

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

IN RE: PROCESSED EGG PRODUCTS	:	
ANTITRUST LITIGATION	:	
<hr style="border: 0.5px solid black;"/>		
	:	MDL No. 2002
	:	08-md-02002
	:	
THIS DOCUMENT APPLIES TO:	:	
ALL ACTIONS	:	

CASE MANAGEMENT ORDER NO. 19 (ADDITIONAL DISCOVERY PLAN)

AND NOW, this 18th day of May, 2012, upon consideration of the parties’ joint and separate proposals regarding a discovery schedule in this multi-district litigation, including matters discussed during various conferences, and upon consideration of other case management aspects of this litigation, it is hereby **ORDERED** as follows¹:

I. PARTIAL LIFT OF DISCOVERY STAY

A. The stay of discovery as set forth in Case Management Order No. 1 at ¶ 8.B. (Doc. No. 3) is **LIFTED** with respect to oral or written depositions of parties, or non-parties,² and prior restrictions on non-party discovery generally, and class issues expert discovery. Discovery continues to be stayed as to merits expert discovery, except as may be mutually agreed to proceed by and among the interested parties.

II. FACT DISCOVERY

A. Requests for Production of Documents and Document Production

1. Paragraph III.D.10 of Case Management Order No. 18 is **MODIFIED** as follows:

¹ This Order adopts the definitions set forth in Case Management Order No. 18 (Doc. No. 656).

² “Non-party” as used in this Order means any person who, or entity that, is not a party in this litigation and is not currently employed by, or similarly affiliated with, a party in this litigation. The Court is not using the term “third party” to describe such persons or entities in order to avoid any confusion as may arise due to status relating to, for example, Fed. R. Civ. P. 14. This definition is not intended to interfere with the specific provisions of Paragraph C.5. below concerning “Former Employees of Parties.”

Documents that meet either of the following criteria need not be logged in any privilege log: (1) documents relating to the engagement of outside counsel for this litigation, or (2) documents that a party believes in good faith are subject to that party's claim of privilege or work-product protection and that are generated or dated after September 24, 2008. In the event that any party becomes aware of information reasonably suggesting that potentially privileged documents generated after September 24, 2008 may be relevant, the parties shall meet and confer with respect to that issue.

2. Until no later than November 1, 2012, the parties may serve additional document requests pursuant to Fed. R. Civ. P. 34, but only (1) upon written agreement of the interested parties to do so; or (2) with the Court's leave upon good cause shown, *see also* Apr. 20, 2010 Order (Doc. No. 320).

B. Depositions (generally)

1. The parties shall in good faith endeavor to minimize any extant burdens associated with witness depositions, and particularly with respect to non-party witnesses. This shall include minimizing the number of attendees at any given deposition.

C. Depositions (excluding non-party and expert depositions)

1. Collectively, Direct Purchaser Plaintiffs, Indirect Purchaser Plaintiffs and Direct Action Plaintiffs are limited to 640 hours of depositions of Defendants and shall confer in good faith to allocate the designation of deposition witnesses and the allocation of hours between and among them. This limitation shall include Fed. R. Civ. P. 30(b)(6) depositions propounded by any Plaintiff Group. Collectively, Direct Purchaser Plaintiffs, Indirect Purchaser Plaintiffs and Direct Action Plaintiffs are limited to a total of 11 depositions of witnesses from each Defendant Group.

Unless otherwise agreed by the interested parties, each Fed. R. Civ. P. 30(b)(6) deposition notice propounded by Plaintiffs shall count as one deposition, notwithstanding the number of deponents proffered by each Defendant Group in response to the deposition notice.

2. Defendants, collectively, are limited to 640 hours of depositions of the Plaintiffs (including each individual named plaintiff in the Indirect

Purchaser Actions). This limitation shall include Fed. R. Civ. P. 30(b)(6) depositions propounded by any Defendant.

Defendants, collectively, are limited to a total of 7 depositions of witnesses from each corporate Plaintiff.

Unless otherwise agreed by the interested parties, each Fed. R. Civ. P. 30(b)(6) deposition notice propounded by Defendants shall count as one deposition, notwithstanding the number of deponents proffered by each corporate Plaintiff in response to the deposition notice.

3. Dual Merits and Rule 30(b)(6) Deponents

Notices for Rule 30(b)(6) depositions shall be issued, and designations of representatives made, prior to the confirmation of deposition schedules in order to facilitate the efficient and economical appearance of deponents who are appearing in their individual capacity and as a Rule 30(b)(6) designee.

Accordingly, except by agreement or leave of Court, no individual shall be deposed on separate occasions. Rule 30(b)(6) depositions and individual depositions shall be coordinated so that a deposition of the representative in his or her individual capacity occurs immediately before or after (*i.e.*, on the same day or, as may be sensible for the convenience of the deponent and counsel, on the next day) the 30(b)(6) deposition for which the person has been designated.

In the event a party delays or alters a Rule 30(b)(6) designation, the Court will entertain an application for relief from this provision.

4. For good cause shown, a party may obtain leave of Court to conduct depositions that exceed the deposition limitations set forth herein. No witness shall be deposed for more than seven (7) hours, except that by agreement of the parties or by leave of Court, a witness can be questioned for more than seven (7) hours as long as the deposition does not extend beyond seven (7) hours on any single day.

5. Former Employees of Parties

- a. In the case of former employees of Defendants or Plaintiffs sought for deposition, counsel for the noticing party shall, in the first instance, be permitted to serve a notice of deposition via electronic means upon counsel for the Plaintiff or Defendant that employed the prospective deponent (“Employer Party”).

Counsel for the Employer Party shall accept service on a provisional basis, and shall make a good faith effort to contact the former employee and to assist in arranging for the requested deposition.

b. If the prospective deponent does not wish to be represented by counsel for the Employer Party, service must be effected through appropriate means pursuant to Fed. R. Civ. P. 45. Counsel for the Employer Party shall provide the noticing party's counsel with the last available contact information of the deponent so that appropriate service may be obtained.

c. If a former employee is represented by counsel to a Party, then the deposition of that former employee counts toward the deposing Group's deposition limit.

6. The last day on which any party may serve a notice of deposition is 30 days prior to the close of fact discovery.

D. Non-Party Discovery (excluding expert discovery)

1. The party serving a subpoena directed to a non-party shall promptly serve any objections it receives upon all parties. Additionally, the party serving the subpoena shall notify all other parties (i) if the subpoenaed party makes documents available for inspection and copying or (ii) if the subpoenaed party otherwise produces documents in response to the subpoena. If any Plaintiff or Defendant in the litigation wishes to copy documents so produced, the copies shall be produced at that Plaintiff's or Defendant's expense.

2. Plaintiffs (as a Group) and Defendants (as a Group) each may take 42 depositions of non-party witnesses.

E. Requests for Supplemental Discovery

If, after having some experience in conducting discovery under this Order, any Party believes that the discovery rights afforded it are inadequate in some material or otherwise substantive manner, and if those concerns cannot be addressed by agreement of the parties, then, for good cause shown, that Party may seek leave of Court for additional discovery.

III. CLASS CERTIFICATION AND CLASS CERTIFICATION EXPERT DISCOVERY (Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs only)

A. Motions for Class Certification (Generally)

At minimum, a motion for class certification must include the following: identification of the class(es) and any sub-class(es) for which certification is sought; detail the facts that show satisfaction of the requirements of Fed. R. Civ. P. 23(a) and (b), including the identity of named plaintiff(s) to represent each class and subclass, the qualifications of counsel for each class and subclass, and the rate, percentage, or other formula for calculating the amount of attorneys fees counsel expect to request for representing the proposed class(es); present a plan for managing the litigation for trial; describe the forms, methods, and financing to be used to give notice to class members; and identification, including reports and affidavits, of any experts to be used to support class certification.

Any response in opposition to class certification must specify with particularity the factual and legal basis for objection and identify any facts on which an evidentiary dispute exists. An objecting party must identify and include reports and affidavits of any experts to be used in opposition to class certification.

The Court directs all counsel to review the Court's General Pretrial and Trial Policies and Procedures on the Court's website³ in order to be familiar with the Court's requirements with respect to motion practice. To that end, the Court directs the parties that, in both their submissions and responses, controlling legal opinions rendered by the United States Supreme Court and the Court of Appeals for the Third Circuit must be cited and discussed, whenever possible, to defend arguments in support of and/or in opposition to the motion for class certification.

B. Direct Purchaser Plaintiffs

1. Direct Purchaser Plaintiffs shall file and serve their motion for class certification and their expert reports in support of class certification no later than October 18, 2013.
2. Direct Purchaser Plaintiffs shall make their class certification experts available for depositions October 28-November 27, 2013.
3. Defendants shall file and serve Defendants' responses to the Direct Purchaser Plaintiffs' motion for class certification, expert reports on class

³ <http://www.paed.uscourts.gov/documents/procedures/prapol2.pdf>

certification issues, and any challenge to Plaintiffs' class certification experts no later than January 10, 2014.

4. Defendants shall make their class certification experts available for depositions from January 17-February 14, 2014.
5. Direct Purchaser Plaintiffs shall file their reply briefs in support of class certification, reply expert reports on class certification issues, and any response to any challenge to their class certification experts no later than March 14, 2014.
6. Defendants shall file their reply briefs in support of any challenge to Plaintiffs' class certification experts no later than April 11, 2014.
7. The Court shall hold a class certification hearing at a time convenient for the Court after seeking scheduling information from participating counsel.

C. Indirect Purchaser Plaintiffs

1. Indirect Purchaser Plaintiffs shall file and serve their motion for class certification and their expert reports in support of class certification no later than 60 days after the conclusion of the class certification hearing in the Direct Purchasers' case.
2. The Indirect Purchaser Plaintiffs shall make their class certification experts available for depositions for 30 days after filing their class certification motion.
3. Defendants shall file and serve Defendants' responses and expert reports on class certification 75 days after Indirect Purchaser Plaintiffs' motion for class certification.
4. Defendants shall make their class certification experts available for depositions for 30 days after filing their opposition to the Indirect Purchasers' motion for class certification.
5. Indirect Purchaser Plaintiffs shall file their reply briefs, and reply expert reports on class certification issues, no later than 45 days after Defendants' response.
6. The Court shall hold a class certification hearing at a time convenient for the Court after seeking scheduling information from participating counsel.

D. Class Certification Experts

Absent court order or an agreement of the parties, each expert may be deposed once for each expert report, rebuttal report, supplement, or correction that he or she issues. If an expert is deposed during the class certification phase and is also designated as a testifying expert or his/her work is relied upon by a testifying expert during a later phase of the case, then the expert may be deposed again. Absent court order or agreement of the parties, each expert deposition shall be limited to seven hours on the record.

IV. MERITS EXPERT DISCOVERY, DISPOSITIVE MOTIONS, AND FINAL PRE-TRIAL DEADLINES

A. Joint Proposed Schedule

All parties shall meet and confer and, by no later than May 1, 2013, submit a joint proposed schedule to the Court that governs merits expert discovery, final deadlines for dispositive and *Daubert* motions, a remand date as to those cases transferred for coordination in this MDL, and final pre-trial deadlines as to those cases filed before the Court. The Court's expectation is that merits expert discovery will **not** be deferred pending rulings on class certification.

B. Dispositive Motions

As discussed during the May 7, 2012 status conference, the Court will entertain dispositive motions, partial or otherwise, filed at any time during the course of litigation up until the final deadline to file such motions so long as the Court and parties have advance notice by letter of a party's intent to do so. The absence of a final deadline to file dispositive motions shall not preclude a party from filing a dispositive motion. Unless the parties stipulate otherwise with the Court's approval or the Court orders otherwise for good cause shown, a response to a Fed. R. Civ. P. 56 motion shall be due twenty-one (21) days after service.

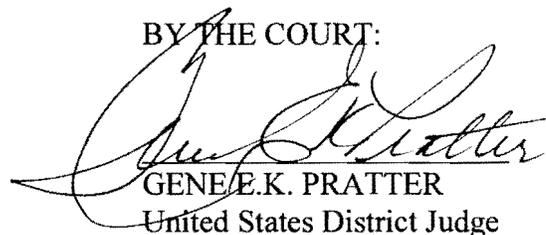
The Court directs all counsel to review the Court's General Pretrial and Trial Policies and Procedures on the Court's website in order to be familiar with the Court's requirements with respect to motion practice. To that end, the Court directs the parties that, in both their submissions and responses, controlling legal opinions rendered by the United States Supreme Court and the Court of Appeals for the Third Circuit must be cited and discussed, whenever possible, to defend arguments in support of and/or in opposition to the motion.

V. STATEMENTS OF LAW

By September 14, 2012, the parties may jointly or separately submit to the Court one bound hard-copy and one electronic copy of a “Statement of Law” which discusses—for purposes of specifying the elements of the claims and defenses and appropriate factors and considerations—the following areas of law as they might specifically apply to this litigation and the specific jurisdictions at issue: (1) the Capper-Volstead and agricultural cooperative immunity defenses on a federal and state-by-state basis; (2) standard by which to assess the reasonableness of standard-setting conduct as a restraint of trade on a federal and state-by-state basis⁴; (3) state consumer protection claims; (4) state unjust enrichment claims; (5) state fraudulent concealment (or equitable tolling) doctrines. These discussions of law should be focused on the appropriate statutory provisions and the appropriate precedent of the United States Supreme Court and the Court of Appeals for the Third Circuit or controlling authority of a given state jurisdiction. The discussion need not be limited to case authority and may include, as necessary, by way of example, appropriate reference to treatises, secondary authorities, and legislative history. By this solicitation of briefing, the Court is not seeking generalized academic treatises, but rather focused expositions on legal issues directly germane to this litigation.

It is so **ORDERED**.

BY THE COURT:



GENE E.K. PRATTER
United States District Judge

⁴ See also Defendants’ Liaison Counsel’s May 11, 2012 Letter.