

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

| | | |
|------------------------------------|---|--|
| IN RE: DOLLAR GENERAL CORP. |) | MDL NO. 2709 |
| MOTOR OIL MARKETING AND |) | |
| SALES PRACTICES LITIGATION |) | |
| |) | Master Case No. 16-02709-MD-W-GAF |
| |) | |
| ALL ACTIONS |) | |

DISCOVERY PLAN AND SCHEDULING ORDER

1. Initial Disclosures. Plaintiffs and Defendants in the *Solis* case, transferred from the Northern District of Illinois, and in the *Cooke* case, transferred from the Southern District of Texas, have already exchanged the initial disclosures required by Fed. R. Civ. P. 26(a)(1). Pursuant to the Court’s June 8, 2016, Order, the parties will exchange Rule 26(a)(1) initial disclosures in the remaining cases by July 6, 2016, and each party will file a notice of this exchange with the Court. Neither party has waived the right to object to any Rule 26(a)(1) initial disclosures.

2. Consolidated Amended Complaint. Plaintiffs will file a consolidated amended complaint within 45 days from the date of this Order. Defendants are entitled to file a motion to dismiss as well as a motion to strike class allegations, and this Court’s ruling on any such motions as to claims and parties in the consolidated amended complaint will apply with equal force to, and be dispositive of, the individual cases unless a party shows cause, upon the motion of any party, why the ruling should not apply. The transferor forums’ choice-of-law principles will apply notwithstanding the filing of the consolidated amended complaint. The consolidated amended complaint supersedes and replaces all previously-filed class action allegations from the individual complaints. The filing of the consolidated amended complaint does not waive

Plaintiffs' or Defendants' venue or jurisdictional objections pursuant to *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1988).

3. Rule 12 Motions. Defendants' Rule 12 response to the consolidated amended complaint shall be filed within 60 days of the filing of the consolidated amended complaint. Plaintiffs shall file any opposition to a Rule 12 motion no later than 45 days after the filing of the Rule 12 motion, and Defendants shall file any reply in support of a Rule 12 motion no later than 30 days after the filing of the opposition brief. Suggestions in support and opposition to any Rule 12 motion will be limited to 30 pages and any reply suggestions will be limited to 20 pages; however, this Court will entertain motions to extend page limits. Defendants' Rule 12 motion and Plaintiffs' response should contain all grounds upon which relief is requested, even if those grounds have been previously briefed.

4. Answer to Consolidated Amended Complaint. In the event Defendants' motion to dismiss is denied, Defendants shall answer the operative complaint within 30 days of the Order denying the motion to dismiss.

5. Discovery During Pendency of Rule 12 Motions. Discovery shall resume immediately and continue during the pendency of Rule 12 motion practice. Defendants' Motion to Stay Discovery (Doc. # 13) is DENIED.

6. Joinder of Parties and Amendments to Complaint. All motions to amend pleadings or join parties shall be filed no later than 90 days after discovery begins. The parties will cooperate in confirming the identity of the appropriate corporate entity(ies) named as Defendants. Plaintiffs also intend to include in their early discovery efforts, discovery that will identify any additional potentially liable entities who may be joined as parties to this litigation.

7. Discovery – Fact and Expert. Fact discovery should not be phased or limited to certain issues. Expert discovery should be conducted towards the end of fact discovery and should be concluded before the end of fact discovery. The deadline for filing discovery motions and for the close of all discovery, fact and expert, is 12 months after Defendants file an answer to the operative complaint. The parties shall exchange only one comprehensive expert report per expert and depose each expert only once. Experts' opinions and required supporting materials will be disclosed no later than 6 months after Defendants file an answer to the operative complaint and will produce these experts for deposition within 20 days thereafter. Defendants will disclose their experts' opinions and required supporting material no later than 30 days after the completion of the depositions of Plaintiffs' experts and will produce their experts for deposition within 20 days thereafter.

8. Class Certification Proceedings. The class certification proceedings shall occur while fact and expert discovery are open. Plaintiffs shall file their motion for class certification and supporting material no later than 30 days after the close of expert deposition discovery. Defendants shall file their opposition to Plaintiffs' motion for class certification and supporting material no later than 30 days after Plaintiffs' motion for class certification is filed. Plaintiffs' reply in support of motion for class certification and supporting materials shall be filed no later than 20 days after Defendants' opposition is filed.

9. Dispositive Motions. All dispositive motions pursuant to Rule 56, *Daubert* motions, and motions to strike experts shall be filed no later than 60 days after a decision on class certification or the close of all discovery, whichever is later. All opposition briefs shall be filed no later than 45 days thereafter and reply briefs in support of the motions shall be filed 30 days thereafter. All dispositive motions shall have a separate section wherein each statement of fact

is individually numbered so that any party opposing such motion may refer specifically to a genuine issue of material fact. Suggestions in opposition to a dispositive motion shall begin with a concise listing of material facts to which the party contends a genuine dispute exists. All motions for summary judgment shall comply with Local Rules 7.1 and 56.1.

10. Motions for Extension of Time. All motions for extension of time pursuant to Rule 6(b) or Rules 31, 33, 34, and 36 must state:

- a. The date when the pleading, response or other action is/was first due;
- b. The number of previous extensions and the date the last extension expires;
- c. The cause for the requested extension, including a statement as to why the action due has not been completed in the allotted time; and
- d. Whether the requested extension is approved or opposed by opposing counsel (agreement by counsel of a requested extension is not binding on the Court).

11. Fact Sheets. Fact sheets will not be required.

12. Depositions. The parties will work collaboratively to conduct discovery efficiently and cost-effectively, including, where appropriate, grouping witnesses geographically for depositions and producing witnesses for deposition once for all purposes, where possible. The showing of good cause (not “necessity”) may warrant some additional discovery. The parties should continue to discuss appropriate deposition limitations and submit a proposed stipulation to the Court within 30 days of the date of this Order, as the parties’ discussions to date have not been focused on this issue. If the parties cannot come to an agreement, the parties shall submit their respective proposals to the Court, within 30 days from the date of this Order.

13. Written Discovery. The parties shall continue to discuss appropriate limitations on written discovery and submit a proposed stipulation to the Court within 30 days of the date of this Order,

as the parties' discussions to date have not been focused on this issue. If the parties cannot come to an agreement, the parties shall submit their respective proposals to the Court, within 30 days from the date of this Order.

14. Discovery Motions. 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. In the event a teleconference is needed, my Judicial Assistant may be reached at 816-512-5660. All teleconference requests should be directed to her. A description of the discovery dispute, not to exceed one page in length, should be faxed to the Court at 816-512-5673 or emailed to my Judicial Assistant at lisa_mitchell@mow.uscourts.gov by the movant within 24 hours of the teleconference. Teleconferences by cell phone are discouraged. Counsel must have a clear connection without interference from background noise. Otherwise, counsel may be disconnected and considered as having failed to appear.

15. Status Conferences and Joint Reports. Status conferences will be held once every three months telephonically, unless a party demonstrates good cause for an in-person conference, to help enable this Court to maintain an active presence in the status of this litigation. Teleconferences by cell phone are discouraged. The parties will prepare and submit a joint status report 5 days prior to any status conference set by the Court. If any party wishes to discuss a disputed issue during a scheduled status conference, the party must provide written notice of the dispute, not to exceed one page in length, 24 hours in advance of the conference. If parties wish to take up a discovery dispute at a scheduled status conference, parties must comply with Local Rule 37.1 and procedures outlined in Paragraph 13, above.

16. Quarterly Expense Reports. Lead counsel must file with this Court quarterly reports detailing the time and expenses spent on the case. Such reports are due a week in advance of each scheduled status conference.

17. Fee Allocation Agreement. Parties will submit their proposed fee allocation agreement to the Court within two weeks from the date of this Order.

18. Trial Date. The parties suggest, and this Court agrees that it is too soon to propose a trial date at this juncture. A trial date will be taken up in a status conference at an appropriate time.

19. Protective Order. The parties will meet and confer, and submit a stipulated protective order to the Court by July 29, 2016. If the parties are unable to reach an agreement on an appropriate protective order by that date, they will instead submit their own proposed protective orders by July 29, 2016.

20. Preservation Order. The parties will meet and confer, and submit a stipulated preservation order to the Court within 30 days from the date of this Order. If the parties are unable to reach an agreement on an appropriate preservation order by that date, they will instead submit their own proposed preservation orders within 30 days from the date of this Order.

21. ESI Order. The parties will meet and confer regarding appropriate protocols and limitations concerning the discovery of electronically stored information and submit a proposed stipulation to the Court by August 29, 2016. If the parties are unable to reach agreement, the parties will submit their own respective proposals to the Court by August 29, 2016 for resolution.

22. Mediation and Assessment Program. This case will be included in Western District of Missouri's Mediation and Assessment Program. Parties will be notified of the date, time, and place of a settlement conference.

23. Investigation of Plaintiff Recruitment. Plaintiffs' lead counsel will conduct a thorough investigation into Defendants' allegations of Plaintiff recruitment. Plaintiffs' lead counsel will file a report with the Court within 45 days of the date of this Order which sets forth the results of the investigation, informs the Court of which attorneys participated in Plaintiff recruitment and which Plaintiffs were recruited, and sets forth any justification for the attorneys' actions. Defendants will have 14 days to respond to Plaintiffs' report, if Defendants believe such a response is necessary. The Court will then determine what, if any, sanctions are appropriate.

24. Scope of this Court's Order. Any case management or scheduling order entered by the Court applies not only to the cases currently before this Court, but also all cases that might later become part of this MDL. Parties that later become part of this MDL either through transfer, direct filing, or removal have 10 days from the date their case first becomes part of this MDL to object to any portion of the case management or scheduling order. After that time, any objection is considered waived.

IT IS SO ORDERED.

s/ Gary A. Fenner

GARY A. FENNER, JUDGE
UNITED STATES DISTRICT COURT

DATED: July 15, 2016