

ORIGINAL

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



In the Matter of)
Phoebe Putney Health System, Inc.)
a corporation, and)
)
Phoebe Putney Memorial Hospital, Inc.)
a corporation, and)
)
Phoebe North, Inc.)
a corporation, and)
)
HCA Inc.)
a corporation, and)
)
Palmyra Park Hospital, Inc.)
a corporation, and)
)
Hospital Authority of Albany-Dougherty County.)
_____)

Docket No. 9348

[PUBLIC] VERSION

UNOPPOSED EMERGENCY REQUEST TO REVISE SCHEDULING ORDER

Pursuant to Rules 3.22 and 4.3(b) of the Rules of Practice of the Federal Trade Commission (“FTC Rules”), 16 C.F.R. §§ 3.22, 4.3(b), all Respondents - Hospital Authority of Albany-Dougherty County, Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., Phoebe North, Inc., HCA Inc., and Palmyra Park Hospital, Inc., (collectively “Respondents”) respectfully request an Order further revising the Scheduling Order in the above captioned matter.¹ In support of this motion, Respondents state as follows:

¹ Respondents believe that the FTC does not have jurisdiction over them. As explained in paragraph 4 below, the USDC MD GA has issued an order dismissing the FTC’s Motion for a Preliminary Injunction, finding the “transaction,” even as defined by Complaint Counsel, to be immune from federal antitrust laws. This Request should not be considered in any way to conflict with Respondents’ view that the Commission lacks jurisdiction.

1. On April 19, 2011, the Federal Trade Commission (“FTC”) filed a Complaint, Motion for a Temporary Restraining Order, and Motion for a Preliminary Injunction in United States District Court for the Middle District of Georgia (“USDC MD GA”). Simultaneously, on April 19, 2011, Complaint Counsel commenced this administrative action.
2. On April 21, 2011, Judge W. Louis Sands of the USDC MD GA granted the FTC’s Motion for a Temporary Restraining Order.
3. On May 26, 2011, this Court held a scheduling conference, and on May 31, 2011 issued a Scheduling Order.
4. On June 27, 2011, after extensive briefing and an all day hearing, the USDC MD GA dismissed with prejudice the FTC’s Complaint, ruling that the “transaction” as described by Complaint Counsel is immune from federal antitrust laws, denied the FTC’s Motion for Preliminary Injunction, dissolved the Temporary Restraining Order and granted Respondents’ Motion to Dismiss and Vacate the Temporary Restraining Order (attached).
5. On June 28, 2011, the FTC filed in the USDC MD GA a Notice of Appeal to the Eleventh Circuit.
6. On June 29, 2011, the FTC filed an Emergency Motion for an Injunction Pending Appeal and to Expedite the Appeal.
7. On July 1, 2011, Respondents filed an Unopposed Request to Revise Scheduling Order and an Unopposed Motion for Stay.
8. On July 5, 2011, this Court granted the Unopposed Motion to Revise Scheduling Order.
9. On July 6, 2011, the Eleventh Circuit granted without prejudice the FTC’s Motion for an Injunction Pending Appeal and granted the FTC’s Motion to Expedite the Appeal.
10. On July 7, 2011, this Court issued an Order Certifying the Unopposed Motion to Stay, recommending that the Commission stay the administrative hearing proceedings pending

the outcome of the appeal to the Eleventh Circuit. As of the date of this request, the Commission has not ruled on the Unopposed Motion to Stay.

11. On July 8, 2011, the Eleventh Circuit vacated and corrected its July 6, 2011 Order. The Eleventh Circuit issued a new Order granting the Motion for an Injunction Pending Appeal and motion to Expedite the Appeal, with Judge Hull dissenting on the issuance of the injunction and concurring with the motion to expedite the appeal (attached).
12. Also on July 8, 2011, the Clerk of the Eleventh Circuit tentatively set the case for oral argument for the week of October 3, 2011.
13. Pursuant to this Court's July 5, 2011 Order granting the Unopposed Motion to Revise Scheduling Order, Complaint Counsel, Respondents, and third-parties have quickly approaching deadlines.
14. Because the Commission has not yet ruled on the Unopposed Motion for Stay, and in a continued effort to avoid unnecessary expense and burden on all parties, Respondents respectfully request that the Scheduling Order in this matter be revised as outlined below:
 - a. Move from July 15, 2011 to July 20, 2011 the deadline for issuing document requests, requests for admission, interrogatories and subpoena duces tecum.²
 - b. Move from July 20, 2011 to July 25, 2011, the date for which Complaint Counsel must provide its expert witness list;
 - c. Move from July 20, 2011 to July 25, 2011 the deadline for Respondents' Counsel to provide expert witness lists.

15. In this Court's Order granting the Unopposed Motion to Revise Scheduling Order, this Court ordered that no discovery, third party subpoena responses, motions to quash, or

² Respondents do not seek relief from the requirement to provide preliminary witness lists on July 15, 2011 in order to facilitate ongoing meet and confer discussions about witnesses and the necessity for Complaint Counsel to take certain noticed depositions.

responses to motions to quash be due before July 18, 2011. Respondents request this date to be amended to July 20, 2011.³

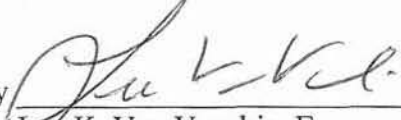
16. The parties have conferred and Complaint Counsel do not oppose this Emergency Request to Revise Scheduling Order but advise the Court that, if Respondents' Motion to Stay now pending before the Commission is not granted, further revisions to the existing Scheduling Order may be necessary.

WHEREFORE, Respondents respectfully request that the ALJ enter an Order revising the Scheduling Order, as set forth in this motion. A proposed order is attached hereto for the convenience of the ALJ.

³ Respondents state that this Request should not be considered in any way to conflict with Respondents Emergency Motion to Revise Scheduling Order. Respondents are making this Request in an effort to allow the Commission time to Rule on the Unopposed Motion to Stay and allow this Court time to rule on the Emergency Request to Revise Scheduling Order.

Dated: July 14, 2011

Respectfully submitted,

By 

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Docket No. 9348

[PROPOSED] ORDER

Having reviewed the Unopposed Emergency Request to Revise Scheduling Order, it is hereby

ORDERED that the deadline for issuing document requests, requests for admission, interrogatories and subpoena duces tecum be moved to July 20, 2011;

ORDERED that the deadline for Complaint Counsel to provide its expert witness list be moved to July 25, 2011;

ORDERED that the deadline for Respondents' Counsel to provide their expert witness lists be moved to July 29, 2011;

ORDERED that no discovery or third party subpoena response shall be due before July 20, 2011. Responses to outstanding discovery requests due on or before July 18 are now due on July 20, 2011.

D. Michael Chappell
Chief Administrative Law Judge

Dated:

CERTIFICATE OF SERVICE

I hereby certify that this 14th day of July, 2011 a true and correct copy of the foregoing Unopposed Emergency Request to Revise Scheduling Order was filed via FTC e-file, with the paper original and a true and correct copy of the paper original via U.S. First Class Mail to:

Donald S. Clark
Secretary
Federal Trade Commission
Room H113
600 Pennsylvania Avenue, NW
Washington, DC 20580
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by electronic mail and U.S. First Class Mail to:

The Honorable D. Michael Chappell
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and by electronic mail to the following:

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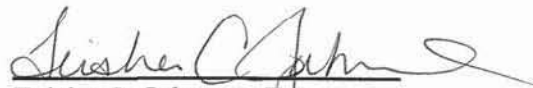
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