

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Alvaro M. Bedoya
 Melissa Holyoak
 Andrew Ferguson

In the Matter of)
)
Asbury Automotive Group, Inc.,)
a corporation,)
)
Asbury Ft. Worth Ford, LLC, a limited liability)
company, also d/b/a David McDavid Ford)
Ft. Worth,)
)
McDavid Frisco – Hon, LLC, a limited liability)
company, also d/b/a David McDavid Honda of)
Frisco,)
)
McDavid Irving – Hon, LLC, a limited liability)
company, also d/b/a David McDavid Honda of)
Irving, and)
)
Ali Benli, individually and as an officer of)
Asbury Ft. Worth Ford, LLC,)
McDavid Frisco – Hon, LLC, and)
McDavid Irving – Hon, LLC,)
)
Respondents.)

DOCKET NO. 9436

**JOINT EXPEDITED MOTION FOR A FOUR-MONTH STAY
OF ADMINISTRATIVE PROCEEDINGS**

Complaint Counsel and Respondents Asbury Automotive Group, Inc., Asbury Ft. Worth Ford, LLC, McDavid Frisco – Hon, LLC, McDavid Irving – Hon, LLC, and Ali Benli (collectively “Respondents”) jointly move pursuant to 16 C.F.R. § 3.41 to stay this Part 3

proceeding, including the evidentiary hearing and all filing and discovery deadlines, for four months—including moving the evidentiary hearing from April 16, 2025 to August 18, 2025—to allow for resolution of Respondents’ expedited motion for preliminary injunction and the Commission’s anticipated motion to dismiss in the collateral federal action, *Asbury Automotive Group, Inc., et al. v. Fed. Trade Comm’n, et al.*, No. 4:24-cv-00950-O (N.D. Tex.).¹ This limited postponement would provide the parties time to brief, and the United States District Court for the Northern District of Texas time to decide, preliminary motions in the collateral federal action without unduly delaying the Part 3 proceeding. The public has a strong interest in providing reasonable time for resolution of the preliminary motions in the federal action, which will determine whether one or both of these actions may proceed, while saving litigants and non-litigants from expenses and burdens that could later prove unnecessary. The parties further respectfully request expedited consideration of this motion by October 28, 2024, to ensure that no party is unduly burdened in the parallel proceedings by uncertainty arising from the pending motion.

BACKGROUND

The Commission issued the Part 3 Complaint against Respondents in this matter on August 16, 2024. On August 21, 2024, the Office of Administrative Law Judges designated Judge Dania L. Ayoubi for these proceedings. Respondents filed their Answer and Affirmative Defenses on September 3, 2024, and, following a prehearing conference, Judge Ayoubi issued the Scheduling Order on September 13, 2024. Under that Order, fact discovery is scheduled to close on February 18, 2025 and expert discovery is scheduled to conclude on March 25, 2025. The evidentiary hearing in this matter is scheduled to begin on April 16, 2025.

¹ Respondents note that, by joining this motion, they do not waive any defenses they may have in this matter.

On October 4, 2024, Respondents filed a complaint for injunctive and declaratory relief in the United States District Court for the Northern District of Texas, seeking to preliminarily and permanently enjoin this Part 3 proceeding on constitutional grounds. (ECF No. 1, Compl., at 31-32, *Asbury Automotive Group, Inc., et al. v. Fed. Trade Comm'n, et al.*, No. 4:24-cv-00950-O (N.D. Tex. Oct. 4, 2024).) On October 14, 2024, Respondents filed an expedited motion for a preliminary injunction staying these proceedings pending adjudication of Respondents' constitutional claims in the collateral federal action. (ECF No. 6.) That same day, the district court ordered the Respondents to confer with the Defendants named in that action² to agree on a briefing schedule for that motion and ordered such schedule be filed with the court no later than October 21, 2024. (ECF No. 10.) The parties in the collateral federal proceeding have proposed a consolidated briefing schedule for the motion for preliminary injunction and Defendants' contemplated motion to dismiss in which briefing on both motions would conclude by December 24, 2024. Under the proposed federal scheduling order, if the Commission does not grant the present motion by October 28, 2024, Respondents may file a motion in the federal action for a four-month stay of these proceedings.

ARGUMENT

The Commission can stay Part 3 proceedings for good cause, as recognized in numerous provisions of its Part 3 Rules. *See* 16 C.F.R. § 3.41(f); *see also id.* §§ 3.21(c), 3.41(b).³ Here, there is good cause for a limited stay to provide the parties time to brief, and the district court time to decide, Respondents' expedited motion for preliminary injunction and Defendants'

² Respondents named as Defendants the Commission as well as each of the Commissioners in their official capacities.

³ In the alternative, the parties move for a four-month continuance of these proceedings, including a four-month postponement of the evidentiary hearing from April 16, 2025 to August 18, 2025, and a four-month postponement of all filing deadlines and discovery deadlines, pursuant to 16 C.F.R. §§ 3.21(c) or 3.41(b).

contemplated motion to dismiss in the collateral federal court action. The requested relief will not prejudice the Commission’s ability to discharge its duties.

The Commission has concluded good cause exists to postpone administrative proceedings in other recent Part 3 matters, to allow for the resolution of a motion for preliminary injunction in a parallel federal proceeding. A planned, time-limited stay avoids any inefficiencies that may arise from preparing for the administrative trial under tight deadlines while awaiting resolution of the pending motions in the district court. For example, finding good cause, the Commission has reasoned that “the public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary.” *In re Meta Platforms, Inc.*, No. 9411, 2023 WL 621507, at *1-2 (F.T.C. Jan. 11, 2023) (granting motion to postpone administrative hearing until after date expected for federal court decision on preliminary injunction); *accord In re Novant Health, Inc.*, No. 9425, 2024 WL 2974553 (F.T.C. June 5, 2024) (same); *In re FleetCor Techs., Inc.*, No. D-9403, 2021 WL 6618368 (F.T.C. Aug. 25, 2021) (same); *In re Hackensack Meridian Health, Inc.*, No. 9399, 2021 WL 2379546, at *1-2 (F.T.C. May 25, 2021) (same); *In re Thomas Jefferson Univ.*, No. 9392, 2020 WL 7237952, at *1-2 (F.T.C. Nov. 6, 2020) (same); *In re RAG-Stiftung*, No. 9384, 2020 WL 91294, at *1-3 (F.T.C. Jan. 2, 2020) (same); *In re Sanford Health*, No. 9376, 2017 WL 5845596, at *1-2 (F.T.C. Nov. 21, 2017) (same); *In re The Penn State Hershey Med. Ctr.*, No. 9368, 2016 WL 3345405, at *1 (F.T.C. June 10, 2016) (same); *In re Advocate Health Care Network*, No. 9369, 2016 WL 3182774, at *2 (F.T.C. June 2, 2016) (same). Absent a stay, the parties will be required to expend resources conducting the bulk of discovery in this Part 3 proceeding while simultaneously litigating a motion for preliminary injunction and motion to dismiss in the collateral federal court proceeding to determine whether one or both of these actions may proceed. The proposed four-month stay would provide time for

resolution of the parties' preliminary motions in the federal action without unduly delaying the Part 3 proceeding, potentially saving litigants and third parties from expenditures and burdens that could prove unnecessary.

CONCLUSION

For the foregoing reasons, Complaint Counsel and Respondents respectfully request that the Commission enter an order by October 28, 2024, staying this Part 3 proceeding, including the evidentiary hearing and all filing and discovery deadlines, for four months, and moving the evidentiary hearing from April 16, 2025 to August 18, 2025.

Dated: October 21, 2024

/s/ Jamie D. Brooks

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Counsel for Respondents

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**[Proposed] ORDER GRANTING THE PARTIES’ JOINT EXPEDITED MOTION FOR A
FOUR-MONTH STAY OF ADMINISTRATIVE PROCEEDINGS**

Good cause having been shown,

IT IS HEREBY ORDERED that Complaint Counsel's and Respondents' Joint Expedited Motion for a Four-Month Stay of Administrative Proceedings is **GRANTED**;

IT IS FURTHER ORDERED that all proceedings before the Commission and the Office of Administrative Law Judges in this matter are hereby **STAYED** as follows:

- (1) Commencement of the evidentiary hearing in this matter is moved from April 16, 2025 to August 18, 2025;
- (2) All other proceedings in this matter are stayed for four months from the date of this order;
- (3) All deadlines, whether pursuant to the Rules or the Administrative Law Judge's Scheduling Order, are extended four months; and
- (4) The Administrative Law Judge shall issue a revised Scheduling Order consistent with the terms of this order.

By the Commission.

April J. Tabor
Secretary

Seal:
ISSUED:

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SEPARATE MEET AND CONFER STATEMENT

Complaint Counsel Jamie D. Brooks and Daniel Dwyer conferred by video conference with Respondents’ Counsel Ed Burbach and John Sepehri on October 17, 2024 and October 21, 2024. This motion seeks relief that cannot be obtained solely by agreement of the parties. Respondents’ Counsel joins Complaint Counsel in the filing of this motion.

/s/ Jamie D. Brooks

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Washington, DC 20580

Complaint Counsel

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record—Ed Burbach, Michael Lockerby, Robert Johnson, John Sepehri, Megan Chester, James Doty, Sarah Abutaleb, and Daniel Dwyer—by email on this 21st day of October, 2024.

/s/ Jamie D. Brooks

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Complaint Counsel