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24 **IN THE UNITED STATES DISTRICT COURT**
25 **FOR THE DISTRICT OF ARIZONA**

26 Axon Enterprise, Inc.,

27 Plaintiff,

28 v.

Federal Trade Commission, et al.,

Defendants.

No. 2:20-cv-00014-PHX-DWL

**PLAINTIFF'S OPPOSITION
TO DEFENDANTS' MOTION
TO EXTEND TIME TO FILE
RESPONSIVE PLEADING**

Plaintiff Axon Enterprise, Inc. ("Axon") opposes Defendants' Motion to Extend Their Responsive Pleading Deadline from March 13 when it is now due, until 14 days after this Court rules on Axon's pending motion for preliminary injunction (ECF 15), to

1 ostensibly “spare the parties and the Court from duplicative and potentially unnecessary
2 briefing.” (ECF 25 at 1). The fact is that *after* Axon filed this case the FTC rushed to file and
3 prosecute its duplicative, unnecessary, and extraordinarily expensive (for both Axon and
4 taxpayers) parallel administrative proceeding to avoid a neutral Article III court deciding
5 Axon’s substantial constitutional challenges. This motion is the FTC’s latest avoidance
6 attempt, and this Court should not allow it.
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9 It is ironic, to say the least, that the Defendants—the FTC and its Commissioners—
10 seek to stay their obligation to timely respond to Axon’s Complaint pending this Court’s
11 ruling on Axon’s preliminary injunction motion, when these same Defendants *denied* Axon’s
12 motion to stay the FTC’s administrative proceedings pending this Court’s ruling on the same
13 preliminary injunction motion.¹ Axon has therefore been forced to proceed in both actions
14 simultaneously and at tremendous expense. At every turn, the FTC has sought to delay any
15 merits filing in this Court while at the same time fast-tracking everything in its administrative
16 home court where it hasn’t lost in 25 years.
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19 Here, the FTC did not respond on the merits to Axon’s preliminary injunction
20 motion, not even in the alternative, relying instead solely on jurisdictional claims. (ECF 19).
21 It then *opposed* Axon’s motion to expedite consideration and hearing of that motion. (ECF
22 23). Now the FTC seeks to delay its response to Axon’s Complaint, even though the
23 government already gets more than twice as long as other parties (60 as opposed to 21 days)
24 to file a responsive pleading under Fed. R. Civ. P. 12(a)(1)-(2). Nor is there any undue
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28 ¹ Axon filed its motion for preliminary injunction in this Court on January 9, 2020, and its
motion to stay the FTC’s administrative proceeding (FTC Docket No. 9389) the next day on
January 10, 2020. Although the order is not on the public docket, the FTC denied Axon’s
motion on February 27, 2020.

1 burden in requiring a timely response where the FTC acknowledges its intent to file a
2 motion to dismiss (instead of answering the serious constitutional allegations of the
3 Complaint), which will repeat, at least “in part”, its already drafted jurisdictional arguments.
4 (ECF 25 at 3).²

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6 In stark contrast, and in a clear attempt to force Axon to submit to unconstitutional
7 proceedings before its Fifth Amendment Due Process/Equal Protection and Article II
8 Separation of Powers claims can be resolved here, the FTC set its administrative hearing
9 schedule on an aggressive 5-month fast track rather than the allowed 8-month schedule
10 under FTC Rule 3.11(b)(4). Trial is set to begin May 19, 2020. The administrative Scheduling
11 Order sets an April 3 discovery deadline (2 days after the oral argument set here) such that
12 Axon is presently engrossed in massive document processing and production, as well as
13 attempting to navigate nearly 50 depositions all over the country in a 3-week-period in the
14 face of coronavirus travel restrictions, quarantine requirements, and office closures
15 impacting individuals the FTC has targeted for depositions. While Axon is literally being
16 forced to spend millions of dollars to defend the unconstitutional administrative case in the
17 next month, Defendants’ claimed “burden and expense” associated with the mere filing of a
18 merits-based written response in this Court pales by comparison. Requiring the FTC’s timely
19 filing may also avoid further delay should the Court “solicit further expedited briefing on the
20 merits of Axon’s request for injunctive relief” (ECF 24 at 2) following oral argument on
21 April 1.
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28 ² The FTC has not identified or otherwise conferred with Axon as to any other alleged ground for dismissal, as required by Local Rule 12.1(c), despite the fact that Defendants’ responsive pleading is due Friday.

1 For all these reasons, Axon respectfully requests this Court to deny Defendants'
2 motion to delay its merits response to Axon's Complaint.

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4 Dated: March 8, 2020

Respectfully submitted,

5
6 /s/ Pam Petersen

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2020, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's CM/ECF system upon all counsel of record in the above-captioned case.

/s/ Pam Petersen _____

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