

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.	)	

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**SECOND REVISED SCHEDULING ORDER**

On February 22, 2021, the Commission issued an order directing that the evidentiary hearing commence on June 2, 2021, and that a revised prehearing scheduling order be issued. Upon consideration of the parties' Joint Motion for Second Revised Scheduling Order, the parties' requests are adopted, except as modified herein. The dates remaining in the January 13, 2021 First Revised Scheduling Order are hereby revised as follows:

March 8, 2021           -       Complaint Counsel provides its final proposed witness list, which shall include: (1) an indication whether each witness is designated as fact or expert witness; and (2) a summary of the general topics of each witness' anticipated testimony.<sup>1</sup> 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. 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.

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<sup>1</sup> At the time the original scheduling order was issued on August 4, 2020, it was unclear whether the evidentiary hearing would take place live or by video. Pursuant to the Commission's February 22, 2021 Order, the evidentiary hearing will take place by video. Therefore, the clause in the August 4, 2020 Scheduling Order that directed counsel to provide a good faith indication whether they intend to seek leave to present witness testimony by video deposition is deleted. The parties are directed to the new Additional Provision allowing them to submit trial depositions in lieu of live video testimony at trial.

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

- March 11, 2021 - Respondents' Counsel provides each party's final proposed witness list, which shall include: (1) an indication whether each witness is designated as fact or expert witness; and (2) a summary of the general topics of each witness' anticipated testimony.<sup>2</sup> 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. 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 their final proposed witness lists 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 reports shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
- 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 31, 2021 - Deadline for depositions of experts, except any expert providing a rebuttal report, and exchange of expert related exhibits.
- April 6, 2021 - Deadline for depositions of rebuttal experts.
- April 12, 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

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<sup>2</sup> See n.1.

expert related exhibits), and Complaint Counsel's basis of admissibility for each proposed exhibit.

Complaint Counsel provides courtesy copies to ALJ of its final proposed exhibit list and its basis of admissibility for each proposed exhibit.

- April 22, 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 provides courtesy copies to ALJ of their final proposed exhibit lists and their basis of admissibility for each proposed exhibit.
- April 22, 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>3</sup>
- May 5, 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.
- May 7, 2021 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits. *See* Additional Provision 14.
- May 10, 2021 - Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 15.
- May 14, 2021 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- May 14, 2021 - Complaint Counsel files pretrial brief supported by legal authority.

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<sup>3</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.

- May 17, 2021 - Deadline for filing responses to motions *in limine* to preclude admission of evidence.
- May 21, 2021 - Exchange proposed stipulations of law, facts, and authenticity.
- May 25, 2021 - Respondents' Counsel files pretrial briefs supported by legal authority.
- June 1, 2021 - Final prehearing conference to begin at 2:00 p.m. in Eastern Time and to take place virtually via videoconference.

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.

- June 2, 2021 - Commencement of Hearing, to begin at 10:00 a.m. Eastern Time and to take place virtually via videoconference.

All Additional Provisions of the August 4, 2020 Scheduling Order and the January 13, 2021 First Revised Scheduling Order remain in effect, except that Additional Provision 24 from the August 4, 2020 Scheduling Order is modified as follows:

Properly admitted deposition testimony, including discovery depositions or trial depositions, and whether or not recorded by video, and properly admitted investigational hearing transcripts, are part of the record. Unless permitted by the Administrative Law Judge with three days' prior approval, such depositions or excerpts of depositions shall not be read or played during the evidentiary hearing in order to provide that testimony, but may be used in the examination of live witnesses.

The following Additional Provision is also added:

Due to ongoing public health concerns related to COVID-19, the evidentiary hearing in this matter will be conducted remotely by video conference. To accommodate safety or other concerns of witnesses and attorneys and staff, the parties may, in advance of the hearing, take trial depositions of fact witnesses who had been deposed before the close of discovery and to submit such prior testimony (as video and/or transcript of deposition testimony) as an exhibit in lieu of presenting the fact witness' testimony via live video at trial. Although the parties may submit trial depositions in lieu of live video testimony at trial for all fact witnesses in the case, you may choose to do trial depositions for all or fewer than all fact witnesses.

ORDERED:



D. Michael Chappell  
Chief Administrative Law Judge

Date: March 4, 2021