

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



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

**In the Matter of**

**Impax Laboratories, Inc.,  
a corporation.**

**Docket No. 9373**

**JOINT MOTION FOR A LATER EVIDENTIARY HEARING DATE**

Dated: June 7, 2017

Pursuant to Commission Rule of Practice 3.21(c)(1), Complaint Counsel and Respondent Impax Laboratories, Inc. jointly move the Commission for an order setting a later hearing date of October 24, 2017 to accommodate a brief five-week extension of the discovery schedule. There is good cause for such an order: a brief extension of the discovery schedule will permit an orderly and efficient completion of fact discovery that will minimize any potential burden on witnesses and third parties.

1. The hearing in this matter is currently set for September 19, 2017. Fact discovery is ongoing and scheduled to conclude on July 7, 2017. Depositions have begun, and at least 15 more are scheduled between now and the end of fact discovery. Two more are scheduled after the fact discovery cut-off as well. Most of the witnesses are third parties—either former employees of Impax, or current or former employees of Endo Pharmaceuticals Inc., the other party to the agreement Complaint Counsel challenges.

2. In the last few weeks, a significant discovery dispute has arisen between the parties. Complaint Counsel has expressed concern that it was receiving relevant witness documents the day (or night) before that witness's deposition, impeding its ability to use those documents in preparation for the deposition. On June 1, Complaint Counsel filed a motion to compel on this issue. It sought an order requiring Impax to either produce relevant witness documents at least four days prior to the deposition, or allow the witness to be re-called at a later date in Washington, D.C. to be questioned on any late-produced documents.

3. Impax's position is that it has engaged in a good faith effort to produce each witness' documents in a timely fashion, but due to the extensive and time-consuming nature of Impax's document gathering, review, and production efforts, as well as logistical issues with its vendor, it is not possible for Impax to guarantee that all relevant documents will be produced

multiple days in advance of each deposition as presently scheduled. Nor is Impax willing to ask its employees and former employees to sit for multiple depositions

4. Both parties wish to minimize the disruption to the schedule and burden on witnesses that might result from being re-called for a second deposition to testify about certain documents. But Complaint Counsel is not willing to forgo its argument that it is entitled to receive relevant documents a reasonable amount of time in advance of a deposition, something that Impax is not in a position to do under the current schedule. Impax has agreed, however, that it can complete its production of documents by July 7, 2017 – the current fact discovery deadline. A modest extension of the trial date would allow the parties to seek a modification of the discovery schedule to allow the parties to re-schedule the remaining depositions on or after July 7, 2017, at which time Complaint Counsel will have had sufficient time to review relevant witness documents in preparation for depositions.

5. Impax and Complaint Counsel respectively request that the Commission set October 24, 2017 for the evidentiary hearing.

6. If the Commission grants this Joint Motion for a Later Evidentiary Hearing, the parties intend to jointly request that Judge Chappell modify the remaining discovery and pre-trial deadlines to conform with the new hearing date.

Dated: June 7, 2017

Respectfully submitted,

/s/ Bradley S. Albert  
Bradley S. Albert  
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*Counsel for Impax Laboratories, Inc.*

**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.

June 7, 2017

By: /s/ Nicholas A. Leefer  
Attorney

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**[PROPOSED] ORDER**

Having carefully considered the Joint Motion for a Later Evidentiary Hearing Date, all related evidence, and all applicable law, it is hereby ORDERED AND ADJUDGED that the Joint Motion is GRANTED.

Chief Administrative Law Judge Chappell is hereby directed that the hearing date is moved to October 24, 2017. *See* Section 3.21(c)(1) of the Commission Rule of Practice, 16 C.F.R. § 3.21(c)(1).

ORDERED:

By the Commission.

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Donald S. Clark  
Secretary

SEAL

ISSUED:

Notice of Electronic Service

**I hereby certify that on June 07, 2017, I filed an electronic copy of the foregoing Joint Motion for a Later Evidentiary Hearing Date, with:**

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

Donald Clark  
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**I hereby certify that on June 07, 2017, I served via E-Service an electronic copy of the foregoing Joint Motion for a Later Evidentiary Hearing Date, upon:**

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**I hereby certify that on June 07, 2017, I served via other means, as provided in 4.4(b) of the foregoing Joint Motion for a Later Evidentiary Hearing Date, upon:**

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