

PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF THE ADMINISTRATIVE LAW JUDGE



ORIGINAL

DOCKET NO. 9389

In the Matter of

**Axon Enterprise, Inc.
a corporation;**

and

**Safariland, LLC,
a corporation.**

JOINT MOTION FOR FIRST REVISED SCHEDULING ORDER

On March 13, 2013, the Federal Trade Commission (“FTC”) granted the parties’ Joint Expedited Motion to Reschedule the Administrative Hearing to accommodate a five-week extension of the discovery schedule for the purpose of conducting depositions. The date for the commencement of the hearing in this case has been rescheduled from May 19, 2020 to June 23, 2020.

Accordingly, Complaint Counsel and Respondents jointly move this Court to enter the attached proposed First Revised Scheduling Order, which extends deposition discovery and post-discovery deadlines by five weeks to align with the new date for the evidentiary hearing.

Dated: March 13, 2020

Respectfully submitted,

s/ Jennifer Milici
Jennifer Milici

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

In the Matter of

**Axon Enterprise, Inc.
a corporation;**

and

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[PROPOSED] FIRST REVISED SCHEDULING ORDER

In accordance with the Commission's March 13, 2020 Order granting the joint motion to reschedule the hearing, the dates in the January 30, 2020 Scheduling Order are hereby revised as follows:

- | | |
|--------------|--|
| May 8, 2020 | Close of deposition 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's 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 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.

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's 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 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.

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

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

- 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 the January 30 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.
- June 11, 2020 Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 14 of the January 30 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 serve courtesy copy on 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.

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 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.

All other deadlines and provisions of the January 30, 2020 Scheduling Order remain in effect.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: [DATE]

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2020, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Acting Secretary
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The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to:

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By: s/ Jennifer Milici
Jennifer Milici

Counsel Supporting the Complaint

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

March 13, 2020

By: s/ Jennifer Milici
Jennifer Milici