

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

In the Matter of

**Hackensack Meridian Health, Inc.,
a corporation,**

and

**Englewood Healthcare Foundation,
a corporation.**

Docket No. 9399

JOINT MOTION TO AMEND SCHEDULING ORDER

Complaint Counsel and Respondents, Hackensack Meridian Health, Inc. (“HMH”), and Englewood Healthcare Foundation (“Englewood”), jointly move to amend the Scheduling Order entered by this Court on December 28, 2020. The Parties make this motion in conjunction with a Joint Expedited Motion for a Continuance of Administrative Proceedings that will be submitted shortly and will seek to postpone commencement of the administrative hearing that currently is scheduled to begin on June 15, 2021 for 30 days, *i.e.*, until July 15, 2021. The Parties respectfully request this Court to extend the imminent, remaining pre-trial deadlines in the Scheduling Order to the furthest extent possible, so as to avoid potentially unnecessary expense and burden on nonparties and the Court while the Parties’ joint expedited motion is pending before the Commission. If the Commission does not move the trial date, these amended pre-trial deadlines will still enable the Parties to commence the trial as scheduled, on June 15, 2021. If the Commission does move the hearing date, this Court will have saved approximately two dozen nonparties—nearly all of which are hospitals and others in the healthcare industry that continue to be engrossed in challenges presented by the global pandemic—meaningful expense and burden during the interim while the

Parties' joint motion is pending before the Commission. If this Court grants this motion, but the Commission declines to enter the requested stay, the Parties are prepared to proceed in a manner that does not require that the Court have decided all of the motions for in camera treatment prior to the trial.

On December 4, 2020, the Commission filed a complaint in the United States District Court for the District of New Jersey seeking a temporary restraining order and a preliminary injunction to prevent Respondents from consummating the transaction that is the subject of this case. *FTC v. Hackensack Meridian Health, Inc., et al.*, No. 2:20-cv-18140-JMV-JBC (D.N.J.). The preliminary injunction hearing commenced on May 10, 2021 before Judge John Michael Vazquez. The preliminary injunction hearing concluded on May 18, 2021, and the District Court has scheduled closing arguments for June 2, 2021. The District Court will then take the matter under advisement following closing arguments, and the Parties anticipate a decision within the next several months.

In light of the forthcoming ruling in the preliminary injunction proceeding, and the likelihood that the ruling will cause these administrative proceedings to be suspended or rendered moot, Complaint Counsel and Respondents respectfully request that the Scheduling Order be amended to move certain deadlines. Among the most pressing deadlines is that motions for in-camera treatment are currently due to be filed by nonparties on May 24. Amending the scheduling order will move that date until June 7, reducing the risk that many nonparty healthcare providers and others, who may have confidential information used or witnesses called at the administrative trial, will incur unnecessary expense and burden over the coming days and weeks on pre-trial preparation and commencing the administrative trial, only to have the trial permanently suspended shortly thereafter. These extensions will likewise also save this Court from potentially unnecessary expenditures of time and resources.

This is the first request the Parties have made to revise the Court’s Scheduling Order. The parties hereby request the following amendments detailed below:

| Action | Current Deadline | Proposed Deadline |
|--|------------------|-------------------|
| Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits | May 20, 2021 | May 20, 2021 |
| Deadline for filing motions <i>in limine</i> to preclude admission of evidence. <i>See</i> Additional Provision 13 | May 24, 2021 | June 7, 2021 |
| Deadline for filing motions for <i>in camera</i> treatment of proposed trial exhibits. <i>See</i> Additional Provision 12. | May 24, 2021 | June 7, 2021 |
| Deadline for filing responses to motions <i>in limine</i> to preclude admission of evidence | June 1, 2021 | June 10, 2021 |
| Deadline for filing responses to motions for <i>in camera</i> treatment of proposed trial exhibits | June 1, 2021 | June 10, 2021 |
| Exchange and provide a courtesy copy to ALJ of objections to final proposed witness lists and exhibit lists. The parties are directed to review the Commission’s Rules on admissibility of evidence before filing objections to exhibits | June 1, 2021 | June 10, 2021 |
| Complaint Counsel files pretrial brief supported by legal authority | June 2, 2021 | June 7, 2021 |
| Exchange proposed stipulations of law, facts, and authenticity | June 8, 2021 | June 10, 20021 |
| Respondents’ Counsel files pretrial brief supported by legal authority | June 9, 2021 | June 11, 2021 |
| Final prehearing conference to begin at 1:00 p.m. Eastern Time | June 11, 2021 | June 14, 2021 |
| Commencement of Hearing, to begin at 10:00 a.m. Eastern Time | June 15, 2021 | June 15, 2021 |

A Proposed Order is attached.

Dated: May 19, 2021

Respectfully submitted,

/s/ Kenneth M. Vorrasi

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[PROPOSED] ORDER AMENDING SCHEDULING ORDER

This matter having come before the Court upon the Joint Motion to Amend the Scheduling Order, and having considered the position of the Parties, it is hereby ORDERED that the Scheduling Order in the above-captioned matter is amended to reflect the agreed-upon dates provided in the Joint Motion.

All other provisions of the Scheduling Order shall remain in effect.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2021, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
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The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
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I also certify that I caused the foregoing document to be served via email to:

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By: s/ Jonathan Lasken
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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.

May 19, 2021

By: s/ Jonathan Lasken
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