

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: WHOLESALE GROCERY PRODUCTS
ANTITRUST LITIGATION

CASE No. 09-MD-2090 (ADM/TNL)

**THIRD AMENDED
PRETRIAL SCHEDULING
ORDER**

THIS ORDER RELATES TO ALL ACTIONS

The Second Amended Pretrial Scheduling Order (ECF No. 598) provided that certain deadlines would be determined by measuring a certain number of days from the issuance of the class-certification order. The class-certification order was issued on September 7, 2016. (See ECF Nos. 647, 651.) This Third Amended Pretrial Scheduling Order (“Third Amended PSO”) provides the specific dates for those deadlines.

All remaining actions shall proceed under this Amended Pretrial Scheduling Order. Pursuant to Rule 16 of the Federal Rules of Civil Procedure and the Local Rules of this Court, and in order to secure the just, speedy, and less expensive determination of this action, the following schedule shall govern these proceedings. This schedule may be modified only upon formal motion and a showing of good cause as required by D. Minn. LR 16.3.

These actions shall proceed without designation of a distribution-center-based bell-weather or test case.

1. Fact Discovery

- a. To the extent not already completed, all initial disclosures required by Fed. R. Civ. P. 26(a)(1) shall be completed on or before October 30, 2015. The parties shall meet and confer on or before October 30, 2015, to agree on any supplementation required by Fed. R. Civ. P. 26(e)(1).
- b. Fact discovery shall be commenced in time to be completed on or before January 15, 2016; except that the Rule 30(b)(6) depositions for Plaintiffs Elkhorn-Lueptows, Inc.; Jefferson Lueptows, Inc.; East Troy Lueptows, Inc.; Nemecek Markets, Inc.; and Blue Goose Super Market, Inc., shall be completed on or before February 5, 2016.
- c. No more than 35 Interrogatories, counted in accordance with Fed. R. Civ. P. 33(a), shall be served any party.

- d. No more than 70 Document Requests shall be served by any party. Additionally, the following time limitations shall apply:
 - i. Defendants shall not serve a document request for any document created outside of the time period between January 1, 2002 and December 31, 2008.
 - ii. Plaintiffs shall not serve a document request for any document created outside of the time period between January 1, 2002 and December 31, 2008, except that Plaintiffs may request documents relating to (aa) product sales, (bb) profit margins, (cc) prices, and (dd) the relevant market, including market shares, created during the following time periods: January 1, 2001 to January 1, 2002 and December 31, 2008 to December 31, 2009.
- e. No more than 35 Requests for Admissions shall be served by any party.
- f. No more than 36 factual depositions, excluding expert witness depositions, shall be taken by any party.
- g. No document shall be filed under seal unless such document or information therein is genuinely confidential and/or there are *compelling* reasons to do so. Any party seeking to file a document under seal shall specifically review each document and the information therein to limit sealing only to the extent necessary.
- h. Any party claiming privilege or protection of trial-preparation materials shall serve on the party seeking discovery a privilege log that complies with the requirements in Fed. R. Civ. P. 26(b)(5).

2. ESI Discovery Plan

- a. The parties shall preserve all electronic documents that bear on any claims, defenses, or the subject matter of the lawsuit.

3. Non-Dispositive Motions

- a. Non-dispositive motions may be scheduled for hearing by calling the Court's Judicial Assistant and Calendar Clerk, Holly McLelland, at 651-848-1870.
- b. All motions which seek to amend the pleadings, including without limitation, a motion for leave to amend to add parties must be served on or before January 17, 2011.
- c. Except as to non-dispositive motion deadlines specifically set forth elsewhere in this Order, all non-dispositive motions and supporting documents shall be served

and filed on or before January 15, 2016; and on or before February 5, 2016 with respect to the Rule 30(b)(6) depositions specifically referenced in Section 1(a).

d. All non-dispositive motions and supporting documents which relate to expert discovery shall be filed and served on or before March 15, 2017.

- e. Prior to scheduling any non-dispositive motion, parties are strongly encouraged to consider whether the motion, including motions relating to discovery and scheduling, can be informally resolved through telephone conference with the Magistrate Judge. All non-dispositive motions shall be scheduled, filed and served in compliance with the Electronic Case Filing Procedures for the District of Minnesota and in compliance with D. Minn. LR 7.1 and 37.1.
- f. At the Rule 16 Scheduling Conference, the Court advised the parties that it is willing to resolve non-dispositive disputes between the parties on an informal basis via a telephone conference. However, before the Court will agree to proceed with this informal resolution mechanism, the "meet and confer" required by Fed. R. Civ. P. 37(a)(1) and D. Minn. LR 37.1 must have taken place, and all parties to the dispute must agree to use this informal resolution process as the very nature of the process is such that the parties are giving up rights they would otherwise have (e.g., the dispute is heard over the phone; there is no recording or transcript of the phone conversation; no briefs, declarations or sworn affidavits are filed). If the parties do agree to use this informal resolution process, one of the parties shall contact Magistrate Judge Leung's chambers to schedule the conference. The parties shall submit short letters prior to the conference to set forth their respective positions. The requesting party shall submit its letter 7 days prior to the conference; the responding party shall submit its letter 4 days prior to the conference. The Court will read the written submissions of the parties before the phone conference, hear arguments of counsel at the conference, and if no one changes their decision during the phone conference regarding their willingness to participate in this informal resolution process, the Court will issue its decision at the conclusion of the phone conference or shortly after the conference. Depending on the nature of the dispute, the Court may or may not issue a written order. If there is no agreement to resolve a dispute through this informal resolution process, then the dispute must be presented to the Court via formal motion and hearing.

4. Class Certification Motions

- a. Plaintiffs' motion(s) for certification of distribution-center-based classes shall be served and filed on or before March 1, 2016, in a manner consistent with the filing requirements for dispositive motions set forth in Section 6.
- b. Defendants' response(s) to Plaintiffs' motion(s) for certification of distribution-based classes shall be served and filed on or before May 6, 2016, in a manner consistent with the filing requirements for dispositive motions set forth in Section 6.

- c. Plaintiffs' reply(ies) to Defendants' response(s) to Plaintiffs' motion(s) for certification of distribution-based classes shall be served and filed on or before June 17, 2016, in a manner consistent with the filing requirements for dispositive motions set forth in Section 6.

5. Expert Reports and Discovery

- a. **Plaintiffs' disclosure of the identity and report of their merits expert(s) shall be served on or before October 24, 2016.**
- b. **Defendants' disclosure of the identity and report of their merits expert(s) shall be served on or before December 7, 2016.**
- c. **Plaintiffs' disclosure of the identity and rebuttal report of their merits expert(s) shall be served on or before January 6, 2017.**
- d. **Expert discovery, including depositions, shall be completed on or before March 15, 2017.**

6. Dispositive Motions

- a. All dispositive motions and supporting pleadings (notice of motion, motion, exhibits, affidavits, memorandum of law, and proposed order) shall be served and filed on or before **May 15, 2017**.¹ Counsel are reminded that they must anticipate the time required for obtaining hearing dates. In the event that the hearing for the motion is set to take place more than 42 days after this date, then unless the parties agree otherwise or as ordered by the Court, the response to the dispositive motion (including affidavits, exhibits and memorandum of law) shall be served and filed no later than 21 days after this date, and the reply memorandum shall be served and filed no later than 28 days after this date.
- b. Counsel for the moving party shall call Calendar Clerk Jackie Ellingson, (612) 664-5093, to schedule the hearing for the dispositive motion. All dispositive motions shall be scheduled, filed and served in compliance with the Electronic Case Filing Procedures for the District of Minnesota and in compliance with Local Rule 7.1. When a motion, response or reply brief is filed on ECF, two paper courtesy copies of the pleading and all supporting documents shall be mailed or delivered to Calendar Clerk Jackie Ellingson, 612-664-4093, contemporaneously with the documents being posted on ECF.

¹ Before filing additional dispositive motions, the parties are encouraged to review *In re Wholesale Grocery Prods. Antitrust Litig.*, 752 F.3d 728, 735 (8th Cir. 2014).

7. Status & Settlement Conferences

- a. **The parties shall appear for a settlement conference with the Court starting at 10:00 a.m. on February 14 and 15, 2017. An order for settlement conference shall issue shortly.**
- b. **In addition to the settlement conference scheduled with the Court in this Third Amended PSO, the parties are strongly encouraged to engage in a full day of private mediation prior to the settlement conference scheduled herein.**
- c. Commencing on or shortly before November 15, 2015, and on or shortly before the 15th day every two months thereafter (e.g., January 15, 2016, etc.), counsel for the parties shall CM/ECF file a joint letter to the Court setting forth the status of the case with reasonable specificity, including without limitation, an update of efforts toward settlement and whether a settlement conference with a private mediator or the Court would be productive.

8. Trial

- a. This case shall be ready for trial **on August 15, 2017.**
- b. Anticipated length of trial shall be determined at a later date.

9. Prior Orders and Remedies

- a. All prior consistent orders remain in full force and effect.

[Continued on next page.]

- b. Failure to comply with any provision of this Order or any other prior consistent Order shall subject the non-complying party, non-complying counsel and/or the party such counsel represents to any and all appropriate remedies, sanctions and the like, including without limitation: assessment of costs, fines and attorneys' fees and disbursements; waiver of rights to object; exclusion or limitation of witnesses, testimony, exhibits and other evidence; striking of pleadings; complete or partial dismissal with prejudice; entry of whole or partial default judgment; and/or any other relief that this Court may from time to time deem appropriate.

IT IS SO ORDERED.

Dated: September 20, 2016

s/ Tony N. Leung
Magistrate Judge Tony N. Leung
United States District Court
District of Minnesota

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Litigation*
Case No. 09-md-2090 (ADM/TNL)