PUBLIC

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

In the Matter of	)	
HomeAdvisor, Inc., a corporation, d/b/a Angi Leads, d/b/a HomeAdvisor Powered By Angi,	)	Docket No. 9407
Respondent.	)	

MOTION TO AMEND SCHEDULING ORDER

3.21(c)(2), Complaint Counsel moves to amend the Scheduling Order in this matter and enter the attached Proposed Scheduling Order . The Proposed Order would correct a discrepancy between previous extensions of the hearing date and the pre-hearing deadlines. Additionally, because the initial Scheduling Order in this matter has been amended repeatedly, the Proposed Order would integrate all prior amendments and provide a single document for the Court and the parties, superceding the initial Scheduling Order. Respondent does not oppose this motion.

Background: The Court first issued its Scheduling Order in this matter on April 25, 2022. On June 15, the Court amended Paragraph 8 of the Scheduling Order. Order Granting Unopposed Motion for Extension of Time to Move to Compel Discovery Responses. On September 7, 2022, the Court delayed to September 20, 2022,

for the purposes of allowi

Joint Motion to Extend Time to Complete Fact Discovery. On September 9, 2022, the

virtually by vid

Without Substantial Controversy at 1. On September 19, 2022, the Commission delayed the evidentiary hearing in this matter to February 22, 2023 approximately three and a half months after its prior November 9, 2022 date but

Judge, all related prehearing deadlines were extended by exactly three months. Order Granting

ing Date and Prehearing

currently spread across five documents.

Argument: The Court should enter the Proposed Order because it would promote efficiency without disadvantaging or inconveniencing either party or the Court.[1] Rule 3.21 empowers the Court to, upon a showing of good cause, grant a motion to extend any deadline or time specified in this scheduling order other than the date of the evidentiary hearing. § 3.21(c)(2). In delaying the evidentiary hearing, the Commission

ongoing authority to modify other dates. September 19 Order at 2. The Proposed Order would keep the same time between deadlines established in the original Scheduling Order, counting backwards from the new evidentiary hearing date.[2] Good cause exists because it would be inefficient and inconvenient to require all pre-hearing matters to be completed two weeks prior to the evidentiary hearing including the final prehearing conference regularly set for the day before the hearing. Moreover, the Proposed Order would promote efficiency and clarity by re-

[1]

parties do not object to moving those deadlines to the nearest convenient date.

[2] January 16, 2023, is a federal holiday, so the Proposed Order sets deadlines that would fall on that day to January 17, 2023, and a response deadline that would fall on January 26, 2023, to January 27, 2023.

consolidating the terms of the scheduling order required by Rule 3.21(c)(1) into a single document instead of five. Besides the changes to the dates of prehearing deadlines, the Proposed Order incorporates prior orders without changing the status quo. Accordingly, Complaint Counsel moves, and Respondent does not oppose, that the Court enter the Proposed Order.

Respectfully submitted,

Dated: November 17, 2022

s/ Colin D. A. MacDonald

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PROPOSED SCHEDULING ORDER

ets (or develust ve

		leave to submit surrebuttal expert reports on behalf of Respondents).
January 30, 2023	-	Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
February 3, 2023	-	

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 a list identifying each exhibit to which admissibility is agreed, marked D Qigned by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

February 22, 2023 - Commencement of Hearing, to begin at 10:00 a.m..

ADDITIONAL PROVISIONS

1. For all papers that are required to be filed with the Office of the Secretary, the

pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), or

the date, time, and place of each . . . conference between counsel, and the names of all parties participating in each such con Motions that fail to include such separate statement may be denied on that ground.

5. Rule 3.22(c) states:

> All written motions shall state the particular order, ruling, or action desired and the grounds therefor. Memoranda in support of, or in opposition to, any dispositive motion shall not exceed 10,000 words. Memoranda in support of, or in opposition to, any other motion shall not exceed 2,500 words. Any reply in support of a dispositive motion shall not exceed 5,000 words and any reply in support of any other motion authorized by the Administrative Law Judge or the Commission shall not exceed 1,250 words.

If a party chooses to submit a motion without a separate memorandum, the word count limits of 3.22(c) apply to the motion. If a party chooses to submit a motion with a separate memorandum, absent prior approval of the ALJ, the motion shall be limited to 750 words, and 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 50 requests for admissions, including all discrete subparts, except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. Any single interrogatory inquiring as to a request for admissions response may address only a single such response. There is no limit to the number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits. Within seven days of service of a document request, the parties shall confer about the format for the production of electronically stored information. If any federal court proceeding related to this administrative proceeding is initiated, any discovery obtained in this proceeding may be used in the related federal court litigation, and vice versa.

8. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off and that all responses and objections will be due on or before that date, unless otherwise noted. Any motion to compel responses to discovery requests, or to seek certification of a request for court enforcement of a nonparty subpoena, shall be filed within 30 days of when the responding party declines to make a production or answer an interrogatory, in whole or in part, and no further conferral between the parties is planned on the issue, or within 20 days after the close of discovery, whichever first occurs; except that, where the parties have been engaging in negotiations over a

discovery dispute, including negotiations with any nonparty with regard to a subpoena, the deadline for the motion to compel shall be within 5 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 by videotape at least five days in advance of the deposition. 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.

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 the deposition is scheduled. The parties need not separately notice the deposition of a non-party noticed by an opposing party. Unless the parties otherwise agree, at the request of any party, the time and allocation for a non-party deposition shall be divided evenly between them, but the noticing party may use any additional time not used by the opposing party. If no party makes such a request, cross-examination of the witness will be limited to one hour.

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 has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within three business days of receiving the documents. No deposition of a non-party shall be scheduled between the time a non-party provides documents in response to a subpoena *duces tecum* to a party, and 3 business days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a non-party produces those documents at the time of the deposition, as agreed to by all parties involved.

12. If a party intends to offer confidential materials of an opposing party or non-party as evidence at the hearing, in providing notice to such non-party, the parties are required to inform each non-party of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45; in *In re Otto Bock Healthcare North American*, 2018 WL 3491602 at *1 (July 2, 2018); and *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

13. Motions *in limine*

advance of the hearing, to take expert depositions for the purpose of perpetuating trial testimony (i.e., a trial deposition) and to submit such trial testimony as an exhibit in lieu of presenting the imony via live video at trial. This trial deposition may be conducted in addition to any deposition of an expert witness for purposes of discovery (discovery deposition). Although the parties are encouraged to submit trial depositions in lieu of live video testimony at trial for all expert witnesses in the case, you may choose to do trial depositions for all or fewer than all experts.

21.
Proceedings and Specifying Facts Without Substantial Controversy, the evidentiary hearing in this matter will be conducted remotely by video conference. To accommodate safety or other concerns of witnesses and attorneys and staff, the parties may, in advance of the hearing, take trial depositions of fact witnesses who had been deposed before the close of discovery and to submit such trial deposition testimony (as video and/or transcript of trial deposition testimony) as imony via live video at trial. Although the parties may submit trial depositions in lieu of live video testimony at trial for all fact witnesses in the case, you may choose to do trial depositions for fewer than all fact witnesses.

21A. All trial depositions shall occur between the close of discovery and the close of party. The

depositions.

20. 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.

21. h 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.

22. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and need not be read in open co

24. 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.

25. ts shall bear the designation PX and Respondent s exhibits shall bear the designation RX or some other appropriate designation. Complaint H [Kts shall bear the designation PXD and Respondent s 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 any disputed fact. Both sides shall number the first page of each exhibit with a single series of consecutive numbers. When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive control number or some other consecutive page number.

26. At the final prehearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial.The parties shall confer and shall eliminate duplicative exhibits in advance of the final prehearing conference and, if necessary, during trial. For example, if PX100 and RX200 are different 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.

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2022, I filed the foregoing document electronically