

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

In the Matter of)	
)	
Traffic Jam Events, LLC, a limited liability company,)	
)	Docket No. 9395
and)	
)	
David J. Jeansonne II, individually and as an officer of Traffic Jam Events, LLC,)	
)	
Respondents.)	

FIRST REVISED SCHEDULING ORDER

On May 3, 2021, the Commission issued an Order Returning the Matter to Adjudication and Setting a New Evidentiary Hearing Date. The Commission set the evidentiary hearing to commence on September 14, 2021, and directed that a revised prehearing scheduling order be issued. Upon consideration of the parties' joint proposed scheduling order, the parties' stipulated proposals are adopted, except as modified herein, and the deadlines set forth in the September 4, 2020 Scheduling Order are hereby revised as set forth below.

- | | | |
|---------------|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| June 11, 2021 | - | Deadline for issuing document requests, interrogatories and subpoenas <i>duces tecum</i> , except for discovery for purposes of authenticity and admissibility of exhibits. |
| June 25, 2021 | - | Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits. |
| July 16, 2021 | - | 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. |
| July 23, 2021 | - | Deadline for Complaint Counsel to provide expert witness reports. |

- July 26, 2021 - 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.
- July 30, 2021 - 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).
- August 9, 2021 - 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.
- August 10, 2021 - 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
- August 11, 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

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.

striking Complaint Counsel’s rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondents).

- August 17, 2021 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- August 20, 2021 - Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 13.
- August 20, 2021 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits. *See* Additional Provision 12.
- August 27, 2021 - Deadline for filing responses to motions *in limine* to preclude admission of evidence.
- August 27, 2021 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- August 30, 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.
- August 31, 2021 - Complaint Counsel files pretrial brief supported by legal authority.
- September 7, 2021 - Exchange proposed stipulations of law, facts, and authenticity.
- September 8, 2021 - Respondents’ Counsel files pretrial brief supported by legal authority.
- September 13, 2021 - Final prehearing conference to begin at 2:00 p.m. Eastern Time.

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.

September 14, 2021 - Commencement of Hearing, to begin at 10:00 a.m. Eastern Time.

ADDITIONAL PROVISIONS

To better facilitate a remote trial, the Additional Provisions of the Scheduling Order issued on September 4, 2020, are modified as set forth below.

- (1) Additional Provision 22 in the September 4, 2020 Scheduling Order is replaced by the following Additional Provision 22A:

Properly admitted deposition testimony, including discovery depositions or trial depositions, and whether or not recorded by video, and properly admitted investigational hearing transcripts, are part of the record. Unless permitted by the Administrative Law Judge with three days' prior approval, such depositions or excerpts of depositions shall not be read or played during the evidentiary hearing in order to provide that testimony, but may be used in the examination of live witnesses.

- (2) The following provisions are added as Additional Provisions 27 and 28:

27. Due to ongoing public health concerns related to COVID-19, it is probable that the evidentiary hearing in this matter will be conducted remotely by video conference. The parties are encouraged, in 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 expert's testimony 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 fewer than all experts.

28. Due to ongoing public health concerns related to COVID-19, it is probable that 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 an exhibit in lieu of presenting the fact witness' testimony 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.

All other Additional Provisions of the September 4, 2020 Scheduling Order are in effect.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: May 7, 2021