

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE: BLUE CROSS BLUE SHIELD	}	Master File No.: 2:13-CV-20000-RDP
	}	
ANTITRUST LITIGATION	}	This document relates to all cases.
(MDL NO.: 2406)	}	

FIFTH AMENDED SCHEDULING ORDER

This matter is before the court on the parties' Joint Motion to Amend Scheduling Order. (Doc. # 2439). The Joint Motion (Doc. # 2439) is **GRANTED**. It is **ORDERED** as follows:

1. **Class Certification Discovery:**

- a. Class certification expert discovery is to be commenced in time to allow the parties to meet all deadlines set forth below.
- b. All reports from retained experts on class certification under Fed. R. Civ. P. 26(a)(2) are:
 - Due from Plaintiffs **upon filing of any class certification motion;**
 - Due from Defendants **upon filing of any opposition** to class certification motion;
 - Rebuttal due from Plaintiffs **upon filing of any reply** to class certification motion.
 - The parties **SHALL** complete the depositions of any expert on class certification issues **within thirty (30) days of receipt of the expert's report** provided that any deposition regarding a rebuttal report **SHALL** be taken **within eighteen (18) days of service of the rebuttal report.**

2. **Class Certification Motions:** Motions for class certification and materials in support **SHALL** be filed **on or before April 15, 2019**.¹

- Opposition briefs **SHALL** be due **on or before July 15, 2019**.
- Reply briefs **SHALL** be due **on or before August 30, 2019**.

3. Any **Daubert motions** seeking to exclude any class certification expert witness **SHALL** be filed **within seventy-five days of disclosure of the expert's report**.

- Opposition briefs **SHALL** be filed **within forty-five days of any Daubert Motion**.
- Reply briefs **SHALL** be filed **within forty-five days of any opposition brief**.

4. **Damages and Merits Expert Reports and Discovery** are:

- Due from Plaintiffs **on or before May 15, 2019**.
- Due from Defendants **on or before July 30, 2019**.
- Rebuttals due from Plaintiffs **on or before August 30, 2019**.
- The parties **SHALL** complete the deposition of any expert on merits and damages issues **within thirty (30) days of that expert's report** provided that any deposition regarding a rebuttal report **SHALL** be taken **within eighteen (18) days of service of the rebuttal report**.

5. **Dispositive Motions:** All potentially dispositive motions on issues of liability which are not critically dependent on the outcome of class certification, materials in support, and

¹ In their class certification motions and briefing, the parties **SHALL** address the propriety of a Rule 23(b)(2) injunctive class in this litigation (*see, e.g., State of Ala. v. Blue Bird Body Co.*, 573 F.2d 309, 310 (5th Cir. 1978) and *Klay v. Humana, Inc.*, 382 F.3d 1241 (11th Cir. 2004)), and the effects of certification of such a class, including claim preclusion issues (*see, e.g., In re Processed Egg Prod. Antitrust Litig.*, 312 F.R.D. 124, 165 (E.D. Pa. 2015); *In re Vitamin C Antitrust Litig.*, 279 F.R.D. 90, 114-15 (E.D.N.Y. 2012); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 299 F.R.D. 555, 578 (E.D. Tenn. 2014)). The Provider Plaintiffs and Defendants, in particular, **SHALL** also address the propriety and advisability of the use of subclasses.


supporting expert reports under Fed. R. Civ. P. 26(a)(2) are **due on or before September 16, 2019**. The parties will meet and confer as to an appropriate briefing schedule after the filing of such a Motion or Motions, and present a schedule or competing proposals to the court **within 7 days after the filing of any potentially dispositive motion**.

6. After issuing a decision on class certification, the court will address dispositive motions that are dependent on the outcome of class certification. **On or before June 1, 2019**, the parties **SHALL** meet and confer as to what dispositive issues may be dependent on the outcome of class certification. **On or before June 14, 2019**, the parties **SHALL** file a joint report identifying those dispositive motions that a party contends is dependent on the outcome of class certification.

7. **Personal Jurisdiction.** On or before June 7, 2015, the parties **SHALL** present a joint report addressing an appropriate plan for dealing with challenges to this court's (or a transferor court's) in personam jurisdiction over the parties in this case.

8. **Pretrial Conference and Trial:** As necessary, the court will set a pretrial conference after the ruling on class certification and/or dispositive motions.

DONE and ORDERED this May 23, 2019.



R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE