

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

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

MDL No. 2361

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

This Document Relates To: ALL CASES

ORDER

Before the Court are (1) the parties' Joint Proposed Notice Plan (Doc. No. 362) and (2) the parties' Joint Proposed Case Schedule (Doc. No. 363). As an initial matter, the Court finds that the parties' Joint Proposed Notice Plan (Doc. No. 362), as well as the content of the proposed notice forms, satisfies the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P. 23(e)(1), and due process. The Court further finds that the procedures described in the Joint Proposed Notice Plan, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances. The parties indicate in their plan that, "Once the Court resolves the discovery disputes and orders a pre-trial schedule, the parties will propose to the Court a start date for the Notice Plan and an opt-out deadline." As the court has resolved the discovery disputes and within the present document has entered a pretrial schedule, the parties are **ORDERED** to propose a start date for the notice plan and an opt-out deadline on or before **MARCH 13, 2018**. The Court enters the following scheduling and trial order.

FIFTH AMENDED SCHEDULING AND TRIAL ORDER

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 Christy_Anderson@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.

Issues subject to protective orders under Fed. R. Civ. P. 26 (c)(5) must be raised by written motion prior to the scheduling of the pertinent depositions citing the “good cause” in specific detail.

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. INDEX

1.	Discovery Depositions of Drs. Kessler and Mitchell only	Closed May 25, 2018
2.	Supplement to discovery response	Fifteen days before pretrial conference
3.	Joint status report	May 25, 2018

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**

Discovery is closed with the exception of the depositions of Dr. Kessler and Dr. Mitchell. Those depositions will be concluded no later than May 25, 2018. **Close of discovery means that all discovery, including 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. **SUPPLEMENT TO DISCOVERY RESPONSES**

Any supplement to discovery responses under Rule 26(e), Fed. R. Civ. P. will be filed no later than fifteen (15) days before the scheduled pretrial teleconference.

This obligation extends to expert affidavits.

3. JOINT STATUS REPORT

The parties shall file a joint status report outlining the progress of this case and advising the Court of any potential problems. This report is due on or before May 25, 2018.

II. TRIAL

INDEX

1.	Stipulation of facts	June 21, 2018
2.	Witness list, in camera witness list	June 21, 2018
3.	Exhibit lists Stipulation to identity and authentication of exhibits	June 21, 2018
4.	Deposition designations Designations Objections, counterdesignations Objections to counterdesignations	June 21, 2018 June 28, 2018 July 9, 2018
5.	Motions in limine, trial brief	July 12, 2018
6.	Responses to motions in limine Responses to trial briefs	July 19, 2018

IT IS ORDERED that this cause be set for bench trial on **November 13, 2018**. A pretrial conference will be held on **Thursday, October 4, 2018, at 10:00 a.m.**

Counsel shall have the responsibility to maintain contact with the courtroom deputy, Christy Anderson, at telephone number (816)512-5063 regarding trial questions. All matters will be heard at the United States Courthouse, Courtroom 7C, in Kansas City, Missouri, unless otherwise notified by the courtroom deputy.

1. STIPULATION OF ANY UNCONTROVERTED FACTS

A stipulation of any uncontroverted facts shall be filed no later than June 21, 2018. If no stipulated facts can be agreed upon, including facts related to the Court's subject matter or personal jurisdiction, the parties shall file a joint statement to that effect.

2. WITNESS LISTS

Each party shall file a witness list no later than June 21, 2018. The witnesses shall be listed in alphabetical order.

IN CAMERA WITNESS LISTS shall be filed simultaneously with each parties' witness list and shall include the subject matter that each witness will testify about and the exhibits each witness will identify or use; the length of time needed for direct examination of each witness; and the order in which you propose to call each witness. You shall provide an **estimate of the amount of time it will take to cross-examine opposing parties' witnesses** within **five days** of their disclosure.

In camera submissions of witness lists **may be electronically filed under seal with leave of Court being waived.** *Pro se* litigants may alternatively submit their *in camera* witness lists by emailing the document to the courtroom deputy at christy_anderson@mow.uscourts.gov or providing a paper copy to her. **Faxed copies of in camera witness lists will not be accepted.**

PLEASE NOTE that counsel may, if desired, file and serve the information detailed above instead of making a separate *in camera* submission.

3. EXHIBIT LISTS

Each party shall file an exhibit list no later than June 21, 2018. Each exhibit listed shall be pre-marked and numbered. If only a portion of an exhibit is to be offered, the portion to be offered shall be specifically identified. A copy of the exhibit index will be attached to the copy of the exhibit list.

A STIPULATION TO THE IDENTITY AND AUTHENTICATION OF EXHIBITS shall be filed no later than June 21, 2018. If no exhibits can be stipulated to, the parties shall file a joint statement to that effect.

4. DEPOSITION DESIGNATIONS.

a. **All parties** shall file any designation by page and line number, of any deposition testimony to be offered in evidence as a part of that party's case-in-chief in connection with such claim or claims no later than June 21, 2018.

b. **All parties** shall file objections to proposed deposition testimony designated by any other party pursuant to subparagraph 4(a) no later than June 28, 2018.

c. **All parties** shall file a designation, by page and line number, of any deposition testimony to be offered as cross-examination to deposition testimony designated by other parties pursuant to subparagraph 4(a) no later than June 28, 2018.

d. **All parties** shall serve and file any objections to proposed deposition testimony designated by any other party pursuant to subparagraph (4)(c) no later than July 9, 2018.

e. **Deposition designations, objections and counterdesignations shall be properly marked (color coded) and submitted to the Court 30 days before trial.**

5. MOTIONS IN LIMINE, TRIAL BRIEFS

All parties shall file all motions in limine with supporting suggestions no later than July 12, 2018. Any desired trial brief shall be filed no later than July 12, 2018.

6. RESPONSES TO MOTIONS IN LIMINE AND RESPONSES TO TRIAL BRIEFS

All parties shall file and serve responses to earlier filed motions in limine and responses to earlier filed trial briefs no later than June 19, 2018.

7. The Court may place time limits on opening statements, and direct- and cross-examination of all witnesses. You should be prepared to support your representations as to the length of trial. (See paragraph 2 above.)

8. In furtherance of the efficient use of judicial resources, the following rules of Court will be imposed.

a. All legal issues must be raised in advance of trial by written motions and in accordance with the scheduling order of this Court.

b. Motions will not be heard during trial without a strong showing that counsel could not, by due diligence, have raised them sooner.

c. Motions for judgment as a matter of law submitted under Rule 50

shall be filed with the Court as soon as possible but no later than the night before the anticipated completion of testimony.

d. Testimony will not be interrupted to deal with evidentiary matters that could have been heard in advance of trial. The Court will consider those matters during recess, at noon break, or at the end of the day. Counsel should be prepared with written authority for their position.

e. Witnesses who will be testifying from exhibits or about exhibits should review them immediately prior to their examination.

PLEASE NOTE that a witness not listed in accordance with this order will not be permitted to testify, except for good cause shown and with leave of Court; and that an exhibit not listed or deposition testimony not designated in accordance with this order will not be received in evidence, except for good cause shown and with leave of Court. All witnesses shall be instructed to be available for testimony as of the first day of trial scheduled herein, should the Court so require.

IT IS SO ORDERED.

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

Dated: March 5, 2018
Kansas City, Missouri