

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



In the Matter of)
)
)
Impax Laboratories, Inc.,)
a corporation,)
)
Respondent.)

DOCKET NO. 9373

SECOND REVISED SCHEDULING ORDER

Pursuant to the Order Granting Joint Motion to Extend Discovery Schedule, issued on June 19, 2017, the remaining deadlines set forth in the Scheduling Order issued in this case on February 17, 2017 are hereby revised. All other provisions remain of the Scheduling Order, as supplemented by the Revised Scheduling Order issued on April 24, 2017 remain in effect, and are further supplemented herein (*see* prehearing conference instructions, below).

- July 24, 2017 - Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.
- July 28, 2017 - Respondent's Counsel provides expert witness list.
- August 11, 2017 - 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.
- August 18, 2017 - Deadline for Complaint Counsel to provide expert witness reports.
- September 5, 2017 - Deadline for Respondent's Counsel to provide expert witness reports (to be provided by 4 p.m. ET). Respondent's expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).

- September 13, 2017 - Complaint Counsel provides to Respondent's Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.
- Complaint Counsel serves courtesy copies on 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.
- September 20, 2017 - 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 Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent 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 Respondent).
- September 26, 2017 - Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.
- Respondent's Counsel serves courtesy copies on ALJ 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.
- September 27, 2017 - 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).¹ See Additional Provision 7.

¹ 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 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.

- October 2, 2017 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- October 4, 2017 - Deadline for filing motions *in limine* to preclude Admission of evidence. *See* Additional Provision 9.
- October 4, 2017 - Exchange and serve courtesy copy on ALJ 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.
- October 10, 2017 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- October 10, 2017 - Complaint Counsel files pretrial brief supported by legal authority.
- October 10, 2017 - Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
- October 11, 2017 - Exchange proposed stipulations of law, facts, and authenticity.
- October 13, 2017 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- October 17, 2017 - Respondent's Counsel files pretrial brief supported by legal authority.
- October 19, 2017 - Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

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.

At the final prehearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial and provide the exhibits to the court reporter. The parties shall confer and shall eliminate duplicative exhibits in advance of the final prehearing conference and, if necessary, during trial. For example, if CCX 100 and RX 200 are different copies of the same document, only one of those documents shall be offered into evidence. The parties shall agree in advance as to which exhibit number they intend to use. Counsel shall contact the court reporter regarding submission of exhibits.

October 24, 2017 - 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.

ORDERED:


D. Michael Chappell
Chief Administrative Law Judge

Date: June 19, 2017