

**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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**ORDER DENYING WITHOUT PREJUDICE  
RESPONDENTS’ MOTION TO ENFORCE DISCOVERY  
CUTOFF AND EXCLUDE DECLARATION**

**I.**

On February 22, 2021, Respondents Altria Group, Inc. and JUUL Labs, Inc. (collectively, “Respondents”) filed a Motion to Enforce the Discovery Cutoff and Exclude Declaration (“Motion”<sup>1</sup>). Specifically, Respondents seek an order barring the admission or use in this matter of a declaration (“Declaration”) produced in discovery by Federal Trade Commission (“FTC” or “Commission”) Complaint Counsel unless the Declarant is deposed by March 26, 2021. Complaint Counsel submitted an opposition to the Motion on March 4, 2021 (“Opposition”). As set forth below, the Motion is DENIED WITHOUT PREJUDICE.

**II.**

Based on a review of the Motion, Opposition, and the exhibits submitted therewith, the following is a summary of the relevant facts.

Complaint Counsel produced the Declaration to Respondents in May 2020. In December 2020, Respondents began discussions with the Declarant’s counsel to schedule a deposition. In early January 2021, the Declarant’s counsel agreed to a date of January 28, 2021 for a deposition, and Respondents sent the Declarant’s counsel a deposition subpoena directed to the Declarant.

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<sup>1</sup> On March 3, 2021, Respondents filed a Supplement to their Motion.

On January 25, 2021, the Declarant's counsel informed Respondents that the Declarant had relocated to Switzerland and would not participate in a remote deposition due to restrictions under Swiss law. The Declarant's counsel also advised that the Declarant would be unable to travel to a country where the Declarant could lawfully participate in a remote deposition because of travel restrictions related to COVID-19.

Respondents have continued communicating with the Declarant's counsel but there has been no indication that circumstances will change and no new deposition date has been provided. Complaint Counsel has also been endeavoring to schedule the Declarant's deposition, by pursuing the approval of Swiss authorities to take the deposition in Switzerland and, alternatively, by attempting to arrange the Declarant's travel to the United States or to a third county for the purpose of providing deposition testimony.

### III.

The Scheduling Order in this case, as revised, set February 8, 2021 as the deadline for concluding depositions of fact witnesses. It is undisputed that the Declarant was not deposed by that date, despite reasonable efforts by Respondents; however, Complaint Counsel is continuing its efforts to obtain the deposition of the Declarant, and Rule 3.21(c)(2) allows a party to seek an extension of any scheduling order deadline, where the party can demonstrate good cause. 16 C.F.R. § 3.21(c)(2) ("The Administrative Law Judge may, upon a showing of good cause, grant a motion to extend any deadline or time specified in this scheduling order other than the date of the evidentiary hearing."). It is premature at this time to determine whether, if such a motion were to be filed, the circumstances would support good cause to allow a late deposition of the Declarant.

It is also premature to rule on the admissibility of the Declaration because it is not apparent that the Declaration is going to be offered as an exhibit. Complaint Counsel's final exhibit list is not due until April 12, 2021. Additional Provision 9 of the Scheduling Order makes clear that "no declaration shall be admitted unless a fair opportunity was available to depose the declarant." Respondents retain the right to object to the admissibility of the Declaration should it appear on Complaint Counsel's final exhibit list, including by motion *in limine*.

### IV.

For all the foregoing reasons, Respondents' Motion is DENIED WITHOUT PREJUDICE.

ORDERED:



D. Michael Chappell  
Chief Administrative Law Judge

Date: March 16, 2021