

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Lina M. Khan, Chair
Rebecca Kelly Slaughter
Christine S. Wilson
Alvaro M. Bedoya

In the Matter of)	
)	
Meta Platforms, Inc.,)	Docket No. 9411
a corporation, et al.)	
)	PUBLIC
Respondents.)	
)	

**JOINT EXPEDITED MOTION TO CONTINUE THE
EVIDENTIARY HEARING UNTIL FEBRUARY 13, 2023**

Complaint Counsel and Respondents Meta Platforms, Inc., Within Unlimited, Inc., and Mark Zuckerberg jointly move to continue the commencement of the administrative hearing currently scheduled to begin on January 19, 2023 to February 13, 2023—which is approximately two weeks after a decision is expected on the FTC’s request for a preliminary injunction in the parallel federal court proceeding. The parties agreed to seek this continuance after Chief Administrative Law Judge Chappell directed the parties to “confer about filing a joint motion to the Commission[] requesting expedited review and seeking a continuance or extension of the trial date until 2 weeks after a ruling by the district court in the pending preliminary injunction proceeding.” Ex. A. Judge Chappell issued this directive because a “continuance or extension of the date for the administrative trial will conserve the resources of the parties, and nonparties, and promote efficient judicial administration” given that the federal court’s decision “may well result in the withdrawal of [the Part 3] case.” *Id.* Moreover, the Commission has routinely granted

continuances in similar circumstances. The parties thus jointly request that the Commission continue the start of the evidentiary hearing until February 13, 2023.

BACKGROUND

On July 27, 2022, the FTC filed a Complaint for a Temporary Restraining Order and Preliminary Injunction in the United States District Court for the Northern District of California pursuant to Section 13(b) of the Federal Trade Commission Act. *See FTC v. Meta Platforms, Inc.*, No. 5:22-cv-04325-EJD, ECF No. 1 (N.D. Cal. 2022). The district court held an evidentiary hearing on the FTC's preliminary injunction request from December 8 to December 20, 2022, and the district court told the parties to expect a decision by January 31, 2023. For this reason, the parties recently stipulated to extend the TRO preventing the consummation of the proposed acquisition to January 31, 2023 or the first business day after whenever the district court issues its decision on the FTC's preliminary injunction, whichever occurs earlier. *Id.*, ECF No. 508.

Meanwhile, Complaint Counsel filed the complaint in this action on August 11, 2022, and the evidentiary hearing is scheduled to begin on January 19, 2023. Under the Scheduling Order, there are a substantial number of upcoming deadlines, including the deadline for expert depositions and pre-trial briefs. There are also numerous motions pending before Judge Chappell, including two motions in limine, a motion to compel, and a number of motions for *in camera* treatment.

On December 22, 2022, Judge Chappell directed the parties to “confer about filing a joint motion to the Commission, requesting expedited review[,] and seeking a continuance or extension of the trial date until 2 weeks after a ruling by the district court in the pending preliminary injunction proceeding.” Ex. A. Judge Chappell did so because “[w]hile the grant or denial of a preliminary injunction may well result in the withdrawal of [the Part 3] case, it is not apparent that any district court ruling will be issued prior to the trial date, and as you know, the Commission has

deferred ruling on Respondents' pending motion to stay until January 17, 2023.”¹ *Id.* Granting the continuance would thus, in Judge Chappell's view, “conserve the resources of the parties, and nonparties, and promote efficient judicial administration.” *Id.* On December 23, 2022, the parties conferred and agreed to file this motion.

ARGUMENT

FTC Rule 3.41(b) authorizes the Commission to “order a later date for the evidentiary hearing” for good cause. The Commission has routinely concluded that good cause exists when issuing a continuance would “provide additional time for resolution of the district court action, which could obviate the need for an administrative hearing, without unduly delaying the Commission proceeding.” *In re Hackensack Meridian Health, Inc.* 2021 WL 2379546, at *2, Dkt. 9399 (F.T.C. May 25, 2021); *see also In re Thomas Jefferson Univ.*, Dkt. 9392, 2020 WL 7237952, at *2 (F.T.C. Nov. 6, 2020) (60-day continuance); *In re RAG-Strifung*, Dkt. 9384, 2020 WL 91294, at *2–*3 (F.T.C. Jan. 2, 2020) (49-day continuance); *In re Sanford Health*, Dkt. 9376, 2017 WL 6604532, at *1–*2 (F.T.C. Dec. 21, 2017) (continuance until 21 days after federal appellate court decision); *In re The Penn State Hershey Med. Ctr.*, Docket No. 9368, 2016 WL 3345405, at *1 (F.T.C. June 10, 2016) (similar); *In re Advocate Health Care Network*, Docket No. 9369, 2016 WL 3182774, at *2 (F.T.C. June 2, 2016) (26-day continuance).

Under these well-reasoned decisions, good cause supports issuing a continuance here. The Part 3 evidentiary hearing is scheduled to begin less than two weeks before a decision is expected

¹ Respondents previously moved to stay this administrative proceeding until after a ruling on the FTC's motion for a preliminary injunction in federal court, and Complaint Counsel opposed the motion. *See* Resp. Mot., Aug. 26, 2022 (Dkt. No. 605429). Although Respondents still believe issuing such a stay is warranted, to avoid burdening the Commission with potentially duplicative motions practice, Respondents will withdraw that motion if this joint motion is granted.

on the FTC's preliminary injunction request. And as Judge Chappell recognized, the federal court's decision "may well result in the withdrawal of [the Part 3] case." Ex. A.

Granting a continuance is particularly warranted because it may preserve not only the resources of the FTC and the parties, but also third parties. "[T]he public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary." *In re Hackensack Meridian Health, Inc.* 2021 WL 2379546, at *2 (collecting cases). As Judge Chappell recognized, proceeding with the January 19 start date for the evidentiary hearing will require the parties, Judge Chappell (and his staff), and third parties to expend substantial resources given the numerous upcoming deadlines, pending motions, and need to prepare for the hearing. Ex. A. All of these expenditures would be unnecessary if the district court's decision obviates the need for this proceeding.

Moreover, if the federal district court's decision does not obviate the need for this administrative proceeding, continuing the evidentiary hearing until February 13, 2023 will not unduly delay resolution of this matter. Indeed, as the Commission has recognized, "a short delay in the start of the administrative hearing w[ill] not harm the Commission or the public interest should it be necessary for the administrative adjudication to go forward." Order Granting Continuance at 2, *In re Advocate Health Care Network*, D09369 (F.T.C. May 6, 2016). This is particularly true here because this Part 3 proceeding and the preliminary injunction proceedings in federal court have been proceeding in parallel for months—and fact discovery in Part 3 is already closed, expert reports have been served, and the parties are engaged in final pre-trial preparation for the hearing. The parties will thus be ready to try this case before Judge Chappell if necessary upon the expiration of the continuance.

CONCLUSION

For these reasons, the parties respectfully request that the Commission grant this motion.

Dated: December 27, 2022

Respectfully submitted,

By: /s/ Chantale Fiebig

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[Proposed] Order Granting The Parties’ Joint Expedited Motion for a Continuance

Having considered Respondents’ and Complaint Counsel’s joint expedited motion for a continuance of the commencement of the administrative hearing currently scheduled to begin on January 19, 2023, the motion is hereby GRANTED. The administrative hearing shall begin on February 13, 2023.

CERTIFICATE OF SERVICE

I hereby certify that, on December 27, 2022, 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:

April J. Tabor
Secretary of the Federal Trade Commission
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The Honorable D. Michael Chappell
Administrative Law Judge
FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW, Rm. H-110
Washington, D.C. 205080

I also certify that I caused the foregoing document to be served via email to:

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Jeanine Balbach
Michael Barnett
E. Eric Elmore
Justin Epner

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Counsel for Respondent Within Unlimited, 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 original filing, and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

/s/ Chantale Fiebig
Chantale Fiebig

Exhibit A

From: [Gross, Dana](#)
To: [Meta ALJ Case - Weil KH](#)
Subject: FW: Docket 9411 Meta Platforms et al.
Date: Friday, December 23, 2022 4:45:06 PM
Attachments: [12.22.22 Order Granting Respondents' Unopposed Motion for Leave to Call One Additional Expert Witness.pdf](#)

Dear Counsel:

Below is correspondence and an Order issued by Judge Chappell yesterday.

From: Gross, Dana
Sent: Thursday, December 22, 2022 5:22 PM
To: 1032-Meta-Within-DL <1032-Meta-Within-DL@ftc.gov>; ZUCKERBERG-ALJ@lists.kellogghansen.com; WithinFTC9411@hoganlovells.com
Cc: OALJ <OALJ@ftc.gov>
Subject: Docket 9411 Meta Platforms et al.

Dear Counsel:

Per Judge Chappell, in light of the numerous, pending pre-trial scheduling order deadlines and the approaching January 19, 2023 trial date, the parties are directed to confer about filing a joint motion to the Commission, requesting expedited review and seeking a continuance or extension of the trial date until 2 weeks after a ruling by the district court in the pending preliminary injunction proceeding. While the grant or denial of a preliminary injunction may well result in the withdrawal of our case, it is not apparent that any district court ruling will be issued prior to the trial date, and as you know, the Commission has deferred ruling on Respondents' pending motion to stay until January 17, 2023. A continuance or extension of the date for the administrative trial will conserve the resources of the parties, and nonparties, and promote efficient judicial administration.

Regards,

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