

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



ORIGINAL

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In the Matter of )

Impax Laboratories, Inc., )  
a corporation, )

Respondent. )  
\_\_\_\_\_

DOCKET NO. 9373

**ORDER DENYING WITHOUT PREJUDICE COMPLAINT  
COUNSEL'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

**I.**

On June 2, 2017, Federal Trade Commission ("FTC" or "Commission") Complaint Counsel filed a Motion to Compel Timely Production of Documents ("Motion"). Respondent Impax Laboratories, Inc. ("Respondent" or "Impax") filed an opposition to the Motion on June 9, 2017 ("Opposition"). As set forth below, the Motion is DENIED WITHOUT PREJUDICE.

**II.**

Complaint Counsel argues that it is entitled during discovery to receive documents from Respondent relating to a deposition witness "within a reasonable time before [the] deposition" and that Respondent's asserted failure to do so thus far has prejudiced Complaint Counsel's ability to effectively conduct depositions. Asserting that there are a number of depositions scheduled to take place in the near future, Complaint Counsel seeks an order (1) requiring Respondent to "produce all documents involving or relating to a [deposition] witness at least four business days before the deposition of such witness," and (2) providing that if Respondent fails to produce documents by that deadline, Complaint Counsel shall be entitled to recall the witness for additional deposition questioning regarding "any late-produced documents." Motion Proposed Order.

Respondent asserts that Complaint Counsel agreed that Respondent would produce documents in response to Complaint Counsel's document requests on a rolling basis, and that Respondent has been diligent in producing documents, including in advance of scheduled depositions. Respondent argues that it is not obligated, by the FTC Rules of Practice, case law, or the Scheduling Order issued in this case, to tie its production of documents to the timing of


depositions scheduled by Complaint Counsel and that under the Scheduling Order, Respondent has until July 7, 2017 to complete its document production.

### III.

On June 7, 2017, Complaint Counsel and Respondent filed with the Commission a Joint Motion for a Later Evidentiary Hearing Date, seeking to reset the hearing date in this matter from September 19, 2017 to October 24, 2017 (“Joint Motion”). In support of the Joint Motion, the parties recite the dispute that is the subject of the instant Motion, and state that “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.” Joint Motion at 2. The parties further state that “[i]f 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 to the new hearing date.” *Id.*

Based on the pendency of the Joint Motion, including the possibility that the relief requested by Complaint Counsel in the instant Motion may be rendered moot, Complaint Counsel’s Motion is DENIED WITHOUT PREJUDICE.

ORDERED:

  
D. Michael Chappell  
Chief Administrative Law Judge

Date: June 12, 2017

Notice of Electronic Service

**I hereby certify that on June 12, 2017, I filed an electronic copy of the foregoing Order Denying Without Prejudice Counsel's Motion Re: Production of Documents, with:**

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

Donald Clark  
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**I hereby certify that on June 12, 2017, I served via E-Service an electronic copy of the foregoing Order Denying Without Prejudice Counsel's Motion Re: Production of Documents, upon:**

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**I hereby certify that on June 12, 2017, I served via other means, as provided in 4.4(b) of the foregoing Order Denying Without Prejudice Counsel's Motion Re: Production of Documents, upon:**

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