

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

**In the Matter of**

**Altria Group, Inc.  
a corporation,**

**and**

**JUUL Labs, Inc.  
a corporation**

**Docket No. 9393**

**RESPONDENTS' SUPPLEMENTAL FILING IN SUPPORT OF MOTION TO  
ENFORCE THE DISCOVERY CUTOFF AND EXCLUDE A DECLARATION**

On March 2, 2021, Respondents filed a letter with the Court describing intervening circumstances relevant to Respondents' February 22, 2021 Motion to Enforce the Discovery Cutoff and Exclude a Declaration (the "February 22 Motion"). Shortly thereafter, counsel for Respondent Juul Labs, Inc. was contacted by the Secretary's Office and asked to re-style the letter as a Supplemental Memorandum in support of the February 22 Motion. The Supplemental Memorandum and a revised Proposed Order are attached.

Dated: March 3, 2021

By: s/ David I. Gelfand

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**PROPOSED ORDER**

Upon Respondents' February 22, 2021 Motion to Enforce the Discovery Cutoff and Exclude a Declaration (the "February 22 Motion") and Respondents' March 3, 2021 Supplemental Memorandum in Support of the February 22 Motion, and having considered the papers in support and in opposition thereto, it is hereby

ORDERED, that if Complaint Counsel wish to admit or use the declaration discussed in the February 22 Motion (the "Declaration"), they must make the declarant available for a deposition by March 26, 2021, and it is further

ORDERED that unless Respondents are provided a fair opportunity to depose the declarant by March 26, 2021, the Declaration will be deemed inadmissible and may not be used in this matter pursuant to Additional Provision 9 of the August 4, 2020 Scheduling Order.

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
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**In the Matter of**

**Altria Group, Inc.  
a corporation,**

**and**

**JUUL Labs, Inc.  
a corporation**

**Docket No. 9393**

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF RESPONDENTS'  
FEBRUARY 22, 2021 MOTION TO ENFORCE THE DISCOVERY CUTOFF AND  
EXCLUDE A DECLARATION**

On February 22, 2021, Respondents in the above captioned matter filed their Motion to Enforce the Discovery Cutoff and Exclude a Declaration. That motion explained that Complaint Counsel was seeking to introduce a declaration from a third party even though Respondents were not given the opportunity to depose the declarant before the February 8 fact discovery cut-off in this case. Respondents noted that we had offered to take the deposition slightly out of time if it could be arranged before Respondents and Complaint Counsel had to proceed to pre-hearing steps such as deposing Complaint Counsel's expert, serving exhibit lists, serving Respondents' expert report, and filing motions *in limine*, if any.

The day after Respondents filed the motion, the Commission extended the hearing date from April 13 to June 2, 2021. As a result, Respondents and Complaint Counsel have agreed to a revised pre-hearing schedule. A Joint Motion for Second Revised Scheduling Order was filed with the Court on March 1.

During Respondents' discussion with Complaint Counsel regarding the revised schedule, Respondents offered to extend the deadline for taking the declarant's deposition to

late March. Respondents again asked Complaint Counsel to agree to either take the deposition before the extended deadline or exclude the declaration. Complaint Counsel declined.

In view of these circumstance, Respondents respectfully suggest that the Court resolve the pending Motion to Enforce the Discovery Cutoff and Exclude a Declaration by requiring that Complaint Counsel arrange for the declarant's deposition to be taken by March 26, 2021 if Complaint Counsel wishes to admit or use the declaration in this matter. This would allow Respondents to take the deposition and consider the testimony obtained in that deposition before the March 31 deadline for deposing Complaint Counsel's expert, who cites to the relevant declaration in his report.

Dated: March 3, 2021

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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on March 3, 2021, I caused a true and correct copy of the foregoing Supplemental Filing In Support Of Motion To Enforce The Discovery Cutoff And Exclude A Declaration to be filed electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor  
Acting Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580  
ElectronicFilings@ftc.gov

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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