

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

**In the Matter of**

**Altria Group, Inc.**

**and**

**JUUL Labs, Inc.**

**Docket No. 9393**

**JOINT MOTION FOR FIRST REVISED SCHEDULING ORDER**

Complaint Counsel and Respondents Altria Group, Inc. and JUUL Labs, Inc. respectfully move this Court for an order revising certain deadlines in this Court's August 4, 2020 Scheduling Order in order to accommodate the scheduling of depositions in this matter. The parties propose extending the deadline for fact discovery for one week to accommodate witness schedules and extending other deadlines, including deadlines for expert disclosures and deadlines for third party in camera filings, to accommodate the additional week of fact discovery. The date for the final prehearing conference is unchanged in the parties' proposal.<sup>1</sup> A proposed First Revised Scheduling Order is attached.

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<sup>1</sup> Respondents reserve the right to separately seek a continuation of the trial date in order to facilitate an in-person evidentiary hearing.

Dated: January 12, 2021

Respectfully submitted,

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BEFORE THE FEDERAL TRADE COMMISSION  
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**In the Matter of**

**Altria Group, Inc.**

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**JUUL Labs, Inc.**

**Docket No. 9393**

**[PROPOSED] FIRST REVISED SCHEDULING ORDER**

The dates in the August 4, 2020 Scheduling Order are hereby revised as follows:

- |                   |   |
|-------------------|---|
| January 19, 2021  | Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.  |
| February 8, 2021  | Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.   |
| February 15, 2021 | Deadline for Complaint Counsel to provide expert witness reports.   |
| March 1, 2021     | Complaint Counsel provides to Respondents' Counsel its final proposed exhibit list, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), and Complaint Counsel's basis of admissibility for each proposed exhibit. |

Complaint Counsel also provides its final proposed witness list, which shall include: (1) an indication whether each witness is designated as fact or expert witness; (2) a summary of the general topics of each witness' anticipated testimony; and (3) a good faith indication whether Complaint Counsel intends to seek leave to present the witness' testimony by video deposition. Complaint Counsel's proposed final witness list shall not include more than 25 fact witnesses, and shall not include more than three witnesses who did not appear on the supplemental witness lists provided by Complaint Counsel in accordance with the timeframes set forth above. No witness may be added to the final witness list who did not appear on

the supplemental witness list unless such witnesses have been deposed in their personal capacity in this litigation.

Complaint Counsel provides courtesy copies to ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.

March 15, 2021

Deadline for Respondents' Counsel to provide expert witness reports. Respondents' expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).

Respondents' Counsel provides to Complaint Counsel its final proposed exhibit list, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), and Respondents' basis of admissibility for each proposed exhibit.

Respondents' Counsel also provides each party's final proposed witness list, which shall include: (1) an indication whether each witness is designated as fact or expert witness; (2) a summary of the general topics of each witness' anticipated testimony; and (3) a good faith indication whether Respondents' Counsel intends to seek leave to present the witness' testimony by video deposition. Respondents' Counsel's proposed final witness list shall not include more than 25 fact witnesses, and shall not include more than three witnesses who did not appear on the supplemental witness lists provided by Respondents' Counsel in accordance with the timeframes set forth above. No witness may be added to the final witness list who did not appear on the supplemental witness list unless such witnesses have been deposed in their personal capacity in this litigation.

Respondents' Counsel provides courtesy copies to ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.

Additionally, Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).<sup>2</sup>

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<sup>2</sup> Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party or third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that party or third party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives notice of a party's intent to introduce such material. Commission Rule 3.45(b) states that parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days' notice of the proposed use of such material. To resolve this apparent conflict, the Scheduling

- March 25, 2021 Deadline for filing motions for *in camera* treatment of proposed trial exhibits. *See* Additional Provision 14.
- March 26, 2021 Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondents' expert reports. If material outside the scope of fair rebuttal is presented, Respondents will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondents).
- Additionally, 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.
- March 28, 2021 Complaint Counsel files pretrial brief supported by legal authority.
- March 29, 2021 Deadline for filing motions *in limine* to preclude admission of evidence, except to the extent such motions relate to any expert rebuttal report, in which case such motions must be made within four days after the deposition of the rebuttal expert. *See* Additional Provision 15.
- March 31, 2021 Deadline for depositions of experts, except any expert providing a rebuttal report, and exchange of expert related exhibits.
- April 2, 2021 Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- Exchange proposed stipulations of law, facts, and authenticity.
- April 6, 2021 Deadline for depositions of rebuttal experts.
- Deadline for filing responses to motions *in limine* to preclude admission of evidence, except to the extent such motions relate to any expert rebuttal report, in which case any such response must be within four days after the motion *in limine* is filed.
- April 8, 2021 Respondents' Counsel files pretrial brief supported by legal authority.
- April 9, 2021 Final prehearing conference to begin at 1:00 p.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

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Order requires that the parties provide 10 days' notice to the opposing party or third parties to allow for the filing of motions for *in camera* treatment.

The parties shall meet and confer prior to the prehearing conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits.

To the extent the parties have agreed to stipulate to any issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ one business day prior to the conference. At the conference, the parties' list of stipulations shall be marked as "JX1" and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.

Counsel may present any objections to the final proposed witness lists and exhibits. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as "JX2" and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

April 13, 2021 Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

All other deadlines and provisions of the August 4, 2020 Scheduling Order remain in effect.

ORDERED:

Date: [DATE]

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D. Michael Chappell  
Chief Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on January 12, 2021, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor  
Acting Secretary  
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, DC 20580

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

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By: s/ James Abell  
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*Counsel Supporting the Complaint*

**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.

January 12, 2021

By: s/ James Abell  
James Abell