UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ESTUARY TRANSIT DISTRICT AND TEAMSTERS 671 HEALTH SERVICE & INSURANCE PLAN, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

HARTFORD HEALTHCARE CORPORATION, HARTFORD HOSPITAL, HARTFORD HEALTHCARE MEDICAL GROUP, INC., INTEGRATED CARE PARTNERS, LLC,

Defendants.

26(F) REPORT OF PARTIES' PLANNING MEETING

Date Complaint Filed: June 14, 2024

Dates Complaint Served: Defendants signed the waiver of service on June 18, 2024.

Date of Defendants' Appearances: August 13, 2024

Pursuant to Fed. R. Civ. P. 16(b), 26(f) and D. Conn. L. Civ. R. 16, conferences were held on August 28, 2024; September 9, 2024; September 25, 2024; and October 1, 2024. The participants were:

On behalf of Plaintiffs Estuary Transit District and Teamsters 671 Health Services & Insurance Plan: Jonathan Shapiro from Aeton Law Partners LLP; Daniel Walker and Hope Brinn from Berger Montague PC; Michael Eisenkraft and Nathaniel Regenold from Cohen Milstein Sellers & Toll PLLC; Matthew Ruan from Freed Kanner London & Millen LLC; and Frank Schirripa from Hach Rose Schirripa & Cheverie LLP.

On behalf of Defendants Hartford HealthCare Corporation; Hartford Hospital; Hartford HealthCare Medical Group, Inc.; and Integrated Care Partners, LLC (collectively, "Hartford

HealthCare"): Eric Stock and Josh Obear from Gibson, Dunn & Crutcher LLP; and Leo Caseria and Joseph Antel of Sheppard, Mullin, Richter & Hampton LLP.

I. Certification

Undersigned counsel (after consultation with their clients) certify that: (a) they have discussed the nature and basis of the parties' claims and defenses and any possibilities for achieving a prompt settlement or other resolution of the case; and (b) they have developed the following proposed case management plan. Counsel further certify that they have forwarded a copy of this report to their clients.

II. Jurisdiction

A. Subject Matter Jurisdiction

Plaintiffs allege causes of action under Section 1 of the Sherman Act, 15 U.S.C. § 1. Thus, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

B. Personal Jurisdiction

Personal jurisdiction is not contested. Dkt. No. 42 ¶ 19.

III. Brief Description of Case

A. Claims of Plaintiffs

Plaintiffs seek damages, as well as injunctive and equitable relief, under Sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1 and 2, alleging that Defendant Hartford HealthCare Corporation ("HHC") and certain of its subsidiaries—Hartford Hospital; Hartford Healthcare Medical Group, Inc. ("HHMG"); and Integrated Care Partners, LLC ("ICP")—engaged in a multifaceted scheme to artificially inflate prices for healthcare services in several parts of Connecticut. Plaintiffs are self-funded healthcare plan sponsors that have directly purchased healthcare services from Defendants for their employees and their employees' families. Plaintiffs

seek to represent a class of health plan sponsors that have been systematically overcharged by HHC, HHMG, and ICP.

Plaintiffs allege that HHC has a dominant market share for general acute care inpatient hospital services ("GAC") in the Meriden (66%), Norwich (84%), Torrington (79%), Willimantic (80%), Bridgeport (43%), and Hartford (50%) hospital service areas. HHC owns numerous Connecticut hospitals, including the largest hospital in Hartford, the second largest hospital in Bridgeport, and hospitals in other smaller towns in which the hospitals are the only ones serving those communities. Plaintiffs allege that these hospitals are "must haves" for insurers in Connecticut if those insurers want to offer GAC within a reasonable distance for their insureds and thus be a commercially viable plan.

In addition to owning hospitals, HHC also owns Defendant HHMG, a multispecialty group of over 800 physicians and advanced practitioners in over 350 locations. And HHC's wholly owned subsidiary, Defendant ICP, coordinates pricing and other business decisions of purportedly independent physician practices in many specialties operating across Connecticut. HHC has leveraged and continues to leverage the market power it has in the GAC markets to increase its market share in the outpatient services markets by (1) requiring any healthcare plans wishing to include any HHC hospitals or services to include all of them; (2) using anti-incentive terms in its contracts to prevent insurers creating narrow or tiered networks or steering insureds towards less expensive providers with incentives; and (3) coercing solo and group physician practices into joining ICP by withholding or threatening to withhold HHC referrals from physician practices that do no join ICP. These practices also continue to bolster HHC's market share in GAC.

Plaintiffs allege that Defendants' scheme has had numerous anticompetitive effects, including foreclosing a substantial share of competition that would be based on lower price and/or superior quality of the markets in which HHC is operating and maintaining and bolstering HHC's market power, thereby allowing HHC to charge supracompetitive prices in the GAC and outpatient services market.

B. Defenses and Claims (Affirmative Defenses, Counterclaims, Third Party Claims, Cross Claims) (either pled or anticipated) of Defendants:

Hartford HealthCare strongly rejects Plaintiffs' contention that it has violated the antitrust laws. Hartford HealthCare is a non-profit healthcare system that provides high-quality health care to thousands of patients across Connecticut. Hartford HealthCare asserts that, for more than a decade, it has been the leader in a movement away from an inefficient, hard-to-navigate, and inequitable system of care towards a patient-focused model centered on close clinical integration amongst healthcare providers, thereby enhancing access, affordability, equity, and excellence.

Hartford HealthCare contends that Plaintiffs' claims fail both factually and legally for a host of reasons, including[1]:

1. Hartford HealthCare does not possess market power—let alone monopoly power—under the antitrust laws in any plausible relevant antitrust market;
2. The Complaint contains numerous allegations that are factually inaccurate;

[1] Hartford HealthCare's defenses are detailed more fully in its Answer to Plaintiffs' Complaint, Dkt. No. 42. Nothing in the above summary of defenses should be read to limit Hartford HealthCare's defenses, to assume any burden of proof that Hartford HealthCare would not otherwise bear, or to constitute an admission that Hartford HealthCare is in any way liable to Plaintiffs, that Plaintiffs have been or will be injured or damaged in any way, or that Plaintiffs are entitled to any relief whatsoever.

3. Hartford HealthCare has not entered into any contract or combination—including any acquisition, product tying, exclusive dealing, or price fixing—whose likely effect is, or has been, to restrain trade or diminish competition in any plausible relevant market;
4. Hartford HealthCare's conduct has improved the quality and other attributes of patient care across the State of Connecticut, increased the health care options for patients in Connecticut, including allowing health care procedures to be moved to lower cost settings, and greatly enhanced the vibrant competition that exists for health care services in the state;
5. Plaintiffs have not suffered any antitrust injury, nor can they meet the other requirements for antitrust standing;
6. Many of Plaintiffs' claims are time-barred; and
7. This action may not be maintained as a class action pursuant to Federal Rules of Civil Procedure 23 because, among other things, Plaintiffs have not defined a cognizable class, common questions of law or fact common to members of the putative class do not predominate over questions affecting only individual members, a class action is not superior to other available methods for fairly and efficiently adjudicating this controversy, and Plaintiffs are not proper or adequate class representatives and their claims are not representative of the putative class.

IV. Statement of Undisputed Facts

Counsel certify that they have made a good faith attempt to determine whether there are any material facts that are not in dispute. The following material facts are undisputed:

- Plaintiff Estuary Transit District operates a health plan that includes certain of Defendants' hospitals and outpatient services in its network.

- Plaintiff Teamsters 671 Health Service & Insurance Plan operates a health plan that includes certain of Defendants' hospitals and outpatient services in its network.
- Defendant Hartford HealthCare Corporation operates a health system that includes the Connecticut hospitals known as St. Vincent's Medical Center, Hartford Hospital, Hospital of Central Connecticut, MidState Medical Center, Backus Hospital, Charlotte Hungerford Hospital, and Windham Hospital.
- Defendants provide health care services to patients in Connecticut and receive reimbursement for some of those services from, among others, health plans and/or insurers.
- Plaintiffs claim that they have paid Defendants fees for health care services provided to Plaintiffs' members in Connecticut.

V. Case Management Plan

A. Initial Disclosures

Initial disclosures will be served not later than October 18, 2024.

B. Scheduling Conference

1. The Parties do not request to be excused from holding a pretrial conference with the Court before entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b).

2. The Parties prefer that a scheduling conference, if held, be conducted in person.

C. Early Settlement Conference

1. The Parties certify that they have considered the potential benefits of attempting to settle the case before undertaking significant discovery or motion practice. Settlement is unlikely at this time.

2. The Parties do not request an early settlement conference.

3. The Parties do not request a referral for alternative dispute resolution pursuant to D. Conn. L. Civ. R. 16.

D. Joinder of Parties, Amendment of Pleadings, and Motions Addressed to the Pleadings

The Parties have discussed any perceived defects in the pleadings and have reached the following agreements for resolution of any issues related to the sufficiency of the pleadings.

1. Plaintiffs should be allowed until 90 days following Defendants' filing of their answer to Plaintiffs' complaint to file motions to join additional parties and to amend pleadings. Motions filed after the foregoing dates will require, in addition to any other requirements under the applicable rules, a showing of good cause for the delay.

2. Defendants should be allowed until 45 days following Plaintiffs' filing of any motion to amend or add parties to file a response. Motions filed after the foregoing dates will require, in addition to any other requirements under the applicable rules, a showing of good cause for the delay.

E. Discovery

a. Recognizing that the precise contours of the case, including the amounts of damages at issue, if any, may not be clear at this point in the case, in making the proposals below concerning discovery, the Parties have considered the scope of discovery permitted under Fed. R. Civ. P. 26(b)(1). At this time, the Parties wish to apprise the Court of the following information regarding the "needs of the case":

The Parties agree that a single period of fact discovery should be completed prior to class and merits expert discovery. The factual and legal issues, including as to the merits of Plaintiffs'

antitrust claims and the susceptibility of the claims to class-wide treatment under Federal Rule of Civil Procedure 23, are appropriate matters for discovery during the fact discovery period.

The Parties anticipate that fact discovery will generally include: (1) the negotiating of the scope of requests for the production of documents and transaction data; (2) pursuing non-party document discovery; (3) reviewing of documents; and (4) taking party and non-party depositions. Expert discovery will require the parties to engage with economic and other experts who will submit reports that the Parties will use in connection with class certification, summary judgment, and trial.

b. The Parties anticipate that discovery will be needed on at least the following subjects: (1) the relevant product/services markets for this litigation; (2) the relevant geographic markets for this litigation; (3) whether the Defendants possess substantial market power in the relevant markets; (4) whether and to what extent Defendants engaged in the alleged conduct challenged by Plaintiffs; (5) whether and to what extent Defendants' alleged conduct caused anticompetitive effects in the relevant market; (6) whether and/or to what extent solo and group physician practices were coerced into joining ICP; (7) whether and/or to what extent ICP suppressed price competition; (8) the extent to which Defendants' alleged conduct raised prices above the competitive level; and (9) Defendants' procompetitive justifications for the alleged conduct; (10) whether and to what extent Defendants' alleged conduct caused a cognizable antitrust injury to Plaintiffs; (11) whether Plaintiffs have defined a cognizable class; and (12) whether and to what extent Plaintiffs' class allegations are accurate and satisfy the requirements of Federal Rule of Civil Procedure 23.

c. The Parties' respective proposals for discovery and case schedule are appended to this report as Appendix A. The proposed schedules are informed by District practice and

counsel's experience litigating complex antitrust class actions. The Parties agree on the proposed dates and deadlines through the completion of fact discovery, but (as set forth below) disagree whether expert discovery and briefing on class certification (and any related *Daubert* motions) should be sequenced so that expert discovery on issues relevant to class certification and the briefing on any motion for class certification are completed prior to expert discovery on issues related to the merits of Plaintiffs' claims.

d. The Parties propose that fact discovery commence promptly and conclude by October 26, 2025. The discovery-related deadlines, including the fact discovery cutoff, assume that the Parties agree to coordinate discovery with the plaintiffs in *John Brown et al. v. Hartford HealthCare Corp.*, No. X03-CV22-6152239-S (Conn. Sup. Ct. 2022) ("*Brown*")—a putative class action pending in Connecticut state court that also asserts antitrust claims against HHC. Assuming the Parties reach agreement on coordination of discovery with the *Brown* action, the Parties expect that materials produced by Defendants in *Brown* will be re-produced in this action reasonably promptly after their production in *Brown*. The Parties also expect to agree to a deposition protocol pursuant to which the *Estuary* and *Brown* plaintiffs will take depositions of Defendants' witnesses concurrently, and the depositions of Defendants' witnesses in this action will occur within the timeline for depositions in *Brown*.

Event/Deadline	Joint Proposal
Parties to submit proposed stipulated orders re confidentiality and ESI, and, if not stipulated to, a joint motion setting out the disputes	October 4, 2024
Deadline for Plaintiffs to serve First Set of Requests for Production together with proposed custodians and search terms	October 16, 2024
Deadline to Serve Initial Disclosures	October 18, 2024

Event/Deadline	Joint Proposal
Deadline to Substantially Complete Production of Documents and Data in Response to Requests for Production Served on or Before October 16, 2024	April 30, 2025
Fact Discovery Cutoff[2]	October 26, 2025

e. The Parties agree that each of Plaintiffs and Defendants may conduct up to 33 depositions of witnesses affiliated with a Party, including any Rule 30(b)(6) witnesses of a Party, and including any former employees, officers, directors, or members of any Party, with the total number of Party deposition hours for Plaintiffs collectively and Defendants collectively capped at 190 hours. Third-party depositions and expert depositions shall not count against these limitations. The Parties agree that fact depositions will be completed during the fact discovery period. Depositions will be completed by October 26, 2025.

f. The Parties agree to 25 interrogatories, such that Plaintiffs may serve 25 total interrogatories on any or all Defendants, and Defendants may serve 25 total interrogatories on any or all Plaintiffs.

g. Plaintiffs and Defendants intend to call expert witnesses at trial.

h. Plaintiffs and Defendants each intend to conduct expert discovery and briefing on class certification, among other further proceedings following the end of fact discovery. The Parties' respective proposed schedules and positions on the schedules are set forth in Appendix A, filed with this Joint Report.

[2] Interrogatories and Requests for Admission, other than those Requests for Admission regarding the admissibility of evidence (including authenticity and foundation issues), must be served no later than 30 days before this deadline.

i. A damages analysis will be provided by any party who has a claim or counterclaim for damages 60 days following the Court's decision on Plaintiffs' motion for class certification.

j. Undersigned counsel (after consultation with their respective clients concerning computer-based and other electronic information systems, including historical, archival, back-up and legacy files, in order to understand how information is stored and how it may be retrieved) have discussed the disclosure and preservation of electronically stored information, including, but not limited to, the form in which such data shall be produced, search terms and/or other techniques to be used in connection with the retrieval and production of such information, the location and format of electronically stored information, appropriate steps to preserve electronically stored information, and the allocation of costs of assembling and producing such information. The Parties are working in good faith to agree upon a stipulated ESI protocol or competing proposals for an ESI order and Protective Order by October 4, 2024

k. Undersigned counsel (after consultation with their clients) have also discussed the location(s), volume, organization, and costs of retrieval of information stored in paper and or other non-electronic forms. The Parties will include such information in a stipulated ESI protocol or competing proposal for an ESI order.

l. Undersigned counsel have discussed discovery procedures that minimize the risk of waiver of privilege or work-product protection, including procedures for asserting privilege claims after production. The Parties will include such information in a stipulated ESI protocol or competing proposal for an ESI order.

F. Other Scheduling Issues

The Parties propose their respective proposed schedules for addressing proceedings following the end of fact discovery in Appendix A, and Plaintiffs' and Defendants' reasons for such proposals in Appendixes B and C, respectively, filed with this Joint Report.

G. Summary Judgment Motions

Summary judgment motions, which must comply with Local Rule 56, will be filed within the appropriate time, as provided for in the Parties' respective proposed schedules. (*See* Appendix A.)

H. Joint Trial Memorandum

The joint trial memorandum required by the Standing Order on Trial Memoranda in Civil Cases will be filed 60 days after a ruling on a motion for summary judgment that does not resolve the entire case.

VI. Trial Readiness

The case will be ready for trial 60 days following the filing of the joint trial memorandum.

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APPENDIX A

PLAINTIFFS' PROPOSED SCHEDULE

Event/Deadline	Plaintiffs' Proposal
Deadline for Exchange of Opening Expert Reports	November 25, 2025
Submission of a Damages Analysis	November 25, 2025
Deadline for Exchange of Opposing Expert Reports	January 23, 2026
Deadline for Exchange of Rebuttal Expert Reports	March 9, 2026
Close of Expert Discovery[3]	April 9, 2026
Deadline to File Motion to Certify Class and *Daubert* Motions Related to Class Certification	May 11, 2026
Deadline to File Opposition to Motion to Certify Class and Opposition to *Daubert* Motions Related to Class Certification	June 10, 2026
Deadline to file Reply in Support of *Daubert* Motion	July 15, 2026
Deadline to File Reply in Support of Motion to Certify Class	September 23, 2026
Hearing on Motion for Class Certification and Related *Daubert* Motions	To be determined by the Court
Motions for Summary Judgment and *Daubert* Motions Related to Summary Judgment	60 days after the Court's decision on Motion to Certify Class
Oppositions to Motions for Summary Judgment and Oppositions to *Daubert* Motions Related to Summary Judgment	95 days after the Court's decision on Motion to Certify Class
Replies in Support of Motions for Summary Judgment and Replies in Support of *Daubert* Motions Related to Summary Judgment	130 days after the Court's decision on Motion to

[3] Absent agreement by the parties or an order of the Court, the parties are limited to one deposition, up to seven hours on the record, of an expert submitting a report.

Event/Deadline	Plaintiffs' Proposal
	Certify Class
Hearing on Motion for Summary Judgment	To be determined by the Court
Final Pretrial Conference	To be determined by the Court
Trial	To be determined by the Court

DEFENDANTS' PROPOSED SCHEDULE

Event/Deadline	Defendants' Proposal
Deadline for Plaintiffs to Serve Class Expert Reports and Deadline to File Motion to Certify Class	November 29, 2025
Deadline for Defendants to Serve Rebuttal Class Expert Reports and Opposition to Motion to Certify Class	January 28, 2026
Deadline for Plaintiffs to Serve Reply Class Expert Reports, Reply in Support of Motion to Certify Class, and *Daubert* Motions to Exclude Class Cert Reports	March 16, 2026
Deadline for Defendants to File *Daubert* Motions to Exclude Class Experts, and Oppose Plaintiffs' *Daubert* Motions	April 6, 2026
Deadline for Plaintiffs to Reply in Support of Plaintiffs' *Daubert* Motions, and Oppose Defendants' *Daubert* Motions	April 27, 2026
Deadline for Defendants' Replies in Support of *Daubert* Motions to Exclude Class Experts, and/or to File Any Motion to Stay Case Pending Class Certification Decision	May 18, 2026
Class Certification Hearing	At the Court's direction
Deadline to Serve Opening Merits Expert Reports on All Issues on Which a Party Has the Burden of Proof	September 4, 2026
Deadline to Serve Rebuttal Merits Expert Reports	October 16, 2026
Deadline to Serve Reply Merits Expert Reports	November 16, 2026
Close of Expert Discovery	December 18, 2026
Deadline to File Motions for Summary Judgment and *Daubert* Motions Related to Merits Experts	January 29, 2027 or 60 days after Court's decision on Motion to Certify (whichever is later)

Deadline to File Oppositions to Motions for Summary Judgment and Oppositions to *Daubert* Motions Related to Merits Experts	March 15, 2027 or 45 days after filing of Summary Judgment
Deadline to File Replies in Support of Motions for Summary Judgment and Replies in Support of *Daubert* Motions Related to Merits Experts	April 15, 2027 or 30 days after filing of opposition to Summary Judgment
Hearing on Motion for Summary Judgment	To be determined by the Court
Final Pretrial Conference	To be determined by the Court
Trial	To be determined by the Court

APPENDIX B

Plaintiffs' Position Regarding Schedule

Plaintiffs propose a schedule with one period of expert reports and depositions promptly following the end of fact discovery. Defendants propose two duplicative periods of expert reports and depositions—one set of "class certification" expert reports concurrent with class certification briefing, and then nearly a year later, one duplicative set of "merits" expert reports that runs concurrently with summary judgment briefing. There are four main reasons that Plaintiffs' proposal is more efficient and fairer to both parties.

First, Plaintiffs propose a single period of expert reports covering the overlapping "class certification" and "merits" issues, while Defendants propose separate periods, separated by many months, for duplicative class certification and merits expert reports. Under current antitrust class action jurisprudence, class certification expert reports and merits expert reports are largely, if not entirely, overlapping. At class certification, Plaintiffs have the burden of showing that their case can be proved with predominantly classwide evidence. *See*, *e.g.*, *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453-460 (2016); *Amgen Inc. v. Conn. Retirement Plans & Trust Funds*, 568 U.S. 455, 459-60, 467-70 (2013); *see also Comcast Corp. v. Behrend*, 569 U.S. 27, 33-34 (2013) (class certification analysis in antitrust cases will "frequently entail overlap with the merits of the plaintiff's underlying claim," because the "class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action").[4] There is very little, if any, daylight between the expert testimony needed for "class" and for "merits."

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[4] Under Fed. R. Civ. P. 23(b)(3), Plaintiffs must show that their case as a whole or one or more of its constituent parts is capable of proof on a predominantly class-wide basis. *Tyson Foods*, 577 U.S. at 453 ("When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3).") (quotation omitted).

Put another way, the best way to show that Plaintiffs' case *is capable of* class-wide proof *is actually to lay out workable methods, using class-wide evidence, of proving liability, injury, and damages*. That is what Plaintiffs' experts will do in their reports. Indeed, such merits-based detail is needed for the Court to perform the "rigorous analysis" required in analyzing Plaintiffs' class certification motion. *See Comcast*, 569 U.S. at 33 (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011)).

Defendants' proposal would impose two redundant rounds of expert reports: one for reports pertaining to class certification and then another pertaining to the "merits" of the case nearly a year later. Defendants' extra round of expert reports for the merits of the case also comes with a second redundant round of *Daubert* briefing relating to these merits expert reports, and a second round of expert depositions. These expert reports, which will necessarily cover the same topics as the reports submitted at the class certification stage, will simply function as a series of sur-rebuttals to the same issues that were the subject of the earlier class certification reports. This redundancy adds substantial expense, extra work for the Court, and several additional months to the schedule. Because Defendants' proposal is inefficient, it is increasingly the case that courts are combining expert discovery as Plaintiffs propose. Indeed, Plaintiffs' counsel have successfully litigated, or are currently litigating, multiple prior complex antitrust cases, including several hospital monopolization cases, under court-approved schedules similar to what Plaintiffs propose here. *See, e.g.,* Case Mgmt. Order No. 1, *Carbone, et al. v. Brown University, et al.,* No. 22-cv-00125 (N.D. Ill, Sept. 8. 2022), ECF No. 195; Order, *Uriel Pharm. Health & Welfare Plan v. Advocate Aurora Health, Inc.*, No. 22-cv-610 (E.D. Wisc. Aug. 16, 2023), ECF No. 41; Prelim. Pretrial Conference Order, *Team Schierl Cos., et al. v. Aspirus, Inc., et al.*, No. 22-cv-00580 (W.D. Wisc. Feb. 24,

2023), ECF No. 35; Scheduling Order Regarding Discovery & Briefing on Mot. for Class Certif.*,* *In re: Domestic Airline Travel Antitrust Litig.*, MDL No. 2656, 15-MC-01404 (D.D.C. Jan. 30, 2017), ECF No. 152; Case Mgmt. Order, *In re: Geisinger Health & Evangelical Community Hosp. Healthcare Workers Antitrust Litig.*, No. 4:21-cv-00196 (M.D. Pa. Feb. 7, 2022), ECF No. 80; Stipulated Order Regarding Am. Case Schedule As Modified*, Simon and Simon, PC. v. Align Tech., Inc.*, No. 3:20-cv-03754 (N.D. Cal. May 18, 2021), ECF No. 106; Scheduling Order, *Fusion Elite All Stars, et al. v. Varsity Brands, LLC*, *et al.* No. 20-cv-2600 (W.D. Tenn. Oct. 15, 2020), ECF No. 61; Case Mgmt. Order No. 1*, In Re: Broiler Chicken Grower Antitrust Litig.*, No. 6:17-cv-00033 (E.D. Okla. Apr. 13, 2020), ECF No. 312; Further Am. Scheduling Order, *In re Lipitor Antitrust Litig.*, No. 3:12-cv-02389 (D.N.J. Oct. 1, 2019), ECF No. 899; Corrected Seventh Am. Scheduling Order, *In re: Niaspan Antitrust Litig*., No. 13-MD-2460 (E.D. Pa. Nov. 16, 2018), ECF No. 570; Scheduling Order, *In re Dental Supplies Antitrust Litig.*, No. 16-cv-696 (E.D.N.Y. April 10, 2017), ECF No. 177; Pretrial Order No. 5, *In re: Google Digital Advertising Antitrust Litig.*, 21-md-3010 (S.D.N.Y. Nov. 21, 2022), ECF No. 394; Discovery Plan & Scheduling Order, *Le v. Zuffa, LLC*, No. 2:15-cv-01045 (D. Nev. Oct. 14, 2016), ECF No. 311. These case management orders are provided in the attached Exhibit B1.

Second, Plaintiffs propose one seven-hour deposition per expert during a single period for expert depositions. Defendants' proposal, on the other hand, leaves open the possibility of full depositions of experts at both the class certification and merits expert stage. (Defendants' written proposal is silent on this, but Defendants have confirmed this understanding to Plaintiffs.) This means that in addition to redundant expert reports, there will be redundant discovery. This, again, is expensive and time consuming.

Third, Plaintiffs propose that the expert discovery record be closed before the parties begin briefing class certification and summary judgment. Defendants' proposal has the parties providing expert reports at the same time as the briefs, meaning that the expert record would continue unfolding as the briefing does. In Plaintiffs' counsel's experience over many antitrust cases, this often results in the parties being "two ships passing in the night" on crucial expert issues. For example, a party often introduces new analyses in rebuttal expert reports to respond to analyses in opposition expert reports. Under Defendants' proposed schedule, these rebuttal opinions would come after a party opposing a motion has filed its brief. This often results in requests for sur-rebuttal reports and sur-reply briefs, which will burden the Court and the parties with satellite litigation and inevitably draw out the schedule.

Fourth, Plaintiffs propose that *Daubert* motions related to class certification, if any are made, should run concurrently with the class certification briefing, and that any *Daubert* motions related to summary judgment should run concurrently with summary judgment briefing. Defendants, on the other hand, propose a schedule where Plaintiffs must serve any *Daubert* motions at the same time as their reply brief on class certification, and then after class certification briefing is closed, Defendants serve their opening *Daubert* motions. This is unfair and inefficient for several reasons. First, it unfairly burdens Plaintiffs with briefing *Daubert* at the same time they are working on class certification reply briefing and rebuttal expert reports, but then Defendants' motion is due after the close of class certification briefing and reports. Second, the issues in *Daubert* briefing and class certification briefing are inevitably the same, and thus, because *Daubert* briefing extends well past class certification, Defendants will have the "last word" on class certification issues despite the fact that Plaintiffs have the burden of proof.

Defendants' primary arguments are that their proposed schedule (1) gets to class certification more quickly; (2) avoids the need to have experts weigh in on "merits" issues that might go away if the class is not certified; and (3) is in accord with common practice. Each argument should be rejected.

Defendants' proposal gets to class certification more quickly at the expense of redundant rounds of expert reports, which themselves impose enormous, needless costs on the parties. It also does so by having expert reports run concurrently with class certification briefing, which disproportionately burdens Plaintiffs' who have the burden of proof at class certification. And as discussed above, Defendants' proposal risks satellite litigation over "sandbagging" as the expert record is evolving during the class certification briefing. In addition, assuming the class is certified, Defendants' schedule then has a completely new round of redundant expert reports, nearly a year later, that runs concurrently with summary judgment briefing, resulting in the same disputes.[5]

Second, there are no merits expert expenses the parties can avoid under Defendants' schedule. There is often no "daylight" between merits and class certification; it is virtually certain that Defendants, as they do in all cases, will challenge each element of Plaintiffs' claims at class certification, and because of that, Plaintiffs typically will have expert analysis of every merits issue at the class certification stage. Moreover, Defendants' schedule has opening merits expert reports just six months after the end of class certification briefing. Because it usually takes several months for the Court to hold a hearing on class certification and then issue an opinion, the parties' experts (particularly Plaintiffs' experts) will need to do all the merits work regardless of what ultimately happens at class certification.

[5] Defendants also shorten the schedule by, for example, giving Plaintiffs less time for reply expert reports (which rebut Defendants' experts) than Defendants have for their rebuttal expert reports. This is true under Defendants' proposal at both the class and merits stages.

Third, the hospital cases currently being litigated by Plaintiffs' counsel, as well as numerous other complex antitrust cases, follow the structure Plaintiffs propose. *See supra* at pgs. 2-3 (collecting cases).

EXHIBIT B1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FRANK CARBONE, ANDREW CORZO, SAVANNAH ROSE EKLUND, SIA HENRY, MICHAEL MAERLANDER, BRANDON PIYEVSKY, KARA SAFFRIN, and BRITTANY TATIANA WEAVER, individually and on behalf of all others similarly situated,	Case No.: 22-cv-00125
Plaintiffs,	Hon. Matthew F. Kennelly
v.	
BROWN UNIVERSITY, CALIFORNIA INSTITUTE OF TECHNOLOGY, UNIVERSITY OF CHICAGO, THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, CORNELL UNIVERSITY, TRUSTEES OF DARTMOUTH COLLEGE, DUKE UNIVERSITY, EMORY UNIVERSITY, GEORGETOWN UNIVERSITY, THE JOHN HOPKINS UNIVERSITY, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, NORTHWESTERN UNIVERSITY, UNIVERSITY OF NOTRE DAME DU LAC, THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, WILLIAM MARSH RICE UNIVERSITY, VANDERBILT UNIVERSITY, and YALE UNIVERSITY,	
Defendants.	

CASE MANAGEMENT ORDER #1

Per the Court's ruling during the September 2, 2022 Status Hearing and its Order dated September 2, 2022, the Court enters the following case Management Order jointly submitted by the parties..

(1) Pretrial schedule

The pretrial schedule for this matter is attached as Appendix 1.

(2) Joint Status Report

The parties shall file a Joint Status Report on November 7, 2022, in which the parties shall update the Court on (a) the status of discovery, (b) the parties' respective positions on any discovery disputes that have become ripe, and (c) the parties' positions on mediation.

(3) Modifications to the limits on discovery

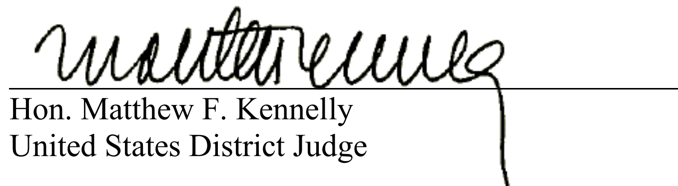
A. **Depositions of Non-Expert Witnesses.** The parties will meet-and-confer regarding the number of non-expert witness depositions and submit a proposed order (or competing orders if the parties are unable to reach agreement) on **December 23, 2022**.

B. **Interrogatories.** Plaintiffs may collectively propound no more than 45 written interrogatories, including all discrete subparts, on any defendant. Defendants may collectively propound no more than 45 written interrogatories, including all discrete subparts, on any plaintiff.

C. **Requests for Admission.** Plaintiffs may collectively propound no more than 50 written requests for admission on each defendant. Defendants may collectively propound no more than 50 written requests for admission on each plaintiff.

IT IS SO ORDERED.

Date: September 8, 2022



Hon. Matthew F. Kennelly
United States District Judge

Dated: September 7, 2022

Respectfully submitted,

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APPENDIX 1

EVENT	**DEADLINE**
Answer Under FRCP 12	September 9, 2022
Parties to submit proposed stipulated orders re ESI, deposition protocol, and expert discovery, and if not stipulated to, a joint motion setting out the disputes	September 16, 2022
Parties to submit proposed stipulated orders re. confidentiality and FERPA and, if not stipulated to, a joint motion setting out the disputes.	October 21, 2022
Parties to submit joint status report	November 7, 2022
Status Hearing	November 14, 2022 8:45 a.m.
Parties to Submit Status Report to Court Setting Forth Any Areas of Dispute Regarding Custodians, Non-Custodial Document Sources, and Search Methodologies	December 2, 2022
Deadline to Begin Rolling Production of Documents in Response to RFPs Served on or Before September 19, 2022	December 16, 2022
Parties will submit a proposed order (or competing orders if the parties are unable to reach agreement) on the number of non-expert witness depositions.	December 23, 2022
Substantial completion of Structured Data in Response to RFPs Served on or Before September 19, 2022[1]	February 13, 2023
Substantial completion of Document Production in Response to RFPs Served on or Before September 19, 2022	March 3, 2023
	July 31, 2023

[1] To the extent applicable to the requested information, meeting this deadline is subject to the parties' compliance with the Family Educational Rights and Privacy Act. *See* 20 U.S.C. § 1232g; 34 C.F.R. Part 99.

EVENT	**DEADLINE**
Substantial completion of Document Production in Response to RFPs Served on or Before March 31, 2023	
Motion to Amend Pleadings	July 31, 2023
Close of Fact Discovery	January 31, 2024[2]
Opening Expert Reports (Class Certification and Merits) on All Issues on Which a Party Has the Burden off Proof	March 15, 2024
Opposition Expert Reports (Class Certification and Merits)	May 17, 2024
Rebuttal Expert Reports (Class Certification and Merits)	August 2, 2024
Close of Expert Discovery	September 13, 2024[3]
Daubert Motions	October 18, 2024
Motion for Class Certification	October 18, 2024
Daubert Oppositions	November 15, 2024
Opposition to Motion for Class Certification	November 15, 2024
Daubert Replies	December 20, 2024
Reply in Support of Class Certification	January 8, 2025
Daubert and/or Class Certification Hearing	

[2] All RFPs must be served at least 75 days before the close of fact discovery. All interrogatories must be served at least 45 days before the close of fact discovery.

[3] Expert depositions are to be taken during the period between August 2, 2024 and September 13, 2024.

EVENT	DEADLINE
	Court's discretion
Summary Judgment Motions	March 7, 2025
Summary Judgment Oppositions	April 11, 2025
Summary Judgment Replies	May 12, 2025
Summary Judgment Hearing	Court's discretion
Pre-Trial Conference	Court's discretion
Trial	Court's discretion

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

URIEL PHARMACY HEALTH AND WELFARE PLAN, et al.,

Plaintiffs,

v. **Case No. 22-cv-610**

ADVOCATE AURORA HEALTH, INC., et al.,

Defendants.

ORDER FOLLOWING SCHEDULING CONFERENCE

On August 16, 2023, the court held a scheduling conference in accordance with Fed. R. Civ. P. 16 and Civil L. R. 16(a) (E.D. Wis.).

IT IS ORDERED that:

1. The parties agreed that fact discovery commenced on June 23, 2023.

2. The parties agreed to comply with Fed. R. Civ. P. 26(a)(1) concerning initial disclosures by August 9, 2023.

3. The parties may join additional parties and amend pleadings without further leave of the court through October 2, 2023.

4. The parties shall substantially complete production of structured data pursuant to requests for production served on or before August 16, 2023, by November 17, 2023.

5. The parties shall substantially complete document production pursuant to requests for production served on or before August 16, 2023, by September 18, 2024.

6. a. Any discovery motions brought pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure must comply with Civil L.R. 37, by including:

> a written certification by the movant that, after the movant in good faith has conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action, the parties are unable to reach an accord. The statement must recite the date and time of the conference or conferences and the names of all parties participating in the conference or conferences.

b. All discovery motions and non-dispositive pretrial motions must be filed pursuant to Civil L.R. 7(h), unless the court otherwise permits. The motion must not exceed three pages in length. No separate memorandum may be filed with the motion, and any supporting affidavit allowed by Civil L.R. 7(h) must not exceed two pages. An opposing memorandum, which must not exceed three pages in length, may be filed within seven days of service of the motion. The court will notify the parties of the date and time for a hearing on the motion, if the court deems it necessary.

7. Fact discovery shall close on February 19, 2025.

8. The parties shall serve opening expert reports on all issues for which they bear the burden of proof on or before March 19, 2025.

9. The parties shall serve opposing expert reports on or before May 14, 2025.

10. The parties shall serve rebuttal expert reports on or before July 9, 2025.

11. The parties shall complete depositions of all experts by August 13, 2025.

12. The plaintiffs shall file their motion for class certification and any *Daubert* motions related to class certification on or before September 24, 2025.

13. The defendants shall file their opposition to class certification and any *Daubert* motions related to class certification on or before November 19, 2025.

14. The parties shall file replies in support of any *Daubert* motions related to class certification on or before January 14, 2026.

15. The plaintiffs shall file their reply to defendants' opposition to class certification on or before January 21, 2026.

16. a. The parties shall file any dispositive motions and any *Daubert* motions related to said dispositive motions on or before April 15, 2026.

b. All summary judgment motions and briefing thereon must comply with Civil L.R. 7 and 56(b).

17. The parties shall file any opposition to a dispositive motion and any *Daubert* motions related to said dispositive motions on or before June 10, 2026.

18. The parties shall file any reply in support of dispositive motions or any reply in support of any *Daubert* motions related to a dispositive motion on or before July 22, 2026.

19. The court expects counsel to confer and make a good faith effort to settle the case.

The foregoing schedule shall not be modified except upon a showing of good cause and by leave of the court.

SO ORDERED at Milwaukee, Wisconsin, this 16th day of August, 2023.

/s/Lynn Adelman
LYNN ADELMAN
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TEAM SCHIERL COMPANIES and HEARTLAND FARMS, INC., on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

ASPIRUS, INC. and ASPIRUS NETWORK, INC.,

Defendants.

PRELIMINARY PRETRIAL CONFERENCE ORDER

22-cv-580-jdp

This court held a telephonic preliminary pretrial conference on February 8, 2023. The court set the schedule for this case and advised the parties that their conduct throughout this case is governed by this pretrial conference order and attachments.

The parties and their attorneys must at all times treat everyone involved in this lawsuit with courtesy and consideration. The parties must attend diligently to their obligations in this lawsuit and must reasonably accommodate each other in all matters so as to secure the just, speedy and inexpensive resolution of each proceeding in this matter as required by Fed. R. Civ. Pro. 1. Failure to do so shall have consequences.

1. Deadline to Serve Initial Disclosures: June 19, 2023

2. Deadline for Completion of Non-Expert Depositions: April 5, 2024

3. Discovery Cutoff: May 7, 2024

Discovery is stayed until June 5, 2023. Absent written agreement of the parties or a court order to the contrary, all discovery must conform with the requirements of Rules 26 through 37.

Rule 26(a)(1) governs initial disclosures unless the parties agree in writing to the contrary.

The following discovery materials *shall not* be filed with the court unless they concern a motion or other matter under consideration by the court: interrogatories; responses to interrogatories; requests for documents; responses to requests for documents; requests for admission; and responses to requests for admission.

A party need not file a deposition transcript with the court until that party is using the deposition in support of some other submission, at which time the entire deposition must be filed. All deposition transcripts must be in compressed format. The court will not accept duplicate transcripts. The parties must determine who will file each transcript.

A party may not file a motion regarding discovery until that party has made a good faith attempt to resolve the dispute. All efforts to resolve the dispute must be set forth in any subsequent discovery motion filed with this court. By this order, the court requires all parties to a discovery dispute to attempt to resolve it quickly and in good faith. Failure to do so could result in cost shifting and sanctions under Rule 37.

This court also expects the parties to file discovery motions promptly if self-help fails. Parties who fail to do so may not seek to change the schedule on the ground that discovery proceeded too slowly to meet the deadlines set in this order.

All discovery-related motions must be accompanied by a supporting brief, affidavit, or other document showing a *prima facie* entitlement to the relief requested. Any response to a discovery motion must be served and filed within seven calendar days of service of the motion. Replies may not be filed unless requested by the court.

4. Deadline to Serve Opening Expert Reports: June 7, 2024

5. Deadline to Serve Opposing Expert Reports: July 19, 2024

6. Deadline to Serve Rebuttal Expert Reports: August 30, 2024

7. Deadline for Expert Witness Depositions: October 18, 2024

8. Motions & Briefs To Certify/Decertify Classes: November 15, 2024

This is the deadline for plaintiffs to seek certification of a Rule 23 class or for defendant to seek decertification of a conditional FLSA class.

Responses: December 13, 2024

Replies: January 10, 2025

9. Deadline for filing dispositive motions: June 16, 2025

Dispositive motions may be filed and served by any party on any date up to the deadline set above. All dispositive motions must be accompanied by supporting briefs. All responses to any dispositive motion must be filed and served within 28 calendar days of service of the motion. Any reply by the movant must be filed and served within 21 calendar days of service of the response. The parties may not modify this schedule without leave of court.

If any party files a motion for summary judgment, all parties must follow this court's procedure governing such motions, a copy of which is attached to this order. The court will not consider any document that does not comply with its summary judgment procedure. A party may not file more than one motion for summary judgment in this case without leave of court.

Parties are to undertake discovery in a manner that allows them to make or respond to dispositive motions within the scheduled deadlines. The fact that the general discovery deadline cutoff, set forth below, occurs after the deadlines for filing and briefing dispositive motions is not a ground for requesting an extension of the motion and briefing deadlines.

10. Settlement Letters: November 7, 2025

Not later than this date, each party must submit a confidential settlement letter to the clerk of court at clerkofcourt@wiwd.uscourts.gov. The letter should set forth the terms and conditions upon which that party would settle this case. These letters will not become part of the record in this case and will not be shared with the presiding judge or opposing counsel.

The clerk of court may independently initiate settlement discussions with counsel based upon the settlement letters. A party can also request mediation at any time, before or after settlement letters are filed, by contacting the clerk of court via e-mail or telephone at 608-261-5795.

11. Rule 26(a)(3) Disclosures *and* all motions in limine: November 14, 2025

Objections: December 15, 2025

The first date is the deadline to file and serve all Rule 26(a)(3) disclosures, as well as all motions in limine, proposed voir dire questions, proposed jury instructions, and proposed verdict forms. All responses in opposition are due by the second date. The format for submitting proposed voir dire questions, jury instructions and verdict forms is set forth in the Procedures Governing Final Pretrial Submissions, which is attached.

*The parties should **not** submit courtesy copies of all these submissions to chambers.*

12. Final Pretrial Conference: January 7, 2026 at 2:30 p.m.

Lead counsel for each party must appear in person. Any deposition that has not been filed with the Clerk of Court by the date of the final pretrial conference shall not be used by any party for any purpose at trial.

13. Trial: January 26, 2026 at 9:00 a.m.

Trial shall be to a jury of eight. The parties estimate that this case will take four weeks to try. Absent further order of this court, the issues to be tried shall be limited to those identified by the parties in their pretrial conference report to the court.

This case will be tried in an electronically equipped courtroom and the parties shall present their evidence using this equipment. Counsel must ensure the compatibility of any of their personal equipment with the court's system prior to the final pretrial conference.

14. Reporting Obligation of Corporate Parties

All parties that are required to file a disclosure of corporate affiliations and financial interest form have a continuing obligation throughout this case promptly to amend that form to reflect any changes in the answers.

Entered this 9th day of February, 2023.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE DOMESTIC AIRLINE TRAVEL ANTITRUST LITIGATION This Document Relates To: ALL CASES	**MDL Docket No. 2656** **Misc. No. 15-1404 (CKK)**

SCHEDULING ORDER REGARDING DISCOVERY AND BRIEFING ON MOTION FOR CLASS CERTIFICATION
(January 30, 2017)

Pursuant to the Court's [125] Order of November 15, 2016, the parties filed a [144] Joint Status Report outlining the parties' positions as to a proposed Case Management Plan and providing the Court with proposed Scheduling Orders. The Court held an on-the-record Initial Scheduling and Case Management Conference on January 26, 2017, during which the Court discussed the parties' positions. The Court now issues this Order governing discovery and briefing on the issue of the class certification. The Court shall first discuss the uncontested issues and then shall render its rulings with respect to the contested issues.

It is this 30th day of January, 2017, hereby ORDERED as follows:

Uncontested Issues

1. Lift of discovery stay. Pursuant to this Court's [4] Order of October 30, 2015, all discovery in this matter was stayed until further order of the Court. The stay of discovery is hereby lifted.

2. Settlement. The Court shall not refer this matter to a magistrate judge to conduct a settlement conference at this time as the parties believe there is not a realistic possibility of settling this matter without further judicial action. To the extent that the parties believe such action would

be useful in the future, they are instructed to promptly notify the Court.

3. Special Master. As agreed to by the parties, the Court shall, by separate order, appoint the Honorable Richard A. Levie as Special Master in this matter pursuant to Federal Rule of Civil Procedure 53 for the purposes of managing discovery and resolving discovery disputes.[1]

4. Initial Disclosures. As agreed to by the parties, the parties shall continue discussing whether there is a more effective alternative to initial disclosures as required by Federal Rule of Civil Procedure 26(a)(1). As discussed at the hearing, the parties shall notify the Court as to whether they plan to produce initial disclosures pursuant to Rule 26(a)(1) or whether they agree on an alternative plan by the date specified in this Order. If an agreement is not reached, the parties shall set forth their respective positions by the date specified in this Order.

5. Expert Disclosures. As agreed to by the parties, expert disclosures shall be governed by Federal Rule of Civil Procedure 26, except as modified by expert stipulation agreed to by the parties and ordered by the Court. The parties shall adhere to dates specified in this Order.

6. Protective Order. The parties agree to negotiate a protective order, and propose the protective order to the Court by the date specified in this Order.

7. Government Production. As agreed to by the parties, Plaintiffs are entitled to any or all documents produced by Defendants to the Department of Justice ("DOJ") in response to the civil investigative demands ("CIDs") issued in July 2015 ("government production"). In addition to providing all materials produced, Defendants agree to provide Plaintiffs with lists of search

[1] Plaintiffs indicated in the Joint Status Report that they opposed the referral of this matter to a Special Master. However, at the hearing, Plaintiffs indicated that they have no reservations about the appointment of Judge Levie as Special Master in this matter.

terms employed which may have narrowed the demands, privilege logs provided, custodians designated, and written agreements between DOJ and Defendants, if any, as to the scope of the Defendants' production. Defendants shall serve the government production and other documents outlined in this section on Plaintiffs by no later than **February 13, 2017**.

As agreed to by the parties, the producing party may designate any or all documents in the government production as "Confidential" without attorney review in order to expedite production. This designation only applies to the exchange of the documents between the parties during the discovery and does not apply to documents filed with the Court.[2] The presumption is that all documents and pleadings will be filed on the public docket. To the extent that either party seeks to file documents with the Court under seal, sealed documents may be filed in paper form with the Clerk's Office if they are accompanied by a motion to seal in accordance with Local Civil Rule 5.1(h). Motions to seal should explain why sealing is appropriate with reference to the factors identified in *United States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980). The Court then shall render a ruling on the request to seal. Failure to file a proper motion to seal may result in the document being placed in the public record.

8. Document Production. As agreed to by the parties, the documents to which the

[2] The Court notes that counsel on behalf of one Plaintiff in this action filed a [150] *Request to Include in the Scheduling Order an Opportunity to Object to the Proposed Protective Order*, requesting that the Court set a time period by which Plaintiffs may object to the proposed protective order. As the Court noted during the hearing, such issues should be raised to and through Plaintiffs' Interim Class Co-Counsel and not directly to the Court by individual Plaintiffs in this matter. Further, as discussed on the record during the hearing, the designation of the government production as "confidential" does not obviate the need for any party wanting to file documents under seal in this Court to make an appropriate showing that such action is necessary. Otherwise, the presumption is that documents and pleadings be filed on the public docket. This clarification appears to address the concern raised by the Plaintiff in her request.

parties have not raised an objection shall be produced on a rolling basis. The parties shall continue to meet and confer regarding the specific transactional data to be retained as well as produced, format for the production of data, sharing of costs of collecting and producing data and documents, and a schedule for the orderly and prompt production of different categories of documents.

9. Principal Designees. Plaintiffs shall select a Principal Designee from each of the lead counsel class firms on which all discovery-related requests, productions, or correspondence shall be directed. The Plaintiffs' Principal Designees shall be responsible for distributing these materials to all plaintiffs. Defendants also shall select one Principal Designee for each Defendant to whom all discovery-related requests, productions, or correspondence shall be directed.

10. Electronic Service. As agreed to by the parties, service of all correspondence and formal papers filed, whether under seal or otherwise, shall be completed by electronic mail to counsel of record in lieu of service of documents pursuant to Federal Rule of Civil Procedure 5. In the event any document is too voluminous for electronic mail, the parties shall serve on each Principal Designee an electronic disk, hard drive, secure download, or other electronic means agreed upon by the parties.[3]

As agreed to by the parties, if service is made by physical mail, the serving party will e-mail the other side's Principal Designee when the materials are sent to alert them that the materials are being served. Electronic delivery shall be treated the same as hand delivery for purposes of calculating response times under the Federal Rules. Service on Plaintiffs' Primary Designee shall be deemed service on all Plaintiffs. Plaintiffs' Primary Designee shall provide copies to all

[3] The Court adopts the agreed-upon electronic means of service for each Principal Designee listed in the parties' Joint Status Report. Jt. Status Report at 7-8, ECF No. [144].

Plaintiffs of any papers or documents served by Defendants.

11. Nationwide Service. As agreed to by the parties, the parties will be allowed nationwide service of discovery subpoenas pursuant to Federal Rule of Civil Procedure 45 and 15 U.S.C. § 23, to issue from the Court.

Contested Issues

12. Discovery Schedule. The parties dispute whether discovery should be bifurcated into "class certification" discovery and "merits" discovery. Defendants' position is that such a delineation is prudent and that Defendants should only be required to produce all discovery necessary to determine whether the proposed class should be certified pursuant to Federal Rule of Civil Procedure 23. Defendants acknowledge that some of this discovery would touch on the merits of Plaintiffs' claims and outline the discovery they deem relevant to the issue of class certification.[4] Plaintiffs object, arguing that discovery may be accomplished in phases, but that bifurcation on a "class certification" and "merits" basis is inappropriate in this instance. Rather, Plaintiffs' proposal contemplates filing their motion for class certification prior to the completion of discovery but not bifurcating discovery as Defendants suggest.

[4] Specifically, Defendants propose the following discovery be taken prior to resolving the issue of class certification. For discovery produced to Plaintiffs: (1) "Defendants' capacity data for the period in dispute"; (2) "Defendants' transactional and pricing data regarding flights for the period in dispute"; (3) "Documents from Defendants' network planning departments regarding capacity planning and changes"; (4) "Fact depositions of a limited number of each of Defendant's employees directed at class certification issues"; (5) "Depositions of class certification experts designated by Defendants"; and (6) "All materials produced by Defendants to the Department of Justice pursuant to CIDs issued in July 2015." Jt. Status Report at 18. For discovery produced to Defendants: (1) "Discovery from Plaintiffs on the issue of common proof of impact and other class certification issues, including the bases for Plaintiffs' allegations that capacity and pricing diverged from historical patterns in 2009"; (2) "Depositions of class certification experts designated by Plaintiffs"; and (3) "A deposition of each Plaintiff." *Id.*

A class action is "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700-01 (1979)). As such, Rule 23(a) sets out four specific requirements – numerosity, commonality, typicality, and adequate representation – to "ensure[] that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate." *Id.* at 349, 350. Indeed, Rule 23 is more than a mere pleading standard. Rather, "[a] party seeking class certification must affirmatively demonstrate his compliance with the Rule," meaning that "he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Id.* at 350. As such, the Supreme Court of the United States recognized that "sometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question," and must be satisfied that the prerequisites of Rule 23(a) are met after "rigorous analysis." *Id.* (quoting *Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 160, 161 (1982)). "Frequently that 'rigorous analysis' will entail some overlap with the merits of the plaintiff's underlying claim." *Id.* at 351. This is the case because "'[t]he class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action.'" *Id.* (quoting *Falcon*, 457 U.S. at 160).

Courts have recognized that discovery on the merits is not required to be completed prior to class certification in some instances. *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 258 F.R.D. 167, 172 (D.D.C. 2009) (citing *Hubbard v. Potter*, No. 03–CV–1062, 2007 WL 604949, at *2 (D.D.C. Feb. 22, 2007)). However, the U.S. Court of Appeals for the District of Columbia Circuit has not set forth a bright line test for determining when circumstances would warrant

bifurcating discovery. "In resolving motions to bifurcate discovery at the pre-certification stage, district courts must 'balance the need to promote effective case management, the need to prevent potential abuse, and the need to protect the rights of all parties.'" *In re Rail Freight*, 258 F.R.D. at 172 (quoting *Hubbard*, 2007 WL 604949, at *2). As one district court summarized, "the prime considerations in whether bifurcation is efficient and fair include whether merits-based discovery is sufficiently intermingled with class-based discovery and whether the litigation is likely to continue absent class certification." *In re Plastics Additives Antitrust Litig.*, No. 03–CV–2038, 2004 WL 2743591, at *2 (E.D. Pa. Nov. 29, 2004). "Although some discovery is necessary to resolve certification issues, 'pre-certification discovery is subject to the limitations which may be imposed by the court, and any such limitations are within the sound discretion of the court.'" *In re Rail Freight*, 258 F.R.D. at 172 (quoting *Hubbard*, 2007 WL 604949, at *2).

Based on the record, the Court shall not bifurcate discovery as requested by Defendants for the following reasons. As an initial matter, the scope of the government production remains unclear at this time.[5] Plaintiffs represented during the hearing that in the last day or two they learned more information about the scope of the productions, the time frame of the productions, and the custodians for the productions. However, Plaintiffs noted that they did not have complete information, including what was negotiated as the ultimate scope of the documents produced. The Court further notes that it denied Plaintiffs' request, which was opposed by Defendants, that Defendants provide Plaintiffs with the government production prior to briefing on Defendants' motion to dismiss. Mem. Op. & Order (Mar. 30, 2016), ECF No. [96].

[5] Plaintiffs also represented at the hearing that it is premature to know whether or not this litigation will continue if the class is not certified.

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Second, the Court is not as sanguine as Defendants that discovery in this matter can be easily bifurcated into discovery related to class certification and discovery related to the merits. Plaintiffs have the burden of demonstrating that the class should be certified. Indeed, as Plaintiffs argued, the Court sees an issue with permitting Defendants to determine the scope of discovery required for Plaintiffs to meet their burden. Here, as discussed with respect to the motion to dismiss, the parties have differing views about the potential scope of the alleged conspiracy. *See* Mem. Op. (Oct. 28, 2016), at 28, ECF No. [124] ("Defendants . . . contend that Plaintiffs are required to plead specific routes or city-pairs that were affected by the conspiracy. Plaintiffs instead assert that the conspiracy had an industry-wide effect on prices and plead that the conspiracy affected air passenger transportation services within the United States."). As such, it seems difficult to determine at least at this juncture that there is a clear line between the discovery needed to resolve the class certification issue and other discovery to resolve the merits of Plaintiffs' claims.

Third, the Court cites with approval the decision of Magistrate Judge John M. Facciola in *In re Rail Freight Fuel Surcharge Antitrust Litigation*, 258 F.R.D. 167 (D.D.C. 2009). In that case, Judge Facciola denied the defendants' request to bifurcate discovery and instead determined that it was appropriate to allow an initial period of discovery after which the parties briefed the class certification issue. *Id.* at 176. Judge Facciola found bifurcating discovery was inappropriate because: it would require the plaintiffs to accept the defendants' formulation of the class certification question, *id.* at 173; the alleged conspiracy's operation and scope were closely intertwined, *id.* at 174; and bifurcating discovery would likely lead to more disputes, *id.* However, he also found that permitting "untrammeled and unlimited discovery" before determining class

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certification was not proper. *Id.* at 176.

Here, as the Plaintiffs suggest, the Court agrees that permitting some discovery prior to class certification without adopting an artificial distinction between class certification and merits discovery strikes the appropriate balance. As such, the Court shall adopt the schedule proposed by Plaintiffs at this juncture. As previously discussed, this schedule will require Defendants to provide discovery that Defendants concede Plaintiffs are entitled to prior to briefing the class certification issue, namely the government production, capacity data for the relevant period, transactional and pricing data regarding flights during the relevant period, documents from Defendants' planning departments regarding capacity planning and changes, fact depositions of a limited number of Defendants' employees, and depositions of Defendants' class certification experts. Jt. Status Report at 18. However, it will permit Plaintiffs to ask for additional information that they deem relevant to the class certification issue.

In light of the uncertainty surrounding the scope of discovery, the Court notes that the dates set are the outside dates by which the Court expects certain tasks to be completed. As further discussed *infra*, the Court shall set regular status hearings in order to monitor the parties' progress and, if prudent, to adjust the schedule to require the earlier completion of some tasks. The Court shall set this hearing schedule in place in part to alleviate Defendants' concerns regarding the scope of pre-class certification discovery.

13. Schedule for Discovery and Briefing on Motion for Class Certification. For the reasons set forth, the Court shall adopt Plaintiffs' proposal. The Court shall revisit the schedule at the next hearing to determine whether dates should be moved earlier. However, the Court does not anticipate granting extensions beyond the dates outlined. Accordingly, parties shall adhere to

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the following schedule:

Fact Discovery Opens	January 27, 2017
Deadline for Submission of Agreed Protective Order, Discovery in Lieu of R. 26(a) Disclosures, Protocol for Production of ESI and Documents Expert Stipulation, Privilege Protocol, Deposition Protocol, Preservation Agreement, and/or other agreements that the parties deem necessary[6]	February 27, 2017
Substantial Completion of Production of Transactional Data and Documents	July 27, 2017
Close of Fact Discovery Prior to Certification	April 27, 2018
Class Certification Motion (including motion for appointment of class counsel) and Expert Report(s)	April 27, 2018
Deadline for Defendants to Depose Plaintiffs' Expert(s)	June 11, 2018
Opposition to Class Certification and Expert Report(s)	June 27, 2018
Deadline for Plaintiffs to Depose Defendants' Expert(s)	July 27, 2018
Class Certification Reply and Expert Report(s)	August 13, 2018

[6] Agreed-upon protocols shall be filed with the Court so that they may be incorporated into the record through Court order.

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14. Status Hearing. This matter is set for a Status Hearing on **May 3, 2017**, at **10:00 a.m.**, in **Courtroom 28A**. By no later than **April 26, 2017**, the parties shall file a brief joint status report updating the Court as to the progress of discovery and alerting the Court to any other outstanding issues that the parties deem appropriate. As agreed to by the parties, the Court intends to hold regular status hearings, initially on a quarterly basis and then every three to four months as appropriate. The Court shall set a schedule for these regular hearings at the May, 3, 2017, hearing.

IT IS SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE: GEISINGER HEALTH AND EVANGELICAL COMMUNITY HOSPITAL HEALTHCARE WORKERS ANTITRUST LITIGATION	No. 4:21-CV-00196 (Chief Judge Brann)

<u>CASE MANAGEMENT ORDER</u>

FEBRUARY 7, 2022

Pursuant to the authority granted to this Court under Federal Rule of Civil Procedure 83(b), this Case Management Order shall govern all proceedings in the above-captioned case. No deadlines set by this Order, the Local Rules,[1] or the Federal Rules of Civil Procedure may be altered without this Court's approval, and this Court may modify any deadline *sua sponte*.

Discovery

1. Fact discovery shall be conducted expeditiously and diligently, and shall be completed by <u>June 9, 2023</u>. All requests for extensions of any discovery deadline shall be made at least fourteen days before the expiration of the discovery period.

2. Deadline to serve expert reports on all issues on which a party as the burden of proof is <u>June 30, 2023</u>.

[1] The Local Rules are online at http://www.pamd.uscourts.gov/sites/pamd/files/LR120114.pdf, and may also be obtained by writing the Clerk of Court, United States Courthouse and Federal Building, Suite 218, 240 West Third Street, Williamsport, Pennsylvania, 17701-6460.

3. Deadline to serve opposing expert reports is August 11, 2023.

4. Deadline to serve rebuttal expert reports is September 25, 2023.

5. Deadline for expert witness depositions is October 23, 2023.

6. If a discovery dispute arises, counsel shall electronically docket a letter apprising the Court of the dispute's general contours. Upon receipt of that letter, the Court may schedule a conference if necessary. No discovery motions may be filed without express permission of the Court.[2]

7. Counsel shall confer within four weeks after the completion of discovery to discuss settlement, and shall notify this Court if they would like the assistance of a United States Magistrate Judge in conducting a formal settlement conference.

8. All requests for extensions of any discovery deadline shall be made at least fourteen days before the expiration of the discovery period.

Class Certification

9. Motions for Class Certification/Daubert motions and supporting brief is to be filed by November 20, 2023.

10. Oppositions to Motions for Class Certification/Daubert Motions are to be filed by January 8, 2024.

11. Replies in support of Motions for Class Certification/Daubert Motions is to be filed by January 29, 2024.

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[2] *See* Federal Rule of Civil Procedure 16(b)(3)(B)(v).

Miscellaneous Matters

12. Motions to seal documents (and the document(s) sought to be sealed) must be mailed to, or filed with, the Clerk's Office in Williamsport. The Court will not accept sealed documents filed in Scranton or Harrisburg.

13. At any time, if the parties wish to utilize the Court-Annexed Mediation Program[3] or any other form of alternative dispute resolution, counsel should electronically docket a letter expressing this interest and request a telephone conference call with the Court.

14. Inquiries about this case may be directed to Janel R. Rhinehart, my Courtroom Deputy, at 570-323-9772.

[3] *See* Local Rules 16.8.1-.7.

Summary of Dates and Deadlines

Substantial Completion of Production of Structured Data in Response to Requests for Production served on or before 12/1/2021	April 6, 2022
Deadline to Begin Rolling Production of Documents in Response to Requests for Production served on or before 12/2/2021[4]	May 2, 2022
Substantial Completion of Document Production in Response to Requests for Production served on or before 12/2/2021	July 8, 2022
Deadline for Completion of Non-Expert Depositions	April 7, 2023
Close of Fact Discovery[5]	June 9, 2023
Expert reports	June 30, 2023
Opposing expert reports	August 11, 2023
Rebuttal expert reports	September 25, 2023
Expert Witness Depositions	October 23, 2023
Motions for Class Certification/Daubert Motions and supporting briefs	November 20, 2023
Oppositions to Motions for Class Certification/Daubert Motions	January 8, 2024
Replies in Support of Motions for Class Certification/Daubert Motions	January 29, 2024

BY THE COURT:

s/ Matthew W. Brann
Matthew W. Brann
Chief United States District Judge

[4] A privilege log must be served within 30 days of any production from which documents are withheld on the basis of privilege or work-product protection.

[5] Interrogatories and Requests for Admission, other than those Requests for Admission regarding the admissibility of evidence (including authenticity and foundation issues), must be served no later than 45 days before this deadline.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SIMON AND SIMON, PC d/b/a CITY SMILES and VIP DENTAL SPAS, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ALIGN TECHNOLOGY, INC.,

Defendant.

Case No.: 3:20-cv-03754-VC

~~[PROPOSED]~~ STIPULATED ORDER REGARDING AMENDED CASE SCHEDULE AS MODIFIED

WHEREAS, on May 5, 2021, Plaintiffs Simon And Simon, PC d/b/a City Smiles and VIP Dental Spas (“Plaintiffs”) and Defendant Align Technology Inc. (“Defendant,” collectively with Plaintiffs, the “Parties”), having met and conferred, filed an Updated Joint Case Management Statement, Rule 26(f) Statement, and [Proposed] Order that included a Jointly Proposed Schedule as Attachment A (ECF Nos. 99 and 99-1, respectively);

WHEREAS, on May 12, 2021, the Parties attended a case management conference with the Court at which the Court ordered the Parties to make certain changes to the Jointly Proposed Schedule, including adding case management conferences approximately every four (4) months (with joint case management statements due seven (7) days in advance), and combining all summary judgment and *Daubert* briefing into single documents when such documents are to be filed at the same time (with any motions proposing changes to the page limits to be submitted to the Court in advance of the filing deadlines for such combined briefs);

NOW THEREFORE, the Parties, by and through their respective counsel, hereby stipulate and agree to the terms of this Amended Jointly Proposed Schedule as follows:

Amended Jointly Proposed Schedule

Proposed Date	Event
5/5/2021	Joint CMC Statement due
5/12/2021	Case Management Conference[1]
7/25/2021	Deadline to begin rolling production of documents in response to Requests for Production served on or before January 15, 2021[2]
8/24/2021	Deadline to complete production of structured data in response to Requests for Production served on or before January 15, 2021
9/15/2021	Joint CMC Statement due
9/22/2021	Case Management Conference
1/12/2022	Joint CMC Statement due
1/19/2022	Case Management Conference
2/13/2022	Deadline to complete production of documents in response to Requests for Production
3/11/2022	Deadline to complete initial ADR
5/11/2022	Joint CMC Statement due
5/18/2022	Case Management Conference
7/15/2022	Deadline to complete fact discovery
8/12/2022	Deadline to serve expert reports on all issues on which a party has the burden of proof
9/14/2022	Joint CMC Statement due
9/21/2022	Case Management Conference
9/23/2022	Deadline to serve opposing expert reports

[1] Producing parties are to produce organizational charts (if any) and proposed custodians, non-custodial document sources, and search methodology within 21 days of the Case Management Conference.

[2] Privilege logs shall be served within 45 days of each production of documents from which documents were withheld based on any claim or privilege or work-product protection.

11/4/2022	Deadline to serve rebuttal expert reports
12/5/2022	Deadline to complete expert discovery
1/10/2023	Deadline to file motion for class certification and any *Daubert* motion related to class certification
1/18/2023	Joint CMC Statement due
1/25/2023	Case Management Conference
2/14/2023	Deadline to file opposition to motion for class certification and opposition to any *Daubert* motion related to class certification
3/14/2023	Deadline to file reply in support of *Daubert* motion related to class certification
3/21/2023	Deadline to file reply in support of motion for class certification
4/13/2023 5/11/2023	Hearing on motion for class certification Case Management Conference
4 weeks after decision on Class Certification	Close of residual post-certification discovery period
6/13/2023	Deadline to file motion for summary judgment and any *Daubert* motions[3]
7/25/2023	Deadline to file opposition to motion for summary judgment and opposition to any *Daubert* motions[4]
8/22/2023	Deadline to file reply in support of motion for summary judgment and in support of any *Daubert* motions[5]
(At the Court's convenience)	Hearing on motion(s) for summary judgment and *Daubert* motions Final pretrial conference

[3] Any party filing a motion for summary judgment and a *Daubert* motion must file them as a combined brief. Any motion as to the page limits for such briefing will be taken up in advance of this deadline.

[4] Any party filing a brief in opposition to a motion for summary judgment and a brief in opposition to a *Daubert* motion must file them as a combined brief. Any motion as to the page limits for such briefing will be taken up in advance of this deadline.

[5] Any party filing a reply brief in support of a motion for summary judgment and a reply brief in support of a *Daubert* motion must file them as a combined brief. Any motion as to the page limits for such briefing will be taken up in advance of this deadline.

11/20/2023	Trial Begins

IT IS SO STIPULATED, through Counsel of Record.

Dated: May 13, 2021

Respectfully Submitted,

By: *_____/s/ Joseph R. Saveri_____*

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Counsel for Individual and Representative Plaintiffs

Dated: May 13, 2021

By: */s/ Steven A. Marenberg*

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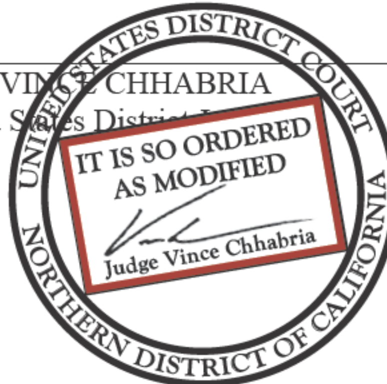
Attorneys for Defendant Align Technology, Inc.

IT IS ORDERED that the forgoing Amended Jointly Proposed Schedule is approved.

Dated: May 18, 2021

HON. VINCE CHHABRIA
United States District Judge



FILER'S ATTESTATION

I, Joseph R. Saveri, am the ECF user whose identification and password are being used to file this [Proposed] Stipulated Order Regarding Amended Case Schedule. In compliance with L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this Joint Case Management Conference Statement has been obtained from each of the other signatories.

May 13, 2021 /s/ *Joseph R. Saveri*

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FUSION ELITE ALL STARS, et al., Plaintiffs, v. VARSITY BRANDS, LLC, et al., Defendants.	)	No. 2:20-cv-2600-SHL-cgc

SCHEDULING ORDER

Pursuant to written notice, a scheduling conference was held by video conference on September 30, 2020. Present were Benjamin A. Gastel, Eric L. Cramer, H. Laddie Montague, Jr., Mark Suter, Mary L. Russell, J. Gerard Stranch, IV, Greg S. Asciolla, Karin E. Garvey, Trey Thatcher, Victoria Sims, Katheryn Van Dyck, Greg Asciolla and Brian Shearer, counsel for plaintiffs, and Adam S. Baldridge, George Cary, Matthew S. Mulqueen, Steven Kaiser, Grady M. Garrison, Nicole D. Berkowitz and Alexis Collins, counsel for defendants. The Court discussed dates and deadlines with the Parties, and the Parties agreed to submit a joint proposed scheduling order. Pursuant to the joint proposed scheduling order, the following deadlines shall control this matter:

FIRST DAY TO SERVE WRITTEN DISCOVERY REQUESTS: October 16, 2020.

INITIAL DISCLOSURES PURSUANT TO FED. R. CIV. P. 26(a)(1): October 30, 2020.
.
PRODUCING PARTIES TO PROVIDE ORGANIZATIONAL CHARTS (TO THE EXTENT THEY EXIST): 30 days after being served with the requesting Parties' first requests for production of documents.

MOTION TO DISMISS: December 1, 2020.

OPPOSITIONS TO MOTION TO DISMISS: January 15, 2021.

Case 2:24-cv-00051-JMB Document 7-1 Filed 10/15/24 Page 74 of 136

REPLIES IN SUPPORT OF MOTION TO DISMISS: February 15, 2021.

PARTIES TO SUBMIT DISPUTES TO COURT REGARDING ANY AREAS OF DISPUTE REGARDING DOCUMENTS TO BE PRODUCED IN RESPONSE TO REQUESTS FOR PRODUCTION: 90 days from service of the Parties' first Requests for Production.

ALTERNATIVE DISPUTE RESOLUTION

(a) **ADR DEADLINE PURSUANT TO ADR PLAN RULE 4.3(a)**: December 23, 2020.

(b) **SELECTION OF MEDIATOR PURSUANT TO ADR PLAN RULE 5.4(c)**:

ADR STIPULATION FILING DATE: On or before October 23, 2020, the Parties will file a stipulation designating the specific ADR intervention the Parties have selected, the time frame within which the ADR process will be completed, and the selected Neutral.

COMPLETING FACT DISCOVERY:

(a) **DOCUMENT PRODUCTION**[1]

(1) **BEGIN ROLLING PRODUCTION OF DOCUMENTS IN RESPONSE TO REQUESTS FOR PRODUCTION**: Within 75 days of service of the relevant requests for production of documents, subject to any unresolved objections of the producing Party.

(2) **COMPLETION OF PRODUCTION OF TRANSACTIONAL DATA IN RESPONSE TO REQUESTS FOR PRODUCTION**: Within 100 days of service of the relevant requests for production of documents, subject to any unresolved objections of the producing Party.

(3) **COMPLETION OF DOCUMENT PRODUCTION IN RESPONSE TO REQUESTS FOR PRODUCTION**: Within 165 days of the service of relevant requests for production of documents, subject to any unresolved objections of the producing Party.

(b) **DEADLINE FOR MOTIONS TO JOIN PARTIES**: November 19, 2021.

(c) **DEADLINE FOR MOTIONS TO AMEND PLEADINGS**: November 19, 2021.

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[1] All requests for production must be served at least 45 days before the end of Fact Discovery.

(d) DEADLINE FOR COMPLETION OF DEPOSITIONS: February 18, 2022.[2]

(e) DEADLINE FOR SERVING INTERROGATORIES AND REQUESTS FOR ADMISSION: January 14, 2022.

(f) CLOSE OF FACT DISCOVERY: February 18, 2022.

EXPERT WITNESS DISCLOSURES

(a) DEADLINE TO SERVE EXPERT REPORTS ON ALL ISSUES ON WHICH A PARTY HAS THE BURDEN OF PROOF: March 18, 2022.

(b) DEADLINE TO SERVE OPPOSING EXPERT REPORTS: May 13, 2022.

(c) DEADLINE TO SERVE REBUTTAL EXPERT REPORTS: July 11, 2022.

(d) DEADLINE FOR EXPERT WITNESS DEPOSITIONS:[3] August 12, 2022.

MOTIONS FOR CLASS CERTIFICATION AND TO EXCLUDE EXPERTS UNDER F.R.E. 702/DAUBERT MOTIONS: September 16, 2022.

OPPOSITIONS TO MOTIONS FOR CLASS CERTIFICATION AND TO EXCLUDE EXPERTS UNDER F.R.E. 702/DAUBERT MOTIONS: November 11, 2022.

STATUS CONFERENCE TO SET SCHEDULE FOR SUMMARY JUDGMENT AND TRIAL: November 18, 2022 at 9:30 AM.

REPLIES IN SUPPORT OF MOTIONS TO EXCLUDE EXPERTS UNDER F.R.E. 702/DAUBERT MOTIONS: December 9, 2022.

REPLIES IN SUPPORT OF MOTIONS FOR CLASS CERTIFICATION: December 22, 2022.

SUMMARY JUDGMENT MOTIONS: To be discussed at November 18th conference.

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[2] The deadlines for completing depositions and closing fact discovery are contingent on the Parties' substantially completing production of data and documents sufficiently in advance of the February 18, 2022 deadline for completing depositions and closing fact discovery so that the Parties have sufficient time to prepare for and utilize the documents at depositions.

[3] Absent agreement of the Parties, each expert is subject to a maximum of one deposition lasting no more than seven hours.

JOINT PROPOSED PRETRIAL ORDER DUE: To be set by the Court at November 18th conference.

PRETRIAL CONFERENCE DATE: To be set by the Court November at 18th Conference.

JURY TRIAL: To be set by the Court at November 18th Conference.

OTHER RELEVANT MATTERS:

Pursuant to Local Rule 16.3(d), within 7 days of completion of ADR, the parties shall file a notice via ECF confirming that the ADR was conducted and indicating whether it was successful or unsuccessful, without disclosing the parties' respective positions at the ADR. The Mediator must file a Mediation Certification form, as noted above.

Pursuant to Local Rule 7.2(a)(1)(A), all motions, except motions pursuant to Fed. R. Civ. P. 12, 56, 59, and 60 shall, be accompanied by a proposed order in a word processing format sent to the ECF mailbox of the presiding judge.

Pursuant to Local Rule 7.2(a)(1)(B), the parties are required to consult prior to filing any motion (except motions filed pursuant to Fed. R. Civ. P. 12, 56, 59, and 60).

The opposing party must file a response to any opposed motion. Pursuant to Local Rule 7.2(a)(2), a party's failure to respond timely to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion.

Neither party may file an additional reply to any motion, other than a motion filed pursuant to Fed. R. Civ. P. 12(b) or 56, without leave of the court. Pursuant to Local Rule 7.2(c), if a party believes that a reply is necessary, it shall file a motion for leave to file a reply within 7 days of service of the response, setting forth the reasons why a reply is required.

This order has been entered after consultation with the parties. Absent good cause shown, the deadlines set by this order will not be modified or extended.

IT IS SO ORDERED, this 15th day of October, 2020.

s/ Sheryl H. Lipman
SHERYL H. LIPMAN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

IN RE: BROILER CHICKEN GROWER LITIGATION	No. 6:17-cv-00033-RJS-SPS The Honorable Robert J. Shelby The Honorable Steven P. Shreder

CASE MANAGEMENT ORDER NO. 1

Plaintiffs Haff Poultry, Inc. ("Haff"), Nancy Butler, Johnny Upchurch, Jonathan Walters, Myles Weaver, and Melissa Weaver (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated, and Defendants Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Breeders, Inc., and Tyson Poultry, Inc. (collectively, "Tyson"); Pilgrim's Pride Corporation ("Pilgrim's"); and Perdue Foods, LLC ("Perdue") (collectively, "Defendants")[1] have agreed in light of directions from the Court during the Rule 16 Conference, and the Court hereby orders, that this case shall be governed by the following schedule:

DATE	EVENT
3/30/2020	Producing Parties to Provide Organizational Charts (if available) and Proposed Custodians, Non-Custodial Document Sources, and Search Methodology
3/30/2020	Parties Exchange Initial Disclosures
3/30/2020	Parties Submit Rule 16 Report and First Status Report[2]
4/24/2020	Parties to Confer Re: any Areas of Dispute Involving Custodians, Non-Custodial Document Sources, and Search Methodologies
5/15/2020	Parties to Submit Joint Letter to Court Regarding any Areas of Dispute Re: Custodians, Non-Custodial Document Sources, and Search Methodologies[3]

[1] Plaintiffs and Defendants shall be collectively referred to as "Parties." Plaintiffs collectively and Defendants collectively may also be referred to as a "side."

[2] Supplemental Status Reports every 90 days.

[3] Copies of all Reports/Letters contemplated by this Order must be provided both to the assigned District Judge and Magistrate Judge.

8/21/2020	Deadline to Begin Rolling Production of Documents in Response to Requests for Production Served on or Before 2/25/2020[4]
10/2/2020	Deadline for Completion of Document Production of Transactional Data in Response to Requests for Production Served on or Before 2/25/2020
11/20/2020	Deadline for Completion of Document Production in Response to Requests for Production Served on or Before 2/25/2020
1/21/2021	Deadline to Amend Pleadings without Further Leave of the Court
9/24/2021	Close of Fact Discovery[5]
11/19/2021	Deadline to Serve Expert Reports on all Issues on which a Party has the Burden of Proof
1/28/2022	Deadline to Serve Opposing Expert Reports
3/11/2022	Deadline to Serve Rebuttal Expert Reports
5/6/2022	Deadline for Completion of Expert Discovery[6]
6/17/2022	Deadline to File Class Certification Motions
6/17/2022	Deadline to File *Daubert* Motions
7/29/2022	Deadline to File Opposition Memoranda to Class Certification and *Daubert* Motions
9/2/2022	Deadline to File Reply Memoranda in Support of *Daubert* Motions
9/9/2022	Deadline to File Reply Memoranda in Support of Class Certification

[4] Privilege Logs must be provided within 30 days of each production of documents.

[5] All Requests for Production must be served at least 75 days before the end of fact discovery. All Interrogatories and Requests for Admission must be served at least 45 days before the end of fact discovery.

[6] Absent agreement of the Parties, each expert is subject to a maximum of one deposition lasting no more than seven hours.

10/14/2022	Deadline to File Motions for Summary Judgment
12/2/2022	Deadline to File Oppositions to Motions for Summary Judgment
12/23/2022	Deadline to File Reply Memoranda in Support of Summary Judgment

Discovery in this case shall be governed by the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Eastern District of Oklahoma. In recognition of the fact that this case will require additional discovery beyond that provided for in those rules, Plaintiffs and Defendants have agreed, and the Court hereby orders, that discovery in this case shall be governed by the following limitations:

1. **General:** The Parties agree that for purposes of these discovery limitations, each Defendant family shall be considered a single "party." To illustrate, the four Tyson defendants—Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Breeders, Inc., and Tyson Poultry, Inc.—shall be considered together such that Tyson is subject to no more than 25 interrogatories as set forth below.
2. **Interrogatories:** Each side may propound up to 45 interrogatories under Fed. R. Civ. P. 33. The Parties further agree that no party shall be subject to more than 25 interrogatories.
3. **Depositions:**
   a. Each side shall be limited to 250 hours of party depositions and 500 hours of total deposition time for both party and non-party depositions. No party may be subject to more than 13 depositions. Further, each party shall be subject to no more than 14 hours of Fed. R. Civ. P. 30(b)(6) deposition testimony. These limits do not include depositions of expert witnesses disclosed under Fed. R. Civ. P. 26(a)(2).
   b. Absent agreement or leave of Court, no witness shall be deposed for more than one day of seven (7) hours. For purposes of deposition limits, each seven (7) hours of a Fed. R. Civ. P. 30(b)(6) deposition shall count as a single deposition, regardless of the number of witnesses designated to testify.
   c. Excluded from any deposition limits are depositions of non-previously-deposed witnesses who appear on an opposing party's final pre-trial witness list, unless

such witnesses were (i) discovery custodians, or (ii) previously identified in initial disclosures or supplements thereto, served at least sixty days prior to the conclusion of fact discovery.

d. In addition, for each named Plaintiff added in an amended pleading, Defendants shall receive an additional seven (7) hours of deposition time if the Plaintiff is a natural person or 14 hours of deposition time if not, provided that such time is used only to depose the newly-added Plaintiff(s). If, prior to being deposed, a named Plaintiff is withdrawn and substituted for another named Plaintiff, Defendants shall not receive the additional hours of deposition time described above. If the withdrawn Plaintiff was previously deposed, the Defendants shall receive the additional hours of deposition time described above for each substitute named Plaintiff.

4. **Requests for Production:** The Parties agree that each side shall endeavor to propound no more than two sets of requests for production.

5. **Requests for Admission:** The Parties agree that each side may serve up to 50 requests for admission under Fed. R. Civ. P. 36.

IT IS SO ORDERED.

Date: April 13, 2020

Hon. Robert J. Shelby
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE LIPITOR ANTITRUST LITIGATION This Document Related To: ALL CASES	Master Docket No. 3:12-cv-02389-PGS-DEA

FURTHER AMENDED SCHEDULING ORDER

It is hereby ORDERED that the Amended Scheduling Order previously entered at ECF No. 854 will be amended as follows:

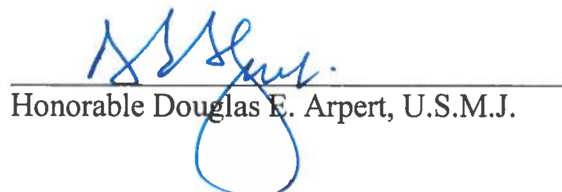
1. It is hereby ORDERED that litigation shall proceed under the following schedule:

Event	Current	Amended
Date for commencing rolling production of documents. Privilege logs that correspond to each production shall be served no later than six weeks thereafter.	May 30, 2019	January 22, 2020
Date for substantial completion of production of documents responsive to RFPs served on or before March 1, 2018; date for Defendants to report election as to waiver of privilege	September 26, 2019	March 18, 2020
Fact discovery closes	March 26, 2020	November 4, 2020
Plaintiffs serve all opening expert reports	May 21, 2020	February 10, 2021
Defendants serve opposition expert reports	July 30, 2020	May 5, 2021
Plaintiffs serve rebuttal expert reports	September 17, 2020	July 7, 2021
Close of expert discovery[1]	November 12, 2020	September 1, 2021

2. No later than October 14, 2019 the parties are directed to submit proposed dates for the remainder of the schedule either jointly or in competing forms of order.

Dated: 10/1/19

BY THE COURT:



Honorable Douglas E. Arpert, U.S.M.J.

[1] Each expert is to be deposed only one time.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NIASPAN ANTITRUST LITIGATION	MDL NO. 2460
THIS DOCUMENT RELATES TO: ALL ACTIONS	MASTER FILE NO. 13-MD-2460

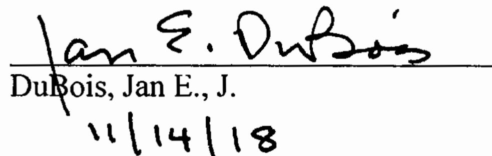
[~~PROPOSED~~] CORRECTED SEVENTH AMENDED SCHEDULING ORDER

IT IS ORDERED that the deadlines in the above-caption action are AMENDED as follows:

Previous Date	Due Date	Event
March 30, 2018	March 30, 2018	Close of fact discovery - all discovery requests and subpoenas must be served to be answerable by this date, except as noted below.
April 6, 2018	April 6, 2018	Completion of depositions of designees of Lupin Pharmaceuticals, Inc., City of Providence, and all other depositions as addressed at the March 29, 2018, status conference. Giant Eagle files report regarding data production by McKesson Corporation.
April 12, 2018	April 12, 2018	Completion of deposition of designee of McKesson Corporation.
April 17, 2018	April 17, 2018	Completion of depositions of designees of entities addressed in this Court's Order dated March 20.
May 31, 2018	May 31, 2018	Plaintiffs serve opening expert reports.
June 18, 2018	June 18, 2018	Plaintiffs provide defendants with demands.
July 16, 2018	July 16, 2018	The parties file a joint settlement report.
August 27, 2018	August 27, 2018	Defendants serve opposition expert reports.
October 22, 2018	October 22, 2018	Plaintiffs serve rebuttal expert reports.
December 19, 2018	December 19, 2018	Plaintiffs file class certification motions (along with previously served expert reports).
December 19, 2018	February 8, 2019	Close of expert depositions. All depositions necessary to class certification motions shall be completed such that the class certification briefing schedule set forth in the Court's Sixth

Previous Date	Due Date	Event
		Amended Scheduling Order (Dkt # 534) remains in place.
February 25, 2019	February 25, 2019	Defendants file opposition to class certification motions (along with previously served expert reports). Defendants file any Daubert motions related to experts proffered by Plaintiffs in support of class certification.
March 25, 2019	March 25, 2019	Plaintiffs file replies to class certification motions. Plaintiffs file oppositions to any Daubert motions filed by Defendants relating to Plaintiffs' class certification experts.[1] Plaintiffs file any Daubert motions related to experts proffered by Defendants in opposition to class certification.
n/a	April 8, 2019	Defendants file oppositions to any Daubert motions filed by Plaintiffs relating to defense class certification experts.
TBD	TBD	Hearing on class certification motions.
TBD	TBD	Telephonic conference with Judge DuBois to address summary judgment briefing and further scheduling.

BY THE COURT:



DuBois, Jan E., J.

11/14/18

[1] No party shall file a reply in support of a Daubert motion relating to class certification experts.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE DENTAL SUPPLIES ANTITRUST LITIGATION	Civil Action No. 16-cv-696 (BMC)(GRB) <u>ALL CASES</u> **~~[PROPOSED]~~ SCHEDULING ORDER**

AND NOW, having reviewed the Unopposed First Request for a Schedule Extension filed in this Court by the Class Plaintiffs in the above-captioned action:

1. The following amended deadlines in the above-captioned action are hereby so ordered:

Event	Original Deadline	Amended Deadline
Deadline for Fact Discovery	5/12/2017	6/26/2017
Plaintiffs' Class and Merits Expert Reports	6/16/2017	9/14/2017
Defendants' Class and Merits Expert Reports	8/15/2017	11/13/2017
Plaintiffs' Class and Merits Rebuttal Reports	10/13/2017	1/11/2018
Plaintiffs' Initial Class Certification Brief	11/10/2017	2/8/2018
Defendants' Opposition to Plaintiffs' Class Certification Brief; Defendants Class *Daubert* Motion(s)/Brief(s); and Plaintiffs' Class *Daubert* Motion/Brief	12/22/2017	3/22/2018
Defendants' Opposition(s) to Plaintiffs' Class *Daubert*	2/2/2018	5/3/2018

Motion/Brief; Plaintiffs' Opposition(s) to Defendants' Class *Daubert* Motion(s)/Brief(s)		
Plaintiffs' Class Certification Reply Brief	2/9/2018	5/10/2018
Defendants' Class *Daubert* Reply Brief(s); and Plaintiffs' Class *Daubert* Reply Brief	3/5/2018	6/4/2018

2. There is no change in the following provisions set forth in Case Management Order No. 3, ECF No. 94, dated July 14, 2016: (A) summary judgment motions will be due 30 days after the Court decides the class certification motion, opposition briefs will be filed 30 days thereafter, and reply briefs will be due 21 days after opposition briefs are filed, and (B) any *Daubert* motions pertaining to the summary judgment motions will be filed on the same dates as the summary judgment briefing.

Approved and so-ordered:

Dated: April 10, 2017

____
The Honorable Brian M. Cogan
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---x

IN RE: GOOGLE DIGITAL ADVERTISING ANTITRUST LITIGATION

21-md-3010 (PKC)

PRE-TRIAL ORDER NO. 5
SCHEDULING ORDER

---x

CASTEL, Senior District Judge:

Civil Case Management Plans (the "Plans") have been submitted by or with the input of the parties in accordance with Rule 26(f)(3), Fed. R. Civ. P., and Pretrial Order No. 2 (Doc. 309). Having considered those Plans and any accompanying submissions, the Court enters the following Scheduling Order:

1. Amended pleadings may not be filed and additional parties may not be joined except pursuant to the procedures set forth in Pre-Trial Order Nos. 2, 3 and 4. Any motion to amend or join additional parties (except as to the state law claims, as to which amendments are stayed pending further Order) shall be filed within 30 days of this Order.

2. The parties shall negotiate an appropriate protocol regarding Electronically Stored Information and present either an agreed-upon proposed stipulation, or their respective positions as to those portions of the stipulation on which they do not agree, by January 13, 2023.

3. The parties reserve all rights to object to discovery, including on relevance grounds. In view of the Opinion and Order of September 13, 2022, discovery relating to the Network Bidding Agreement is stayed pending further Order.

4. Initial disclosures, pursuant to Rule 26(a)(1), if they have not been previously served, shall be served by January 13, 2023. The parties shall comply with their

obligations under Rule 26(e) to supplement or correct initial disclosures in a timely manner.

5. All fact discovery shall be completed by June 28, 2024. The Court has considered the substantial document production that has already been made in these actions and the complexities and other exceptional circumstances presented by these actions.

6. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. The interim deadlines may be extended by the written consent of the parties without application to the Court, provided that all fact discovery is completed by the date set forth in paragraph 5 above:

    6.1. Initial requests for production of documents and data shall be served by January 27, 2023. The parties shall substantially complete production of documents, including data responsive to the initial requests, within four months of service.

    6.2. No Interrogatories shall be served except in compliance with Local Rule 33.3(a) without first obtaining leave of Court, except as follows: defendants may serve one set of interrogatories not to exceed 25 questions on each named plaintiff, including named class representatives, in each Member Case by January 27, 2023.

    6.3. Requests to Admit for the purpose of authenticating documents may be served no later than 45 days prior to the close of fact discovery identified in paragraph 5 above.

    6.4. Depositions of fact witnesses shall be completed by the close of fact discovery identified in paragraph 5 above.

6.5. Plaintiffs and defendants shall be permitted to take up to 15 fact-witness depositions per side. A party may seek leave of Court to depose additional witnesses by identifying the particular witnesses by name (or Rule 30(b)(6) categories), describing the matters on which they have unique knowledge; and identifying the actions to which the particular witness pertains. With the consent of the examined witness or leave of a Court, the 7-hour limited may be modified.

6.6. The parties are encouraged to stipulate to the manner of conducting a particular deposition (e.g. videotaped, telephonically, remote video, written questions).

6.7. Duplicative questioning of witnesses is not permitted and, absent a finding of good cause by the Court, no fact witness may be examined more than once.

7. All expert discovery shall be completed by December 27, 2024. Plaintiffs shall serve opening reports of all experts within 45 days after the close of fact discovery. Defendant(s) shall serve responsive expert reports within 45 days after the service of plaintiffs' expert reports. Plaintiffs may then serve any rebuttal expert reports within 45 days after the service of defendant(s)' reports. Depositions of experts shall be completed within 45 days following the service by plaintiffs of rebuttal expert reports. The parties are invited to negotiate an appropriate stipulation regarding expert testimony and present either the agreed-upon proposed stipulations, or their respective positions as to those portions of the stipulations on which they do not agree, by January 12, 2024.

8. Absent further Order from the Court, motions for class certification are deferred until after the close of fact and expert discovery. Plaintiffs in the proposed class actions will move for certification within 30 days after the close of expert discovery. Defendant(s) will respond to the certification motions within 30 days after their filing, and each of the class plaintiffs may file a reply within 20 days after the filing of defendant(s)' responses.

9. All motions and applications shall be governed by the Court's Individual Practices, including pre-motion letter requirements. Pursuant to the authority of Rule 16(c)(2), any motion for summary judgment will be deemed untimely unless a pre-motion letter relating thereto is filed no later than 14 days after the date set by the Court for the close of expert discovery. No party shall file any summary judgment motions prior to the close of expert discovery.

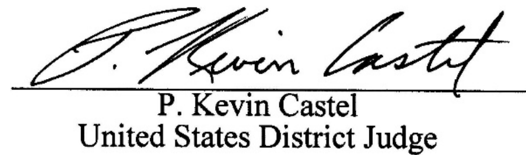
10. The time for filing Final Pre-Trial Submissions is stayed pending further Order of this Court.

11. No party waives any existing rights to remand to its transferor court under 28 U.S.C. § 1407(a) or any other right related to the change of venue. See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26 (1998); Manual for Complex Litigation § 22.93 at p. 463 (4th ed.).

12. This Order may not be modified or the dates herein extended, except by further Order of this Court for good cause shown. Any application to modify or extend the dates herein shall be made in a written application in accordance with the Court's Individual Practices and shall be made no less than fourteen (14) days prior to the expiration of the date sought to be extended.

13. The next Case Management Conference will be held on February 15, 2023 at 2 p.m. in Courtroom 11D. No matter may be raised at the Conference unless a letter detailing the party's position is filed with the Court 14 day in advance of the Conference. Any response shall be filed 7 days thereafter. This procedure shall apply to all future Conferences.

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
November 21, 2022

WILLIAM A. ISAACSON (*Pro Hac Vice*)
(wisaacson@bsfllp.com)
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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

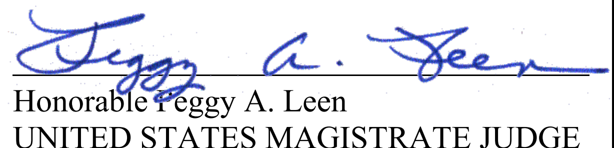
Cung Le, Nathan Quarry, Jon Fitch, Brandon Vera, Luis Javier Vazquez, and Kyle Kingsbury on behalf of themselves and all others similarly situated, Plaintiffs, v. Zuffa, LLC, d/b/a Ultimate Fighting Championship and UFC, Defendant.	Case No.: 2:15-cv-01045-RFB-(PAL) **[PROPOSED] DISCOVERY PLAN AND SCHEDULING ORDER**

Under Fed. R. Civ. P. 26(f) and Local Rule 26-1, the respective parties conducted a discovery planning conference on April 15, 2015. The parties previously submitted a joint proposal to this Court setting the case event dates up through the Class Certification hearing (ECF No. 206 at pp. 34-35). Plaintiffs also proposed dates that set out the timeframe of the briefing of dispositive motions, which this Court accepted and Ordered. (ECF No. 207). Upon invitation from the Court to submit a Proposed Discovery Plan and Scheduling Order, on September 23, the parties submitted competing proposals for the timing for the upcoming case deadlines. ECF Nos. 297-1 and 297-2. On September 27, this Court held a Status Conference and Ordered that the case management deadlines shall be extended by 30 days without prejudice. (ECF No. 304). For the convenience of the parties and the Court, the parties now submit the below Discovery Plan and Scheduling Order in accordance with this Court's Order, adjusted to account for deadlines falling on weekends and deadlines falling on or around holidays.

Close of Fact Discovery	May 1, 2017
Plaintiffs' Opening Expert Reports (class and merits)	May 30, 2017
Last Day to Depose Experts Concerning Opening Reports	June 26, 2017
Opposition Expert Reports	July 24, 2017
Last Day to Depose Opposition Experts	August 21, 2017
Reply Expert Reports	September 5, 2017
Daubert Motions	October 2, 2017
Class Certification Motion	October 2, 2017
Daubert Opposition Briefs	November 21, 2017
Class Certification Opposition Brief	November 21, 2017
Daubert Reply Briefs	December 22, 2017
Class Certification Reply Brief	January 16, 2018
Class Certification Hearing	Court's Convenience
Summary Judgment Motions	March 26, 2018
Summary Judgment Opposition Briefs	April 25, 2018
Summary Judgment Reply Briefs	May 25, 2018

IT IS SO ORDERED.

Date: October 14, 2016



Honorable Peggy A. Leen
UNITED STATES MAGISTRATE JUDGE

Dated: October 12, 2016

BOIES, SCHILLER & FLEXNER LLP

By: /s/ Stacey K. Grigsby
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Attorneys for Defendant Zuffa, LLC, d/b/a Ultimate Fighting Championship and UFC

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Dated: October 12, 2016

Respectfully Submitted,

By: /s/ Michael Dell'Angelo
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ATTESTATION OF FILER

The signatories to this document are myself and Michael Dell'Angelo, and I have obtained Mr. Dell'Angelo's concurrence to file this document on his behalf.

Dated: October 12, 2016

By: /s/ Stacey K. Grigsby_____________

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing **Discovery Plan and Scheduling Order** was served on October 12, 2016 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Michael Kim

An Employee of Boies, Schiller and Flexner LLP

APPENDIX C

Defendants' Position Regarding Schedule

Defendants' proposed schedule for class certification and expert discovery is set forth in Appendix A. Following the close of fact discovery, Defendants propose that the Parties proceed to conducting expert discovery on issues relevant to class certification while simultaneously briefing those issues for a motion on class certification. Defendants' proposed schedule then allows the Court some time to consider and rule on class certification before the Parties proceed to expert discovery on merits issues. By contrast, Plaintiffs' proposed schedule—which delays class certification briefing until *after* the completion of merits expert discovery—violates the fundamental principles in the Federal Rules that class certification should be addressed ***early*** in the case to maximize efficiency and reduce the burden on the parties in the event that the class is not certified. The Court should adopt Defendants' proposed schedule, which accommodates Plaintiffs' request for full fact discovery prior to briefing class certification, but sequences class certification briefing and expert disclosures relevant to class certification ***before*** the completion of the costly and highly burdensome merits expert discovery that is expected in this case but not required for the resolution of Plaintiffs' class certification motion. Indeed, this is how courts routinely address class certification in antitrust and other cases in this district.

Class certification must be determined by the Court as early in the case as practicable. It is well established under the Federal Rules and other applicable guidance that the determination of whether a putative class should be certified must occur as early as possible in the case, and not be artificially delayed until the end of the case. As emphasized in the *Manual for Complex Litigation*, "Federal Rule of Civil Procedure 23(c)(1) directs the court to determine" class certification "'at an early practicable time.'" *Manual for Complex Litigation* (Fourth) at § 21.133 (quoting Fed. R. Civ. P. 23(c)(1)). The Second Circuit has held similarly. *See Siskind v.*

Sperry Retirement Program, Unisys, 47 F.3d 498, 503 (2d Cir. 1995) ("fundamental fairness requires" the rule that courts decide "on class status 'as soon as practicable after the commencement of an action'" (quoting Fed. R. Civ. P. 23(c)(1))). An early decision on class certification is important and makes logical sense, for several reasons.

First, if the class is not going to be certified, that should be determined as quickly as possible in the litigation so that the Parties (and the Court) do not expend unnecessary resources on a class case that is not likely to proceed to trial. *See, e.g.*, *Philip Morris Inc. v. Nat'l Asbestos Workers Med. Fund*, 214 F.3d 132, 134 (2d Cir. 2000) (noting "the onerous effect of failing to decide class certification promptly"). As the Manual for Complex Litigation explains, for "cases that are unlikely to continue if not certified, discovery into aspects of the merits unrelated to certification delays the certification decision and ***can create extraordinary and unnecessary expense and burden***." *Manual for Complex Litigation* (Fourth) at § 21.14 (emphasis added). That principle applies strongly here because this is a significant antitrust case, and merits expert discovery is likely to cost the Parties millions of dollars in expert fees, as well as significant associated legal fees (including reports, rebuttals, depositions, etc.). Sequencing class certification ***before*** these expert costs at least preserves the possibility that some or all of these costs will not be incurred if the Court determines that the class should not be certified.

In addition, it has been noted that if a class is not to be certified, or if the Court determines to narrow the class upon certification, absent class members who do not become part of a certified class should be informed of that fact as quickly as possible so that those absent class members can consider how their exclusion from the class impacts their own rights or remedies. *See Manual for Complex Litigation* (Fourth) at § 21.133& n.771.

Defendants' Proposed Sequencing Properly Balances the Need for an Expeditious Class Certification Decision Against the Desire by Plaintiffs to Delay That Decision. Defendants' proposal strikes the appropriate balance between the need for an early class certification decision, Plaintiffs' desire for the completion of discovery prior to filing their motion for certification, and the rights of the Defendants to avoid excessive legal and expert costs in the event that the class is not certified. Under Defendants' proposal, Plaintiffs may ***complete fact discovery entirely*** prior to moving for class certification. In addition, they may file whatever expert disclosures they consider relevant to class certification, together with their class certification motion. Defendants may also respond, in their class certification papers, with expert disclosures relevant to class certification. But there is no need for either party to complete expert disclosures and discovery for expert trial witnesses whose testimony is not relevant to class certification. Instead, those costs can be deferred until later—at the very least, after the Court has had some time to consider the class certification motions—and potentially, if the Court so decides, until after the Court issues its class certification ruling.

Plaintiffs speculate that class certification and merits expert issues will be entirely "duplicative," suggesting that all merits expert issues are relevant to class certification. That is a significant overstatement, and improperly diminishes the importance of the class certification analysis.[6] Defendants are confident that they plan to present expert testimony at any trial in this

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[6] None of Plaintiffs' authorities support their contention that class and merits discovery are entirely duplicative. *See Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453-460 (2016) (considering whether case-specific statistical evidence was admissible for class-wide liability); *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 459-60, 467-70 (2013) (holding that proof on a particular merits issue was "not a prerequisite to class certification"); *Comcast Corp. v. Behrend*, 569 U.S. 27, 33-34 (2013) (holding that district court erred in declining to consider whether "damages are capable of measurement on a classwide basis"). Of course, it is true that there will likely be *some* substantial overlap between class and merits issues on topics such as the feasibility of classwide damages, but that does not support Plaintiffs' suggestion that

case (if it occurs) that need not be submitted in connection with their opposition to class certification. In addition, to the extent that Plaintiffs contend that separating class certification experts and merits expert disclosures will result in duplication, Defendants are willing to work with Plaintiffs to minimize any such duplication, including for expert depositions. Regardless, any such speculative concerns about duplication are far outweighed by the principles underlying the rule for deciding class certification as early as practicable, including the possibility of avoiding extraordinary burdens that may amount to millions of dollars of fees and expenses—which savings are only possible if purely merits expert issues are addressed after the class certification decision is decided.

Defendants' Proposed Schedule Conforms with the Practice of This and Other Courts. Defendants' proposed schedule also conforms the practice of the District of Connecticut and other courts where class actions are regularly brought. Attached at Exhibit C1 are copies of scheduling orders in comparable cases where, as Defendants advocate here, class certification briefing was sequenced prior to merits expert discovery. For example, in *Borozny v. Raytheon Techs. Corp.*, No. 3:21-cv-01657-SVN (D. Conn. July 18, 2022) (ECF No. 469), Judge Nagala issued a scheduling order providing for merits expert discovery after the deadline for class certification briefing, and in fact later permitted the parties to meet and confer after the class certification ruling on a schedule for further expert discovery, *Borozny* (D. Conn. Mar. 31, 2023) (ECF No. 630); *see also Audet v. Fraser*, No. 3:16-cv-00940-MPS (D. Conn. Nov. 2, 2016) (ECF No. 56) (ordering simultaneous briefing and expert discovery on class certification, and setting further deadlines for "[m]erits expert reports" and "[d]epositions of those experts" within the three and a half months "after the Court's ruling on the anticipated motion for class

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there are no merits issues that can be addressed separately from the class certification analysis.

certification"). Similarly, in *Aboah v. Fairfield Healthcare Services, Inc.*, No. 3:20-cv-00763-SVN (D. Conn. Apr. 29, 2021) (Dkt. 36), Judge Nagala approved "[p]re-certification discovery limited to liability, special defenses and class certification," with other discovery to follow the Court's ruling on motions for certification. *Accord Savinova v. Nova Home Care, LLC*, No. 3:20-cv-01612-SVN (D. Conn. Apr. 9, 2021) (Dkt. 48) (bifurcating class and merits discovery and ordering that further discovery should not proceed until the court ruled on class certification).

Indeed, in the *Brown* state court antitrust litigation—which is expected to involve discovery coordinated with this action—the *Brown* plaintiffs agreed to sequence class certification briefing and expert submissions prior to merits-related expert discovery. Under the schedule in *Brown*, the parties will brief class certification shortly after the close of fact discovery, and Hartford HealthCare will have brief period during which it can (if it chooses) move to stay merits expert discovery; only after that will the *Brown* parties disclose merits experts and the parties complete merits expert discovery. Accordingly, Plaintiffs' proposal is inconsistent even with existing class action antitrust litigation against Hartford HealthCare on similar issues.

Finally, Defendants' proposed schedule does not materially delay the trial date. Under Defendants' schedule, class certification briefing would be completed by March 16, 2026, and unless the Court stays merits expert discovery, summary judgment can be fully briefed by April 15, 2027—dates that are very comparable to Plaintiffs' proposed schedule.

Accordingly, Defendants respectfully request that the Court adopt Defendants' proposed case schedule as set forth in Appendix A.

EXHIBIT C1

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

TARAH KYE BOROZNY, et al.; on behalf of themselves and all others similarly situated, *Plaintiffs*, v. PRATT & WHITNEY, A DIVISION OF RAYTHEON TECHNOLOGIES CORPORATION; et al., *Defendants*.	No. 3:21-cv-01657-SVN

SCHEDULING ORDER

Upon consideration of the parties' Rule 26(f) Report (ECF No. 453), the following dates are hereby adopted as reasonable and appropriate to serve the purposes of Fed. R. Civ. P. 1. The parties' Rule 26(f) Report is hereby adopted unless otherwise stated.

- **Pleadings and Joinder.** Any motion to amend the complaint or join parties must be filed by Plaintiffs no later than **July 29, 2022.** Defendants may file a responsive pleading to any amended complaint within 60 days after the filing of any such complaint. Any motion to amend the answer or join parties must be filed by the defendant no later than **August 29, 2022.** Such motions shall be governed by Fed. R. Civ. P. 15. Any motion to amend the pleadings or join parties filed after these dates will be governed by the good cause standard of Fed. R. Civ. P. 16(b).

- **Damages Analysis.** Any party with a claim or counterclaim for damages shall serve a damages analysis on the other parties, in compliance with Rule 26(a)(1)(A)(iii), on or before **January 15, 2024**. Any party that is required to serve a damages analysis shall serve an updated damages analysis on the other parties 14 days after the close of discovery.

- **Discovery Deadlines.**

    - Initial disclosures pursuant to Rule 26(a)(1) must be exchanged by **July 29, 2022.**

    - All discovery will be completed (not propounded) by **February 23, 2024.** Discovery will not be phased.

    - Plaintiffs may serve 20 requests for admissions (including subsections) on each Defendant without further order of the Court.

- Parties are initially limited to 35 fact depositions per side, including corporate depositions noticed pursuant to Rule 30(b)(6), but not including third party depositions. Additional depositions may be conducted by agreement of the parties or through leave of the Court.

- **Motion for Class Certification**

    - Plaintiffs' motion for class certification shall be filed no later than **June 16, 2023**. Plaintiffs shall produce any expert reports concerning class certification at that time.

    - Defendants will file any opposition to the motion for class certification no later than **August 14, 2023**. Defendants shall produce any expert reports concerning class certification at that time.

    - Plaintiffs shall file any reply in further support of the motion for class certification no later than **October 6, 2023**. Plaintiffs shall produce any rebuttal expert reports concerning class certification at that time.

- **Discovery Relating to Expert Witnesses.** Any party intending to call any expert witness in addition to the experts related to class certification must comply with Fed. R. Civ. P. 26(a)(2)(B).

    - Parties must designate any trial experts and provide the other parties with reports from retained experts pursuant to Fed. R. Civ. P. 26(a)(2) on any issues on which they bear the burden of proof by **November 1, 2023**. Depositions of such experts must be completed by **December 11, 2023**.

    - Parties must designate all trial experts and provide the other parties with reports from retained experts pursuant to Fed. R. Civ. P. 26(a)(2) on any issues on which they do not bear the burden of proof by **January 15, 2024**. Depositions of such experts must be completed by **February 23, 2024**.

    - Any motion related to preclusion of an expert must be filed by **March 23, 2024**.

- **Motions to Compel.** Any motion for an order compelling disclosure or discovery pursuant to Fed. R. Civ. P. 37(a) must be filed **within 30 days after the response was due** under the Federal Rules of Civil Procedure, that is, within 60 days of the service of the request. If the parties are negotiating in good faith in attempt to resolve the discovery dispute, a motion to extend this deadline may be filed. Failure to file a timely motion in accordance with this scheduling order constitutes a waiver of the right to file a motion to compel. Any motions relating to discovery must fully comply with the Local Rules, as well as the Federal Rules of Civil

Procedure. The parties are directed to review Local Rule 37 before filing any discovery motion.

- **Electronically Stored Information.** The parties shall submit to the Court a proposed ESI Protocol (or competing proposals) by **July 29, 2022.**

- **Dispositive Motions.**

  - The Court will set deadlines related to dispositive motions after the close of discovery.

- **Joint Status Reports of the Parties.**

  A joint status report of the parties shall be filed on or before **January 16, 2023**. The report must address matters that are relevant to the case at the time and address each of the following items:

  (1) a detailed description of the discovery conducted up to the date of the report, and any significant discovery yet to be completed; and

  (2) whether the parties expect to seek any extensions of the deadline to file a motion for class certification.

  A second joint status report of the parties shall be filed on or before **November 15, 2023**. The report must address matters that are relevant to the case at the time and address each of the following items:

  (1) a detailed description of the discovery conducted up to the date of the report, and any significant discovery yet to be completed; and

  (2) whether the parties expect to seek any extensions related to the close of discovery.

The Court encourages the parties to discuss settlement as soon as possible. Nearly all civil cases settle, and at some point in this case, the Court will refer the parties to a U.S. Magistrate Judge to explore the potential for settlement. The sooner the parties look seriously at the possibility for settlement, the less expensive the litigation will be for the parties. The Court understands that sometimes it is necessary to conduct some discovery before the parties can engage in productive mediation. If this is such a case, the Court encourages the parties to discuss exchanging limited discovery before engaging in a formal settlement conference. But the parties may begin settlement

discussions at any time, on their own, through a private mediator, or with the assistance of a U.S. Magistrate Judge.

The parties are advised that the Magistrate Judges may not be able to conduct settlement discussions on short notice. Accordingly, the parties should seek a referral for settlement discussions at the earliest possible date. To do so, any party may file a brief motion for a referral to a Magistrate Judge, representing that all parties have conferred and agree that such a referral would be appropriate.

Counsel shall provide each named party to this action with a copy of this Order.

IT IS SO ORDERED.

/s/
Sarala V. Nagala, U.S.D.J.

Dated: Hartford, Connecticut
July 18, 2022

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DENIS MARC AUDET, et. al. Plaintiffs, v. STUART A. FRASER, et al., Defendants.	No. 3:16-cv-00940 (MPS)

SCHEDULING ORDER

Having reviewed the parties' Rule 26(f) Report [doc. # 40] and held a telephonic status conference today, the Court APPROVES the parties' Rule 26(f) Report and adopts the dates proposed by the parties in their Rule 26(f) Report with the exceptions set forth below:

- In the event that Defendant Fraser's motion to dismiss is denied, Plaintiff shall be allowed until one (1) month after the Court's ruling on the motion to dismiss to join additional parties and until three (3) months after the ruling on motion to dismiss to file motions to amend the pleadings, except that any amendment to the complaint that could have been made at an earlier time through the exercise of reasonable diligence will be barred.
- The parties shall exchange initial disclosures under Rule 26 no later than 14 days after the Court's ruling on Defendant Fraser's motion to dismiss.
- Discovery will begin immediately following the Court's ruling on Defendant Fraser's motion to dismiss. Fact discovery (which includes class discovery) shall end 9 months after it commences. No later than one month after discovery is completed, plaintiffs shall file a motion for class certification along with an expert report. Defendants shall have 30 days to depose any such expert and another week to submit their own report and respond to the motion. Plaintiffs shall have 3 weeks to depose Defendants' expert, and another week to file its reply report and brief.

Merits expert reports by the party bearing the burden of proof shall be due 45 days after the Court's ruling on the anticipated motion for class certification. Depositions of those experts shall be completed within one month, when any opposing expert reports will be due. Depositions of any opposing experts shall be completed within one month, when any rebuttal reports shall be due.

Should the parties, at any time, wish to proceed to mediation, they shall file a joint statement certifying that (1) counsel have conferred with their clients and each other, (2) the parties wish to proceed to mediation, (3) the parties are willing to participate in settlement efforts at such mediation in good faith, and (4) counsel believe that a mediation stands at least a reasonable chance of resolving the case without trial. The statement should also state whether the parties are willing to proceed to mediation before a magistrate judge.

Finally, the parties are responsible for following the appended instructions regarding (1) joint status reports, (2) discovery disputes, and (3) the joint trial memorandum, all of which the Court hereby incorporates as part of this Scheduling Order.

IT IS SO ORDERED.

/s/__________________________________
Michael P. Shea, U.S.D.J.

Dated: Hartford, Connecticut
November 2, 2016

I. INSTRUCTIONS FOR STATUS REPORTS

On or before the deadline assigned by the Scheduling Order, the parties shall file with the Clerk's Office, with certification copies sent to all counsel of record, an original joint status report, stating the following:

(a) The status of the case, describing the status of discovery and identifying any pending motions and any circumstances potentially interfering with the parties' compliance with the scheduling order;

(b) Interest in referral for settlement purposes to a United States Magistrate Judge or to the District's special masters program;

(c) Whether the parties will consent to a trial before a magistrate judge; and

(d) The estimated length of trial.

No status reports will be accepted via facsimile.

II. INSTRUCTIONS FOR DISCOVERY DISPUTES

All discovery issues should be resolved in good faith by counsel in accordance with their obligations to the Court under the Federal Rules of Civil Procedure and the District's Local Rules. Before filing any motion relating to discovery, the parties are required to comply with the following requirements:

1. Counsel for parties to discovery disputes must jointly contact Judge Shea's Chambers by telephone to notify the Court that a dispute exists and provide a brief oral description of the nature of the dispute. Except in extraordinary circumstances, Chambers staff will not entertain such a communication unless counsel for all parties to the discovery dispute are on the telephone when the call is made to Chambers.

2. Within three (3) days of counsel contacting Chambers to notify the Court of the existence of a dispute, each party must provide Chambers via e-mail with a written submission summarizing the nature of the dispute and briefly explaining its position. The written submission shall take the form of a letter and shall be no more than two pages in length. All such communications must be copied to opposing counsel and must include the certification discussed in paragraph 6 below.

3. If the dispute involves a written interrogatory, request for production, request for admission, deposition notice and/or subpoena (the "discovery request"), counsel for the party who served the discovery request at issue will, along with the written submission, provide Chambers via e-mail with a copy of the particular discovery request at issue and the opposing party's written response to that particular request. Judge Shea does not need the entire discovery request and response but requires only the particular portions of the discovery request and response at issue.

4. Other than the written submission and any discovery requests and responses at issue, Judge Shea does not require, and does not want, counsel for the parties to provide him with any briefs, documents, deposition transcripts, correspondence or written argument regarding the discovery issue in dispute.

5. Following a review of the written submission and any discovery requests and responses at issue, the Court will determine whether additional steps, such as a telephonic conference with the Court or additional briefing, are necessary for the Court to resolve the discovery dispute. In some cases, the Court may determine that no additional input is needed and issue an order based only on the letters and relevant discovery requests and objections submitted by the parties. Any such order will reflect the input received from the parties and will allow the parties to docket the materials submitted if they wish to preserve the record on particular points.

6. Before contacting Chambers to notify the Court of a discovery dispute, counsel for parties to any discovery dispute are required by Rule 37(a)(1) of the Federal Rules of Civil

Procedure and Local Rule 37(a) to have conferred with one another and to have made a good faith effort to eliminate or reduce the area of controversy. All discovery issues should be resolved in good faith by counsel in accordance with their obligations to the Court under the Federal Rules of Civil Procedure and the District's Local Rules. Judge Shea interprets the good faith conference obligation of the Federal Rules and Local Rules to require counsel to confer either face-to-face or by telephone; exchanges of correspondence are not sufficient in and of themselves to satisfy counsel's good faith conference obligations. **All written submissions describing the nature of the dispute submitted to the Court must include a written certification by each party that they have complied with their good faith conference obligations under the Federal Rules and Local Rules.**

7. Before notifying the Court of a discovery dispute, counsel for all parties to a discovery dispute must also agree upon the issues that they intend to raise with Judge Shea and inform Chambers of those issues at the time of the notification. If the parties cannot in good faith agree upon the issues to be raised with Judge Shea, they shall so notify Chambers.

8. Should the Court schedule a telephonic conference to discuss the dispute with the parties, counsel should agree in advance on which party will be responsible for initiating the telephonic discovery conference. Counsel should not contact Judge Shea's Chambers until counsel for all parties to the discovery dispute are on the telephone. Failure to participate in a scheduled telephonic discovery conference may result in the imposition of sanctions.

9. Should the Court issue any order following the telephonic conference, the party against whom the order is directed shall comply within 14 days pursuant to Local Rule 37(d), unless otherwise ordered by the Court.

III. JOINT TRIAL MEMORANDUM INSTRUCTIONS

The parties shall confer and shall jointly prepare and submit for the Court's approval a Joint Trial Memorandum in compliance with the District's Standing Order Regarding Trial Memoranda in Civil Cases as modified in these instructions**. In addition to filing an original of the Joint Trial Memorandum with the Clerk of the Court, counsel shall also provide Chambers with a courtesy copy of the Joint Trial Memorandum and all attachments, both in hard copy and as an electronic file compatible with Microsoft Word, sent to Chambers via e-mail or saved on a CD-ROM.** The Joint Trial Memorandum is intended to be a jointly prepared document. Therefore, these Instructions are not satisfied by stapling together trial memoranda prepared separately by counsel for each party.

The Joint Trial Memorandum shall contain the following information:

1. TRIAL COUNSEL: Counsel shall list the names, addresses, telephone numbers, fax numbers and e-mail addresses of the attorney(s) who will try the case. **Trial counsel must attend the Final Pretrial Conference, unless excused in advance by the Court.**

2. JURISDICTION: Counsel shall set forth the basis for federal jurisdiction.

3. JURY/NON-JURY: Counsel shall state whether the case is to be tried to a jury or to the Court.

4. LENGTH OF TRIAL: Counsel shall set forth a realistic estimate of trial days required based on the expected length of testimony for each witness on both direct and cross-examination.

5. FURTHER PROCEEDINGS: Specify, with reasons, the necessity of any further proceedings prior to trial.

6. NATURE OF CASE: Counsel for both parties shall separately state the nature of each cause of action and the relief sought. If appropriate, state the nature of any cross-claims, counterclaims and/or affirmative defenses.

7. TRIAL BY MAGISTRATE JUDGE: Counsel shall indicate whether they have agreed to a trial by a Magistrate Judge and if so, file signed consent forms providing for any appeal to be heard directly by the Court of Appeals.

8. EVIDENCE: **Prior to preparing and submitting the Joint Trial Memorandum, counsel are required to exchange lists of proposed witnesses, exhibits and deposition transcripts to enable counsel for each party to state in the Joint Trial Memorandum whether they object to any proposed witness, exhibit or transcript.**

   a. Witnesses: Counsel shall set forth the names and addresses of each witness to be called at trial, including a brief summary of the anticipated testimony and the expected duration of the witness's testimony. Counsel shall indicate which witnesses are likely to testify and which witnesses will be called only if the need

arises. For each expert witness, set forth the opinion to be expressed, a brief summary of the basis of the opinion and a list of the materials on which the witness intends to rely. Also state the area of the witness's expertise and attach a copy of the expert's report and a curriculum vitae, if available.

Any objection to the admissibility of the testimony of any witness must be stated in this section of the Joint Trial Memorandum, along with a brief statement of the grounds and authority supporting the objection as well as a brief statement from the proponent of the witness regarding admissibility.

NOTE: Witnesses not included in this list shall not be permitted to testify at trial, except for good cause shown. All listed witnesses will be permitted to testify unless there is an explicit objection stated to the witness's testimony.

b. Exhibits: Counsel shall attach a list of all exhibits—including a brief description of their contents—to be offered at trial, except for any exhibits used solely for impeachment. The parties shall mark all exhibits numerically with exhibit tags (which will be provided by the Clerk's Office upon request) starting with Plaintiff's Exhibit "1" and Defendant's Exhibit "501." Where there are multiple plaintiffs or defendants, counsel shall coordinate exhibit identification to ensure that exhibit numbers are not duplicated. Copies of the actual exhibits shall be exchanged no later than seven (7) days prior to submission of the Joint Trial Memorandum. **Copies of all exhibits as to which there may be objections must be brought to the Final Pretrial Conference.** Three (3) days before trial, counsel shall deliver to Judge Shea copies of all exhibits placed in a three-ring binder with a copy of the exhibit list at the front of the binder and with each exhibit separately tabbed, and shall deliver to the Courtroom Deputy the original set of exhibits along with an exhibit list.

Any objection to the admissibility of any exhibit must be stated in this section of the Joint Trial Memorandum, along with a brief statement of the grounds and authority supporting the objection as well as a brief statement from the proponent of the exhibit regarding admissibility.

NOTE: Exhibits not exchanged seven (7) days prior to submission of the Joint Trial Memorandum and exhibits not listed will not be admitted at trial, except for good cause shown and except for any exhibits admitted solely for impeachment. All listed exhibits shall be deemed admissible unless there is an explicit objection stated to the exhibit.

c. Deposition Testimony: Counsel shall list each witness who is expected to testify by deposition at trial. Such list will include a designation by page references of the deposition transcript which each party proposes to read into evidence. Cross-designations shall be listed as provided by Fed. R. Civ. P. 32(a)(6). The list shall include all objections to deposition designations. A marked-up version of the deposition transcript should also be submitted along with the Joint Trial Memorandum (blue for plaintiff; red for defendant).

NOTE: Objections not stated in the Joint Trial Memorandum will be deemed waived, except for good cause shown.

9. STIPULATIONS AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW: Counsel for both parties shall confer in an effort to enter into a written stipulation of uncontroverted facts and into an agreed statement of the contested issues of fact and law.

   a. Bench Trial: Each party shall submit specific proposed findings of fact necessary to support a judgment in that party's favor, identifying each witness and/or exhibit as to each factual conclusion. Each party shall also submit proposed conclusions of law, citing the legal authority that supports each claim or defense.

      Except by order of the Court, post-trial briefing will not be permitted. Any pre-trial memoranda which any party(ies) wish the Court to consider must be filed no later than seven (7) days prior to the date trial commences.

   b. Jury Trial: The stipulation of uncontroverted facts will be read to the jury, and no evidence shall be presented on the uncontested facts.

      i. Proposed Voir Dire Questions: Counsel shall attach a list of questions to be submitted to the jury panel as part of the Joint Trial Memoranda, with any supplements no later than 24 hours before jury selection.

      ii. Proposed Jury Instructions: The parties shall meet and confer for the purposes of preparing and filing jury instructions. Counsel shall attach requests for jury instructions, citing relevant legal authority for each proposed instruction. Counsel are not required to submit general jury instructions which, for example, instruct the jury on its role, evidence in general, witness credibility, etc. If any party objects to another party's proposed instruction, counsel must briefly state the nature of the objection and the legal authority supporting the objection.

      iii. Proposed Verdict Form: Counsel shall meet and confer for the purposes of preparing and filing a proposed verdict form and/or special interrogatories. Counsel shall attach (and also include on the diskette) proposed verdict forms and any proposed special interrogatories. If the parties are unable to agree as to the appropriateness of a proposed form, counsel for the objecting party must state the basis for the objection and provide an alternative proposal (on a diskette).

      iv. Brief Description of Case and Parties: Counsel shall meet and confer and agree upon a brief description of the case, the issues and the parties that the Court can read to proposed jurors at the outset of jury selection.

10. ANTICIPATED EVIDENTIARY PROBLEMS: Counsel shall list any evidentiary problems anticipated by any party and shall attach to the Joint Trial Memorandum motions

in limine along with memoranda of law concerning any anticipated evidentiary problems, including any issues relating to the admissibility of expert testimony under Fed. R. Evid. 702–05 and the *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), line of cases. All memoranda in opposition to any motion in limine must be filed within seven (7) days of the date on which the Joint Trial Memorandum is filed and in no event later than three (3) days before the Final Pretrial Conference. Reply briefs shall not be filed in connection with motions in limine without obtaining permission in advance from the Court.

11. COURTROOM TECHNOLOGY: Counsel shall specify what, if any, technology they intend to use during trial. For instance, if counsel intend to use an overhead projector, transparencies, Elmo, or to connect a laptop to display exhibits or other documents, they must specify as much in the Joint Trial Memorandum. Counsel may coordinate with the Courtroom Deputy to set up any technology in advance of trial.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GWENDOLINE ABOAH, individually, and on behalf of others similarly situated

Plaintiffs,

v.

FAIRFIELD HEALTHCARE SERVICES, INC., d/b/a BRIGHTSTARE CARE OF FAIRFIELD & SOUTHBURY AND PETER R. MOORE,

Defendants.

No. 3:20-cv-0763 (MPS)

SCHEDULING ORDER

The parties' Rule 26(f) Report (ECF No. 26) is APPROVED, except as set forth in this order. Pre-certification discovery limited to liability, special defenses and class certification shall be completed by **September 14, 2021**. Any motion for conditional certification of a FLSA collective will be filed by Plaintiffs by **August 10, 2021**. Any motion for class certification under Rule 23 will be filed by Plaintiffs by **September 15, 2021**. *Regardless of whether the collective and/or the class are certified and additional plaintiffs are joined*, the parties shall, within 14 days of the Court's ruling on any such motions (which will likely be a single ruling disposing of both motions if both motions are filed), meet, confer, and submit a Rule 26(f) report setting forth a proposed schedule for discovery deadlines. Once the Rule 26(f) report has been filed, the Court will issue a revised scheduling order. If no certification motions are filed, the parties shall file a joint status report on the docket no later than **September 30, 2021**, indicating whether the discovery deadlines proposed in the initial Rule 26(f) report, ECF No. 26, will be sufficient to complete discovery or whether the parties seek to adjust those deadlines. At that time, the Court

will either issue a revised scheduling order or will schedule a telephonic status conference to discuss the needs of the case.

Finally, the parties are responsible for following the appended instructions regarding (1) joint status reports, (2) discovery disputes, and (3) the joint trial memorandum, all of which the Court hereby incorporates as part of this Scheduling Order.

IT IS SO ORDERED.

/s/
Michael P. Shea, U.S.D.J.

Dated: Hartford, Connecticut
April 29, 2021

I. INSTRUCTIONS FOR STATUS REPORTS

On or before the deadline assigned by the Scheduling Order, the parties shall file with the Clerk's Office, with certification copies sent to all counsel of record, an original joint status report, stating the following:

(a) The status of the case, describing the status of discovery and identifying any pending motions and any circumstances potentially interfering with the parties' compliance with the scheduling order;

(b) Interest in referral for settlement purposes to a United States Magistrate Judge or to the District's special masters program;

(c) Whether the parties will consent to a trial before a magistrate judge; and

(d) The estimated length of trial.

No status reports will be accepted via facsimile.

II. INSTRUCTIONS FOR DISCOVERY DISPUTES

All discovery issues should be resolved in good faith by counsel in accordance with their obligations to the Court under the Federal Rules of Civil Procedure and the District's Local Rules. Before filing any motion relating to discovery, the parties are required to comply with the following requirements:

1. Counsel for parties to discovery disputes must jointly contact Judge Shea's Chambers by telephone to notify the Court that a dispute exists and provide a brief oral description of the nature of the dispute. Except in extraordinary circumstances, Chambers staff will not entertain such a communication unless counsel for all parties to the discovery dispute are on the telephone when the call is made to Chambers.

2. Within three (3) days of counsel contacting Chambers to notify the Court of the existence of a dispute, each party must provide Chambers via e-mail with a written submission summarizing the nature of the dispute and briefly explaining its position. The written submission shall take the form of a letter and shall be no more than two pages in length. All such communications must be copied to opposing counsel and must include the certification discussed in paragraph 6 below.

3. If the dispute involves a written interrogatory, request for production, request for admission, deposition notice and/or subpoena (the "discovery request"), counsel for the party who served the discovery request at issue will, along with the written submission, provide Chambers via e-mail with a copy of the particular discovery request at issue and the opposing party's written response to that particular request. Judge Shea does not need the entire discovery request and response but requires only the particular portions of the discovery request and response at issue.

4. Other than the written submission and any discovery requests and responses at issue, Judge Shea does not require, and does not want, counsel for the parties to provide him with any briefs, documents, deposition transcripts, correspondence or written argument regarding the discovery issue in dispute.

5. Following a review of the written submission and any discovery requests and responses at issue, the Court will determine whether additional steps, such as a telephonic conference with the Court or additional briefing, are necessary for the Court to resolve the discovery dispute. In some cases, the Court may determine that no additional input is needed and issue an order based only on the letters and relevant discovery requests and objections submitted by the parties. Any such order will reflect the input received from the parties and will allow the parties to docket the materials submitted if they wish to preserve the record on particular points.

6. Before contacting Chambers to notify the Court of a discovery dispute, counsel for parties to any discovery dispute are required by Rule 37(a)(1) of the Federal Rules of Civil Procedure and Local Rule 37(a) to have conferred with one another and to have made a good faith effort to eliminate or reduce the area of controversy. All discovery issues should be resolved in good faith by counsel in accordance with their obligations to the Court under the Federal Rules of Civil Procedure and the District's Local Rules. Judge Shea interprets the good faith conference obligation of the Federal Rules and Local Rules to require counsel to confer either face-to-face or by telephone; exchanges of correspondence are not sufficient in and of themselves to satisfy counsel's good faith conference obligations. **All written submissions describing the nature of the dispute submitted to the Court must include a written certification by each party that they have complied with their good faith conference obligations under the Federal Rules and Local Rules.**

7. Before notifying the Court of a discovery dispute, counsel for all parties to a discovery dispute must also agree upon the issues that they intend to raise with Judge Shea and inform Chambers of those issues at the time of the notification. If the parties cannot in good faith agree upon the issues to be raised with Judge Shea, they shall so notify Chambers.

8. Should the Court schedule a telephonic conference to discuss the dispute with the parties, counsel should agree in advance on which party will be responsible for initiating the telephonic discovery conference. Counsel should not contact Judge Shea's Chambers until counsel for all parties to the discovery dispute are on the telephone. Failure to participate in a scheduled telephonic discovery conference may result in the imposition of sanctions.

9. Should the Court issue any order following the telephonic conference, the party against whom the order is directed shall comply within 14 days pursuant to Local Rule 37(d), unless otherwise ordered by the Court.

III. JOINT TRIAL MEMORANDUM INSTRUCTIONS

The parties shall confer and shall jointly prepare and submit for the Court's approval a Joint Trial Memorandum in compliance with the District's Standing Order Regarding Trial Memoranda in Civil Cases as modified in these instructions. **In addition to filing an original of the Joint Trial Memorandum with the Clerk of the Court, counsel shall also provide Chambers with a courtesy copy of the Joint Trial Memorandum and all attachments, both in hard copy and as an electronic file compatible with Microsoft Word, sent to Chambers via e-mail or saved on a CD-ROM.** The Joint Trial Memorandum is intended to be a jointly prepared document. Therefore, these Instructions are not satisfied by stapling together trial memoranda prepared separately by counsel for each party.

The Joint Trial Memorandum shall contain the following information:

1. TRIAL COUNSEL: Counsel shall list the names, addresses, telephone numbers, fax numbers and e-mail addresses of the attorney(s) who will try the case. **Trial counsel must attend the Final Pretrial Conference, unless excused in advance by the Court.**

2. JURISDICTION: Counsel shall set forth the basis for federal jurisdiction.

3. JURY/NON-JURY: Counsel shall state whether the case is to be tried to a jury or to the Court.

4. LENGTH OF TRIAL: Counsel shall set forth a realistic estimate of trial days required based on the expected length of testimony for each witness on both direct and cross-examination.

5. FURTHER PROCEEDINGS: Specify, with reasons, the necessity of any further proceedings prior to trial.

6. NATURE OF CASE: Counsel for both parties shall separately state the nature of each cause of action and the relief sought. If appropriate, state the nature of any cross-claims, counterclaims and/or affirmative defenses.

7. TRIAL BY MAGISTRATE JUDGE: Counsel shall indicate whether they have agreed to a trial by a Magistrate Judge and if so, file signed consent forms providing for any appeal to be heard directly by the Court of Appeals.

8. EVIDENCE: **Prior to preparing and submitting the Joint Trial Memorandum, counsel are required to exchange lists of proposed witnesses, exhibits and deposition transcripts to enable counsel for each party to state in the Joint Trial Memorandum whether they object to any proposed witness, exhibit or transcript.**

    a. Witnesses: Counsel shall set forth the names and addresses of each witness to be called at trial, including a brief summary of the anticipated testimony and the expected duration of the witness's testimony. Counsel shall indicate which

witnesses are likely to testify and which witnesses will be called only if the need arises. For each expert witness, set forth the opinion to be expressed, a brief summary of the basis of the opinion and a list of the materials on which the witness intends to rely. Also state the area of the witness's expertise and attach a copy of the expert's report and a curriculum vitae, if available.

Any objection to the admissibility of the testimony of any witness must be stated in this section of the Joint Trial Memorandum, along with a brief statement of the grounds and authority supporting the objection as well as a brief statement from the proponent of the witness regarding admissibility.

NOTE: Witnesses not included in this list shall not be permitted to testify at trial, except for good cause shown. All listed witnesses will be permitted to testify unless there is an explicit objection stated to the witness's testimony.

b. Exhibits: Counsel shall attach a list of all exhibits—including a brief description of their contents—to be offered at trial, except for any exhibits used solely for impeachment. The parties shall mark all exhibits numerically with exhibit tags (which will be provided by the Clerk's Office upon request) starting with Plaintiff's Exhibit "1" and Defendant's Exhibit "501." Where there are multiple plaintiffs or defendants, counsel shall coordinate exhibit identification to ensure that exhibit numbers are not duplicated. Copies of the actual exhibits shall be exchanged no later than seven (7) days prior to submission of the Joint Trial Memorandum. **Copies of all exhibits as to which there may be objections must be brought to the Final Pretrial Conference.** Three (3) days before trial, counsel shall deliver to Judge Shea copies of all exhibits placed in a three-ring binder with a copy of the exhibit list at the front of the binder and with each exhibit separately tabbed, and shall deliver to the Courtroom Deputy the original set of exhibits along with an exhibit list.

Any objection to the admissibility of any exhibit must be stated in this section of the Joint Trial Memorandum, along with a brief statement of the grounds and authority supporting the objection as well as a brief statement from the proponent of the exhibit regarding admissibility.

NOTE: Exhibits not exchanged seven (7) days prior to submission of the Joint Trial Memorandum and exhibits not listed will not be admitted at trial, except for good cause shown and except for any exhibits admitted solely for impeachment. All listed exhibits shall be deemed admissible unless there is an explicit objection stated to the exhibit.

c. Deposition Testimony: Counsel shall list each witness who is expected to testify by deposition at trial. Such list will include a designation by page references of the deposition transcript which each party proposes to read into evidence. Cross-designations shall be listed as provided by Fed. R. Civ. P. 32(a)(6). The list shall include all objections to deposition designations. A marked-up version of the

deposition transcript should also be submitted along with the Joint Trial Memorandum (blue for plaintiff; red for defendant).

NOTE: Objections not stated in the Joint Trial Memorandum will be deemed waived, except for good cause shown.

9. STIPULATIONS AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW: Counsel for both parties shall confer in an effort to enter into a written stipulation of uncontroverted facts and into an agreed statement of the contested issues of fact and law.

a. Bench Trial: Each party shall submit specific proposed findings of fact necessary to support a judgment in that party's favor, identifying each witness and/or exhibit as to each factual conclusion. Each party shall also submit proposed conclusions of law, citing the legal authority that supports each claim or defense.

Except by order of the Court, post-trial briefing will not be permitted. Any pre-trial memoranda which any party(ies) wish the Court to consider must be filed no later than seven (7) days prior to the date trial commences.

b. Jury Trial: The stipulation of uncontroverted facts will be read to the jury, and no evidence shall be presented on the uncontested facts.

i. Proposed Voir Dire Questions: Counsel shall attach a list of questions to be submitted to the jury panel as part of the Joint Trial Memoranda, with any supplements no later than 24 hours before jury selection.

ii. Proposed Jury Instructions: The parties shall meet and confer for the purposes of preparing and filing jury instructions. Counsel shall attach requests for jury instructions, citing relevant legal authority for each proposed instruction. Counsel are not required to submit general jury instructions which, for example, instruct the jury on its role, evidence in general, witness credibility, etc. If any party objects to another party's proposed instruction, counsel must briefly state the nature of the objection and the legal authority supporting the objection.

iii. Proposed Verdict Form: Counsel shall meet and confer for the purposes of preparing and filing a proposed verdict form and/or special interrogatories. Counsel shall attach (and also include on the diskette) proposed verdict forms and any proposed special interrogatories. If the parties are unable to agree as to the appropriateness of a proposed form, counsel for the objecting party must state the basis for the objection and provide an alternative proposal (on a diskette).

iv. Brief Description of Case and Parties: Counsel shall meet and confer and agree upon a brief description of the case, the issues and the parties that the Court can read to proposed jurors at the outset of jury selection.

10. ANTICIPATED EVIDENTIARY PROBLEMS: Counsel shall list any evidentiary problems anticipated by any party, **but counsel shall not file motions in limine with the Joint Trial Memorandum.** Instead, counsel shall file motions in limine along with memoranda of law concerning any anticipated evidentiary problems, including any issues relating to the admissibility of expert testimony under Fed. R. Evid. 702–05 and the *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), line of cases, **no later than 30 days before the first pretrial conference set by the Court.** The Court will typically schedule the trial and the pretrial conference shortly after the filing of the Joint Trial Memorandum. All memoranda in opposition to any motion in limine must be filed **no later than 15 days before the first pretrial conference set by the Court. Reply briefs shall not be filed in connection with motions in limine without obtaining permission in advance from the Court.**

11. COURTROOM TECHNOLOGY: Counsel shall specify what, if any, technology they intend to use during trial. For instance, if counsel intend to use an overhead projector, transparencies, Elmo, or to connect a laptop to display exhibits or other documents, they must specify as much in the Joint Trial Memorandum. Counsel may coordinate with the Courtroom Deputy to set up any technology in advance of trial.

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

YELENA SAVINOVA individually, and on behalf of others similarly situated Plaintiffs, v. NOVA HOME CARE, LLC, SOUTHERN HOME CARE SERVICES, INC., ALEH HULIAVATSENKA, & YULIYA NOVIKAVA Defendants	No. 3:20-cv-01612 (MPS)

SCHEDULING ORDER

The Court has reviewed the parties' Rule 26(f) Report (ECF No. 21) and issues the following scheduling order.

Discovery Related to Defendant Nova Home Care, LLC ("Nova")

With respect to Nova, discovery shall commence immediately and will be phased. Phase 1 shall focus on issues related to any motion by Plaintiffs to certify a class under Rule 23 and issues related to any motion by Nova to de-certify the FLSA collective. Such discovery shall be completed by **September 6, 2021**. Any motion to certify the Rule 23 class or to de-certify the FLSA collective shall be filed by **September 27, 2021.** Responses and replies shall be filed in accordance with this Court's Local Rules.

Upon the filing of a motion to certify under Rule 23 or a motion to de-certify the FLSA collective, discovery shall be suspended pending the Court's ruling on such motions. Once the Court has issued a ruling, Phase 2 of discovery shall begin and the parties shall have 120 days from the date that the ruling is issued to complete discovery. If neither party files a motion to certify or a motion to de-certify, Phase 2 of discovery shall begin on September 27, 2021 and the parties

shall have 120 days to complete discovery. Dispositive motions are due within 30 days of the completion of discovery. With respect to any experts, the parties shall meet and confer and propose a schedule for disclosure of and any depositions of expert witnesses that ensures that all such expert discovery is completed no later than 30 days before the deadline for dispositive motions. The parties shall jointly file a proposal within 14 days of this order.

Discovery Related to Defendant Southern Home Care Services, Inc. ("SHCS")

With respect to SHCS, discovery shall remain stayed until the Court has reviewed the parties' remaining submissions related to plaintiffs' motion for conditional certification and notice to potential opt-in plaintiffs with respect to SHCS. The Court will likely issue a scheduling order related to SHCS at or around the same time as it rules on the motion.

***

The Court will hold a mid-discovery Telephonic Status Conference on **July 20, 2021 at 4:00pm**; the Court will provide the parties with the dial-in information. The parties will file a joint status report by **July 13, 2021**.

The Court encourages the parties to discuss settlement as soon as possible. Nearly all civil cases settle, and at some point in this case, the Court will refer the parties to mediation with a U.S. Magistrate Judge to explore the potential for settlement. The sooner that occurs, the less expensive the case will be for the parties. The Court understands that sometimes it is necessary to conduct some discovery before the parties can engage in a productive mediation. If the parties believe this is such a case, the Court encourages them to discuss exchanging limited discovery, perhaps including one deposition by each party and the written discovery necessary to prepare for that deposition, before proceeding to mediation. But the parties may begin settlement discussions at any time, either by themselves or with

the assistance of a U.S. Magistrate Judge. Should the parties wish at any time to be referred to a Magistrate Judge for mediation, they need only so indicate to the Court by filing a joint statement making such a request (which may be as short as a single sentence), by filing a statement by one party representing in good faith that counsel for all parties have conferred and agree that such a referral would be appropriate, or by telephoning chambers to make the same representations.

Finally, the parties are responsible for following the appended instructions regarding (1) joint status reports, (2) discovery disputes, and (3) the joint trial memorandum, all of which the Court hereby incorporates as part of this Scheduling Order.

IT IS SO ORDERED.

/s/
Michael P. Shea, U.S.D.J.

Dated: Hartford, Connecticut
April 9, 2021

I. INSTRUCTIONS FOR STATUS REPORTS

On or before the deadline assigned by the Scheduling Order, the parties shall file with the Clerk's Office, with certification copies sent to all counsel of record, an original joint status report, stating the following:

(a) The status of the case, describing the status of discovery and identifying any pending motions and any circumstances potentially interfering with the parties' compliance with the scheduling order;

(b) Interest in referral for settlement purposes to a United States Magistrate Judge or to the District's special masters program;

(c) Whether the parties will consent to a trial before a magistrate judge; and

(d) The estimated length of trial.

No status reports will be accepted via facsimile.

II. INSTRUCTIONS FOR DISCOVERY DISPUTES

All discovery issues should be resolved in good faith by counsel in accordance with their obligations to the Court under the Federal Rules of Civil Procedure and the District's Local Rules. Before filing any motion relating to discovery, the parties are required to comply with the following requirements:

1. Counsel for parties to discovery disputes must jointly contact Judge Shea's Chambers by telephone to notify the Court that a dispute exists and provide a brief oral description of the nature of the dispute. Except in extraordinary circumstances, Chambers staff will not entertain such a communication unless counsel for all parties to the discovery dispute are on the telephone when the call is made to Chambers.

2. Within three (3) days of counsel contacting Chambers to notify the Court of the existence of a dispute, each party must provide Chambers via e-mail with a written submission summarizing the nature of the dispute and briefly explaining its position. The written submission shall take the form of a letter and shall be no more than two pages in length. All such communications must be copied to opposing counsel and must include the certification discussed in paragraph 6 below.

3. If the dispute involves a written interrogatory, request for production, request for admission, deposition notice and/or subpoena (the "discovery request"), counsel for the party who served the discovery request at issue will, along with the written submission, provide Chambers via e-mail with a copy of the particular discovery request at issue and the opposing party's written response to that particular request. Judge Shea does not need the entire discovery request and response but requires only the particular portions of the discovery request and response at issue.

4. Other than the written submission and any discovery requests and responses at issue, Judge Shea does not require, and does not want, counsel for the parties to provide him with any briefs, documents, deposition transcripts, correspondence or written argument regarding the discovery issue in dispute.

5. Following a review of the written submission and any discovery requests and responses at issue, the Court will determine whether additional steps, such as a telephonic conference with the Court or additional briefing, are necessary for the Court to resolve the discovery dispute. In some cases, the Court may determine that no additional input is needed and issue an order based only on the letters and relevant discovery requests and objections submitted by the parties. Any such order will reflect the input received from the parties and will allow the parties to docket the materials submitted if they wish to preserve the record on particular points.

6. Before contacting Chambers to notify the Court of a discovery dispute, counsel for parties to any discovery dispute are required by Rule 37(a)(1) of the Federal Rules of Civil Procedure and Local Rule 37(a) to have conferred with one another and to have made a good faith effort to eliminate or reduce the area of controversy. All discovery issues should be resolved in good faith by counsel in accordance with their obligations to the Court under the Federal Rules of Civil Procedure and the District's Local Rules. Judge Shea interprets the good faith conference obligation of the Federal Rules and Local Rules to require counsel to confer either face-to-face or by telephone; exchanges of correspondence are not sufficient in and of themselves to satisfy counsel's good faith conference obligations. **All written submissions describing the nature of the dispute submitted to the Court must include a written certification by each party that they have complied with their good faith conference obligations under the Federal Rules and Local Rules.**

7. Before notifying the Court of a discovery dispute, counsel for all parties to a discovery dispute must also agree upon the issues that they intend to raise with Judge Shea and inform Chambers of those issues at the time of the notification. If the parties cannot in good faith agree upon the issues to be raised with Judge Shea, they shall so notify Chambers.

8. Should the Court schedule a telephonic conference to discuss the dispute with the parties, counsel should agree in advance on which party will be responsible for initiating the telephonic discovery conference. Counsel should not contact Judge Shea's Chambers until counsel for all parties to the discovery dispute are on the telephone. Failure to participate in a scheduled telephonic discovery conference may result in the imposition of sanctions.

9. Should the Court issue any order following the telephonic conference, the party against whom the order is directed shall comply within 14 days pursuant to Local Rule 37(d), unless otherwise ordered by the Court.

III. JOINT TRIAL MEMORANDUM INSTRUCTIONS

The parties shall confer and shall jointly prepare and submit for the Court's approval a Joint Trial Memorandum in compliance with the District's Standing Order Regarding Trial Memoranda in Civil Cases as modified in these instructions**. In addition to filing an original of the Joint Trial Memorandum with the Clerk of the Court, counsel shall also provide Chambers with a courtesy copy of the Joint Trial Memorandum and all attachments, both in hard copy and as an electronic file compatible with Microsoft Word, sent to Chambers via e-mail or saved on a CD-ROM.** The Joint Trial Memorandum is intended to be a jointly prepared document. Therefore, these Instructions are not satisfied by stapling together trial memoranda prepared separately by counsel for each party.

The Joint Trial Memorandum shall contain the following information:

1. TRIAL COUNSEL: Counsel shall list the names, addresses, telephone numbers, fax numbers and e-mail addresses of the attorney(s) who will try the case. **Trial counsel must attend the Final Pretrial Conference, unless excused in advance by the Court.**

2. JURISDICTION: Counsel shall set forth the basis for federal jurisdiction.

3. JURY/NON-JURY: Counsel shall state whether the case is to be tried to a jury or to the Court.

4. LENGTH OF TRIAL: Counsel shall set forth a realistic estimate of trial days required based on the expected length of testimony for each witness on both direct and cross-examination.

5. FURTHER PROCEEDINGS: Specify, with reasons, the necessity of any further proceedings prior to trial.

6. NATURE OF CASE: Counsel for both parties shall separately state the nature of each cause of action and the relief sought. If appropriate, state the nature of any cross-claims, counterclaims and/or affirmative defenses.

7. TRIAL BY MAGISTRATE JUDGE: Counsel shall indicate whether they have agreed to a trial by a Magistrate Judge and if so, file signed consent forms providing for any appeal to be heard directly by the Court of Appeals.

8. EVIDENCE: **Prior to preparing and submitting the Joint Trial Memorandum, counsel are required to exchange lists of proposed witnesses, exhibits and deposition transcripts to enable counsel for each party to state in the Joint Trial Memorandum whether they object to any proposed witness, exhibit or transcript.**

    a. Witnesses: Counsel shall set forth the names and addresses of each witness to be called at trial, including a brief summary of the anticipated testimony and the expected duration of the witness's testimony. Counsel shall indicate which

witnesses are likely to testify and which witnesses will be called only if the need arises. For each expert witness, set forth the opinion to be expressed, a brief summary of the basis of the opinion and a list of the materials on which the witness intends to rely. Also state the area of the witness's expertise and attach a copy of the expert's report and a curriculum vitae, if available.

Any objection to the admissibility of the testimony of any witness must be stated in this section of the Joint Trial Memorandum, along with a brief statement of the grounds and authority supporting the objection as well as a brief statement from the proponent of the witness regarding admissibility.

NOTE: Witnesses not included in this list shall not be permitted to testify at trial, except for good cause shown. All listed witnesses will be permitted to testify unless there is an explicit objection stated to the witness's testimony.

b. Exhibits: Counsel shall attach a list of all exhibits—including a brief description of their contents—to be offered at trial, except for any exhibits used solely for impeachment. The parties shall mark all exhibits numerically with exhibit tags (which will be provided by the Clerk's Office upon request) starting with Plaintiff's Exhibit "1" and Defendant's Exhibit "501." Where there are multiple plaintiffs or defendants, counsel shall coordinate exhibit identification to ensure that exhibit numbers are not duplicated. Copies of the actual exhibits shall be exchanged no later than seven (7) days prior to submission of the Joint Trial Memorandum. **Copies of all exhibits as to which there may be objections must be brought to the Final Pretrial Conference.** Three (3) days before trial, counsel shall deliver to Judge Shea copies of all exhibits placed in a three-ring binder with a copy of the exhibit list at the front of the binder and with each exhibit separately tabbed, and shall deliver to the Courtroom Deputy the original set of exhibits along with an exhibit list.

Any objection to the admissibility of any exhibit must be stated in this section of the Joint Trial Memorandum, along with a brief statement of the grounds and authority supporting the objection as well as a brief statement from the proponent of the exhibit regarding admissibility.

NOTE: Exhibits not exchanged seven (7) days prior to submission of the Joint Trial Memorandum and exhibits not listed will not be admitted at trial, except for good cause shown and except for any exhibits admitted solely for impeachment. All listed exhibits shall be deemed admissible unless there is an explicit objection stated to the exhibit.

c. Deposition Testimony: Counsel shall list each witness who is expected to testify by deposition at trial. Such list will include a designation by page references of the deposition transcript which each party proposes to read into evidence. Cross-designations shall be listed as provided by Fed. R. Civ. P. 32(a)(6). The list shall include all objections to deposition designations. A marked-up version of the

deposition transcript should also be submitted along with the Joint Trial Memorandum (blue for plaintiff; red for defendant).

NOTE: Objections not stated in the Joint Trial Memorandum will be deemed waived, except for good cause shown.

9. STIPULATIONS AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW: Counsel for both parties shall confer in an effort to enter into a written stipulation of uncontroverted facts and into an agreed statement of the contested issues of fact and law.

   a. Bench Trial: Each party shall submit specific proposed findings of fact necessary to support a judgment in that party's favor, identifying each witness and/or exhibit as to each factual conclusion. Each party shall also submit proposed conclusions of law, citing the legal authority that supports each claim or defense.

      Except by order of the Court, post-trial briefing will not be permitted. Any pre-trial memoranda which any party(ies) wish the Court to consider must be filed no later than seven (7) days prior to the date trial commences.

   b. Jury Trial: The stipulation of uncontroverted facts will be read to the jury, and no evidence shall be presented on the uncontested facts.

      i. Proposed Voir Dire Questions: Counsel shall attach a list of questions to be submitted to the jury panel as part of the Joint Trial Memoranda, with any supplements no later than 24 hours before jury selection.

      ii. Proposed Jury Instructions: The parties shall meet and confer for the purposes of preparing and filing jury instructions. Counsel shall attach requests for jury instructions, citing relevant legal authority for each proposed instruction. Counsel are not required to submit general jury instructions which, for example, instruct the jury on its role, evidence in general, witness credibility, etc. If any party objects to another party's proposed instruction, counsel must briefly state the nature of the objection and the legal authority supporting the objection.

      iii. Proposed Verdict Form: Counsel shall meet and confer for the purposes of preparing and filing a proposed verdict form and/or special interrogatories. Counsel shall attach (and also include on the diskette) proposed verdict forms and any proposed special interrogatories. If the parties are unable to agree as to the appropriateness of a proposed form, counsel for the objecting party must state the basis for the objection and provide an alternative proposal (on a diskette).

      iv. Brief Description of Case and Parties: Counsel shall meet and confer and agree upon a brief description of the case, the issues and the parties that the Court can read to proposed jurors at the outset of jury selection.

10. ANTICIPATED EVIDENTIARY PROBLEMS: Counsel shall list any evidentiary problems anticipated by any party, **but counsel shall not file motions in limine with the Joint Trial Memorandum.** Instead, counsel shall file motions in limine along with memoranda of law concerning any anticipated evidentiary problems, including any issues relating to the admissibility of expert testimony under Fed. R. Evid. 702–05 and the *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), line of cases, **no later than 30 days before the first pretrial conference set by the Court.** The Court will typically schedule the trial and the pretrial conference shortly after the filing of the Joint Trial Memorandum. All memoranda in opposition to any motion in limine must be filed **no later than 15 days before the first pretrial conference set by the Court. Reply briefs shall not be filed in connection with motions in limine without obtaining permission in advance from the Court.**

11. COURTROOM TECHNOLOGY: Counsel shall specify what, if any, technology they intend to use during trial. For instance, if counsel intend to use an overhead projector, transparencies, Elmo, or to connect a laptop to display exhibits or other documents, they must specify as much in the Joint Trial Memorandum. Counsel may coordinate with the Courtroom Deputy to set up any technology in advance of trial.