



- November 17, 2020 - Deadline for Complaint Counsel to provide expert witness reports.
- November 24, 2020 - Complaint Counsel provides to Respondents' 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 provides courtesy copies to 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.
- December 1, 2020 - Deadline for Respondents' Counsel to provide expert witness reports. Respondents' expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
- December 3, 2020 - Respondents' 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), Respondents' basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.  
  
Respondents' Counsel provides courtesy copies to 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.
- December 3, 2020 - 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>.
- December 11, 2020 - 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 Respondents' expert reports. If

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<sup>1</sup> Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party wishes in camera treatment for a document or transcript that a party intends to introduce into evidence, that party or the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives notice of the 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 Standard Protective Order requires that the parties provide 10 days' notice to the opposing party or third parties to allow for the motions for in camera treatment.

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 reports or seeking leave to submit surrebuttal expert reports on behalf of Respondents).

- December 15, 2020 - Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 13.
- December 15, 2020 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits. *See* Additional Provision 12.
- December 16, 2020 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- December 18, 2020 - Exchange and provide a courtesy copy to ALJ of 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.
- December 18, 2020 - Complaint Counsel files pretrial brief supported by legal authority.
- December 21, 2020 - Deadline for filing responses to motions *in limine* to preclude admission of evidence.
- December 21, 2020 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- December 28, 2020 - Exchange proposed stipulations of law, facts, and authenticity.
- December 29, 2020 - Respondents’ Counsel files pretrial brief supported by legal authority.
- January 4, 2021 - Final prehearing conference to begin at 1:00 p.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

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. 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.

January 5, 2021 - Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

#### **ADDITIONAL PROVISIONS**

1. For all papers that are required to be filed with the Office of the Secretary, the parties shall provide a courtesy copy to the Administrative Law Judge by electronic mail to the following email address: oalj@ftc.gov. The courtesy copy should be transmitted at or shortly after the time of any electronic filing with the Office of the Secretary. Courtesy copies must be



days of reaching an impasse.

9. The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition on videotape at least five days in advance of the deposition. No deposition, whether recorded on videotape or otherwise, may exceed a single, ~~seven~~ day, unless otherwise agreed to by the parties or ordered by the Administrative ~~Law~~ Judge.

10. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas duces tecum and subpoenas ad testificandum. For subpoenas ad testificandum, the party seeking the deposition shall consult with the other parties before the time and place of deposition is scheduled. The parties need not separately notice the deposition of a non-party noticed by an opposing party. If both sides notice any non-party fact deposition, the time allocation for the deposition shall be divided evenly between them. For any non-party deposition noticed by only one side, the ~~noticing~~ side shall be allocated one and a half hours of deposition time for cross or ~~re~~-cross testimony. Unused time in any side's allocation of deposition time may be used by the other side.

11. Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that l

giving undue weight to marginally relevant evidence is minimal in a bench trial such as this where the judge is capable of assigning appropriate weight to evidence.

14. The final witness lists shall represent counsel's good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling order. The final proposed witness list may not include additional witnesses not listed in the preliminary or supplemental witness lists previously exchanged unless by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

15. If any party wishes to offer a rebuttal witness other than a rebuttal expert, the party shall file a request in writing in the form of a motion to request a rebuttal witness. That motion shall be filed as soon as possible after the testimony sought to be rebutted is known and shall include: (a) the name of any witness being proposed (b) a detailed description of the rebuttal evidence being offered; (c) citations to the record, by page and line number, to the evidence that the party intends to rebut; and shall demonstrate that the witness the party seeks to call has previously been designated on its witness list or adequately explain why the requested witness was not designated on its witness list.

16. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

17. Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 701.

18. The parties are required to comply with Rule 3.31A and with the following:

(a) At the time an expert is first listed as a witness by a party, that party shall provide to the other party:

(i) materials fully describing or identifying the background and qualifications of the expert, all publications authored by the expert within the preceding ten years, and all prior cases in which the expert has testified or has been deposed within the preceding four years; and

(ii) transcripts of such testimony in the possession, custody, or control of the producing party or the expert, except that transcript sections that are under seal in a separate proceeding need not be produced.

(b) At the time an expert report is produced, the producing party shall provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case, subject to the provisions of 19(g), except that documents and materials already produced in the case need only be listed by Bates number.

(c) It shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available for deposition in keeping with this Scheduling Order. Unless otherwise agreed to by the parties or ordered by the Administrative Law Judge, expert witnesses shall be deposed only once and each expert deposition shall be limited to one day for

seven hours.

(d) Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information relied on by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to be paid for the study and testimony.

(e) A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of this litigation or preparation





Notice of Electronic Service

I hereby certify that on July 13, 2020, I filed an electronic copy of the foregoing Scheduling Order, with:

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

Donald Clark  
600 Pennsylvania Ave., NW  
Suite 172  
Washington, DC, 20580

I hereby certify that on July 13, 2020, I served via E-Service an electronic copy of the foregoing Scheduling Order, upon:

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**I hereby certify that on July 13, 2020, I served via other means, as provided in 4.4(b) of the foregoing Scheduling Order, upon:**

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