

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

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In the Matter of )  
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Intuit, Inc., ) Docket No. 9408  
a corporation, )  
 )  
Respondent. )  
\_\_\_\_\_ )

**FIRST REVISED SCHEDULING ORDER**

In light of the order of the Commission staying this matter and resetting the date for commencement of the evidentiary hearing to March 27, 2023, dates in the April 27, 2022 Scheduling Order are hereby revised as follows:

- September 16, 2022 - Respondent’s Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
- September 23, 2022 - Complaint Counsel provides expert witness list.  
Complaint Counsel provides supplemental witness list with a brief summary of the proposed testimony.
- September 30, 2022 - Respondent’s Counsel provides expert witness list.  
Respondent’s Counsel provides supplemental witness list with a brief summary of the proposed testimony.
- October 14, 2022 - Deadline for issuing document requests, interrogatories and subpoenas, except for discovery for purposes of authenticity and admissibility of exhibits.
- October 14, 2022 - Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity of documents.
- December 2, 2022 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.

- December 9, 2022 - Deadline for Complaint Counsel to provide expert witness reports.
- December 16, 2022 - Complaint Counsel provides to Respondent's Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.
- Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
- January 13, 2023 - Deadline for Respondent's Counsel to provide expert witness reports (to be provided by 4 p.m. ET). Respondent's expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
- January 13, 2023 - Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.
- Respondent's Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
- January 20, 2023 - 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>1</sup> See Additional Provision 12.

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<sup>1</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.

- January 27, 2023 - 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 Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent 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 Respondent).
- February 10, 2023 - Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 13.
- February 10, 2023 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- February 17, 2023 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- February 17, 2023 - Exchange and serve courtesy copy on ALJ 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 and raise only objections that are necessary and valid.
- February 17, 2023 - Complaint Counsel files pretrial brief supported by legal authority.
- February 24, 2023 - Deadline for filing responses to motions *in limine* to preclude admission of evidence.
- February 24, 2023 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- March 3, 2023 - Exchange proposed stipulations of law, facts, and authenticity.
- March 17, 2023 - Respondent's Counsel files pretrial brief supported by legal authority.
- March 23, 2023 - Final prehearing conference to begin at 1:00 p.m.

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. All 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.

March 27, 2023 - Commencement of Evidentiary Hearing, to begin at 10:00 a.m.

### **ADDITIONAL PROVISIONS**

The Additional Provisions set forth in the April 27, 2022 Scheduling Order shall remain in force, with Paragraph 6 modified as follows:

6. If papers filed with the Office of the Secretary contain *in camera* or confidential material, the filing party shall mark any such material in the complete version of their submission in a conspicuous matter, such as with highlighting or bracketing (i.e., with **{bold font and braces}**). 16 C.F.R. § 3.45(e). Parties shall be aware of the rules for filings containing such information, including 16 C.F.R. § 4.2.

ORDERED:



D. Michael Chappell  
Chief Administrative Law Judge

Date: September 12, 2022