

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

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In the Matter of )	
Altria Group, Inc., )	
a corporation, )	
) )	Docket No. 9393
and )	
) )	
JUUL Labs, Inc. )	
a corporation, )	
) )	
Respondents. )	
_____ )	

**ORDER GRANTING JOINT MOTION TO REVISE SCHEDULING ORDER  
AND FIRST REVISED SCHEDULING ORDER**

On January 12, 2021, Federal Trade Commission (“FTC”) Complaint Counsel and Respondents Altria Group, Inc. and JUUL Labs, Inc. (collectively, “Respondents”) filed a Joint Motion For Revised Scheduling Order. Specifically, the parties move for an order extending the deadline for fact discovery set forth in the August 4, 2020 Scheduling Order issued in this case by one week, in order to accommodate the schedules of deposition witnesses, and extending other deadlines, including deadlines for expert disclosures and deadlines for *in camera* filings, in accordance with the additional week of fact discovery. The Joint Motion is GRANTED except as modified herein.

The First Revised Scheduling Order is set forth below.

- 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 11, 2021 - Respondents' Counsel provides to Complaint Counsel their final proposed exhibit lists, 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 their final proposed witness lists, 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 lists 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 a 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 their

final proposed witness and exhibit lists, their basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including expert witnesses.

- March 11, 2021 - 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>1</sup>
- 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).
- March 22, 2021 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits. *See* Additional Provision 14.
- March 25, 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 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).
- March 26, 2021 - 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.

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<sup>1</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 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.

- March 30, 2021 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- March 31, 2021 - Deadline for depositions of experts, except any expert providing a rebuttal report, and exchange of expert related exhibits.
- April 1, 2021 - 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 2, 2021 - Exchange proposed stipulations of law, facts, and authenticity.
- April 6, 2021 - Deadline for depositions of rebuttal experts.
- April 8, 2021 - Respondents' Counsel files pretrial briefs supported by legal authority.
- April 12, 2021 - Final prehearing conference to begin at 1:00 p.m. Eastern Time.

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. Eastern Time.

All other deadlines and provisions of the August 4, 2020 Scheduling Order are unchanged, except that:

1. Additional provision 1 in the August 4, 2020 Scheduling Order is replaced with the following revised additional provision 1:

For any correspondence to the Office of Administrative Law Judges that is required, the parties shall use electronic mail to the following email address: OALJ@FTC.GOV.

2. The August 4, 2020 Scheduling Order is revised to add the following additional provision:

Due to ongoing public health concerns related to COVID-19, and in the likely event that the evidentiary hearing in this matter will be conducted remotely by video conference, the parties are encouraged, in advance of the hearing, to take expert depositions for the purpose of perpetuating trial testimony (i.e., a trial deposition) and to submit such trial testimony as an exhibit in lieu of presenting the expert's testimony via live video at trial. This trial deposition may be conducted in addition to any deposition of an expert witness for purposes of discovery (discovery deposition). Although the parties are encouraged to submit trial depositions in lieu of live video testimony at trial for all expert witnesses in the case, you may choose to do trial depositions for all or fewer than all experts.

ORDERED:



D. Michael Chappell  
Chief Administrative Law Judge

Date: January 13, 2021