

purpose of considering a proposed settlement. Such motion shall be filed with the Secretary of the Commission, as provided in § 4.2. Any such motion shall be accompanied by a consent proposal; the proposal itself, however, shall not be placed on the public record unless and until it is accepted by the Commission as provided herein. If the consent proposal affects only some of the respondents or resolves only some of the charges in adjudication, the motion required by this paragraph shall so state and shall specify the portions of the matter that the proposal would resolve.

(c) If a consent agreement accompanying the motion has been executed by one or more respondents and by complaint counsel, has been approved by the appropriate Bureau Director, and conforms to § 2.32, and the matter is pending before an Administrative Law Judge, the Secretary shall issue an order withdrawing from adjudication those portions of the matter that the proposal would resolve and all proceedings before the Administrative Law Judge shall be stayed with respect to such portions, pending a determination by the Commission pursuant to paragraph (f) of this section. If a consent proposal is not in the form of a consent agreement executed by a respondent, does not otherwise conform to § 2.32, or has not been executed by complaint counsel, and the matter is pending before the Administrative Law Judge, he or she shall certify the motion and proposal to the Commission upon a written determination that there is a reasonable possibility of settlement. The certification may be accompanied by a recommendation to the Commission as to the disposition of the motion. The Administrative Law Judge shall make a determination as to whether to certify the motion within 5 days after the filing of the motion. The filing of a motion under paragraph (b) of this section and certification thereof to the Commission shall not stay proceedings before the Administrative Law Judge unless the Commission shall so order. Upon certification of such motion, the Commission in its discretion may issue an order withdrawing from adjudication those portions of the matter that the proposal

would resolve for the purpose of considering the consent proposal.

(d) If the matter is no longer pending before the Administrative Law Judge, the Commission in its discretion may, upon motion filed under paragraph (b) of this section, issue an order withdrawing from adjudication those portions of the matter that the proposal would resolve for the purpose of considering the consent proposal. Such order may issue whether or not the consent proposal is in the form of a consent agreement executed by a respondent, otherwise conforms to § 2.32, or has been executed by complaint counsel.

(e) The Commission will treat those portions of a matter withdrawn from adjudication pursuant to paragraphs (c) or (d) of this section as being in a nonadjudicative status. Portions not so withdrawn shall remain in an adjudicative status.

(f) After some or all of the allegations in a matter have been withdrawn from adjudication, the Commission may accept a proposed consent agreement, reject it and return the matter or affected portions thereof to adjudication for further proceedings, or take such other action as it may deem appropriate. If an agreement is accepted, it will be disposed of as provided in § 2.34 of this chapter, except that if, following the public comment period provided for in § 2.34, the Commission decides, based on comments received or otherwise, to withdraw its acceptance of the agreement, it will so notify the parties and will return to adjudication any portions of the matter previously withdrawn from adjudication for further proceedings or take such other action it considers appropriate.

(g) This rule will not preclude the settlement of the case by regular adjudicatory process through the filing of an admission answer or submission of the case to the Administrative Law Judge on a stipulation of facts and an agreed order.

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§ 3.26 Motions following denial of preliminary injunctive relief.

(a) This section sets forth two procedures by which respondents may obtain consideration of whether continuation of an adjudicative proceeding is in the

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public interest after a court has denied preliminary injunctive relief in a separate proceeding brought under section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), in aid of the adjudicative proceeding.

(b) A motion under this section shall be addressed to the Commission and must be filed within 14 days after, but no earlier than:

(1) A district court has denied the Commission's request for a preliminary injunction, if the Commission has not filed a motion for relief pending appeal with the court of appeals within 7 days following the district court's denial of a preliminary injunction; or

(2) A court of appeals has denied a Commission motion for relief pending appeal.

(c) *Withdrawal from adjudication.* Following denial of court relief as specified in paragraph (b) of this section, respondents may move that the adjudicative proceeding be withdrawn from adjudication in order to consider whether the public interest warrants further litigation. Although all respondents must consent to the filing of such a motion, a motion under this paragraph (c) may be filed jointly or separately by each of the respondents in the adjudicative proceeding. At the time respondents file a motion under this paragraph (c), respondents must also electronically transmit a copy to complaint counsel. The Secretary shall issue an order withdrawing the matter from adjudication 2 days after such a motion is filed, except that, if complaint counsel file an objection asserting that the conditions of paragraph (b) of this section have not been met, the Commission shall decide the motion within 10 days after the objection is filed.

(d) *Consideration on the record of a motion to dismiss.* (1) In lieu of a motion to withdraw the adjudicative proceeding from adjudication under paragraph (c) of this section, any respondent may file a motion under this paragraph to dismiss the administrative complaint on the basis that the public interest does not warrant further litigation after a court has denied preliminary injunctive relief to the Commission.

(2) *Stay.* The filing of a motion under this paragraph (d) shall stay the pro-

ceeding until 7 days following the disposition of the motion by the Commission, and all deadlines established by these rules shall be tolled for the amount of time the proceeding is so stayed.

(3) *Answer.* Complaint counsel may file a response within 7 days after such motion is filed.

(4) *Ruling by Commission.* Within 30 days after the deadline for filing a response, the Commission shall rule on any motion under this paragraph (d).

(e) *Form.* Memoranda in support of or in opposition to motions authorized by this section shall not exceed 10,000 words. This word count limitation includes headings, footnotes, and quotations, but does not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, proposed form of order, and any attachment required by § 3.45(e).

(f) *In camera materials.* If any filing includes materials that are subject to confidentiality protections pursuant to an order entered in either the proceeding under section 13(b) or the adjudicative proceeding, such materials shall be treated as *in camera* materials for purposes of this paragraph and the party shall file 2 versions of the document in accordance with the procedures set forth in § 3.45(e). The time within which complaint counsel may file an objection or response under this section will begin to run upon service of the *in camera* version of the motion (including any supporting briefs and memoranda).

[80 FR 15161, Mar. 23, 2015]

Subpart D—Discovery; Compulsory Process

§ 3.31 General discovery provisions.

(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things for inspection and other purposes; and requests for admission. Except as provided in the rules, or unless the Administrative Law Judge