

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



_____)
In the Matter of)
)
Axon Enterprise, Inc.)
a corporation,)
)
and)
)
Safariland, LLC,)
a partnership,)
)
Respondents.)
_____)

Docket No. 9389

FIRST REVISED SCHEDULING ORDER

In accordance with the Order of the Administrative Law Judge issued on March 17, 2020, which granted the parties' Joint Motion for First Revised Scheduling Order, the dates in the January 30, 2020 Scheduling Order are hereby revised as follows:

- May 8, 2020 - 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.

Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.
- May 15, 2020 - Deadline for Complaint Counsel to provide expert witness reports.
- May 18, 2020 - Complaint Counsel provides to Respondents' Counsel its final proposed exhibit list, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), and Complaint Counsel's basis of admissibility for each proposed exhibit.

Complaint Counsel also provides its proposed final witness list, which shall include (a) an indication whether each witness is designated as a fact or expert witness; (b) a summary of the general topics of each witness' anticipated testimony; and (c) a good faith indication of whether the party offering the witness intends to seek leave to present the witness' testimony by video deposition. Complaint Counsel's proposed final witness list shall not include any more than 20 witnesses, and shall not include any more than four witnesses who did not also appear on the supplemental witness lists provided by Complaint Counsel in the 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 copy to ALJ of Complaint Counsel's 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.

May 22, 2020

- Respondents' Counsel provides to Complaint Counsel its final proposed exhibit list, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), and Respondents' basis of admissibility for each proposed exhibit.

Respondents' Counsel also provides its proposed final witness list, which shall include (a) an indication of whether each witness is designated as a fact or expert witness; (b) a summary of the general topics of each witness' anticipated testimony; and (c) a good faith indication of whether the party offering the witness intends to seek leave to present the witness' testimony by video deposition. Respondents' Counsel's proposed final witness list shall not include any more than 20 witnesses, and shall not include any more than four witnesses who did not also appear on the supplemental witness lists provided by Respondents' Counsel in the 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.

Respondents' Counsel provides courtesy copies to ALJ of Respondents' 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.

- May 22, 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).¹
- May 29, 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).
- June 3, 2020 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits. See Additional Provision 13 of January 30, 2020 Scheduling Order.
- June 5, 2020 - Complaint Counsel to 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).
- June 10, 2020 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.

¹ 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.

- June 11, 2020 - Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 14 of January 30, 2020 Scheduling Order.
- June 15, 2020 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- June 15, 2020 - Exchange proposed stipulations of law, facts, and authenticity.
- June 16, 2020 - Exchange and provide 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.
- June 16, 2020 - Complaint Counsel files pretrial brief supported by legal authority.
- June 17, 2020 - Deadline for filing responses to motions *in limine* to preclude admission of evidence.
- June 18, 2020 - Respondents’ Counsel files pretrial brief supported by legal authority.
- June 19, 2020 - 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.

June 23, 2020 - 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.

Except as revised herein, all provisions of the January 30, 2020 Scheduling Order remain in effect.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: March 17, 2020

Notice of Electronic Service

I hereby certify that on March 17, 2020, I filed an electronic copy of the foregoing First Revised Scheduling Order, Order Granting Joint Motion for Revised 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
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I hereby certify that on March 17, 2020, I served via E-Service an electronic copy of the foregoing First Revised Scheduling Order, Order Granting Joint Motion for Revised Scheduling Order, upon:

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