

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

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

This Document Relates To: ALL CASES

MDL No. 2361

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

**AMENDED SCHEDULING ORDER**

Pending before the Court is the parties' Proposed Discovery Plan (Doc. No. 195). As discussed in the Court's previous Order (Doc. No. 196), the Court has determined that discovery should be bifurcated into two phases: Phase I will cover class certification, and Phase II will cover any remaining merits issues. Furthermore, to the extent that class and merits issues overlap, discovery will be allowed into merits issues in Phase I. The parties are cautioned, however, that this Court will not hesitate to deny discovery if the Court finds that such requests are outside the scope of Fed. R. Civ. P. 26(b)(1).<sup>1</sup>

After reviewing the parties' submissions regarding topics of discovery needed for class certification briefing (Doc. Nos. 199, 200, and 201), the Court has determined that

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<sup>1</sup> Rule 26(b)(1) provides:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

defendant's proposed course of action better follows the dictates of Fed. R. Civ. P. 1, which provides that the Federal Rules should be "construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." Accordingly, the Court, to a great extent, has adopted defendant's proposal, and generally concurs with defendant's proposed discovery topics.<sup>2</sup> However, the parties are cautioned to read the entire text of this Order, as the Court has not adopted every recommendation of the parties. In particular, the Court has not adopted defendant's proposals regarding the schedule for expert discovery and motions to strike. Additionally, the Court finds that no further opportunity to file a motion to amend the consolidated complaint should be allowed, given the length of time this case has been pending. The Court further denies plaintiffs' request for a limited merits trial on injunctive relief (see Doc. No. 199), as the Court disagrees with plaintiffs' arguments that such a trial would streamline this case for class certification; instead, the Court finds such a trial (and the discovery necessary to put on such a trial) would be time consuming and costly, and ultimately would not lead to a resolution of plaintiffs' state law claims.

The Court now enters the following Scheduling Order:

The first phase of discovery shall conclude **July 29, 2016**. Phase I discovery will include discovery of all issues relating to plaintiffs' anticipated Motion for Class Certification under Rule 23, as well as issues related to all named plaintiffs. Phase II discovery will involve discovery relating to alleged damages and completion of any other

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<sup>2</sup> To the extent plaintiffs believe the Court is incorrect, the Court is confident plaintiffs will raise such an issue within the context of a discovery dispute teleconference under Local Rule 37.1.

merits issues. To the extent that issues overlap, the Court directs the parties to undertake discovery within Phase I.

**1. TIMELINESS OF SUBMISSIONS.** The parties and counsel are advised that any filing or submission made after 5:00 p.m. will not be reviewed by the Court until the next business day.

**2. PROTECTIVE ORDERS**

Counsel are advised that protective orders shall be issued upon motion of counsel only. This motion shall be filed with the proposed protective order provided as an attachment to the document. The proposed protective order shall also be emailed to the courtroom deputy in Word format at [rhonda.enss@mow.uscourts.gov](mailto:rhonda.enss@mow.uscourts.gov) . In the event that the parties are unsuccessful in reaching an agreement on a proposed protective order, the Court refers the parties to the Manual for Complex Litigation, Fourth § 40.27 for a sample protective order.

**3. INDICES**

Counsel should note that the scheduling and trial order indices are provided for their convenience only. **All parties are directed to review the entire text of this order. The schedules fixed herein will not be extended except for good cause shown and upon further written order of the Court.**

**I. SCHEDULING**

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| 1. | Close of discovery                                    | <b>July 29, 2016</b>  |
| 2. | Motion for Class Certification<br>Opposition<br>Reply | <b>August 26, 2016<br/>November 4, 2016<br/>December 16, 2016</b> |

- |                                       |                        |
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| 3. Asserting party's expert report(s) | <b>June 10, 2016</b>   |
| Defending party's expert report(s)    | <b>July 1, 2016</b>    |
| Rebuttal report(s)                    | <b>July 22, 2016</b>   |
| Challenges/Daubert motions            | <b>August 26, 2016</b> |

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Pursuant to Rules 16(b) and 26(f), Fed. R. Civ. P., and upon consideration of the parties' proposals in the matter, the following time schedule is established.

1. **DISCOVERY**

Phase I discovery shall close as of **July 29, 2016**. **Close of discovery means that all discovery, including the taking of depositions, shall be completed not simply submitted on the date specified by this paragraph. Any last minute discovery submitted too late for the opposing side to timely discover may be stricken. Counsel should also note that the Court expects discovery to proceed in a timely manner. The filing of a dispositive motion does not preclude the parties from conducting discovery.**

a. The Court reserves the right to exercise control over the taking of depositions in any case. The Court may either limit the total number of depositions or place a time limitation on the taking of depositions in general. **Any proposed deposition lasting longer than seven hours requires prior approval by the Court. Proposing counsel shall file a motion explaining the justification for such deposition(s).**

b. **Any discovery motion must be filed before the close of discovery, and in sufficient time for the Court to rule the motion.** The Court will not entertain any discovery motion absent full compliance with Local Rule 37.1. Any discovery motion filed without complying with Local Rule 37.1 will be denied.

c. In the event that a teleconference is needed, please email your request to my chambers at marylynn.shawver@mow.uscourts.gov. The request should include a typed description of the discovery dispute, using a 12 pitch font and not exceeding two pages in length. These teleconferences are intended to resolve one or two issues that do not require authoritative briefing. Where multiple and complex issues are involved, motion practice is appropriate. If you have questions regarding the appropriateness of your dispute for a teleconference, please ask my judicial assistant.

2. **MOTIONS FOR CLASS CERTIFICATION UNDER RULE 23**

All motions for class certification under Rule 23 shall be filed no later than **August 26, 2016**. Absent full compliance with Local Rule 7.0, these motions will be denied. Suggestions in opposition to class certification are due **November 4, 2016**. Reply suggestions are due **December 16, 2016**.

3. **EXPERT TESTIMONY.**

a. A party shall disclose to other parties the identity of any person who may present evidence at trial (or on issues related to class certification) under Rules 702, 703, or 705, Fed. R. Evid.

1. Standard discovery deadlines include submission of expert reports required by Rule 26(a)(2)(B), Fed. R. Civ. P., for all witnesses retained or specially employed to provide expert testimony or whose duties as the party's employee regularly involve giving expert testimony. Plaintiffs shall submit their expert report(s) no later than **June 10, 2016**, defendant no later than **July 1, 2016**, and rebuttal no later than **July 22, 2016**. These deadlines also apply to the disclosures of witnesses under Rule 26(a)(2)(C), Fed. R. Civ. P., for whom no reports are required.

2. Any Daubert motion or other challenge to a proposed expert under Rules 26(a)(2)(B) or 26(a)(2)(C) must be filed no later than **August 26, 2016**. Objections not raised by this deadline may not be raised for the first time at trial.

3. **No expert depositions or other expert discovery shall be taken without a Court order.** The party requesting further discovery shall file a motion specifying what additional discovery is needed, and stating in detail why additional discovery is necessary. This motion shall be filed no later than five days before the close of discovery. This request for additional discovery will not be automatically granted.

b. One of the purposes of the Rule 26(a)(2)(B) expert report is to set forth the substance of a direct examination. If properly done, the expert report should eliminate the need for deposing some experts. Consequently, detailed statements in the report are essential.

c. A party's expert witness will be permitted to testify at trial only in conformity with that witness's report unless otherwise ordered by the Court.

d. Any expert report or disclosure to be submitted under this section shall be filed with this Court on ECF by the deadlines provided in 3(a)(1).

e. If a witness is not required to provide a written report under Rule 26(a)(2)(B), Fed. R. Civ. P., the party naming that witness must prepare a disclosure indicating (1) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and (2) a summary of the facts and opinions to which the witness is expected to testify. Rule 26(a)(2)(C), Fed. R. Civ. P. These disclosures are due on the same dates as set forth in 3(a)(1). Daubert motions or

other challenges to Rule 26(a)(2)(C) witnesses are due on the same dates as set forth in 3(a)(2).

4. **PHASE II SCHEDULING ORDER**

Within 30 days from the date of ruling on plaintiffs' motion for class certification under Rule 23, the parties shall submit to the Court a proposed scheduling order for discovery and scheduling of all remaining issues.

**IT IS SO ORDERED.**

Date: April 12, 2016  
Kansas City, Missouri

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