IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 11-cv-00520-PAB-BNB

HEALTH GRADES, INC.,

Plaintiff,

v.

MDX MEDICAL, INC. d/b/a VITALS.COM,

Defendant.

PARTIES' JOINT MOTION TO ALLOW DEPOSITIONS BEYOND THE EXPERT DISCOVERY CUT-OFF; TO EXTEND THE DISPOSITIVE MOTION DEADLINE BY ONLY ONE WEEK; AND TO EXTEND THE PAGE LIMITS FOR SUMMARY JUDGMENT MOTIONS

Plaintiff Health Grades, Inc. ("Health Grades"), and Defendant MDx Medical, Inc. d/b/a Vitals.com ("MDx")(collectively, the "Parties"), by their respective undersigned counsel, pursuant to Federal Rules of Civil Procedure 16(b)(4), D.C.Colo.LCivR 6.1(C) and (D), D.C.Colo.LCiv.R 7.1, and Sections 12 and 13 of the Scheduling Order in this case, respectfully submit their Joint Motion to Allow Depositions Beyond the Expert Discovery Cut-Off; to Extend the Dispositive Motion Deadline by only one week; and to Extend the Page Limits for Future Summary Judgment Motions, and state in support:

Conferral pursuant to D.C.Colo.LCivR 7.1(A)

Undersigned counsel have conferred with each other regarding the relief requested herein and have agreed to the relief sought in this motion.

JOINT MOTION

1. Pursuant to the Court's Order dated July 30, 2012 [Dkt. 271], the current expert discovery cut-off deadline for this case is October 8, 2012, and the dispositive motion deadline is

October 22, 2012. The Parties seek a two-day extension of the expert discovery cut-off, through October 10, 2012, and an eight-day extension of the dispositive motion deadline, through October 30, 2012.

2. The Parties have scheduled the depositions of Richard G. Cooper and Brian W. Napper, MDx's technical and damages experts, on October 9 and 10, 2012, in Hemet, California and San Francisco, California, respectively. With these two depositions the Parties will have completed taking the depositions of each other's technical and damages experts in the case.

3. Pending before the Court is Health Grades' Motion to Preclude MDx's Advice of Counsel Defense or, Alternatively, to Compel Discovery Relating to Opinions of Counsel [Dkt. 219]. MDx has stipulated and agreed to produce Mr. Philip Braginsky, who authored the opinion on which MDx seeks to rely. Thus, if the Court denies Health Grades' request to preclude, the Parties will schedule and take the deposition of Mr. Braginsky forthwith, and neither party will use the Braginsky deposition to seek further fact or expert discovery.

4. The Parties have additionally conferred and agreed that an eight-day extension of the dispositive motion deadline, through October 30, 2012, will allow them sufficient time to adequately prepare and file their respective dispositive motions.

5. The Parties have additionally conferred and agreed that an extension of the page limitations for summary judgment briefing in the Civil Practice Rules for Judge Brimmer, Rule III(F)(3), from twenty pages for motions and response briefs and ten pages for reply briefs, to thirty pages and fifteen pages, respectively, will allow the parties to brief both liability and damages issues for summary judgment and thus potentially reduce the scope of trial considerably. This requested page limitation extension would be for briefing filed after the date

of this Motion, and the page limitations would not be impacted by briefing of the pending motion for summary judgment (Dkt. 195).

6. The requested timing extensions will not impact the Pretrial Conference scheduled for January 10, 2013. The Parties have sought amendments of the above deadlines on four previous occasions – see Docket #s 86, 132, 160 and 217. Copies of this Motion will simultaneously be served on Health Grades and MDx by their respective undersigned counsel.

WHEREFORE, for good cause shown, the Parties jointly and respectfully request that the Court grant their Motion and order the following:

(1) Expert discovery is extended through October 10, 2012, solely for the purpose of taking the depositions of Messrs. Cooper and Napper. If MDx may rely on the opinion of counsel defense after the Court resolves Health Grades' pending motion [Dkt. 219], the deposition of opinion counsel will be scheduled at a time convenient to the Parties within one month of the Court's ruling on the Health Grades' motion, and neither party will seek further fact or expert discovery based on that deposition;

(2) The dispositive motion deadline is extended through October 30, 2012; and

(3) The page limitations for summary judgment briefing in the Civil Practice Rules for Judge Brimmer, Rule III(F)(3), are extended from twenty pages for motions and response briefs and ten pages for reply briefs, to thirty pages and fifteen pages, respectively, and these page limitations shall apply to briefing submitted after the date of this Motion.

Respectfully submitted this 8th day of October, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2012, I electronically filed the **FOREGOING JOINT MOTION TO ALLOW DEPOSITIONS BEYOND THE EXPERT DISCOVERY CUT-OFF, TO EXTEND THE DISPOSITIVE MOTION DEADLINE BY ONLY ONE WEEK; AND TO EXTEND THE PAGE LIMITS FOR SUMMARY JUDGMENT MOTIONS** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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