

**PUBLIC**

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

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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. )

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DOCKET NO. 9436

**JOINT PROPOSAL TO AMEND THIRD REVISED SCHEDULING ORDER**

On November 25, 2025, the Commission granted the parties’ Joint Expedited Motion for Further Stay and Continuance of Administrative Proceedings, resetting the hearing date in this action from March 19, 2026 to August 6, 2025. Such extension adjusted the hearing date by 140 days to reflect the duration of the stay ordered by the Commission on September 30, 2025, plus 90 days to reflect the ongoing collateral proceedings in federal court, and commensurately extended all pre-hearing deadlines.

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On November 26, 2025, this Court entered the parties' Joint Motion to Hold December Discovery Deadlines in Abeyance, and ordered the parties in to submit a joint proposal to amend the Third Revised Scheduling Order.

Accordingly, the parties now propose the following alternative amendments to the Third Revised Scheduling Order, consistent with 16 C.F.R. § 4.3:

### **Complaint Counsel's Proposed Amendments to Third Revised Scheduling Order**

Complaint Counsel's proposed schedule below extends all deadlines in the August 12, 2025 Third Revised Scheduling Order by 140 days (except one that would fall on a federal holiday). This is consistent with the Commission's order that all pre-hearing deadlines be "commensurately extended" with the 140-day extension of the stay and continuance of the Hearing Date entered in the Commission's November 25, 2025 Order.

In response, Respondents propose two alternative schedules. These schedules deviate significantly from the Commission's November 25, 2025 Order and the Part 3 rules. Respondents' first proposed schedule, among other things, seeks to require Complaint Counsel to serve proposed expert witness lists, supplemental proposed fact witness lists, and fact witness summaries 21-days earlier than the 140 days the parties *just jointly* requested. It also elongates the Respondents' time to serve rebuttal expert reports from 14 days to 24 days, while truncating the time for Complaint Counsel to do the same from 10 days to 6 days, again counter to the Commission-ordered extension the parties just jointly sought. *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), Second Revised Scheduling Order (June 18, 2025), and Third Revised Scheduling Order (Aug. 21, 2025), and reject Respondents' attempt, for the fifth time, to alter the Part 3 rules for expert discovery.

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Respondents' second proposed schedule simply shuffles around the ways in which it deviates from the Commission's November 25, 2025 Order and the Part 3 rules. For example, it continues to elongate the Respondents' time to serve rebuttal expert reports (from 14 days to 21 days). It also would require Complaint Counsel to file its pretrial brief a week before the close of expert depositions, while permitting Respondents to file their pretrial brief a week after the close of expert depositions.

Complaint Counsel further states, in response to Respondents' assertion below regarding their recent proposal that the parties request an "indefinite continuance and stay," that, as noted above, the parties *just jointly* requested (on November 19, 2025), and were granted (on November 25, 2025), a 140-day extension of the stay to further accommodate the collateral proceeding. Although Respondents proposed on December 1, 2025 that the parties now request an indefinite stay, it is not clear what has changed since November 25, or how the parties would justify a new request for an indefinite stay immediately after the Commission granted the parties' requested 140-day extension of the stay. As accurately stated in the excerpt Respondents quote below from the FTC's brief in the collateral federal action, the parties have jointly requested, and the Commission has agreed, on five occasions to stay this administrative proceeding given the collateral proceeding.

Complaint Counsel proposes:

- April 1, 2026 - Parties file Joint Status Report #5.
- April 20, 2026 - Complaint Counsel serves proposed expert witness list.  
Complaint Counsel serves supplemental proposed fact witness list with a brief summary of the proposed testimony.
- April 27, 2026 - Respondents serve proposed expert witness list.  
Respondents serve supplemental proposed fact witness list with a brief summary of the proposed testimony.
- May 7, 2026 - Deadline for parties to serve document requests, interrogatories, and subpoenas, except for discovery for purposes of authenticity and admissibility of exhibits.

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- June 1, 2026 - Deadline for parties to serve requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of documents.
- June 9, 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.
- June 15, 2026 - Complaint Counsel serves expert witness reports.
- June 22, 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.
- June 29, 2026 - Respondents serve expert witness reports. Respondents' expert reports shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
- June 29, 2026 - Parties file Joint Status Report #6.
- July 1, 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.  
  
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.
- July 6, 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).

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- July 9, 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)).
- July 13, 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.
- July 20, 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.
- Complaint Counsel files pretrial brief supported by legal authority.
- Deadline for parties to file responses to motions for in camera treatment of proposed exhibits.
- July 23, 2026 - Deadline for parties to file responses to motions in limine to preclude admission of evidence.
- July 27, 2026 - Parties exchange proposed stipulations as to law, facts, the admissibility of proposed exhibits, and the expertise of any expert witnesses.
- August 3, 2026 - Respondents file pretrial brief supported by legal authority.
- August 4, 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

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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.

August 6, 2026 - Evidentiary Hearing begins at 10:00 a.m. Eastern Time.

### **Respondents’ Proposed Amendments to Third Revised Scheduling Order**

Respondents’ proposed amendments to the August 21, 2025 Third Revised Scheduling Order offer a fair opportunity to prepare for the Evidentiary Hearing and comply with the Commission’s order that the pre-hearing deadlines be “commensurately extended” to afford the hearing on August 6, 2026.

On December 2, 2025, the Asbury Respondents provided Complaint Counsel with the following amendments to the Scheduling Order:

- March 30, 2026** - Complaint Counsel serves proposed expert witness list.
- March 30, 2026** - Complaint Counsel serves supplemental proposed fact witness list with a brief summary of the proposed testimony.
- April 24, 2026** - Respondents serve proposed expert witness list.
- April 24, 2026** - Respondents serve supplemental proposed fact witness list with a brief summary of the proposed testimony.
- May 7, 2026** - Deadline for parties to serve document requests, interrogatories, and subpoenas, except for discovery for purposes of authenticity and admissibility of exhibits.
- June 1, 2026** - Deadline for parties to serve requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of documents.
- June 8, 2026** - Close of fact discovery, except for discovery permitted under Rule

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3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.

**June 14, 2026**

- Complaint Counsel serves expert witness reports.

**June 22, 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.

**July 7, 2026**

- Respondents serve expert witness reports. Respondents' expert reports shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).

**July 13, 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).
- 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,

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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)).

- July 20, 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.
  - Complaint Counsel files pretrial brief supported by legal authority.
  - Deadline for parties to file responses to motions for in camera treatment of proposed exhibits.
- July 23, 2026**
- Deadline for parties to file responses to motions in limine to preclude admission of evidence.
- July 27, 2026**
- Parties exchange proposed stipulations as to law, facts, the admissibility of proposed exhibits, and the expertise of any expert witnesses.
- July 30, 2026**
- Respondents file pretrial brief supported by legal authority.
- August 3, 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.

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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.

- August 6, 2026** - Evidentiary Hearing begins at 10:00 a.m. Eastern Time.

In rejecting these dates, Complaint Counsel argued that:

“In contrast, Respondents’ proposed schedule deviates significantly from the Commission’s November 25, 2025 Order and the Part 3 rules. Among other things, it seeks to require Complaint Counsel to serve proposed expert witness lists, supplemental proposed fact witness lists, and fact witness summaries 21-days earlier than the 140 days the parties *just jointly* requested.”

On the contrary, the [Joint] Expedited Motion for Further Stay and Continuance of Administrative Proceedings did not request that each of the Scheduling Order deadlines be pushed back exactly 140 days. It requested that the deadlines be “commensurately<sup>1</sup> extend[ed]”. Similarly, the Commission ordered that “the evidentiary hearing in this proceeding shall commence at 10:00 a.m. on August 6, 2026” and that “all pre-hearing deadlines in this proceeding are hereby commensurately extended”. The dates proposed by Respondents are commensurate with a rescheduling of the hearing on August 6, 2026.

The Third Revised Scheduling Order, and Complaint Counsel’s proposed amendments thereto along with the FTC’s Rules for Practice for Adjudicate Proceedings deny Respondents due

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<sup>1</sup> “commensurately” is defined as being “in a way that is correct and suitable in amount when compared to something else”. <https://dictionary.cambridge.org/us/dictionary/english/commensurately>

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process by, in part, failing to provide sufficient time for Respondents to defend the case. For example, the Third Revised Scheduling Order, and previous scheduling orders adopted over Respondents' objections<sup>2</sup>, provided insufficient time for Respondents to designate expert witnesses, identify and designate rebuttal witnesses, and prepare and provide expert witness reports. For those reasons, among others, Respondents have not joined in Complaint Counsel's previous proposed scheduling orders which have been adopted nearly in their entirety. These deprivations of due process make up part of the basis of Respondents' challenge to this proceeding in *Asbury Automotive Group, Inc., et al. v. Fed. Trade Comm'n, et al.*, No. 4:24-cv-00950-O (N.D. Tex.) (the "Federal District Court Proceeding).

Thus, the Asbury Respondents propose their dates outlines above. However, while Asbury Respondents believe that their above proposed dates are reasonable and commensurate, to the extent the ALJ believes that they are not, the Asbury Respondents alternatively propose the following dates:

- April 1, 2026 - Parties file Joint Status Report #5.
- April 20, 2026 - Complaint Counsel serves proposed expert witness list.  
Complaint Counsel serves supplemental proposed fact witness list with a brief summary of the proposed testimony.
- May 7, 2026 - Respondents serve proposed expert witness list.  
Respondents serve supplemental proposed fact witness list with a brief summary of the proposed testimony.
- May 7, 2026 - Deadline for parties to serve document requests, interrogatories, and subpoenas, except for discovery for purposes of authenticity and admissibility of exhibits.

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<sup>2</sup> Accordingly, the Respondents' proposal adjusted all of Respondents' their previously proposed deadlines from the parties' August 12, 2025, Supplement to Joint Status Report #3 by the same duration.

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- June 1, 2026 - Deadline for parties to serve requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of documents.
- June 9, 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.
- June 15, 2026 - Complaint Counsel serves expert witness reports.
- June 22, 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.
- June 29, 2026 - Parties file Joint Status Report #6.
- July 1, 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.
- 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.
- July 6, 2026 - Respondents serve expert witness reports. Respondents' expert reports shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).

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- July 6, 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).
- July 20, 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)).
- July 20, 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.
- Complaint Counsel files pretrial brief supported by legal authority.
- Deadline for parties to file responses to motions for in camera treatment of proposed exhibits.
- July 27, 2026 - Deadline for parties to depose expert witnesses (including rebuttal expert witnesses) and exchange expert-related proposed exhibits.
- Parties exchange proposed stipulations as to law, facts, the admissibility of proposed exhibits, and the expertise of any expert witnesses.
- July 31, 2026 - 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.
- August 3, 2026 - Deadline for parties to file responses to motions in limine to preclude admission of evidence.
- Respondents file pretrial brief supported by legal authority.
- August 4, 2026 - Final prehearing conference begins at 10:00 a.m. Eastern Time.

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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.

August 6, 2026 - Evidentiary Hearing begins at 10:00 a.m. Eastern Time.

Finally, the Asbury Respondents believe that the ALJ should be aware that on November 26, 2025, the FTC Defendants filed their response to the Asbury Plaintiffs' Motion for Reconsideration in the federal court litigation. Among other things the FTC Defendants argued:

***The history of the administrative proceeding shows that Asbury faces no irreparable harm.*** Since this lawsuit was filed, the Commission has agreed on five occasions to stay the administrative proceeding—on October 29, 2024; March 25, 2025; June 3, 2025; August 5, 2025, and November 25, 2025—so that Asbury could litigate its constitutional challenges in this Court without having to simultaneously participate in the administrative proceeding. The administrative proceeding is currently stayed. See Order Granting the Parties' Joint Expedited Motion for Further Stay and Continuance of Administrative Proceedings, In the Matter of Asbury Automotive Group, Inc., et al., FTC Docket No. 9436, <https://perma.cc/R4ZG-RHBT> (Nov. 25, 2025). ***Because the Commission has repeatedly stayed the administrative proceeding and there is no indication it would be unwilling to grant further stays, Asbury cannot show it faces***

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***“imminent” irreparable harm.*** Chacon v. Granata, 515 F.2d 922, 925 (5th Cir. 1975). Moreover, Asbury cannot show the “extraordinary remedy” of a preliminary injunction is “necessary to prevent irreparable injury,” or that the equities favor an injunction, ***because if Asbury believes it needs a stay beyond the current one, it could request that from the Commission.*** Ridgely, 512 F.3d at 734; Henry v. First Nat. Bank of Clarksdale, 595 F.2d 291, 302 (5th Cir. 1979).

In light of this new argument, on December 1, 2025 Counsel for Asbury Plaintiffs emailed counsel and inquired:

In short, the FTC Defendants argue there is no imminent harm to plaintiffs because the parties have agreed to seek and the commission has granted continuances multiple times.

Of course, we disagree with the argument, but it does raise a proposal we would like to again make to your client.

Please advise if your clients would agree to an order an indefinite continuance and stay of the FTC administrative proceeding pending a final and unappealable court ruling on our constitutional claims.

The FTC Defendants’ Counsel at the Department of Justice directed Respondents to negotiate with Complaint Counsel for purposes of reaching said agreement. Complaint Counsel have not agreed.

Thus, through both the Department of Justice and Complaint Counsel, Respondents have attempted to engage the FTC Defendants to negotiate an indefinite continuance and stay of the FTC administrative proceeding pending a final and unappealable court ruling on their constitutional claims in the Federal District Court Proceeding. Respondents believe this would save all parties time and expense, as well as serve judicial economy in both the Federal District Court Proceeding and this matter. At minimum, an indefinite stay would remove the necessity of both parties and this court from having to continually renegotiate hearing and pre-hearing dates.

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Respectfully submitted,

Dated: December 5, 2025

*/s/ Mark L. Glassman*

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Complaint Counsel

*/s/ Brandon Livengood*

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Counsel for Respondents

**PUBLIC****CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of December, 2025, I electronically filed a corrected copy of the foregoing document and its attachments (originally filed on the 5<sup>th</sup> Day of December, 2025) using the FTC's E-filing system, which will send notification of such filing to:

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

The Honorable Dania L. Ayoubi  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave NW, Rm. H-110  
Washington, DC 20580  
oalj@ftc.gov

I further certify that a true and correct copy of the foregoing and its attachments, as corrected, were served on all counsel of record—Edward D. Burbach, Michael Lockerby, John Sepehri, Robert Johnson, Megan Chester, Brandon Livengood, Mark L. Glassman, Jamie D. Brooks, James Doty, Dan Dwyer, and Sarah Abutaleb—by email on this 10<sup>th</sup> Day of December, 2025 (originally served on the 5th day of December, 2025).

*Mark L. Glassman*

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Mark L. Glassman  
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Complaint Counsel