

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

IN RE: H&R BLOCK)	MDL No. 2474
IRS FORM 8863 LITIGATION)	
)	Master Case No. 4:13-MD-02474-FJG
ALL ACTIONS)	

SECOND AMENDED SCHEDULING ORDER

Upon consideration of the parties' Joint Motion for the Extension of Discovery Deadlines (Doc. No. 66), the Court enters the following Second Amended Scheduling Order.

The first phase of discovery has already commenced, and shall conclude **FEBRUARY 5, 2016**. Phase I discovery will include discovery of all issues relating to plaintiffs' anticipated Motion for Class Certification, as well as issues related to all named plaintiffs who have not been compelled to arbitrate their claims against defendants. Phase II discovery will involve discovery relating to alleged damages and completion of any other 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 . 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

INDEX

1.	Close of discovery	February 5, 2016
2.	Consolidated Class Action Complaint	September 30, 2014
3.	Motion to Strike Class Allegations	November 7, 2014
4.	Motion to join additional parties	January 23, 2015
5.	Motion to amend pleadings	February 9, 2015
6.	Motion for Class Certification	March 4, 2016
7.	Asserting party's expert report(s)	November 19, 2015
	Defending party's expert report(s)	December 23, 2015
	Rebuttal report(s)	January 21, 2016
	Challenges/Daubert motions	March 4, 2016
8.	Status reports	January 4, 2016

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 **February 5, 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. CONSOLIDATED CLASS ACTION COMPLAINT

Plaintiffs shall file any consolidated class action complaint no later than **SEPTEMBER 30, 2014**. Defendants shall file their answer or other response to plaintiffs' consolidated class action complaint on or before **OCTOBER 28, 2014**.

3. **MOTION TO STRIKE CLASS ALLEGATIONS**

Defendants shall file any motion to strike class allegations relating to putative class members subject to arbitration agreements on or before **NOVEMBER 7, 2014**.

4. **MOTION TO JOIN ADDITIONAL PARTIES**

Any motion to join additional parties will be filed no later than **JANUARY 23, 2015**. Where a motion to join additional parties is granted, plaintiffs will telephone the Court's judicial assistant at (816)512-5630 to discuss a deadline for filing any proposed amendments to the scheduling and trial order.

5. **MOTION TO AMEND PLEADINGS**

Any motion to amend pleadings shall be filed no later than **FEBRUARY 9, 2015**.

6. **MOTIONS FOR CLASS CERTIFICATION**

All motions for class certification shall be filed no later than **MARCH 4, 2016**. Absent full compliance with Local Rule 7.0, these motions will be denied. Suggestions in opposition to class certification are due **APRIL 15, 2016**. Reply suggestions are due **MAY 13, 2016**. The Court will determine whether a hearing is necessary after reviewing the parties' briefs.

7. **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

NOVEMBER 19, 2015, defendants no later than **DECEMBER 23, 2015**, and rebuttal no later than **JANUARY 21, 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 **MARCH 4, 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 7(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 7(a)(1). Daubert motions or other challenges to Rule 26(a)(2)(C) witnesses are due on the same dates as set forth in 7(a)(2).

8. STATUS REPORTS

The parties shall file a status report with the Court on or before **JANUARY 4, 2016**, outlining the progress of this case and advising the Court of any potential problems related to discovery or any other matters.

9. PHASE II SCHEDULING ORDER

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

IT IS SO ORDERED.

Date: May 21, 2015
Kansas City, Missouri

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