UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION, et al. Plaintiffs, v. LIFEWATCH INC., et al. Defendants.	Case No. 15cv5781 Judge Gary Feinerman Mag. Judge Jeffrey T. Gilbert

PLAINTIFFS' MOTION TO REOPEN DISCOVERY

Plaintiffs Federal Trade Commission and State of Florida, Office of the Attorney General, move this Court pursuant to Fed. R. Civ. P. 16(b)(4), to amend the scheduling order to reopen discovery until May 31, 2019. Pursuant to Rule 16, a scheduling order may be amended for good cause shown and with the judge's consent. Here there is good cause to amend the scheduling order to reopen discovery. First, significant time has passed since fact discovery closed, and Plaintiffs should be allowed to pursue evidence that Defendants' illegal telemarketing practices have continued in the intervening months. Second, reopening discovery would potentially resolve Defendants' pending motion *in limine* to exclude testimony due to their claimed inability to depose potential trial witnesses.

Good cause exists to amend the scheduling order and reopen discovery because nearly 17 months have passed since discovery closed on October 6, 2017. *See* Scheduling Order dated August 24, 2017 (Dkt. 233). Since that time, Plaintiffs have received numerous third-party complaints related to the Defendants' sale of medical alert systems. Plaintiffs request the opportunity to obtain and submit testimony from these witnesses, and to seek supplemental

discovery from Defendants relating to such information, for use at trial as further evidence of Defendants' wrongdoing.

Good cause further exists because reopening discovery could potentially resolve Defendants' motion *in limine* to exclude the testimony at trial of Messrs. Boling, Hilgar, and Settecase. Prior to the close of discovery, Defendants claimed their limited efforts to serve Messrs. Boling, Hilgar, and Settecase with deposition subpoenas were unsuccessful. Defendants subsequently filed a motion *in limine* asking the Court to either allow Defendants to depose these witnesses, or preclude them from testifying at trial. (Dkt. 372.) Plaintiffs' response to Defendants' motion is due on June 6, 2019. (Dkt. 400). Were this Court to reopen discovery until May 31, 2019, Defendants would have an opportunity to take the depositions of Messrs. Boling, Hilgar, and Settecase prior to the date Plaintiffs' response is due, thus potentially resolving their motion *in limine*.

Reopening discovery until May 31, 2019, will not cause additional delay because trial in this matter is not set to begin until July 15, 2019. Plaintiffs did not seek this relief previously because Defense counsel represented – including in open court – that their clients had accepted Plaintiffs' settlement offer. Despite that, after many months, Defendants still have not provided Plaintiffs with a signed consent order.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order reopening discovery until May 31, 2019.

Respectfully Submitted,

Dated: March 5, 2019

/s/Samantha Gordon
DAVID A. O'TOOLE
SAMANTHA GORDON
Federal Trade Commission, Midwest Region

230 South Dearborn Street, Suite 3030
Chicago, Illinois 60604
Telephone: (312) 960-5623
Facsimile: (312) 960-5600
Email: sgordon@ftc.gov

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

STATE OF FLORIDA

ASHLEY MOODY
Attorney General

/s/Paul Eric Courtright
PAUL ERIC COURTRIGHT
DONNA CECILIA VALIN
Office of the Attorney General
State of Florida
Department of Legal Affairs
Consumer Protection Division
135 W. Central Blvd., Suite 1000
Orlando, Florida 32801
Telephone: (407) 316-4840
Facsimile: (407) 245-0365
Email: Paul.Courtright@myfloridalegal.com

Attorneys for Plaintiff
OFFICE OF THE ATTORNEY GENERAL
STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS

CERTIFICATE OF SERVICE

I, Samantha Gordon, hereby certify that on March 5, 2019, I electronically filed PLAINTIFFS' MOTION TO REOPEN DISCOVERY, with the Court using the CM/ECF system, which will automatically send copies to any attorney of record in the case.

Respectfully Submitted,

/s/ Samantha Gordon
SAMANTHA GORDON
Federal Trade Commission
230 South Dearborn Street, Suite 3030
Chicago, Illinois 60603
Voice: (312) 960-5623
Fax: (312) 960-5600
email: sgordon@ftc.gov