UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION *All Actions*	MDL No. 2472 C.A. No. 1:13-md-2472-S-PAS

JOINT MOTION TO MODIFY
INTERIM CASE MANAGEMENT ORDER NUMBER 8

Pursuant to Federal Rule of Civil Procedure 16(b)(4), Direct Purchaser, End Payor, and Retailer Plaintiffs (collectively, "Plaintiffs")[1] and Defendants[2] (collectively, the "Parties") jointly move for an order modifying the Court's September 18, 2017 Interim Case Management Order Number 8 ("Case Management Order 8"), s*ee* DE 326, to extend by approximately 150 days the close of fact discovery, and related case deadlines, to allow the Parties adequate time to conduct supplemental searches, review, and production of documents without jeopardizing the time available for conducting the remainder of fact discovery in an orderly manner.

Federal Rule of Civil Procedure 16(b)(4) permits modification of a scheduling order "for good cause and with the judge's consent." *See also Tavares v. Enter. Rent-A-Car Co.*, No. 13-521S, 2015 U.S. Dist. LEXIS 122401, at *29 (D.R.I. Jan. 16, 2015).

[1] Plaintiffs are American Sales Company, LLC; Rochester Drug Cooperative; Walgreen Co.; The Kroger Co.; Safeway Inc.; HEB Grocery Company L.P.; Albertson's LLC; CVS Pharmacy, Inc.; Rite Aid Corporation; Rite Aid Hdqtrs. Corp.; City of Providence; A.F. of L. – A.C.G. Building Trades Welfare Plan; Allied Services Division Welfare Fund; Electrical Workers 242 and 294 Health & Welfare Fund; Fraternal Order of Police, Fort Lauderdale Lodge 31; Insurance Trust Fund; Laborers International Union of North America; Local 35 Health Care Fund; Painters District Council No. 30 Health & Welfare Fund; Teamsters Local 237 Welfare Benefits Fund; United Food and Commercial Workers Local 1776 & Participating Employers Health and Welfare Fund; Denise Loy; Melissa Chrestmas; and Mary Alexander.

[2] Defendants are Warner Chilcott Sales (US), LLC; Warner Chilcott (US), LLC; Warner Chilcott Public Limited Company; Warner Chilcott Company, LLC f/k/a Warner Chilcott Company, Inc.; Warner Chilcott Laboratories Ireland Limited; Warner Chilcott Holdings Company III, Ltd.; Warner Chilcott Corporation; Watson Laboratories, Inc.; Watson Pharmaceuticals, Inc.; Lupin Limited; and Lupin Pharmaceuticals, Inc.

Good cause to extend the case deadlines by approximately 150 days exists here. The Parties have actively conducted discovery in accordance with the Court's Orders and Case Management Order 8. Of particular relevance to this Joint Motion, the Parties have engaged in two lengthy meet and confer processes, one concerning additional time periods for the Warner and Watson Defendants' production of documents that Plaintiffs contend they need, and the other concerning discovery from Plaintiffs of documents that Defendants contend are relevant to the relevant product market.

These meet and confers began in the spring of 2017, and recently resulted in compromise agreements between the Parties on two fronts. First, the Warner and Watson Defendants agreed, with regard to several of Plaintiffs' requests for production, to search for documents within their possession, custody, and control that were generated over a more expansive time frame that Plaintiffs contend they need—e.g., as late as December 31, 2015—in addition to the time periods that they initially searched. Defendants assert that additional time in the case schedule is necessary in order for the Warner and Watson Defendants to collect, review, and produce these additional documents. (Plaintiffs also continue to seek more expansive time frames on certain other requests for production, and this dispute is the subject of a motion to compel that is pending before the Court. *See* DE 328.) Second, Plaintiffs recently agreed to run additional searches for documents within their possession, custody, and control that Defendants contend are relevant to the relevant product market.

The Parties already certified by October 6, 2017 that they substantially completed the production of documents responsive to initial document requests (except as to the two categories of documents mentioned above). However, the Parties have come to an agreement, based on their experience in this case to date, that more time is needed in the case schedule to allow

adequate time for each side to conduct the expanded collections, review, and production resulting from their recent compromise agreements, as well as time for the receiving parties to adequately review those expanded productions and conduct the remaining fact discovery in an orderly fashion. Accordingly, the Parties jointly propose extending the deadline for the close of fact discovery, and related deadlines, by approximately 150 days. This proposal would make June 19, 2018 the close of fact discovery.

Although the Parties largely agree on a proposed revised case schedule that would extend case deadlines by approximately 150 days, there are two issues on which the Parties are unable to reach agreement and respectfully request the Court's assistance in reaching resolution. The Parties disagree regarding (1) Defendants' proposal, subject to leave of Court, to file an early motion under Federal Rule of Civil Procedure 56 on monopoly power in the relevant product market, and (2) the deadline to serve interrogatories. A summary of the Parties' respective positions on these two issues follows.

1. **Defendants' Proposal to File an Early Motion under Fed. R. Civ. P. 56 on Monopoly Power**

Defendants' Position:

Pursuant to Local Rule Cv 56(c), Defendants intend to seek leave of Court to file an early Rule 56 motion on the dispositive issue of the lack of monopoly power in the relevant product market. A favorable ruling on this issue would resolve this case in its entirety and avoid the substantial time and expense—for the Court and the parties—of grappling with the several other complex issues in this case (i.e., several distinct claims of reverse payments, alleged "product hopping," and fraud on the Patent Office). All of Plaintiffs' theories of liability require proving that Warner Chilcott had monopoly power in a relevant antitrust product market. Therefore, Defendants' early Rule 56 motion regarding the lack of monopoly power would address a

dispositive threshold issue that cuts across all other novel, complex issues in this case. Defendants' proposed schedule for addressing this motion would allow it to be considered and decided over six months before Rule 56 motions would otherwise be ripe for consideration under the case schedule, thereby potentially saving the parties and the Court over six months of work. Under Defendants' proposal, the hearing on this motion would be approximately three months before the close of expert discovery and the filing of any additional Rule 56 motions and seven months before any pretrial exchanges.[3] Granting Defendants leave to file an early Rule 56 motion on lack of monopoly power thus would be consistent with the Court's goal in managing complex litigation: "bringing about a just resolution as speedily, inexpensively, and fairly as possible." David F. Herr, Annotated Manual for Complex Litigation, Fourth, § 10.1 (2017) ("*Annotated Manual*").

The United States Judicial Panel on Multidistrict Litigation and the Federal Judicial Center have advised courts presiding over complex multidistrict litigation to "[d]etermine the key issues that [the court] can decide early or on an expedited basis," because doing so "will speed settlement or other resolution of the litigation as a whole." U.S. Judicial Panel on Multidistrict Litig. & Fed. Judicial Ctr., Ten Steps to Better Case Management, A Guide for Multidistrict Litigation Transferee Judges 2 (2d ed. 2014), *available at* https://www.fjc.gov/sites/default/files/2014/Ten-Steps-MDL-Judges-2D.pdf; *see also Annotated Manual* § 30.1 (noting that "[e]ffective management of antitrust litigation requires identifying, clarifying, and narrowing pivotal factual and legal issues as soon as practicable," and that "[u]nless the judge and attorneys give early attention to these issues, substantial time may be

[3] Even if Plaintiffs are correct that there may be some overlapping expert work between market power and certain other issues, no expert should have to duplicate work. Plaintiffs also do not even attempt to argue that there would be any overlap with such expert (and potential summary judgment) issues as the underlying patent and alleged fraud on the Patent Office, the procompetitive justifications for the alleged "product hop," FDA regulatory strategies, causation, and damages.

wasted on claims subject to summary dismissal"). No doubt conscious of this guidance applicable to multidistrict litigation, courts frequently entertain early Rule 56 motions on threshold issues in complex antitrust cases like this one. *See, e.g.*, Order re: CertainTeed's Motion for Expedited Motion for Summary Judgment (ECF 148), *In re: Domestic Drywall Antitrust Litig.*, No. 2:13-md-002437-MMB, DE 496 at 1 (E.D. Pa. Nov. 23, 2016) (allowing defendant to file early Rule 56 motion on threshold issue); *Pierson v. Walmart.com USA LLC (In re: Online DVD Rental Antitrust Litig.)*, No. M 09-2029 PJH, 2011 U.S. Dist. LEXIS 49090, at *37 (N.D. Cal. Apr. 29, 2011) (noting grant of leave to file early Rule 56 motion on antitrust standing); *Emigra Grp., LLC v. Fragomen, Del Rey, Bernsen & Loewy, LLP*, 612 F. Supp. 2d 330, 339, 360-62 (S.D.N.Y. 2009) (granting antitrust defendants' early motion for summary judgment on grounds of lack of defined product market and lack of monopoly power).[4]

Unlike some of Plaintiffs' more novel claims (e.g., "product hopping"), the issue of monopoly power in the relevant product market is commonly litigated.[5] Moreover, the Court already considered this issue to some extent at the motion to dismiss stage when the Court indicated that discovery was needed to resolve it. *See* Opinion and Order at 37 (Aug. 8, 2017), DE 307 ("[I]t may very well turn out, after discovery, that the Loestrin drugs are in fact reasonably economically interchangeable with other oral contraceptives . . . ."). Defendants expect that their proposed early Rule 56 motion would raise issues similar to those the Court

[4] Notably, none of the three cases Plaintiffs cite in which (they assert) the courts declined to grant leave to file early summary judgment motions were MDLs (or antitrust matters). Those cases also are readily distinguishable. *See O'Connor v. Oakhurst Dairy*, No. 14-cv-192, 2014 WL 7212962, at *1-2 (D. Me. Dec. 17, 2014) (denying request to phase, and hence delay, discovery, in order to allow defendants to file a summary judgment motion on an issue defendants conceded would require an extension of the current law, but allowing defendants to file an early summary judgment motion on this issue under certain circumstances); *Design Basics, LLC v. T.K. Constructors Inc.*, No. 16-cv-1841, 2016 WL 9274931, at *1-2 & n.2 (S.D. Ind. Oct. 19, 2016) (denying request to halt discovery in order to file partial early summary judgment motion that would neither resolve the case nor affect the "stakes in this litigation"); *Emp'rs Mut. Cas. Co. v. Carl Hobbs Constr. Co.*, No. 1:11-cv-643, 2012 WL 975951, at *1-2 (M.D. Ala. Mar. 22, 2012) (denying as premature summary judgment motion where virtually no discovery had been conducted). For example, there is no concern with delay here, as neither discovery nor any other aspect of the case would be delayed under Defendants' proposal, and, of course, resolution of the market power issue would completely resolve the pending claims.

[5] *See, e.g., Bayer Schering Pharma AG v. Sandoz, Inc.*, 813 F. Supp. 2d 569, 573 (S.D.N.Y. 2011) (rejecting single drug product market for oral contraceptive).

already considered. However, those issues would now be informed by discovery showing that there is no issue of material fact, and that the factors the Third Circuit identified in the *Doryx* antitrust litigation[6] in affirming summary judgment for lack of market power apply here to establish a broad product market in which Loestrin 24 Fe had a tiny market share. Contrary to Plaintiffs' assertion, the mere fact that Defendants have sought, and produced, extensive discovery on the relevant product market does not in any way establish that there will actually be any disputed issues of material fact or that Plaintiffs will be able to marshal evidence sufficient to create a triable issue in support of their strained theory of a single-product product market. In fact, there are dozens of competing oral contraceptives, all of which are effective for the same purpose: the prevention of pregnancy. Everything that Defendants have seen in discovery so far supports a product market far broader than Plaintiffs' narrow definition.

Plaintiffs' Position:

On October 10, 2017, Defendants informed Plaintiffs of Defendants' desire to file an "early" summary judgment motion on market definition. Local Rule 56(c) provides that "[n]o party shall file more than one motion for summary judgment unless the Court otherwise permits for good cause shown." Defendants have not shown "good cause" to support their request and cannot do so at this stage of the litigation.

First, the issue of market definition is unlikely to be resolved on summary judgment (whether on an "early" motion or done in the usual course) because "market definition is a question of fact." *Coastal Fuels of Puerto Rico, Inc. v. Caribbean Petroleum Corp.*, 79 F.3d 182, 196 (1st Cir. 1996).[7] This Court has already recognized that market definition in this litigation

[6] *Mylan Pharms. Inc. v. Warner Chilcott Pub. Ltd. Co.*, 838 F.3d 421, 434-38 (3d Cir. 2016).

[7] *See also CTC Commc'ns Corp. v. Bell Atl. Corp.*, 77 F. Supp. 2d 124, 142 (D. Me. 1999) ("Market definition in the antitrust context is a question of fact that may only be resolved on summary judgment if the record does not present any dispute of

involves highly contested factual issues on which the defendants have sought extensive discovery. *See, e.g.*, *In re Loestrin 24 Fe Antitrust Litig.*, No. 1:13-MD-2472-S-PAS, 2017 WL 3600938, at *14 (D.R.I. Aug. 8, 2017) (noting that market definition is a "fact-sensitive issue" and quoting *In re Nexium (Esomeprazole) Antitrust Litig.*, 968 F. Supp. 2d 367, 388 (D. Mass. 2013), which stated that the interchangeability of the drug with other drugs is "such a factually intensive determination [it] is better left for resolution by a jury"); *see also Meijer, Inc. v. Barr Pharms., Inc.*, 572 F. Supp. 2d 38, 62 (D.D.C. 2008) ("*Ovcon*") (in reverse payment antitrust class action case concerning oral contraceptive concluding that "[t]he Court cannot resolve the parties' disputed market definition on summary judgment" because both parties had marshaled evidence and citing *Coastal Fuels*).

Second, Defendants' proposed "early" summary judgment motion comes too late in this litigation to provide any cost-savings, and will likely result instead in duplication of effort and more inefficiency. Defendants' claim that early summary judgment motions are "frequently entertain[ed]" is belied by the lack of case law on this point and ignores the warning that "[d]espite their benefits, summary-judgment proceedings can be costly and time-consuming." Manual for Complex Litigation, Fourth § 30.1.[8]

Even when an early summary motion is proposed in a complex case, it is typically done at the outset of the litigation in conjunction with cost-saving phasing or limiting discovery keyed to a specific dispositive issue or issues. *See, e.g.*, *In re: Domestic Drywall Antitrust Litigation*, MDL No. 2437, ECF 64 & 126 (E.D. Pa. Sept. 18, 2013) (phasing discovery keyed to early

material fact."); Manual for Complex Litigation, Fourth § 30.1 (noting that certain issues "may be susceptible to resolution under Rule 56 *in the absence of disputed evidentiary facts*") (emphasis added).

[8] *See also O'Connor v. Oakhurst Dairy*, No. 2:14-CV-192-NT, 2014 WL 7212962, at *1-2 (D. Me. Dec. 17, 2014) (denying defendants' request to set an early summary judgment deadline in part because it differed from "[t]he usual sequence of events in a class-action"); *Employers Mut. Cas. Co. v. Carl Hobbs Const. Co.*, No. 1:11-CV-643, 2012 WL 975951, at *2 (M.D. Ala. Mar. 22, 2012) ("[I]t makes little sense to rush a fact intensive motion, because pushing it before the Court too early deprives the nonmovant of the ability to develop his or her case sufficiently.").

summary judgment motions on one topic); *O'Connor*, 2014 WL 7212962, at *1-2 (denying defendants' motion to phase discovery based on early summary judgment motion in FLSA class and collective action).[9] No such cost-savings can be achieved here. Discovery on all issues is already well underway. By the time briefing on Defendants' proposed "early" summary judgment motion is complete, the vast majority of the work necessary for summary judgment in the usual course will already be done. For example, under Defendants' proposal "monopoly power" reply briefs are due just days before the expert reports are due on other "merits" issues. Thus, fact discovery and substantially all expert work will already have been completed before briefing on the proposed "early" summary judgment motion is even complete. Further, given Defendants' proposed date for a hearing on the early summary judgment motion, all or substantially all of the expert work on *all* issues will be complete before the "early" motion is decided.

Additionally, the issue of market definition is tied to the central liability issues of the fact and amount of the reverse payments being challenged. As a result, adding an early summary judgment motion at this stage in this litigation will only duplicate and complicate the proceedings without any cost-savings. *See, e.g.*, *Design Basics, LLC v. T.K. Constructors Inc.*, No. 16-cv-1841, 2016 WL 9274931, at *2 (S.D. Ind. Oct. 19, 2016) ("The court is not convinced that substantial efficiency could be gained in this case by allowing T.K.'s proposed early summary judgment motion. T.K. has failed to convince the court of good cause for deviating

[9] Early summary judgment has also been allowed in certain cases where a complaint is obviously deficient. *See, e.g.*, *Emigra Grp. LLC v. Fragomen, Del Rey, Bernsen & Loewy, LLP*, 612 F. Supp. 2d 330, 337 (S.D.N.Y. 2009). But here, the Court, after extensive consideration, concluded that nearly all the allegations in the operative complaints were well-pled. *Emigra* was "a dispute over the hiring by one competitor of an employee of another that has been dressed in the raiment of an antitrust case." *Id.* at 337. The defendant there sought leave to file a motion for summary judgment at the initial Rule 16 conference. *Id.* at 339. In granting summary judgment *prior to any discovery*, the *Emigra* court noted that "the antitrust claims are insubstantial" and the proposed relevant market too far-fetched. *Id.* at 343 ("The likelihood that any one provider or provider network has or threatens to have market power seems remote."). Similarly, in *Pierson v. Walmart.com USA LLC*, No. 09-2029, 2011 WL 1629663, at *1 (N.D. Cal. Apr. 29, 2011), the court allowed an early summary judgment motion on the antitrust standing of one plaintiff group whose "umbrella liability" claims were part of a larger multidistrict litigation.

from its usual rules."). If Defendants' proposal were adopted, the Parties would be required to brief the "early" summary judgment motion concurrently with class certification briefing, and would need to add a third round of expert reports and discovery to the schedule to likewise be done concurrently with class certification expert reports and discovery. It is likely that certain experts and expert discovery related to the later summary judgment issues will also be relevant to the market definition summary judgment issues, meaning that there is a large potential for duplication of work by the experts. For example, under *FTC v. Actavis, Inc.*, 133 S. Ct. 2223, 2236 (2013), a reverse payment itself "is a strong indicator" of market power. Thus, merits expert reports on the reverse payments at issue will bear directly on the issue of market power and market definition. Accordingly, there will be no "savings" in time or resources by an "early" motion.

Third, because Defendants propose to file their early summary judgment motion after the close of fact discovery, there is no reason for the Court to determine whether such a motion is appropriate now. Following the close of fact discovery, the parties and the Court will be in a better position to evaluate whether "good cause" exists to entertain such a motion.

2. Deadline to Serve Interrogatories

Plaintiffs' Position:

The deadline to serve interrogatories should be March 9, 2018 pursuant to Plaintiffs' schedule proposal.

On September 21, 2017, Defendants requested a 150-day extension to move back the close of fact discovery to allow Defendants to complete a supplemental document production because of time period disputes between the Parties. On September 28, 2017, Plaintiffs

tentatively accepted this proposal, with the expectation that all related deadlines, including the deadline to serve interrogatories, would likewise move back 150 days.

However, while the Parties were preparing to make this joint submission, Defendants informed Plaintiffs that they would only agree to move the deadline for serving interrogatories back by 14 days—from October 19, 2017 to November 2, 2017. Defendants would not offer any specifics on why the interrogatory deadline specifically should not move along with every other deadline, or why November 2, 2017 is a more sensible deadline than March 9, 2018 (the original deadline plus approximately 150 days). Defendants have simply stated that moving the deadline to serve interrogatories beyond November 2, 2017 is "excessive."

Defendants' refusal to move back the deadline for interrogatories along with every other date in the schedule serves no purpose other than to frustrate Plaintiffs' discovery efforts. Defendants readily admit that their proposed November 2, 2017 deadline is months before Defendants' entire document production is substantially complete at the end of February 2018, likely before any substantive depositions, and nearly eight months before the close of fact discovery in June 2018.[10]

While there is no requirement to include a deadline for serving interrogatories, such a deadline ensures that the Parties have sufficient time to respond to interrogatories before the close of fact discovery. If there is a dispute about responses, it can be resolved within the time for completing fact discovery. In this litigation, the Parties have previously agreed that having at least a few months prior to the close of fact discovery to work through interrogatories is beneficial. And so in each schedule that has been jointly submitted to the Court, the deadline to

[10] Defendants' argument that Defendants' supplemental document productions (which will not be substantially complete until February 2018) will not give rise to the need for interrogatories is difficult to square with the fact that the Defendants viewed the supplemental productions as so substantial that Defendants requested an extra 150 days in the schedule to complete them. And if Plaintiffs learn of any key issues in the supplemental document productions (or in upcoming depositions), Plaintiffs would be foreclosed from serving additional interrogatories concerning those issues.

serve interrogatories was between three and four months before the close of fact discovery.[11] Defendants have presented no reason to deviate now from what the Parties have jointly proposed before, especially given that the *Defendants* first proposed the 150-day extension.

A 150-day extension to the interrogatory deadline is in line with Plaintiffs' proposal of March 9, 2018, which is after the deadline for completion of Defendants' supplemental document production (February 27, 2018), and before the proposed close of fact discovery (June 19, 2018). This is exactly how the interrogatory deadline is situated in the current schedule: between the current date for completion of document production (October 5, 2017) and the current date for the end of fact discovery (January 19, 2018).

Defendants' Position:

Defendants believe there is no reason to extend the deadline to serve interrogatories from the current deadline of October 19, 2017. *See* DE 326, Case Management Order 8 at 1. The Parties have engaged in over nine months of discovery with this deadline in mind. Defendants have already produced approximately 250,000 documents, including a substantially complete production for the individuals Plaintiffs identified as "Key Personnel," complete productions of several other categories of documents Plaintiffs have identified as important to their case, and a substantially complete production of documents from at least 2007 through at least 2013. It is unlikely that Defendants' supplemental productions—from time periods well beyond the time of the wrongdoing alleged in the complaint—will give rise to any additional need for interrogatories that would differ meaningfully from those Plaintiffs can serve (or have already

[11] *See* Interim Case Management Order Number 6, ECF 253 (D.R.I. Jan. 24, 2017) (deadline to serve interrogatories on Sept. 14, 2017 and close of fact discovery on Dec. 21, 2017); Interim Case Management Order Number 7, ECF 306 (D.R.I. Aug. 3, 2017) (deadline to serve interrogatories on Oct. 19, 2017 and close of fact discovery on Jan. 19, 2018).

served) on or before October 19, 2017.[12] Accordingly, extending the deadline for filing interrogatories by almost five months is excessive and will undermine the goal of early completion of discovery so that the parties have adequate time to complete remaining discovery, such as depositions, before the fact discovery deadline. Through their proposed deadline, Plaintiffs seek to gain something that would never have been available to them under any prior case schedule: the ability to serve interrogatories after taking depositions and many months after receiving the large majority of documents. In the interest of compromise, Defendants are willing to agree to a short extension of this deadline, to November 2, 2017.

* * *

Included, below, is a revised proposed case management schedule for this matter. Where applicable, the Parties have indicated a disagreement between them by referring to each side's proposal and highlighting the areas of disagreement.

Event	Current Schedule	Defendants' Proposals	Plaintiffs' Proposals
Parties certify that production of documents responsive to initial discovery requests is substantially complete (except as to Defendants' supplemental document production based on additional time periods and Plaintiffs' productions pursuant to recent agreement between the parties regarding other drug discovery)	October 5, 2017	October 5, 2017	October 5, 2017
Status conference with Court	Early October	October 19, 2017	October 19, 2017

[12] The Warner and Watson Defendants do not believe that these additional collections are likely to result in significant additional non-cumulative, responsive documents, though there will nonetheless be substantial effort involved in collecting and reviewing documents from the extended time periods.

Event	Current Schedule	Defendants' Proposals	Plaintiffs' Proposals
Deadline to exchange privilege logs for documents produced by October 5, 2017[13]	October 26, 2017	October 26, 2017	October 26, 2017
Deadline to serve interrogatories [Defendants' Proposal]	October 19, 2017	November 2, 2017	March 9, 2018
Parties certify supplemental document production is substantially complete	N/A	February 27, 2018	February 27, 2018
Deadline to serve interrogatories [Plaintiffs' Proposal]	October 19, 2017	November 2, 2017	March 9, 2018
Deadline to amend pleadings or to add parties, claims, or defenses, except upon a showing of good cause	October 26, 2017	March 26, 2018	March 26, 2018
Deadline to serve requests for production of documents, interrogatories, and requests for admissions on the amended pleadings	November 2, 2017	April 2, 2018	April 2, 2018
Deadline for filing discovery-related motions (e.g., motions to compel, motions regarding privilege logs)[14]	November 20, 2017	April 20, 2018	April 20, 2018
Fact discovery closes[15]	January 19, 2018	June 19, 2018	June 19, 2018
Deadline for Plaintiffs to move for class certification and serve supporting expert reports[16]	January 19, 2018	June 29, 2018	June 29, 2018

[13] Privilege logs for any production made after October 5, 2017 shall be produced not more than 30 days after the production. Privilege logs for any productions after February 20, 2018 shall be produced not more than 21 days after the production.

[14] Discovery motions may be filed before this date, but may only be filed after this date to address issues arising after the deadline or for good cause shown.

[15] All discovery requests must be served to be answerable by this date, except for requests for admissions, which may be served up to 45 days before Rule 56 and *Daubert* motions are filed.

[16] For all expert reports, the parties will provide three available dates for the deposition of the proposed expert at the time of serving the report. The parties will work to make experts available during the time period preferred by the opposing party (*e.g.*, sufficiently in advance of an opposition brief or responsive expert report). The parties will cooperatively try to schedule class certification-related depositions (and depositions related to Defendants' Rule 56 motion on monopoly power, if leave is granted by the Court to file such a motion in accordance with Defendants' proposal) well before the end of discovery.

Event	Current Schedule	Defendants' Proposals	Plaintiffs' Proposals
Defendants' Proposal: Deadline for Defendants to file Rule 56 motion concerning monopoly power in the relevant product market, pursuant to Manual for Complex Litigation, Fourth, § 30.1, and serve supporting expert reports[17]	N/A	June 29, 2018	N/A
Deadline for Defendants to oppose class certification, serve supporting expert reports, and file any *Daubert* motions relating to Plaintiffs' class certification experts	March 12, 2018	August 22, 2018	August 22, 2018
Defendants' Proposal: Deadline for Plaintiffs to oppose Defendants' Rule 56 motion concerning monopoly power in the relevant product market, serve supporting expert reports, and file any *Daubert* motions relating to Defendants' monopoly power experts	N/A	August 22, 2018	N/A
Deadline for Plaintiffs to file replies in support of class certification, serve rebuttal class certification expert reports, and file any *Daubert* motions relating to Defendants' class certification experts	April 19, 2018	September 28, 2018	September 28, 2018
Defendants' Proposal: Deadline for Defendants to file reply in support of their Rule 56 motion concerning monopoly power in the relevant product market, serve rebuttal expert reports, and file any *Daubert* motions relating to Plaintiffs' monopoly power experts	N/A	September 28, 2018	N/A
Parties serve expert reports on merits issues on which they have burden of proof	April 27, 2018	October 2, 2018	October 2, 2018
Deadline to depose class certification (and, if leave is granted, monopoly power) experts. Any expert submitting a second report (a reply) may be subject to a second deposition, not to exceed 4 hours	April 27, 2018	October 9, 2018	October 9, 2018
Hearing on class certification	May 2018	October 2018	October 2018
Defendants' Proposal: Hearing on Defendants' Rule 56 motion concerning monopoly power in the relevant product market	N/A	October 2018	N/A

[17] Defendants intend to seek leave of Court to file an early Rule 56 motion pursuant to LR Cv 56(c).

Event	Current Schedule	Defendants' Proposals	Plaintiffs' Proposals
Parties serve responsive expert reports on merits issues on merits issues	June 19, 2018	November 20, 2018	November 20, 2018
Parties serve rebuttal merits expert reports	July 26, 2018	December 21, 2018	December 21, 2018
Deadline to confer with the Court regarding the filing of Rule 56 motions	August 2, 2018	January 4, 2019	January 4, 2019
Deadline to complete expert discovery Each expert may be deposed once; Parties will work to make experts available during the time-period preferred by the opposing party	August 13, 2018	January 18, 2019	January 18, 2019
Deadline to file Rule 56 motions, as permitted by the Court (including Statements of Undisputed Fact and/or separate Statements of Undisputed Facts as required by LR Cv 56), and *Daubert* motions	August 24, 2018	January 25, 2019	January 25, 2019
Deadline to file Rule 56 oppositions, as permitted by the Court, and *Daubert* oppositions (including responses to Statements of Undisputed Facts and/or separate Statements of Undisputed Facts as required by LR Cv 56)	October 3, 2018	March 12, 2019	March 12, 2019
Deadline to file Rule 56 replies, as permitted by the Court, and *Daubert* replies (including responses to Statements of Undisputed Facts and/or separate Statements of Undisputed Facts as required by LR Cv 56)	November 2, 2018	April 12, 2019	April 12, 2019
Hearing on Rule 56 and *Daubert* motions	November 2018	April 2019	April 2019
Parties exchange Rule 26(a)(3) disclosures and preliminary trial memoranda	January 4, 2019	May 23, 2019	May 23, 2019
Parties exchange objections and counter-designations to Rule 26(a)(3) disclosures	January 18, 2019	June 6, 2019	June 6, 2019
Parties exchange objections to counter-designations	January 24, 2019	June 13, 2019	June 13, 2019
Parties file motions in limine	January 24, 2019	June 13, 2019	June 13, 2019
Attorney conference on any issues arising from Rule 26(a)(3) disclosures	N/A	June 2019	June 2019

Event	Current Schedule	Defendants' Proposals	Plaintiffs' Proposals
Parties file oppositions to motions in limine	February 14, 2019	July 2, 2019	July 2, 2019
Parties file proposed voir dire questions, full and complete jury instructions, jury verdict form (with special interrogatories, if any are being requested), a list of all exhibits intended to be offered at the trial with statements of the purpose for which the exhibit is offered (premarked by the plaintiff in numerical order and premarked by the defendant in alphabetical order), final bound exhibits (original and two copies), revised 26(a)(3)/Final Pretrial Order materials, a list of all witnesses expected to testify with a brief summary of each witness's testimony and a statement as to whether that witness will testify as an expert, and Final Trial Memoranda.	February 19, 2019	July 12, 2019	July 12, 2019
In-person attorneys' conference in Providence, RI to address whether any issues may be narrowed before trial	February 21, 2019	July 15, 2019	July 15, 2019
Draft of Final Pretrial Order exchanged	February 25, 2019	July 19, 2019	July 19, 2019
Submission of Pretrial Memorandum, which shall contain the following information: 1. (a) Plaintiff will set forth what is expected to be proven in support of the claim; (b) Defendant will set forth what is expected to be proven in defense; 2. A memorandum of supporting law with citations of authorities. This is to include all the law applicable to the case with emphasis on special legal issues, including any and all matters that may be the subject of a motion in limine. All pertinent citations will be fully briefed. 3. A statement as to probable length of trial. Any additional matter which counsel feel will aid the Court in the disposition and/or trial of the action.	February 27, 2019	July 23, 2019	July 23, 2019

Event	Current Schedule	Defendants' Proposals	Plaintiffs' Proposals
Final pretrial conference and hearing on motions in limine[18]	March 6, 2019	July 30, 2019	July 30, 2019
Trial begins	March 11, 2019	August 5, 2019	August 5, 2019

WHEREFORE, the Parties respectfully request that the Court grant this Joint Motion and enter a new interim case management order extending by approximately 150 days the close of fact discovery, and related and subsequent case deadlines.

Dated: October 17, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2017, the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). The foregoing document is also available for viewing and downloading from the ECF system.

/s/ John A. Tarantino