston case you're referencing?

18 MR. ROBERTSON: Sir?

19 THE COURT: Evanston?

02:39:45 20 MR. ROBERTSON: Yes, sir. That was a post
21 acquisition case. It was long after the acquisition, in fact,
22 about 12 years ago. The market has changed a lot since then.
23 Northwestern Memorial has all these new places up and along
24 the lakeshore. That's in the last four years. It wasn't
02:39:59 25 there 12 years ago.

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2016, I caused the foregoing document to be electronically filed with the Secretary of the Commission using the Federal Trade Commission's e-filing system, causing the document to be served on all of the following registered participants:

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

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 delivered via electronic mail a copy of the foregoing document

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CERTIFICATE FOR ELECTONIC 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.

May 27, 2016

By: s/ Emily Bowne