

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

_____)
and)
_____)
JUUL Labs, Inc.)
a corporation,)
_____)
Respondents.)

_____)

SCHEDULING ORDER

- August 17, 2020 - Complaint Counsel provides preliminary witness list (not including experts) with a summary of the general topics of each witness' anticipated testimony.
- August 31, 2020 - Respondents' Counsel provides preliminary witness list (not including experts) with a summary of the general topics of each witness' anticipated testimony.

The parties' preliminary witness lists (not including experts) shall include no more than 35 persons. The lists must reflect each party's good-faith efforts to identify for the other side any witnesses it may call at trial other than solely for impeachment.

- November 9, 2020 -

(not including experts) with a summary of the general topics of each witness' anticipated testimony. The list shall include no more than 30 persons, including no more than seven party

witnesses. (b) (5) (D) (i) (ii) (iii) (iv) (v) (vi) (vii) (viii) (ix) (x) (xi) (xii) (xiii) (xiv) (xv) (xvi) (xvii) (xviii) (xix) (xx) (xxi) (xxii) (xxiii) (xxiv) (xxv) (xxvi) (xxvii) (xxviii) (xxix) (xxx)

Counsel's proposed final witness list shall not include more than 25 fact witnesses, and shall not include more than three witnesses who did not appear on the supplemental witness lists provided by Complaint Counsel in accordance with the timeframes set forth above. No witness may be added to the final witness list who did not appear on the supplemental witness list unless such witnesses have been deposed in their personal capacity in this litigation.

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

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to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).¹

- March 19, 2021 - 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 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).
- March 22, 2021 - Deadline for filing motions *in limine* to preclude admission of evidence, except to the extent such motions relate to any expert rebuttal report, in which case such motions must be made within four days after the deposition of the rebuttal expert. *See* Additional Provision 15.
- March 22, 2021 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits. *See* Additional Provision 14.
- March 24, 2021 - Deadline for depositions of experts, except any expert providing a rebuttal report, and exchange of expert related exhibits.
- March 26, 2021 - 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.
- March 26, 2021 - Complaint Counsel files pretrial brief supported by legal authority.
- March 30, 2021 - Deadline for depositions of rebuttal experts.
- March 30, 2021 - Deadline for filing responses to motions *in limine* to preclude admission of evidence, except to the extent such motions relate to any expert rebuttal report, in which case any such response must be within four days after the motion *in limine* is filed.

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- March 30, 2021 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- April 2, 2021 - Exchange proposed stipulations of law, facts, and authenticity.
- April 6, 2021 - Respondents' Counsel files pretrial brief supported by legal authority.
- April 9, 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.

after the time of any electronic filing with the Office of the Secretary. Courtesy copies must be transmitted to Office of the Administrative Law Judge directly, and the FTC E-filing system shall not be used for this purpose. The oalj@ftc.gov email account is to be used only for courtesy copies of pleadings filed with the Office of the Secretary and for documents specifically requested of the parties by the Office of Administrative Law Judges. Certificates of service for any pleading shall not include the OALJ email address, or the email address of

the word count limits of 3.22(c) apply to the memorandum in support of the motion. This provision applies to all motions filed with the Administrative Law Judge, including those filed under Rule 3.38.

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 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.

7. Each party is limited to 50 document requests, including all discrete subparts; 25 interrogatories, including all discrete subparts; and 10 requests for admissions, including all discrete subparts, except that there shall be no limit on the number of requests for admission for

videotape at least five days in advance of the deposition. The parties shall work in good faith, in light of the public-health emergency, to develop appropriate protocols for remote depositions. No deposition, whether recorded by videotape or otherwise, may exceed a single, seven-hour day, unless otherwise agreed to by the parties or ordered by the Administrative Law Judge. Each side shall be limited to taking a total of 35 depositions, other than expert depositions, unless the Administrative Law Judge grants leave to take any additional depositions.

12. 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 the deposition is scheduled. The parties need not separately notice the deposition of a non-cpo609 (i)rP <<(t)4 (i)-1

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.

22. An expert witness' testimony is limited to opinions contained in the expert report that has been previously and properly provided to the opposing party. In addition, no opinion will be considered, even if included in an expert report, if the underlying and supporting documents and information have not been properly provided to the opposing party. Unless an expert witness is qualified as a fact witness, an expert witness is only allowed to provide opinion testimony; expert testimony is not considered for the purpose of establishing the underlying facts of the case.

23. The final exhibit lists shall represent counsel's good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only 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.

24. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and shall not be read in open court to provide that testimony, but may be used in the examination of live witnesses. Videotape deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.

25. The parties shall provide to one another, and to the Administrative Law Judge and the court reporter, no later than 48 hours in advance, not including weekends and holidays, a list of all witnesses to be called on each day of hearing, subject to possible delays or unforeseen circumstances.

26. The parties shall provide one another with copies of any demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) 24 hours before they are used with a witness.

27. Complaint Counsel's exhibits shall bear the designation PX and Respondents' exhibits shall bear the designation RX or some other appropriate designation. Complaint Counsel's demonstrative exhibits shall bear the designation PXD and Respondents' demonstrative exhibits shall bear the designation RXD or some other appropriate designation. If demonstrative exhibits are used with a witness, the exhibit will be marked and referred to for identification only. Any demonstrative exhibits referred to by any witness may be included in the trial record, but they are not part of the evidentiary record and may not be cited to support

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copies of the same document, only one of those documents shall be offered into evidence. The parties shall agree in advance as to which exhibit number they intend to use. Counsel shall contact the court reporter regarding submission of exhibits.

ORDERED: