

PUBLIC

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

In the Matter of

Asbury Automotive Group, Inc.,
a corporation,

Asbury Ft. Worth Ford, LLC, a limited liability
company, also d/b/a David McDavid Ford
Ft. Worth,

McDavid Frisco – Hon, LLC, a limited liability
company, also d/b/a David McDavid Honda of
Frisco,

McDavid Irving – Hon, LLC, a limited liability
company, also d/b/a David McDavid Honda of
Irving, and

Ali Benli, individually and as an officer of
Asbury Ft. Worth Ford, LLC,
McDavid Frisco – Hon, LLC, and
McDavid Irving – Hon, LLC,

Respondents.

DOCKET NO. 9436

SUPPLEMENT TO JOINT STATUS REPORT #3

Pursuant to the Court’s August 6, 2025 Order Directing Supplementation of Joint Status Report #3, which directed the parties to file: (1) any updates regarding settlement discussions; (2) any updates regarding the federal district court proceeding, Case No. 4:24-cv-00950-O (N.D. Tex.); and (3) a joint proposal to amend the June 18, 2025 Second Revised Scheduling Order to reflect the March 19, 2026 hearing date and extend all pre-hearing deadlines in this proceeding by

PUBLIC

ninety days, Complaint Counsel and Respondents Asbury Automotive Group, Inc., Asbury Ft. Worth Ford, LLC, McDavid Frisco – Hon, LLC, McDavid Irving – Hon, LLC, and Ali Benli (collectively “Respondents”) hereby submit this supplement to Joint Status Report #3.

I. Settlement Discussions

Complaint Counsel and Respondents have had limited further communications about settlement, which have not resulted in significant progress. Complaint Counsel’s May 6, 2025 Motion to remove Count IV and its supporting allegations from the action (“Motion”) was granted and so ordered by the Commission on July 17, 2025. In the parties’ most recent settlement update to this Court, Respondents advised they are hopeful that further settlement discussions would be fruitful should the Motion be granted. Complaint Counsel remains ready when settlement discussions restart and has communicated such readiness to Respondents. Respondents are preparing for settlement negotiations and anticipate reenaging Complaint Counsel this month.

II. Status of Federal District Court Proceedings

As the parties have previously advised, on October 4, 2024, Respondents filed a complaint for injunctive and declaratory relief in the United States District Court for the Northern District of Texas, seeking preliminarily and permanently to enjoin the Part 3 proceeding on constitutional grounds. (ECF No. 1, Compl., at 31-32, *Asbury Automotive Group, Inc., et al. v. Fed. Trade Comm’n*, et al., No. 4:24-cv-00950-O (N.D. Tex.) (“District Court Action”).) On October 14, 2024, Respondents filed an expedited motion for a preliminary injunction staying these proceedings pending adjudication of Respondents’ constitutional claims in the District Court Action. (ECF No. 6.) On November 12, 2024, Defendants in the District Court Action filed a

PUBLIC

motion to dismiss. (ECF No. 24.) The preliminary motions in the District Court Action were fully briefed on December 24, 2024.

On July 29, 2025, Defendants in the District Court Action filed a notice of supplemental authorities (ECF No. 49), to which Respondents responded the following day (ECF No. 50). On August 11, 2025, the district court denied Respondents' motion for a preliminary injunction and dismissed four of the five constitutional claims asserted in their complaint, leaving only Count I, which alleges that the FTC's action violates Article III of the Constitution by adjudicating private rights in a non-Article III tribunal. (ECF No. 51) The district court held that it will decide the merits of this claim on summary judgment and has ordered the parties to submit a joint briefing schedule by August 22, 2025.

III. Scheduling Order

This Court's August 6, 2025 Order directs the parties to provide a proposal to amend the June 18, 2025 Second Revised Scheduling Order to reflect the March 19, 2026 hearing date ordered by the Commission in its August 5, 2025 Order, which further ordered that all pre-hearing deadlines in this proceeding are extended by 90 days. The parties have prepared the following alternative proposals to revise the June 18, 2025 Second Revised Scheduling Order to implement the Commission's order consistent with 16 C.F.R. § 4.3.

Complaint Counsel's Proposed Schedule Reflecting March 19, 2026 Hearing Date:

Complaint Counsel's proposed schedule modifies the dates in the June 18, 2025 Second Revised Scheduling Order by extending all pre-hearing deadlines by 90 days, as ordered in the Commission's August 5, 2025 Order and as consistent with 16 C.F.R. § 4.3, with only minor

PUBLIC

additional variance around federal holidays (i.e., to avoid the Monday before Veterans Day and the Friday after Thanksgiving) or to maintain intervals between successive deadlines in the current schedule.

In contrast, Respondents' proposed schedule requests essentially the same schedule the Court has repeatedly rejected. Respondents' proposal deviates from the Commission's August 5, 2025 Order and the Part 3 rules in at least two ways. First, it extends by only 73 days (from August 29 to November 10) Complaint Counsel's deadline to serve proposed expert witness lists, supplemental proposed fact witness lists, and fact witness summaries. Second, it elongates the time for Respondents to serve rebuttal expert reports from 14 days to 22 days, while truncating the time for Complaint Counsel to do the same from 10 days to 5 days. *See* 16 C.F.R. § 3.31A(a) (Respondents serve expert rebuttal reports within 14 days and Complaint Counsel within 10 days). The Court should abide by its ruling at the September 12, 2024 scheduling hearing (*See* Sept. 12, 2024 Hr'g Tr. 27:1-18.), subsequently reflected in its Scheduling Order (Sept. 13, 2024), Revised Scheduling Order (Mar. 28, 2025), and Second Revised Scheduling Order (June 18, 2025), and reject Respondents' attempt to alter the Part 3 rules for expert discovery for the fourth time.

Complaint Counsel proposes:

- November 12, 2025 - Parties file Joint Status Report #4.
- December 1, 2025 - Complaint Counsel serves proposed expert witness list.
- December 1, 2025 - Complaint Counsel serves supplemental proposed fact witness list with a brief summary of the proposed testimony.
- December 8, 2025 - Respondents serve proposed expert witness list.
- December 8, 2025 - Respondents serve supplemental proposed fact witness list with a brief summary of the proposed testimony.

PUBLIC

- December 18, 2025 - Deadline for parties to serve document requests, interrogatories, and subpoenas, except for discovery for purposes of authenticity and admissibility of exhibits.
- January 12, 2026 - Deadline for parties to serve requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of documents.
- January 20, 2026 - Close of fact discovery, except for discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
- January 26, 2026 - Complaint Counsel serves expert witness reports.
- February 2, 2026 - Complaint Counsel serves final proposed witness and exhibit lists, including depositions, copies of all proposed exhibits (except for demonstrative, illustrative, or summary exhibits and expert-related exhibits), the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Complaint Counsel's final proposed witness list shall include no more than twenty-five fact witnesses testifying live at the hearing. See Additional Provision 17.

Complaint Counsel provides the Administrative Law Judge (ALJ) with courtesy copies of final proposed witness and exhibit lists, the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including expert witnesses.
- February 9, 2026 - Respondents serve expert witness reports. Respondents' expert reports shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
- February 9, 2026 - Parties file Joint Status Report #5.
- February 11, 2026 - Respondents serve final proposed witness and exhibit lists, including depositions, copies of all proposed exhibits (except for demonstrative, illustrative, or summary exhibits and expert-related exhibits), the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.

PUBLIC

Respondents' final proposed witness list shall include no more than twenty-five fact witnesses testifying live at the hearing. See Additional Provision 17.

Respondents provide the ALJ with courtesy copies of final proposed witness and exhibit lists, the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including expert witnesses.

- February 13, 2026 - Parties intending 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).
- February 19, 2026 - Complaint Counsel to identify rebuttal expert witness(es) and serve rebuttal expert witness report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondents' expert witness 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 witness report(s) or seeking leave to submit surrebuttal expert witness report(s)).
- February 23, 2026 - Deadline for parties to depose expert witnesses (including rebuttal expert witnesses) and exchange expert-related proposed exhibits.
- February 23, 2026 - Deadline to file motions for in camera treatment of proposed trial exhibits. See Additional Provision 15.
- February 26, 2026 - Deadline for parties to file motions in limine to preclude admission of evidence. See Additional Provision 16.
- March 2, 2026 - Parties exchange objections to final proposed witness lists and exhibit lists, serving courtesy copies on the ALJ. Parties are to review the Commission's Rules on the admissibility of evidence before filing objections to exhibits and only raise objections that are necessary and valid.
- March 2, 2026 - Complaint Counsel files pretrial brief supported by legal authority.
- March 2, 2026 - Deadline for parties to file responses to motions for in camera treatment of proposed exhibits.
- March 5, 2026 - Deadline for parties to file responses to motions in limine to preclude admission of evidence.

PUBLIC

- March 9, 2026 - Parties exchange proposed stipulations as to law, facts, the admissibility of proposed exhibits, and the expertise of any expert witnesses.
- March 16, 2026 - Respondents file pretrial brief supported by legal authority.
- March 17, 2026 - Final prehearing conference begins at 10:00 a.m. Eastern Time.

The parties shall meet and confer prior to the final prehearing conference regarding trial logistics and proposed stipulations as to law, facts, admissibility of exhibits, and expertise of any expert witnesses. To the extent the parties have agreed to stipulate to any issues of law, facts, admissibility of exhibits, and/or expertise of any expert witnesses, 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 final prehearing conference. At the final prehearing 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 to by the parties.

Also at the final prehearing conference, the parties may present any objections to the final proposed witness lists and proposed exhibits. All proposed exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admissibility of proposed exhibits, the parties shall prepare a list identifying each proposed exhibit to which admissibility is stipulated, which shall be offered into evidence as a joint exhibit marked as "JX2" and signed by each party. No signature by the ALJ is required.

- March 19, 2026 - Evidentiary Hearing begins at 10:00 a.m. Eastern Time.

Respondent's Proposed Schedule Reflecting March 19, 2026 Hearing Date:

Respondents proposed schedule modifies the dates in their June 13, 2025 proposed scheduling order by extending all pre-hearing deadlines by 90 days, as ordered in the

PUBLIC

Commission's August 5, 2025 Order and as consistent with 16 C.F.R. § 4.3, with only minor additional variance around dates falling on weekends.

Respondents believe the below proposed times provide the fairest timeline to prepare for the Evidentiary Hearing, while also following the Commission's latest Order regarding the new hearing date and approaching due process. As set forth in Respondents' Motion for Expedited Preliminary Injunction and subsequent briefing in the federal court case, due process is lacking. For example, Respondents strongly believe that the deadlines proposed by Complaint Counsel would deprive the Respondents of effective due process by setting forth exceedingly short deadlines for Respondents to identify experts and produce experts reports after receipt of Complaint Counsel's identification of experts and production of expert reports.

Respondents propose:

- November 12, 2025 - Parties file Joint Status Report #4.
- November 10, 2025 - Complaint Counsel serves proposed expert witness list.
Complaint Counsel serves supplemental proposed fact witness list with a brief summary of the proposed testimony.
- December 5, 2025 - Respondents serve proposed expert witness list.
Respondents serve supplemental proposed fact witness list with a brief summary of the proposed testimony.
- December 18, 2025 - Deadline for parties to serve document requests, interrogatories, and subpoenas, except for discovery for purposes of authenticity and admissibility of exhibits.
- January 12, 2026 - Deadline for parties to serve requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of documents.

PUBLIC

- January 19 , 2026 - Close of fact discovery, except for discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
- January 26, 2026 - Complaint Counsel serves expert witness reports.
- February 2, 2026 - Complaint Counsel serves final proposed witness and exhibit lists, including depositions, copies of all proposed exhibits (except for demonstrative, illustrative, or summary exhibits and expert-related exhibits), the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Complaint Counsel's final proposed witness list shall include no more than twenty-five fact witnesses testifying live at the hearing. See Additional Provision 17.

Complaint Counsel provides the Administrative Law Judge (ALJ) with courtesy copies of final proposed witness and exhibit lists, the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including expert witnesses.
- February 17, 2026 - Respondents serve expert witness reports. Respondents' expert reports shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
- February 22, 2026 - Parties file Joint Status Report #5.

Respondents serve final proposed witness and exhibit lists, including depositions, copies of all proposed exhibits (except for demonstrative, illustrative, or summary exhibits and expert-related exhibits), the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.

Respondents' final proposed witness list shall include no more than twenty-five fact witnesses testifying live at the hearing. See Additional Provision 17.

Respondents provide the ALJ with courtesy copies of final proposed witness and exhibit lists, the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including expert witnesses.

Parties intending 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).

PUBLIC

- Complaint Counsel to identify rebuttal expert witness(es) and serve rebuttal expert witness report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondents' expert witness 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 witness report(s) or seeking leave to submit surrebuttal expert witness report(s)).
- March 1, 2026 - Deadline for parties to depose expert witnesses (including rebuttal expert witnesses) and exchange expert-related proposed exhibits.
- Deadline to file motions for in camera treatment of proposed trial exhibits. See Additional Provision 15.
- Deadline for parties to file motions in limine to preclude admission of evidence. See Additional Provision 16.
- Parties exchange objections to final proposed witness lists and exhibit lists, serving courtesy copies on the ALJ. Parties are to review the Commission's Rules on the admissibility of evidence before filing objections to exhibits and only raise objections that are necessary and valid.
- March 2, 2026 - Complaint Counsel files pretrial brief supported by legal authority.
- Deadline for parties to file responses to motions for in camera treatment of proposed exhibits.
- March 5, 2026 - Deadline for parties to file responses to motions in limine to preclude admission of evidence.
- March 9, 2026 - Parties exchange proposed stipulations as to law, facts, the admissibility of proposed exhibits, and the expertise of any expert witnesses.
- March 12, 2026 - Respondents file pretrial brief supported by legal authority.

PUBLIC

March 16, 2026 - Final prehearing conference begins at 10:00 a.m. Eastern Time. The parties shall meet and confer prior to the final prehearing conference regarding trial logistics and proposed stipulations as to law, facts, admissibility of exhibits, and expertise of any expert witnesses. To the extent the parties have agreed to stipulate to any issues of law, facts, admissibility of exhibits, and/or expertise of any expert witnesses, 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 final prehearing conference. At the final prehearing 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 to by the parties.

Also at the final prehearing conference, the parties may present any objections to the final proposed witness lists and proposed exhibits. All proposed exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admissibility of proposed exhibits, the parties shall prepare a list identifying each proposed exhibit to which admissibility is stipulated, which shall be offered into evidence as a joint exhibit marked as "JX2" and signed by each party. No signature by the ALJ is required.

March 19, 2026 - Evidentiary Hearing begins at 10:00 a.m. Eastern Time.

Dated: August 12, 2025

/s/ Daniel Dwyer

Mark L. Glassman
 Jamie D. Brooks
 James Doty
 Sarah Abutaleb
 Daniel Dwyer
 Federal Trade Commission
 600 Pennsylvania Ave., NW
 Mail Stop CC-10232
 Washington, DC 20580

Complaint Counsel

PUBLIC

/s/ Brandon Livengood

Edward D. Burbach
eburbach@foley.com
Robert F. Johnson III
John Sepehri
Brandon Livengood
Foley & Lardner LLP
600 Congress Avenue, Suite 3000
Austin, Texas 78701

Michael J. Lockerby
Megan Chester
Foley & Lardner LLP
3000 K Street N.W., Suite 600
Washington, DC 20007

Counsel for Respondents

PUBLIC**CERTIFICATE OF SERVICE**

I hereby certify that on **August 12, 2025**, I caused a true and correct copy of the foregoing **Supplement to Joint Status Report #3** to be served by email on the Office of Administrative Law Judges (oalj@ftc.gov), the Office of the Secretary (ElectronicFilings@ftc.gov), and all counsel of record, who are identified below:

Complaint Counsel:

Mark L. Glassman
Jamie D. Brooks
James Doty
Sarah Abutaleb

Counsel for Respondents:

Ed Burbach
Michael Lockerby
Robert Jonson
John Sepeheri
Megan Chester
Brandon Livengood

/s/ Daniel Dwyer
Daniel Dwyer