

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

**IN RE: SIMPLY ORANGE ORANGE  
JUICE MARKETING AND SALES  
PRACTICES LITIGATION**

**ALL ACTIONS**

MDL No. 2361

Master Case No. 4:12-MD-02361-FJG

**ORDER**

Currently pending before the Court is the parties' Proposed Scheduling Order (Doc. No. 51). On March 1, 2013, this Court denied Coca-Cola's motion to dismiss in its entirety and ordered focused discovery limited to the issues of whether Defendants' products contain synthetic flavors or orange pulp, oil, or essence at levels significantly in excess of those found in raw processed orange juice or otherwise permitted by FDA regulations and whether Defendants add to their not-from-concentrate orange juice products any water-soluble constituents of orange essence (Doc. No. 48). The Court ordered the parties to submit a Joint Proposed Discovery Plan (Doc. No. 48 & 50). On April 15, 2013, the parties submitted the present Proposed Scheduling Order (Doc. No. 51). Despite the parties' good faith efforts to come to agreement, Plaintiffs and Coca-Cola have different views about how discovery should proceed (Doc. No. 51).

After careful review of Plaintiffs' and Defendant's discovery proposal, the Court believes that Defendant's proposal is more consistent with the Court's Order on the Motion to Dismiss (Doc. No. 48). As such, it is hereby **ORDERED**:

1. Conference. Plaintiffs' request for a Local Rule 37.1 Conference is **DENIED**.
2. Class Certification. Plaintiffs' request for a briefing schedule for class certification or for class-related expert disclosures is **DENIED** as premature.

3. Document Discovery. No electronic discovery shall be permitted, at this time. Defendant shall produce document discovery sufficient to show whether Defendants' products contain synthetic flavors or orange pulp, oil, or essence at levels significantly in excess of those found in raw processed orange juice or otherwise permitted by FDA regulations and whether Defendants add to their not-from-concentrate orange juice products any water-soluble constituents of orange essence (Doc. No. 48). This includes categories of documents such as the following:
  - a. All testing conducted by Coca-Cola on the Products during the Class Period, concerning their levels of orange pulp, oil, and essence.
  - b. All USDA testing reports of the Products during the Class Period.
  - c. All communications with government regulatory entities during the Class Period regarding the levels of orange pulp, oil, and essence within the Products.
  - d. All specifications and certifications for the Products, including documents reflecting the composition of any "add backs" to the Products during the Class Period.
4. Fact Witness Depositions. Defendant shall designate a 30(b)(6) witness to testify on behalf of the company as the person most knowledgeable regarding the composition and ingredients of each Product. If necessary, the same person can be used for more than one of the Products. No other depositions shall be conducted at this time.
5. Expert Discovery. If Plaintiffs intend to rely on expert testimony, Plaintiffs must disclose the expert's identity and furnish a report detailing the expert's opinion.

- Defendant shall then have an opportunity to depose Plaintiffs' expert and proffer a rebuttal expert. No other expert discovery is necessary at this time.
6. Written Discovery. No written discovery shall take place at this time.
  7. Initial Disclosures. Initial disclosures shall not take place at this time.
  8. Discovery Schedule.
    - a. **May 9, 2013** – Defendant shall identify its 30(b)(6) witness.
    - b. **May 16, 2013** – Joint Motion for Protective Order shall be filed. Proposed Protective Order shall be emailed to the courtroom deputy at [rhonda.enss@mow.uscourts.gov](mailto:rhonda.enss@mow.uscourts.gov) in Microsoft Word.
    - c. **July 8, 2013** – Defendant shall make an initial production of documents. Additional responsive documents shall be produced thereafter on a rolling basis.
    - d. **August 16, 2013** – To the extent Plaintiffs intend to rely on expert testimony, Plaintiffs shall identify their experts and furnish expert reports.
    - e. **September 30, 2013** – Fact discovery shall be completed.
    - f. **September 30, 2013** – Defendant shall identify its rebuttal experts and furnish rebuttal reports.
    - g. **October 31, 2013** – Expert discovery shall be completed.
    - h. **November 14, 2013** – Plaintiff may request any follow-up discovery.
  9. During the time period noted above, all other pleadings, discovery and motion practice shall remain **STAYED**.

**IT IS SO ORDERED.**

Date: April 24, 2013  
Kansas City, Missouri

**S/ FERNANDO J. GAITAN, JR.**  
Fernando J. Gaitan, Jr.  
Chief United States District Judge