

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

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**IN RE: POOL PRODUCTS  
DISTRIBUTION MARKET ANTITRUST  
LITIGATION**

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**MDL No. 2328  
SECTION: R(2)**

**This Document Relates To: All Actions**

**Judge Vance  
Mag. Judge Wilkinson**

**JOINT REPORT OF ALL PARTIES PURSUANT TO PTO No. 5  
AND MINUTE ORDER ENTERED OCTOBER 5, 2012**

Plaintiffs and Defendants submit the following Joint Report Pursuant to Pretrial Order #5 (Dkt. 93) and Minute Order entered October 5, 2012 (Dkt. 166) to provide (i) a list of information/documents they have agreed to produce, and (ii) a list of the categories or types of information/documents to which they object to production, together with the reasons for their objections. The categories created by the parties are attached to this Joint Report.

**I. Plaintiffs' Position With Respect to Documents and Information**

Plaintiffs have grouped together overlapping requests from the lists that Defendants propounded for ease of discussion. Similarly, our objections apply to multiple requests by Defendants.

A. Plaintiffs do not object to producing non-privileged documents and information in the following categories:

1. Information relating to Plaintiffs' purchases of, and terms of purchase for, Pool Products. (See PoolCorp Defendants' Category Nos. 1, 10, 20, 21,

24, 27, 29; Manufacturer Defendants' Interrogatory Nos. 1, 7, 13, 14 and Requests Nos. 3, 9, 15, 17-19, 22).

2. Information relating to sources or suppliers of Pool Products and locations for Plaintiffs' purchases of Pool Products. (See PoolCorp Defendants' Category Nos. 13-15, 22, 29, 31; Manufacturer Defendants' Interrogatory Nos. 5, 6 and Requests Nos. 6, 7, 15).
3. Information relating to the Plaintiffs' locations and organizational structure. (See PoolCorp Defendants' Category Nos. 6, 7, 11; Manufacturer Defendants' Request No. 2).
4. Information relating to buying groups, including Carecraft, Aquatech, IDN, or WINDO. (See PoolCorp Defendants' Category No. 19; Manufacturer Defendants' Interrogatory No. 9 and Request No. 4).
5. Information relating to trade association activities for Pool Products assuming Defendants reciprocate. (See PoolCorp Defendants' Category No. 23; Manufacturer Defendants' Request No. 16).
6. Information related to discount or rebate programs for Pool Products. (See PoolCorp Defendants' Category No. 28; Manufacturer Defendants' Interrogatory No. 1).
7. Information detailing communications between Plaintiffs and Defendants. (See Manufacturer Defendants' Request No. 8).
8. Information relating to any discontinuance of purchase relationships between Plaintiffs and any seller of Pool Products. (See Manufacturer Defendants' Request No. 23).

9. Information concerning any government or other investigations relating to the matters in the Complaint. (See PoolCorp Defendants' Category No. 33; Manufacturer Defendants' Request Nos. 26, 27).

B. Plaintiffs have offered to produce certain non-privileged documents and information subject to the specified terms below:

1. Document Categories:
  - (a) Business plans, projections, market studies, analyses and the like relating to the Pool Products market.
  - (b) Documents referring to any of the anticompetitive conduct alleged in the Complaint by any one or more of the defendants.
  - (c) Advertising that Plaintiffs created or placed using, in whole or in part, money, materials, programs or services that any Defendant made available for that purpose.
2. These categories have been offered under these express terms:
  - (a) No privileges are waived thereby.
  - (b) While Plaintiffs are willing to produce these materials even though they might constitute "downstream" information (the objection to which is described below), both sides' positions on that issue will be preserved, and Defendants will not use the production of these materials or Plaintiffs' willingness to produce these materials in any application or proceeding relating to the resolution of the disagreement regarding the discovery of downstream information.
  - (c) Plaintiffs will not make an independent search for documents in B.1.(b)

above, but will produce responsive documents that are identified in the searches for documents to other requests to which Plaintiffs have not objected.

C. Plaintiffs Have the Following Specific Objections Relating to Documents and Information.

1. Plaintiffs object to providing discovery of “downstream” documents and financial information.

Defendants seek extensive discovery concerning Plaintiffs’ sales of Pool Products to Plaintiffs’ “downstream” customers, including, for example, for each sale: the SKU, manufacturer, “ship to” address, “bill to” address, units purchased, gross price, freight, rebates and discounts, terms, and net price (PoolCorp. Request No.3; Manufacturer Defendants’ Interrogatory No. 4 and Requests Nos. 20-21). Defendants also seek discovery of each Plaintiff’s financial information, including profits and losses, balance sheets, lines of credit, margins and the like (PoolCorp. Request Nos. 4-6; Manufacturer Defendants’ Interrogatory Nos. 22-23 and Requests Nos. 10, 13).

The recognized prohibition against discovery of downstream information derives from the Supreme Court’s decisions in *Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 392 U.S. 481 (1968), and *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), which among other things prohibit the assertion of a “pass-on” defense. Following this rationale, Courts around the country have denied discovery of downstream and financial information from plaintiffs in antitrust cases. This is true even when defendants claim (as they do in this case) that they are not asserting a “pass-on” defense but need this discovery for other purposes, such as to obtain information concerning the market, or as relevant to class certification, or because there is a case brought by indirect purchasers. *See, e.g., In re Air Cargo Shipping Services Antitrust Litigation*, No. 06-MD-1775,

2010 WL 4916723 (E.D.N.Y. Nov. 24, 2010) [rejected downstream discovery despite defendants' argument that it is relevant to class certification issues; distinguished *Valley Drug Co. v. Geneva Pharmaceuticals, Inc.*, 350 F.3d 1181 (11<sup>th</sup> Cir. 2003) and *In re Urethane Antitrust Litigation*, 237 F.R.D. 454 (D. Kan. 2006)]; *In re Aspartame Antitrust Litigation*, No. 2:06-cv-01732-LDD, 2008 WL 2275528 (E.D. Pa. April 8, 2008) [rejected arguments that downstream discovery was relevant to ascertaining the market, fungibility and substitutability of sweeteners, and Plaintiffs' buying power, market position and demand elasticity; presence of indirect purchasers not pertinent]; *In re K-Dur Antitrust Litigation*, 01-1652 (J.A.G.), 2007 WL 5302308 (D.N.J. Jan. 2, 2007) [rejected downstream discovery in a Section 2 case; *Valley Drug* not applicable; presence of indirects not pertinent].

Courts have also denied attempts to obtain financial information from Plaintiffs, including information concerning their profits and losses, margins, and the like, as irrelevant where the damages claimed are for overcharges and not for lost profits, as is the case here. *See, e.g., In re Automotive Refinishing Paint Antitrust Litigation*, No. MDL 1426, 2006 WL 1479819 (E.D.Pa. May 26, 2006); *In re Pressure Sensitive Labelstock Antitrust Litigation*, 226 F.R.D. 492 (E.D.Pa. 2005); *Vitamins, supra*, 198 F.R.D. 296.

2. Plaintiffs object to the shortened discovery period that Defendants seek to adopt.

Plaintiffs have requested documents and electronically stored information ("ESI") covering the periods:

January 1, 1999 to the present: Non-transactional documents, such as emails, memos and correspondence,

January 1, 1995 to the present: Transactional data, such as purchase and sale information and cost data.

Plaintiffs' January 1, 1999 start date for non-transactional documents is based on PoolCorp's adoption of its Preferred Vendor Program, a cornerstone of the conspiracy, in that year. The January 1, 1995 start date for transactional discovery is to allow expert discovery of a benchmark period.

By contrast, Defendants seek to limit the time period so that it would begin on January 1, 2003 – the date used in their productions to the FTC – and generally end on November 21, 2011 – the date that the FTC announced its complaint against PoolCorp. PoolCorp has offered December 31, 2011, another 40 days, as the end date for transactional data. Plaintiffs, however, are not bound by the scope of the FTC's investigation. *See, e.g., Sam Fox Pub. Co. v. United States*, 366 U.S. 683, 690 (1961) [“just as the Government is not bound by private antitrust litigation to which it is a stranger, so private parties, similarly situated, are not bound by government litigation”]; *In re High Fructose Corn Syrup Antitrust Litigation*, 295 F.3d 651, 664-65 (7<sup>th</sup> Cir. 2002) [rejecting defendants' argument that “because the government has not moved against the alleged HFCS price-fixing conspiracy, there must not have been one. The Justice Department has limited resources....”]. Moreover, review of Defendants' FTC production shows that roughly 80% or more of the documents produced, the level varies by Defendant, are dated 2007 or later, leaving the period from 2003-06 barely covered.

Courts regularly permit discovery to cover periods both before and after the alleged conspiracy or monopolization period. The beginning date for the Class Period (here, August 1, 2002) is not itself determinative. *See, e.g., New Park Entm't LLC v. Elec. Factory Concerts, Inc.*, 2000 WL 62315, at \*2-3 (E.D. Pa. 2000) [directing discovery that included the period seven years prior to plaintiff's entry into the market in a case alleging violations of Sections 1 and 2]. The same is true for discovery of transactional data which Plaintiffs' economic expert will need

to examine a possible benchmark period before and after the violation as the basis to analyze the impact of the violation and the overcharge damages sustained. *See, e.g., In re Linerboard Antitrust Litig.*, 497 F. Supp. 2d 666, 683-84 (E.D. Pa. Nov. 19, 2007) [to show impact, the expert analyzed a benchmark period that included data before and after the alleged conspiracy period]; *In re Folding Carton Antitrust Litig.*, 83 F.R.D. 251, 255 (N.D. Ill. 1978) [directing discovery of economic data covering several years after the end of the conspiracy charged by the DOJ].

3. Plaintiffs object to the Manufacturer and Pool Defendants' interrogatories.

Plaintiffs understood that the Court, in directing the parties to exchange “plain English” lists of categories of discovery to be sought, intended an informal process by which the parties were to begin by discussing what each side believed would be needed to prove or defend the claims in this case. May 30, 2012 Conference Tr. at 15, ll. 7-10 (the parties should “sit down and come up with a list of what information, types of information you need to prove your case in plain English, outside of the rubric of formal requests and that you serve those or you send them to each other.”). Once the lists were exchanged, the parties were to meet and confer, followed by a Court appearance, where the Court would resolve outstanding “big picture calls.” *Id.* at 16, l. 3. Only after that, would more formal discovery requests be served. *Id.* at 16, ll. 8-16.

However, instead of the “realistic lists” called for by PTO No. 5, at 5, and as contemplated by the Court, the Manufacturer Defendants propounded detailed discovery requests and interrogatories. Specifically, the Manufacturer Defendants' 23 interrogatories, several of which include numerous subparts, seek information at a level of detail that would be extraordinarily burdensome to respond to in a narrative format, and which would be of marginal use, if any. The Pool Defendants also prematurely propounded interrogatories and are insisting

that Plaintiffs respond to them now. Accordingly, Plaintiffs have objected to both the Manufacturer and Pool Defendants' resort to these interrogatories.

To the extent that the information sought is properly discoverable, it should be sought through document production and by depositions of Plaintiffs. *See* Fed. R. Civ. P. 26(b)(2)(C)(i)-(iii) (Authorizing the court to limit the means by which discovery is pursued, and to take into account the burden/benefit trade-off.). Plaintiffs also object to the broad contention and damages interrogatories that the Manufacturer Defendants have issued. *See, e.g.*, Manufacturer Defendants' Interrogatory Nos. 3, 14-20. The need to respond to such interrogatories at this early stage of the litigation – prior to discovery and expert analysis – would be overly burdensome in relation to the possible value of answers that may be generated. *See, In re Ebay Seller Antitrust Litig.*, No. C 07-1882 JF, 2008 WL 5212170, at \*2 (N.D. Cal. Dec. 11, 2008) [“the tentative nature of any responses generated at this stage would be of questionable value to the goal of efficiently advancing the litigation”].

4. Plaintiffs object to providing addresses for confidential sources.

PTO No. 12 (Dkt. No. 147) directed Plaintiffs to “*identify* individuals likely to have discoverable information that they may use to support their claims.” (emphasis added). On September 5, 2012, Plaintiffs provided a Supplemental Disclosure of Witnesses, which identified 25 confidential sources. Defendants assert that Plaintiffs should also provide their addresses. The Order was clear that the parties were only to provide *identities* of these confidential sources. This limited disclosure accords with the Fifth Circuit's express recognition of the need to keep confidential sources confidential. *See ABC Arbitrage Plaintiffs' Group v. Tchuruk*, 291 F. 3d 336, 352-353 (5<sup>th</sup> Cir. 2002) [“[i]mposing a general requirement of disclosure of confidential

sources serves no legitimate pleading purpose while it could deter informants from providing critical information to investigators in meritorious cases or invite retaliation against them”].

5. Plaintiffs object to removing the “Highly Confidential” designation from their September 5, 2012 Supplemental Disclosure of Witnesses.

In addition to the addresses of Plaintiffs’ confidential sources, Defendants want Plaintiffs to remove the “Highly Confidential” designation affixed to the disclosures. Pursuant to the Revised Stipulated Protective Order (Dkt. No. 139), items that are designated “Highly Confidential” may only be shared with the Court, Court personnel, outside counsel for any party and their staff, experts, litigation support personnel and any person who is an author or a recipient of the material at issue. It is noteworthy that it was the Manufacturing Defendants who insisted on revising the Stipulated Protective Order, to reduce the circumstances in which party-personnel for either side could have access to “Highly Confidential” Material. The result is to preclude sensitive information from being disclosed not only to Plaintiffs, but to Defendants as well. *See* Dkt. No. 109, ¶¶ 21(b) and (c), deleted in the Revised Stipulated Protective Order, Dkt. No. 139.

Defendants have not provided any compelling reason why the names of these confidential sources, some of whom are customers of the Manufacturer Defendants, should be disseminated beyond the persons described in ¶21 of the Revised Stipulated Protective Order. These confidential sources are whistleblowers who spoke to Plaintiffs under the expectation that all appropriate steps would be taken to protect their identity so that they would not face potential retaliation and harassment from the Defendants. Plaintiffs’ position on this issue is consistent with the Fifth Circuit’s holding in *ABC Arbitrage Plaintiffs’ Group v. Tchuruk*, 291 F. 3d 336, 352-353 (5<sup>th</sup> Cir. 2002).

6. Plaintiffs Oppose Defendants' Objection to Producing Diaries, Calendars, Phone Records and Expense Reports.

These document and information are all easily identifiable and should not be burdensome to produce unless Defendants insist on unnecessary redactions. Plaintiffs propose that the Court direct production of these documents in an unredacted form, with a Highly Confidential Designation without prejudice to Plaintiffs application to reducing that designation as to specific records in the event Plaintiffs believe there is a basis for such relief. Phone records may need to be addressed separately. The Court should direct Defendants to provide Plaintiffs with a description of the types of records maintained or received, and to provide samples, so that the parties can further explore the feasibility of production.

**II. Defendants' Position With Respect to Documents and Information**

**A. Information Defendants Agree to Produce**

**1. PoolCorp**

Subject to the temporal issues and one request discussed below and any claims of privilege, PoolCorp does not object to the vast majority of the DPPs' requests, to the extent that PoolCorp understands what documents the requests are seeking. The same is true with respect to the IPPs' requests. Indeed, PoolCorp has already produced non-privileged documents responsive to these requests by way of the FTC production.

**2. The Manufacturer Defendants**

**a. In Response to the Direct Purchaser Plaintiffs' Requests**

The Manufacturer Defendants consider most of the informal discovery requests issued by the Direct Purchaser Plaintiffs to be duplicative of the Subpoenas and/or Civil Investigative Demands previously issued by the FTC to each of the Manufacturer Defendants. Accordingly, any responsive materials from the time period covered by the FTC requests should already have

been collected from the custodians and for the time periods the FTC identified as relevant. Copies of the Manufacturer Defendants' submissions to the FTC have been provided to the Direct Purchaser Plaintiffs.

With respect to these duplicative requests, the Manufacturer Defendants have agreed to produce any additional responsive, non-privileged materials that exist for the time period after the date of the Manufacturer Defendants' FTC responses but before November 21, 2011 (*i.e.*, the effective date of the FTC Consent Decree referenced in the Amended Complaint), to the extent that such documents are in the possession of the custodians identified by the Manufacturer Defendants in their respective Mandatory and Initial Disclosures.

In addition, the Manufacturer Defendants also have agreed to produce their respective antitrust compliance materials as well as any communications with each plaintiff for the entire time period covered by the Manufacturer Defendants' FTC responses through November 21, 2011, to the extent they are in the possession of the custodians identified by the Manufacturer Defendants in their respective Mandatory and Initial Disclosures.

**b. In Response to the Indirect Purchaser Plaintiffs' Requests**

The Manufacturer Defendants likewise consider many of the Indirect Purchaser Plaintiffs' requests to be duplicative of the Subpoenas and/or Civil Investigative Demands they each received from the FTC. The Manufacturer Defendants will provide the materials submitted to FTC and any additional responsive, non-privileged materials that exist after the date of the Manufacturer Defendants' FTC responses but before November 21, 2011 to the extent that such documents are in the possession of the custodians identified by the Manufacturer Defendants in their respective Mandatory and Initial Disclosures.

In addition, the Manufacturer Defendants also agree to produce warranty information on Pool Products for the time period covered by the Manufacturer Defendants' FTC responses through November 21, 2011, to the extent that responsive records exist and to the extent that such information is readily extractable from the Manufacturer Defendants' respective electronic databases. The Manufacturer Defendants also have agreed to produce correspondence, memos, and e-mails to and from consumers in Arizona, California, Florida, and Missouri regarding Pool Products to the extent they are in the possession of the custodians identified by the Manufacturer Defendants in their respective Mandatory and Initial Disclosures for the time period covered by the Manufacturer Defendants' FTC responses through November 21, 2011.

## **B. Defendants' Objections and Summary of Disputes**

### **1. PoolCorp**

#### **a. General Objections to the Direct Purchaser Plaintiffs' Requests**

With respect to the DPPs' requests, there are two objections as to temporal scope. The first is the DPPs' requested temporal scope for documents (business records). PoolCorp objects to the DPPs' proposed scope of 1999 to the present. For documents already produced to the FTC, the temporal period was the subject of agreement between PoolCorp and the FTC. To the extent documents collected go back to a period prior to that agreed upon temporal period, all of the documents not produced to the FTC would need to be reviewed again, even though most of them were non-responsive to any request. That task would be onerous and likely would not provide the plaintiffs with much additional or useful information.

With respect to the DPPs' request to go forward to "the present," the DPPs have not clarified precisely what that means for ordinary course documents. In any event, PoolCorp would have to undertake the burden of searching for and collecting documents after mid-2010,

when documents were collected for the FTC subpoena. These documents would have little or no probative value with respect to the claims or defense in this case, and thus the burden of collecting them outweighs any benefit to the DPPs. PoolCorp proposes to go up to the date of the FTC collection.

The DPPs also request transaction data from 1995 to “the present.” PoolCorp simply has no transaction data prior to the period already produced to the FTC (2005 or 2006 for most data), thus there is no cause for dispute with respect to the period prior to that time. Through the meet-and-confer process, Defendants asked the DPPs to define “the present.” The DPPs are requesting information through September of 2012. PoolCorp is willing to produce transactional data through December 31, 2011.

**b. Specific Objections to Direct Purchaser Plaintiffs’ Requests**

Request #4 seeks, among other things, expense reports and phone records. PoolCorp objects to these requests, as the burden of gathering these materials far exceeds the probative value of any potentially admissible evidence that the DPPs could obtain. Phone records are not available or reasonably accessible.

**c. General Objections to the Indirect Purchaser Plaintiffs’ Requests**

Although slightly narrower than the DPPs’ temporal period, the IPPs’ beginning date still suffers from the same problems as the DPPs’, as discussed above. The ending date calls for documents and data that have not yet been created, and the IPPs have not articulated a basis for going past the FTC production date.

**d. Specific Objections to the Indirect Purchaser Plaintiffs’ Requests**

Like the DPPs, the IPPs have lodged many requests that overlap with documents already produced by PoolCorp. Request #2 seeks homeowner warranty information, which PoolCorp

does not maintain in any comprehensive way and to the extent there is any, is much more easily obtained from others who are involved in the warranty process for products. Request #9 does not define “National Brands,” so PoolCorp does not know how to respond that Request and whether it is overbroad and unduly burdensome in scope. Private label products are also not part of the IPPs’ claims in this case, so it is unclear why they are entitled to discovery about them.

## **2. Manufacturer Defendants**

### **a. General Objections to the Direct Purchaser Plaintiffs’ Requests**

The Manufacturer Defendants object to the Direct Purchaser Plaintiffs’ request that they produce documents back to 1999 and transactional data back to 1995, several years prior to the beginning of the “Class Period” alleged in the Amended Complaint and much earlier than the time period provided in the Subpoenas and Civil Investigative Demands previously issued by the FTC. Requiring the Manufacturer Defendants to produce materials from such earlier time periods would be unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence.

The Manufacturer Defendants also object to the production of data and documents generated after November 21, 2011—the effective date of the FTC Consent Decree referenced in the Amended Complaint.

Further, the Manufacturer Defendants object to providing any additional documents or information for the time period covered by the FTC Subpoenas and Civil Investigative Demands other than the responses that were provided to the FTC. Copies of the Manufacturer Defendants’ FTC responses have been provided to the Direct Purchaser Plaintiffs. Producing additional documents and information from the time periods covered by the Manufacturer Defendants’ FTC

responses, or for earlier time periods, would be unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence.

**b. Specific Objections to the Direct Purchaser Plaintiffs' Requests**

The Manufacturer Defendants object to the Direct Purchaser Plaintiffs' requests for expense reports, calendars, diaries, and phone logs (including business and cell phone call records) for each individual identified in the Manufacturer Defendants' respective Mandatory and Initial Disclosures on the grounds that the requests are overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Phone records are not available or reasonably accessible.

The Manufacturer Defendants also object to the Direct Purchaser Plaintiffs' requests for supplier reports, earnings call transcripts, trade association materials, monthly inventory data, and communications among the Manufacturer Defendants as irrelevant, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence.

**c. General Objections to the Indirect Purchaser Plaintiffs' Requests**

The Manufacturer Defendants assert the same general objections to the Indirect Purchaser Plaintiffs' requests as they do with respect to the Direct Purchaser Plaintiffs' requests.

**d. Specific Objections to the Indirect Purchaser Plaintiffs' Requests**

The Manufacturer Defendants object to the Indirect Purchaser Plaintiffs' requests for communications with PoolCorp regarding warranties and for Board of Director Reports or manager reports regarding warranties as irrelevant, overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Warranties are irrelevant to the Indirect Purchaser Plaintiffs' claims except for the limited purpose of identifying

potential class members. The Manufacturer Defendants have agreed to provide warranty data from their respective electronic databases to the extent that such information exists and is readily extractable from the electronic databases.

### **C. Response to Specific Objections of the Plaintiffs**

#### **1. Objection to “Downstream” Discovery Requests**

The Plaintiffs’ objection that Defendants are seeking “downstream” discovery is completely misplaced as Defendants are not seeking this information in support of a “pass-on” defense. Indeed, many of the requests to which the Plaintiffs object have nothing to do with the prices that the Plaintiffs charged their customers; rather, they relate to advertising, supply, and demand conditions in the market, among other things.

The information sought by Defendants are instrumental for the record that must be developed for the Court to conduct the “rigorous analysis” required under Rule 23. Beyond Rule 23, these areas are critical to questions at the heart of this case, such as the relevant product and geographic market, the market power (or lack thereof) of Defendants, damages, and fraudulent concealment. This information is certainly at the heart of the Indirect Purchaser Plaintiffs’ claims.

A line of cases recognizes that discovery of facts about plaintiffs’ business, their sales, profits, and the demand of their customers are relevant both to class certification and the merits. *See, e.g., Valley Drug Co. v. Geneva Pharm.*, 350 F. 3d 1181, 1195 (11th Cir. 2003) (reversing certification of a class and remanding for further discovery of “downstream” documents and information); *Air Tech Equip., Ltd. v. Humidity Ventilation Systems, Inc.*, No. 05-CV-77 CPS, 2006 WL3193720, at \*10 (E.D.N.Y. Nov. 2, 2006) (finding that “plaintiffs [were] entitled to

merits discovery ‘downstream data’ consisting of pricing information and codes corresponding to defendants’ customers.’”).

This case involves not only a putative class of direct purchasers that must be certified—an Indirect Purchaser putative class that is "downstream" of the Direct Purchasers—but also monopolization claims that are dependent upon proper definition of the relevant product and geographic market. The questions of the proper market definition here are highly dependent upon the perspective of the downstream purchasers about demand, substitutability, and how far they would travel to purchase the products at issue in this case. All of these considerations make the discovery that Defendants are seeking relevant—indeed, critical—to the adequate development of a factual record here.

Pursuant to this Court’s October 5, 2012 order (Doc. 166), in this Joint Report the Defendants are not fully briefing or addressing all issues and arguments related to the Plaintiffs’ objections on “downstream” discovery but reserve the right to do so and ask that the Court direct briefing on these issues if it is unable to decide the matter on the present record.

#### **b. Objection to Responding to Interrogatories**

The Plaintiffs also object to requests that they consider to be interrogatories on the ground that interrogatories are beyond the scope of Pretrial Order No. 5. Both PoolCorp and the Manufacturer Defendants take the position that Pretrial Order No. 5’s direction that the parties “exchange realistic lists of the types of *information* and documents they need to prove their claims and defenses” directs the parties to exchange interrogatory-type requests as well as document and data requests (emphasis supplied).

### **D. Other Disputes between the Parties**

#### **1. Sufficiency of the Direct Purchaser Plaintiffs’ Initial Mandatory Disclosures**

##### **a. Objections of PoolCorp and the Manufacturer Defendants**

PoolCorp and the Manufacturer Defendants contend that the Direct Purchaser Plaintiffs are required to produce address identifying information for the names listed in their Supplemental Disclosure of Witnesses Pursuant to Pretrial Order No. 12 served on September 5, 2012 (the "DPPs' Supplemental Disclosure of Witnesses") in response to the Court's instructions at the September 4, 2012 telephone conference with the parties. PoolCorp and the Manufacturer Defendants contend that the Court has already instructed the Direct Purchaser Plaintiffs to produce this address identifying information as part of its instruction to "identify the known witnesses" at the September 4, 2012 telephone conference with the parties. The Direct Purchaser Plaintiffs' listing of twenty-five first and last names in their Supplemental Disclosure of Witnesses with no other information does not permit the identification of the listed witnesses. PoolCorp and the Manufacturer Defendants also object to the Direct Purchaser Plaintiffs' position that the identification of names and addresses in the DPPs' Supplemental Disclosure of Witnesses is "highly confidential" under Paragraph 21 of the Revised Stipulated Protective Order entered by the Court on August 3, 2012. The names and address of allegedly knowledgeable witnesses do not fit the Protective Order's description of "highly confidential" information. In addition, the "highly confidential" designation prevents defense counsel from being able to share the names with their clients who, in light of plaintiffs' failure to disclose addresses, may be the only sources available to provide to defense counsel identifications and background information for meaningful discovery. For reference purposes, the DPPs' Supplemental Disclosure of Witnesses is attached as Exhibit B.

Pursuant to this Court's October 5, 2012 order (Doc. 166), Defendants are not fully briefing these issues in this Joint Report, but reserve the right to do so, at the Court's direction.

Dated: October 10, 2012

Respectfully submitted,

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<p><b>Counsel for Defendant Zodiac Pool Systems, Inc.</b></p>	

Aug 23 2012  
06:35PM

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

<b>IN RE: POOL PRODUCTS DISTRIBUTION MARKET ANTITRUST LITIGATION</b>	: : : :	<b>MDL No. 2328 SECTION: R(2) Case No. 2:12md02328-SSV-JCW</b>
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**This Document Relates To: All Actions**

**Judge Vance  
Mag. Judge Wilkinson**

**POOL CORPORATION, SCP DISTRIBUTORS LLC, AND SUPERIOR POOL  
PRODUCTS LLC'S CATEGORIES OF DOCUMENTS AND INFORMATION FOR  
DISCOVERY PURSUANT TO PRETRIAL ORDER NO. 5**

Pursuant to the Court's Pre-Trial Order Number 5, entered on June 4, 2012, Defendants Pool Corporation, SCP Distributors LLC and Superior Pool Products LLC ("Pool Corp.") identify the following topics upon which they intend to seek documents and information from the parties and/or non-parties to this litigation. As discovery and its investigation proceeds, Pool Corp. may identify additional topics for discovery and specifically reserves the right to identify new areas of inquiry based upon information learned during the course of discovery.

**Key Definitions**

1. Unless otherwise specified, the relevant time period is January 1, 2002 until December 31, 2012.
2. "Vendor" refers to any entity from which direct purchasers procured Pool Products.
3. Unless otherwise specified, all terms are defined herein as they are defined in the Direct Purchaser Plaintiffs' Consolidated Class Action Complaint and the Indirect Purchasers' Consolidated Class Action Complaint ("Complaint"). To the extent the same terms are defined differently, they are used herein with reference to the Direct Purchaser's Complaint.

**Direct Purchasers**

- All data and documents showing purchases from any source, of Pool Products from January 1, 2000 to the present, showing:
  - Date of purchase
  - Each SKU
  - Vendor and location of vendor
  - Manufacturer
  - The "ship to" address or location
  - The "bill to" address or location

- Total units purchased
  - Unit price
  - Total gross price
  - Total freight charges, if applicable
  - Any rebates or discounts off the invoice prices
  - The terms of any rebates or discounts received on purchases
  - Total net price.
- All data and documents showing sales of Pool Products to your customers from January 1, 2000 to the present, including:
  - Each SKU
  - Manufacturer
  - Vendor and location of vendor
  - The “ship to” address or location
  - The “bill to” address or location
  - Total units purchased
  - Total gross price
  - Total freight charges, if applicable
  - Any rebates or discounts off the invoice price
  - The terms of any rebates or discounts received on purchases
  - Total net price.
- All documents showing, reflecting, referring or relating to your profits and losses from January 1, 2002 to the present.
- All analyses or summaries of your financial performance, including your ability to obtain and utilize lines of credit.
- All documents showing, reflecting referring or relating to your profit margins from January 1, 2002 to the present.
- If organized as a corporation, your articles of incorporation and your bylaws. If organized as a partnership, your partnership agreement.
- A list of all of your officers and Directors during the relevant time period.
- Copies of any minutes of meetings of Boards of Directors or shareholders.
- All business plans, strategic plans or marketing plans or any other business planning document you created or received for the sale of Pool Products.
- Any pricing matrix or pricing guide or policy you used or received from any source for the purchase or sale of Pool Products.

- Documents or information sufficient to show the number of employees, years in operation, locations and plans (whether carried out or not) for expansion or retrenchment from January 1, 2000 to the present.
- All documents identifying, discussing, referring or relating to any non-compete agreement or restrictive employment covenant entered into with anyone who was terminated or left your employ during the relevant period.
- A list of those considered to be sources of some or all Pool Products, including:
  - The address of the competitor;
  - The year they started operating;
  - The geographic area (by Zip Code(s)) where the source sells Pool Products; and
  - Copies of any agreements or contracts.
- A list of all of the entities who sell or who sold Pool Products to direct purchasers from 2000-present including:
  - A description of the type of entity;
  - The location of the entity who sells or who sold Pool Products;
  - The year they began operating; and
  - Whether they are still in business and if not, the year they stopped operating.
- A list of all the manufacturers of Pool Products from whom you have purchased Pool Products or have considered purchasing Pool Products, including:
  - The SKUs for the Pool Products;
  - A description of the Pool Products; and
  - Any documents referring, reflecting or relating to a comparison of products produced by different manufacturers.
- Any documents discussing or analyzing increased or decreased demand for Pool Products.
- Identify and describe separately each conversation, communication or document that you claim that reflects or was made in furtherance of the unlawful agreements alleged in your Complaint.
- Identify each way that you contend you suffered injury or damages in this case, including a quantification of the total damages you claim you suffered, and any steps you took to mitigate the damages you allege.
- All documents relating to any buying groups, including, but not limited to, Carecraft, Aquatech, or IDN.
- All documents reflecting, referring or relating to communications with other entities or persons regarding the price, terms, or conditions of sale of Pool Products.

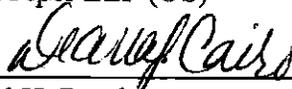
- All documents you have showing a comparison of the prices of Pool Products from different sources.
- All documents referring, reflecting or relating to how far you could or would be willing to travel to purchase Pool Products.
- All documents showing any trade associations memberships and documents received from trade associations reflecting, referring or relating to sources of pool products or prices offered or paid for Pool Products.
- All communications with your competitors regarding the price of Pool Products.
- All documents plaintiffs have to support the allegations in the Complaint, including:
  - A list of witnesses who will support the plaintiffs' claims, including the names of witnesses, address, phone number and e-mail address; and
  - Any documents provided to plaintiffs' counsel during the course of their investigation.
- Any information to show that any of the defendants refused to sell Pool Products to any person or entity. Provide:
  - The name and a description of the entity allegedly refused;
  - The address of the entity allegedly refused;
  - The Pool Products the entity was trying to purchase;
  - The date of the alleged denial; and
  - Any documents referring, reflecting or relating to the alleged denial.
- All internal communications regarding prices offered or paid for Pool Products.
- All documents showing the terms of any discount or rebate program for Pool Products.
- All documents regarding different manufacturers of similar or like Pool Products and any comparisons of the products or prices offered by those manufacturers.
- All marketing materials, brochures or advertisements for the sale of Pool Products you used to advertise to your customers during the relevant time period.
- All documents reflecting, referring or relating to your preferences for suppliers of Pool Products.
- All documents showing any marketing or advertising assistance or support received from Pool Corporation or any other seller of Pool Products.
- Any information about communications with any other person about any of the defendants behaving in an anti-competitive manner, about the FTC investigation or about this lawsuit.

### **Indirect Purchasers**

- Any estimates, quotations, RFPs, or agreements (whether executed or not) that includes the sale of Pool Products, in whole or in part.
- Receipts or records of your purchases for Pool Products from any source.
- Contracts (including time and materials) with pool/spa builders or installers.
- Estimates received to install or construct a pool/spa, whether the contract was entered into or not.
- Maintenance contracts with pool service companies/maintenance companies.
- Invoices from pool service companies/companies that perform pool/spa maintenance.
- Any sales literature, brochures or rebate information from the manufacturer of any Pool Products that are owned or were purchased.
- An identification of the factors you consider(ed) when purchasing or building a pool or spa and purchasing any products to maintain it.
- Any information about communications you had with any other person about any of the defendants behaving in an anti-competitive manner, about the FTC investigation or about this lawsuit.
- All documents and information the named plaintiffs have to support the allegations in the Complaint, including:
  - A list of witnesses who will support the plaintiffs' claims, including the names of witnesses, address, phone number and e-mail address; and
  - Any documents provided to plaintiffs' counsel during the course of their investigation.
- Identify each way that you contend you suffered injury or damages in this case, including a quantification of the total damages you claim you suffered, and any steps you took to mitigate the damages you allege.

Dated: August 23, 2012

DLA Piper LLP (US)

By: 

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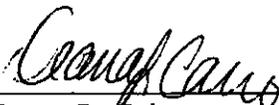
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*Counsel for Defendants Pool Corporation, SCP  
Distributors LLC and Superior Pool Products LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY the above and foregoing Pool Corporation's Categories of Documents and Information for Discovery Pursuant to Pretrial Order No. 5 has been served on Direct Purchaser Plaintiffs' Co-Liaison Counsel, Russ Herman and Camilo Salas, III, Indirect Purchaser Plaintiffs' Liaison Counsel, William Gaudet, by e-mail and upon all parties by electronically uploading the same to Lexis Nexis File & Serve in accordance with Pretrial Order No. 8 on this 23rd day of August, 2012.

  
\_\_\_\_\_  
Deana L. Cairo

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA

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IN RE: POOL PRODUCTS DISTRIBUTION	)	MDL DOCKET NO. 2328
MARKET ANTITRUST LITIGATION	)	SECTION: R(2)
	)	
This document relates to:	)	CHIEF JUDGE VANCE
	)	MAG. JUDGE WILKINSON
ALL DIRECT PURCHASER CASES	)	

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**DIRECT PURCHASER PLAINTIFFS’ RESPONSES AND OBJECTIONS TO  
POOLCORP DEFENDANTS’ CATEGORIES OF DOCUMENTS AND  
INFORMATION FOR DISCOVERY PURSUANT TO PRETRIAL ORDER NO. 5**

Pursuant to the Court’s Pretrial Order No. 5, Direct Purchaser Plaintiffs (“Plaintiffs”) object and respond to Pool Corporation, SCP Distributors LLC, and Superior Pool Products LLC (“PoolCorp Defendants”)’s Categories of Documents and Information For Discovery.

**General Objections and Statements**

Each response below incorporates, is subject to, and does not waive any of these general objections or statements:

1. Plaintiffs will meet and confer with all Defendants with respect to an appropriate time period, or periods, to cover both sides’ production to the other of transactional and cost data, and other relevant ESI and hard-copy documents.
2. “No Objection” is not intended to mean that responsive material exists, but is a representation that Plaintiffs shall make a good faith effort to search reasonably accessible sources, and to produce any such responsive materials that are not otherwise objected to or privileged.
3. Plaintiffs object to requests that are the equivalent to interrogatories, on the

ground that non-document requests are beyond the scope of Pretrial Order No. 5. Similarly, where Plaintiffs do not object to producing responsive documents, Plaintiffs will produce only those documents that exist and are not committing to create documents in response to Defendants' categories.

4. Plaintiffs object to each category to the extent that it seeks documents or information concerning Plaintiffs' sales of Pool Products to their customers. The basis for this objection is that such material is not relevant to a claim or defense of any party, or reasonably calculated to lead to the discovery of admissible evidence.

5. Plaintiffs object to each category that seeks information that is not relevant to a claim or defense of any party, or reasonably calculated to lead to the discovery of admissible evidence.

6. Plaintiffs object to each category to the extent that it seeks the discovery of information that is protected by the attorney-client privilege, the attorney work-product doctrine or by the joint or common interest privilege. This includes, but is not limited to, communications among one or more Pool Products Plaintiffs made in anticipation of or during litigation and investigatory materials.

### **Responses to Requests**

#### **Category No. 1<sup>1</sup>**

All data and documents showing purchases from any source, of Pool Products from January 1, 2000 to the present, showing:

- Date of purchase
- Each SKU
- Vendor and location of vendor
- Manufacturer

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<sup>1</sup> Although the PoolCorp Defendants did not number each individual category of documents and information for discovery, for ease of reference, in responding we have numbered each category sequentially.

- The “ship to” address or location
- The “bill to” address or location
- Total units purchased
- Unit price
- Total gross price
- Total freight charges, if applicable
- Any rebates or discounts off the invoice prices
- The terms of any rebates or discounts received on purchases
- Total net price.

**Response**

No objection to the extent this category seeks the production of purchase records of Pool Products at the level of detail that Plaintiffs have maintained in the regular course of business.

**Category No. 2**

All data and documents showing sales of Pool Products to your customers from January 1, 2000 to the present, including:

- Each SKU
- Manufacturer
- Vendor and location of vendor
- The “ship to” address or location
- The “bill to” address or location
- Total units purchased
- Total gross price
- Total freight charges, if applicable
- Any rebates or discounts off the invoice price
- The terms of any rebates or discounts received on purchases
- Total net price.

**Response**

Plaintiffs object to this category on the grounds that the requested materials are not relevant to a claim or defense, or reasonably calculated to lead to the discovery of admissible evidence. *See* General Objections and Statements ¶ 4.

**Category No. 3**

All documents showing, reflecting, referring or relating to your profits and losses from January 1, 2002 to the present.

**Response**

Plaintiffs object to this category on the grounds that the requested materials are not relevant to a claim or defense, or reasonably calculated to lead to the discovery of admissible evidence.

**Category No. 4**

All analyses or summaries of your financial performance, including your ability to obtain and utilize lines of credit.

**Response**

Plaintiffs object to this category on the grounds that the requested materials are not relevant to a claim or defense, or reasonably calculated to lead to the discovery of admissible evidence.

**Category No. 5**

All documents showing, reflecting referring or relating to your profit margins from January 1, 2002 to the present.

**Response**

Plaintiffs object to this category on the grounds that the requested materials are not relevant to a claim or defense, or reasonably calculated to lead to the discovery of admissible evidence.

**Category No. 6**

If organized as a corporation, your articles of incorporation and your bylaws. If organized as a partnership, your partnership agreement.

**Response**

No objection.

**Category No. 7**

A list of all of your officers and Directors during the relevant time period.

**Response**

No objection.

**Category No. 8**

Copies of any minutes of meetings of Boards of Directors or shareholders.

**Response**

Plaintiffs object to this category on the grounds that it is overly broad, and seeks information that is not relevant to a claim or defense, or reasonably calculated to lead to the discovery of admissible evidence.

**Category No. 9**

All business plans, strategic plans or marketing plans or any other business planning document you created or received for the sale of Pool Products.

**Response**

Plaintiffs object to this category on the grounds that the requested materials are not relevant to a claim or defense, or reasonably calculated to lead to the discovery of admissible evidence. *See* General Objections and Statements ¶ 4. Plaintiffs further object on the ground that this category is overly broad and ambiguous.

**Category No. 10**

Any pricing matrix or pricing guide or policy you used or received from any source for the purchase or sale of Pool Products.

**Response**

No objection to the extent this category requests documents used or received for the *purchase* of Pool Products. Plaintiffs object to this category to the extent it seeks documents or information concerning Plaintiffs' sales of Pool Products to their customers. *See* General Objections and Statements ¶ 4.

**Category No. 11**

Documents or information sufficient to show the number of employees, years in operation, locations and plans (whether carried out or not) for expansion or retrenchment from January 1, 2000 to the present.

**Response**

Plaintiffs object to this category on the grounds that it is overly broad, and seeks information that is not relevant to a claim or defense, or reasonably calculated to lead to the discovery of admissible evidence. However, Plaintiffs will produce documents sufficient to identify their business locations.

**Category No. 12**

All documents identifying, discussing, referring or relating to any non-compete agreement or restrictive employment covenant entered into with anyone who was terminated or left your employ during the relevant period.

**Response**

Plaintiffs object to this category on the grounds that it seeks information that is not relevant to a claim or defense, or reasonably calculated to lead to the discovery of admissible evidence.

**Category No. 13**

A list of those considered to be sources of some or all Pool Products, including:

- The address of the competitor;
- The year they started operating;
- The geographic area (by Zip Code(s)) where the source sells Pool Products; and
- Copies of any agreements or contracts.

**Response**

Plaintiffs will produce responsive documents sufficient to identify sources of Pool Products supplies, and agreements or contracts with suppliers to the extent they exist. To the extent that this category seeks additional documents, Plaintiffs object on the grounds that it seeks information that is not relevant to a claim or defense, or reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs will not create any lists, and object to this category to extent it requests them to do so. *See* General Objections and Statements ¶ 3.

**Category No. 14**

A list of all of the entities who sell or who sold Pool Products to direct purchasers from 2000-present including:

- A description of the type of entity;
- The location of the entity who sells or who sold Pool Products;
- The year they began operating;. and
- Whether they are still in business and if not, the year they stopped operating.

**Response**

Plaintiffs will produce responsive documents sufficient to identify entities from whom Plaintiffs purchased Pool Products, and any corresponding agreements or contracts to the extent they exist. To the extent Plaintiffs kept identifiable “supplier files” for either identified Pool Products suppliers or for Pool Products generally, Plaintiffs will produce such material.

Plaintiffs will not create any lists, and object to this category to extent it requests them to do so.

*See* General Objections and Statements ¶ 3.

**Category No. 15**

A list of all the manufacturers of Pool Products from whom you have purchased Pool Products or have considered purchasing Pool Products, including:

- The SKUs for the Pool Products;
- A description of the Pool Products; and
- Any documents referring, reflecting or relating to a comparison of products produced by different manufacturers.

**Response**

Plaintiffs will produce responsive documents sufficient to identify manufacturers from whom Plaintiffs purchased Pool Products, and any corresponding agreements or contracts to the extent they exist. To the extent Plaintiffs kept identifiable “supplier files” with respect to direct purchases of Pool Products from manufacturers, for either identified Pool Products suppliers or for Pool Products generally, Plaintiffs will produce such material. Plaintiffs will not create any lists, and object to this category to extent it requests them to do so. *See* General Objections and Statements ¶ 3.

**Category No. 16**

Any documents discussing or analyzing increased or decreased demand for Pool Products.

**Response**

Plaintiffs object to this category on the grounds that it is overly broad. However, Plaintiffs will meet and confer with Defendants regarding this category to discuss whether there is a narrower category of material that Plaintiffs will not object to producing.

**Category No. 17**

Identify and describe separately each conversation, communication or document that you claim that reflects or was made in furtherance of the unlawful agreements alleged in your Complaint.

**Response**

Plaintiffs object to this category on grounds that it is the equivalent of an interrogatory.

*See* General Objections and Statements ¶ 3.

**Category No. 18**

Identify each way that you contend you suffered injury or damages in this case, including a quantification of the total damages you claim you suffered, and any steps you took to mitigate the damages you allege.

**Response**

Plaintiffs object to this category on grounds that it is the equivalent of an interrogatory.

*See* General Objections and Statements ¶ 3. Plaintiffs further object on the ground that the information sought is premature, particularly to the extent that damages are likely to include proof from experts.

**Category No. 19**

All documents relating to any buying groups, including, but not limited to, Carecraft, Aquatech, or IDN.

**Response**

No objection to the extent this category seeks documents related to the purchase of Pool Products from suppliers. To the extent this category seeks documents or information concerning Plaintiffs' sales of Pool Products to their customers, Plaintiffs object. *See* General Objections and Statements ¶ 4.

**Category No. 20**

All documents reflecting, referring or relating to communications with other entities or persons regarding the price, terms, or conditions of sale of Pool Products.

**Response**

No objection to the extent this category seeks documents related to the purchase of Pool Products from suppliers, subject to the last sentence of this response. To the extent this category seeks documents or information concerning Plaintiffs' sales of Pool Products to their customers, Plaintiffs object. *See* General Objections and Statements ¶ 4. Plaintiffs further object to "other entities" as being vague and ambiguous.

**Category No. 21**

All documents you have showing a comparison of the prices of Pool Products from different sources.

**Response**

No objection to the extent this category seeks documents related to a comparison of prices of Pool Products from suppliers. To the extent this category seeks documents or information concerning Plaintiffs' sales of Pool Products to their customers, Plaintiffs object. *See* General Objections and Statements ¶ 4.

**Category No. 22**

All documents referring, reflecting or relating to how far you could or would be willing, to travel to purchase Pool Products.

**Response**

No objection.

**Category No. 23**

All documents showing any trade associations memberships and documents received from trade associations reflecting, referring or relating to sources of pool products or prices offered or paid for Pool Products.

**Response**

No objection.

**Category No. 24**

All communications with your competitors regarding the price of Pool Products.

**Response**

Plaintiffs object to this category on the grounds that it seeks information that is not relevant to a claim or defense, or reasonably calculated to lead to the discovery of admissible evidence.

**Category No. 25**

All documents plaintiffs have to support the allegations in the Complaint, including:

- A list of witnesses who will support the plaintiffs' claims, including the names of witnesses, address, phone number and e-mail address; and
- Any documents provided to plaintiffs' counsel during the course of their investigation.

**Response**

Plaintiffs object to this category on the grounds that it seeks information that is protected by the attorney work-product doctrine. *See* General Objections and Statements ¶ 6.

**Category No. 26**

Any information to show that any of the defendants refused to sell Pool Products to any person or entity. Provide:

- The name and a description of the entity allegedly refused;
- The address of the entity allegedly refused;
- The Pool Products the entity was trying to purchase;

- The date of the alleged denial; and
- Any documents referring, reflecting or relating to the alleged denial.

**Response**

No objection to the extent this category seeks pre-existing, non-privileged documents. To the extent that this category seeks non-document discovery, Plaintiffs object on the ground that it is equivalent of an interrogatory. Plaintiffs also object to the extent this category seeks information that is protected by the attorney work-product doctrine. *See* General Objections and Statements ¶ 3 and 6.

**Category No. 27**

All internal communications regarding prices offered or paid for Pool Products.

**Response**

No objection to the extent this category seeks documents related to the purchase of Pool Products from suppliers. To the extent this category seeks documents or information concerning Plaintiffs' sales of Pool Products to their customers, Plaintiffs object. *See* General Objections and Statements ¶ 4.

**Category No. 28**

All documents showing the terms of any discount or rebate program for Pool Products.

**Response**

No objection to the extent this category seeks documents related to discounts or rebate programs offered by suppliers. To the extent this category seeks documents or information concerning Plaintiffs' sales of Pool Products to their customers, Plaintiffs object. *See* General Objections and Statements ¶ 4.

**Category No. 29**

All documents regarding different manufacturers of similar or like Pool Products and any comparisons of the products or prices offered by those manufacturers.

**Response**

No objection.

**Category No. 30**

All marketing materials, brochures or advertisements for the sale of Pool Products you used to advertise to your customers during the relevant time period.

**Response**

Plaintiffs object to this category on the grounds that it seeks documents or information concerning Plaintiffs' sales of Pool Products to their customers. *See* General Objections and Statements ¶ 4.

**Category No. 31**

All documents reflecting, referring or relating to your preferences for suppliers of Pool Products.

**Response**

No objection.

**Category No. 32**

All documents showing any marketing or advertising assistance or support received from Pool Corporation or any other seller of Pool Products.

**Response**

No objection.

**Category No. 33**

Any information about communications with any other person about any of the defendants behaving in an anti-competitive manner, about the FTC investigation or about this lawsuit.

**Response**

No objection except to the extent this category seeks information that is protected by the attorney-client, or attorney work-product privilege.

Dated: September 6, 2012

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**Liaison Counsel and Executive Committee Counsel  
for the Direct Purchaser Plaintiffs and the Class**



Aug 23 2012  
07:13PM

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

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**IN RE: POOL PRODUCTS  
DISTRIBUTION MARKET ANTITRUST  
LITIGATION**

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**MDL No. 2328  
SECTION: R(2)**

**Judge Vance  
Mag. Judge Wilkinson**

This Document Relates to: All Direct Purchaser Cases

**MANUFACTURER DEFENDANTS' CATEGORIES OF DOCUMENTS AND  
INFORMATION FOR DISCOVERY PURSUANT TO PRETRIAL ORDER NO. 5**

Pursuant to the Court's Pre-Trial Order Number 5, entered on June 4, 2012, Hayward Industries, Inc., Pentair Water Pool and Spa, Inc., and Zodiac Pool Systems, Inc. (collectively, the "Manufacturer Defendants") set forth the following as their "realistic list[]" of the types of information and documents they need to prove their claims and defenses." As this case proceeds, the Manufacturer Defendants may identify additional topics for discovery and reserves the right to identify new areas of inquiry.

**Key Definitions**

- Unless otherwise noted, all terms are defined in the same way as they are in Direct Purchaser Plaintiffs' Consolidated Amended Class Action Complaint (the "Complaint").
- Unless otherwise noted, the Relevant Time Period for each of these requests is August 1, 2002 until November 21, 2011.

**Requests for Information**

- Provide the following information with respect to each purchase of Pool Products during the Relevant Time Period by each Plaintiff:
  - (a) The name and address of the supplier from which the Pool Products were purchased;
  - (b) The date of each purchase;

- (c) The Pool Product purchased from each entity, including the brand name and/or trade name, any SKU and product numbers;
  - (d) The quantity purchased and the applicable units;
  - (e) The state, city and zip or postal code for the “ship from” location;
  - (f) The state, city, and zip or postal code for the “purchased from” location;
  - (g) The state, city, and zip or postal code for the “ship to” location;
  - (h) The method of delivery that was used (e.g., common carrier) and any freight or transportation charges;
  - (i) The price paid, including list price and net unit price;
  - (j) Any rebates, discounts, allowances, credits, chargebacks, freight allowances, or other incentives offered to or received by each Plaintiff in connection with the purchase, including any promotional allowances or sales programs;
  - (k) The terms of sale;
  - (l) Whether the supplier functioned as a manufacturer, distributor, and/or a dealer at the time it supplied Pool Products to Plaintiff.
- State whether any entity has ever denied (in whole or in part) any request by any Plaintiff to purchase any Pool Products. If the answer is in the affirmative, state:
    - (a) Whether the entity functioned as a manufacturer, distributor, or a dealer at the time of the denial;
    - (b) The name and geographic location of the entity denying the request;
    - (c) The Pool Products affected by the denial;
    - (d) The date of the denial;
    - (e) The volume (in both units and dollars) of the Pool Products affected by the denial; and
    - (f) The details of any communications relating to the denial, including but not limited to any reasons stated for the denial.
  - Identify each distributor of Pool Products that Plaintiffs contend has been foreclosed from selling Pool Products as a result of the conduct alleged in the Complaint and, for each such distributor:
    - (a) Identify the Pool Product(s) that such distributor was foreclosed from selling;

- (b) State how much higher each Plaintiff contends that its prices for such Pool Product(s) were as a result of the alleged foreclosure;
  - (c) State the basis for the foregoing contention; and
  - (d) Identify which Manufacturer Defendant(s) was or were responsible for such foreclosure and the factual basis for that contention.
- Provide the following information for each Pool Product sold by each Plaintiff during the Relevant Time Period:
  - (a) The bill-to customer name and address;
  - (b) The ship-to customer name and address;
  - (c) The ship-from address and name of the shipper if different than Plaintiff;
  - (d) The date of each sale;
  - (e) The quantity sold and the applicable units;
  - (f) The name of the Pool Product sold, including the brand name and/or trade name, any SKU and product numbers;
  - (g) The list and net price per product unit;
  - (h) Any rebates, discounts, allowances, credits, chargeback, or other incentives or reductions in price or payments offered by each Plaintiff in connection with the sale, including promotional allowances or sales programs; and
  - (i) The address from which each Pool Product was sold by Plaintiff.
- Identify all competitors of each Plaintiff for the sale of Pool Products and state:
  - (a) The dates of the existence of such competition;
  - (b) The Pool Products sold by each competitor;
  - (c) The entity and location from which each competitor purchased Pool Products;
  - (d) The geographic area(s) in which each Plaintiff sells or attempts to sell each category of Pool Products; and
  - (e) The geographic area in which Plaintiff has competed with each competitor.
- Identify all competitors of each Manufacturer Defendant in the manufacture of Pool Products and state:
  - (a) The dates of the existence of such competition;

- (b) The Pool Products sold by each competitor; and
- (c) The geographic area in which each Manufacturer Defendant has competed with each competitor.
- Identify each instance during the Relevant Time Period in which any Plaintiff has been contacted by or had any communications with any supplier (other than any of the Defendants) regarding the Plaintiff's possible purchase of Pool Products, and in each such instance provide:
  - (a) The name and address of the supplier involved;
  - (b) The type of Pool Products offered for sale by that supplier;
  - (c) The terms of any offer by the supplier to sell Pool Products to any Plaintiff; and
  - (d) If any products were purchased by Plaintiff, the name of each Pool Product purchased, including the brand name and/or trade name, any SKU and product numbers.
- Identify all persons employed by any Plaintiff during the Relevant Time Period that are or were responsible for purchasing Pool Products on its behalf.
- Identify each and every conversation, communication, or meeting between any Plaintiff and a buying group for the purchase of Pool Products, including but not limited to, Carecraft, IDN, or WINDO.
- Identify the name and address of all retail, warehouse, or other locations in which you inventory, store, advertise, or sell Pool Products.
- Identify all internet website addresses (including any third-party websites such as Amazon or eBay) from which you advertise or sell Pool Products.
- Identify by state and county the geographical areas of the United States in which you contend that you are able to sell each category of Pool Products to customers.
- Identify, on an allegation-by-allegation basis, all persons with any knowledge concerning each allegation in the Complaint.
- Identify, on an allegation-by-allegation basis, all facts Plaintiffs contend support each allegation in the Complaint.
- In regard to the allegation contained in your Complaint that Defendants engaged in an unlawful combination or conspiracy in restraint of trade, identify and describe:
  - (a) The date that you claim such act, event, transaction, or occurrence happened;

- (b) The location at which you claim each act, event, transaction or occurrence transpired;
  - (c) Each person that you claim participated in each act, event, transaction, or occurrence, and on whose behalf he or she was acting;
  - (d) Each person that you claim authorized or sanctioned participation in the alleged combination and conspiracy by the person identified in your answer to subpart (c) of this interrogatory; and
  - (e) Each conversation, communication, document, or meeting that you claim constitutes, embodies, or was made in furtherance of the combination or conspiracy alleged in your Complaint.
- Identify and set forth all the information concerning or supporting the allegations in the Complaint that Defendants fraudulently concealed their contract, combination, or conspiracy.
  - Describe in detail each way in which each Plaintiff contends it was injured or has suffered damages, including but not limited to:
    - (a) Stating the total amount of damages claimed;
    - (b) Itemizing the amount of each element of damages claimed;
    - (c) Stating all facts or grounds on which you rely to support each element of damages claimed; and
    - (d) Describing the methodology used to calculate each element of damages claimed.
  - Identify each purchase of Pool Products during the Relevant Time Period as to which Plaintiffs claim the price was inflated by the alleged conspiracy. For each purchase, identify, for each Plaintiff:
    - (a) The name and address of the supplier from which the Pool Products were purchased;
    - (b) The date of each purchase;
    - (c) The Pool Product purchased from each entity, including the brand name and/or trade name, any SKU and product numbers;
    - (d) The quantity purchased and the applicable units;
    - (e) The method of delivery that was used (e.g., common carrier) and any freight or transportation charges;
    - (f) The price paid, including list price and net unit price;

- (g) Any rebates, discounts, allowances, credits, chargebacks, freight allowances, or other incentives offered to or received by you in connection with the purchase, including any promotional allowances or sales programs;
  - (h) The terms of sale;
  - (i) Each Plaintiff's knowledge at the time of purchase of the availability and pricing of equivalent products.
- State the difference between the price each Plaintiff actually paid for each of the Pool Products it purchased and the price each plaintiff would have paid during the Relevant Time Period but for Defendants' alleged combination or conspiracy as described in the Complaint, and the basis for this claim.
  - Identify any steps each Plaintiff has taken to mitigate the damages it claims against any Defendant in this action, including the costs and benefits of taking each such step.
  - Identify each and every person who has performed any accounting services for each Plaintiff, including persons regularly employed by each Plaintiff (whether previously or currently employed), as well as outside, independent accountants.
  - Identify each audit report, balance sheet, profit and loss statement, and other financial statement, analysis, or projection of results of past or future operations, that has been prepared by each Plaintiff or on its behalf during the Relevant Time Period.
  - State the dollar amount of net profit or loss for each month, fiscal year, or other period for the operations of the corporation as stated in its profit and loss statements and identify the source of all such information.

#### **Requests for Documents**

- All documents that were identified in answer to or the identification of which was requested in Manufacturer Defendants' interrogatories.
- All documents showing the ownership of, organization and structure of, lines of authority and persons having authority to act for each Plaintiff, including:
  - (a) articles of incorporation and amendments thereto;
  - (b) bylaws;
  - (c) minutes of shareholders, directors, and executive committee meetings relating to officers and authority, including any resolutions pertaining thereto;
  - (d) all internal and external organizational charts, reports, and schedules relating to officers, authority, responsibility, organization, and structure; and

- (e) a listing of all officers, directors, and executives of plaintiff and the duties of each.
- All documents embodying, referring or relating to, or memorializing each Plaintiff's communications with sellers of Manufacturer Defendants' Pool Products other than PoolCorp, including but not limited to correspondence, marketing materials, purchase orders, and invoices.
- All documents identifying, relating to, or embodying any communications with a buying group that purchases Pool Products, including but not limited to, Carecraft, IDN, or WINDO.
- All documents relating to any advertising or marketing materials used by any Plaintiff or by any supplier of Pool Products other than PoolCorp.
- All documents relating to the geographic area in which each Plaintiff purchases, looks to purchase, or can competitively purchase Pool Products.
- All documents identifying or relating to any competitor of any of the Manufacturer Defendants in the manufacture or sale of Pool Products.
- All documents containing, discussing, referring, or relating to any communications between any Plaintiff and any Defendant, including but not limited to any conversations with any former agents or employees of any Defendant.
- All documents that refer or relate to:
  - (a) Any Plaintiff's marketing strategies or policies;
  - (b) Any Plaintiff's Strategic plans;
  - (c) Any Plaintiff's Pricing policies;
  - (d) Competition for the sale of Pool Products;
  - (e) Any Plaintiff's purchasing practices; and
  - (f) Any Plaintiff's suppliers.
- All documents showing, relating, referring to, or evidencing the financial performance of each Plaintiff during the Relevant Period, including:
  - (a) Financial statements;
  - (b) Annual reports;
  - (c) Balance sheets;

- (d) Income statements;
  - (e) Statements of earned surplus;
  - (f) Any consolidation statement relating to each Plaintiff whether prepared internally or externally; and
  - (g) Income tax returns, state and federal.
- All documents embodying, relating, or referring to any Plaintiff's business plans, methods, models, strategies, pricing plans and strategies, purchasing plans and strategies, budgets, forecasts, and market studies and analyses, including but not limited to documents prepared for customers, suppliers, investors, partners, banks, creditors, and lenders.
  - All documents embodying, relating, or referring to any analysis or evaluation of the results and performance of any Plaintiff's business operations, including documents prepared for customers, suppliers, investors, partners, banks, creditors, and lenders.
  - Each Plaintiff's monthly and annual budget statements, and all other projections, estimates, compilation, memoranda, summaries, and reports relating to sales, territories, expenses, profits, and losses.
  - Each Plaintiff's inventory records relating to Pool Products, including both Manufacturer Defendants' products and other Pool Products.
  - All documents referring or relating to, constituting, or memorializing lists of entities from which any Plaintiff purchased Pool Products during the Relevant Time Period.
  - All documents showing any trade association memberships and documents received from trade associations reflecting, referring, or relating to sources of Pool Products or prices offered or paid for Pool Products.
  - All documents containing, discussing, referring, or relating to, any communications between any employee or agent of any Plaintiff with any other person or entity reflecting, referring, or relating to prices offered or paid for Pool Products, including but not limited to any analysis of pricing from different sources of Pool Products.
  - All documents referring or relating to, constituting, or memorializing any agreement (whether formal or informal) between any Plaintiff and any person or entity regarding the purchase or sale of Pool Products.
  - Documents sufficient to show each purchase of Pool Products during the Relevant Time Period by each Plaintiff.
  - Documents sufficient to show each sale of Pool Products during the Relevant Time Period by each Plaintiff.

- Documents sufficient to show the profit margins for each sale of Pool Products during the Relevant Time Period by each Plaintiff.
- All documents referring or relating to, constituting, or memorializing any request by any Plaintiff to purchase any Pool Products from any person or entity and any response thereto by that person or entity.
- All documents referring or relating to, constituting, or memorializing the termination or discontinuance of a purchasing or sale relationship between any Plaintiff and any person or entity selling or purchasing Pool Products.
- All documents relating to or supporting each Plaintiff's alleged damages in this lawsuit including, but not limited to:
  - (a) Any injury or damage each Plaintiff claims to have suffered as a result of any of the Manufacturer Defendant's alleged unlawful activities;
  - (b) The nature and amount of money damages each Plaintiff claims to be damaged as a result of any Manufacturer Defendant's alleged unlawful activities;
  - (c) Any overcharges each Plaintiff claims to have incurred as a result of any Manufacturer Defendant's alleged unlawful activities; and
  - (d) Any steps any Plaintiff has taken to mitigate the damages it claims against any Manufacturer Defendant in this action, including the cost and benefits of taking each such step.
- All documents referring or relating to, or supporting, the allegations in the Complaint that the Manufacturer Defendants engaged in an unlawful combination or conspiracy in restraint of trade.
- All documents containing, discussing, referring or relating to, any communications with any other person about any Defendant behaving in an anticompetitive manner, the Federal Trade Commission's ("FTC") investigation, or this lawsuit.
- Documents concerning any government or other investigation relating to the matters alleged in the Complaint, including documents any Plaintiff provided to any government agency, commission, or entity regarding or relating to any of the matters alleged in the Complaint.

Dated: August 23, 2012

/s/ Wayne J. Lee

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***Counsel for Hayward Industries, Inc.***

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY the above and foregoing Manufacturer Defendants' Categories of Documents and Information for Discovery Pursuant to Pretrial Order No. 5 has been served on Direct Purchaser Plaintiffs' Co-Liaison Counsel, Russ Herman and Camilo Salas, III by e-mail and upon all parties by electronically uploading the same to Lexis Nexis File & Serve in accordance with Pretrial Order No. 8 on this 23rd day of August, 2012.

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**IN RE: POOL PRODUCTS DISTRIBUTION  
MARKET ANTITRUST LITIGATION**

**THIS DOCUMENT RELATES TO: ALL  
ACTIONS**

\* **MDL NO. 2328**  
\*  
\* **SECTION R/2**  
\*  
\*  
\* **Judge Vance**  
\* **Mag. Judge Wilkinson**  
\*  
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**DIRECT PURCHASER PLAINTIFFS' RESPONSES AND OBJECTIONS TO  
MANUFACTURER DEFENDANTS' CATEGORIES OF DOCUMENTS AND  
INFORMATION FOR DISCOVERY PURSUANT TO PRETRIAL ORDER NO. 5**

Pursuant to the Court's Pre-Trial Order Number 5, entered on June 4, 2012, direct purchaser plaintiffs ("plaintiffs") hereby respond and object to manufacturer defendants' categories of documents and information for discovery.

**General Objections and Statements**

Each response set forth below incorporates, is subject to, and does not waive any of these general objections and/or statements:

1. Plaintiffs will meet and confer with all Defendants with respect to an appropriate time period, or periods, to cover both sides' production to the other of transactional and cost data, and other relevant ESI and hard-copy documents.

2. An agreement to produce documents responsive to a request is not intended to mean that responsive material exists, but is a representation that Plaintiffs shall make a good faith effort to search reasonably accessible sources, and to produce any such responsive materials that are not otherwise objected to or privileged.

3. Plaintiffs will not respond to requests that are equivalent to interrogatories, which plaintiffs do not believe are authorized discovery under Pretrial Order No. 5. Plaintiffs reserve the right to further object to interrogatories at the time such discovery is authorized by the Court.

4. Plaintiffs object to each category to the extent that it seeks documents or information concerning Plaintiffs' sales of Pool Products to their customers. The basis for this objection is that such material is not relevant to a claim or defense, or reasonably calculated to lead to the discovery of admissible evidence.

5. Plaintiffs object to each category that seeks information that is not relevant to a claim or defense of any party, or reasonably calculated to lead to the discovery of admissible evidence.

6. Plaintiffs object to each category to the extent that it seeks the discovery of information that is protected by the attorney-client privilege, the attorney work-product doctrine, or by the joint or common interest privilege. This includes, but is not limited to, communications among one or more Pool Products plaintiffs made in anticipation of or during litigation and investigatory materials.

### **Requests for Information**

#### **Interrogatory No. 1**<sup>1</sup>

Provide the following information with respect to each purchase of Pool Products during the Relevant Time Period by each Plaintiff:

- (a) The name and address of the supplier from which the Pool Products were purchased;
- (b) The date of each purchase;

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<sup>1</sup> Although the manufacturer defendants did not number each of their interrogatories or document requests, for ease of reference, in responding we have numbered each interrogatory and document request sequentially.

- (c) The Pool Product purchased from each entity, including the brand name and/or trade name, any SKU and product number;
- (d) The quantity purchased and the applicable units;
- (e) The state, city and zip or postal code for the “ship from” location;
- (f) The state, city, and zip or postal code for the “purchased from” location;
- (g) The state, city, and zip or postal code for the “ship to” location;
- (h) The method of delivery that was used (*e.g.*, common carrier) and any freight or transportation charges;
- (i) The price paid, including list price and net unit price;
- (j) Any rebates, discounts, allowances, credits, chargebacks, freight allowances, or other incentives offered to or received by each Plaintiff in connection with the purchase, including any promotional allowances or sales programs;
- (k) The terms of sale;
- (l) Whether the supplier functioned as a manufacturer, distributor, and/or a dealer at the time it supplied Pool Products to Plaintiff.

**Response to Interrogatory No. 1**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome. Plaintiffs will not agree to create information responsive to this interrogatory, but will produce documents sufficient to identify the suppliers from which each named plaintiff purchased pool products, and will meet and confer with defendants concerning the production of existing and reasonably accessible transaction data related to the named plaintiffs’ purchase of pool products, at the level of detail that plaintiffs have maintained in their regular course of business.

**Interrogatory No. 2**

State whether any entity has ever denied (in whole or in part) any request by any Plaintiff to purchase any Pool Products. If the answer is in the affirmative, state:

- (a) Whether the entity functioned as a manufacturer, distributor, or a dealer at the time of the denial;
- (b) The names and geographic location of the entity denying the request;
- (c) The Pool Products affected by the denial;
- (d) The date of the denial;
- (e) The volume (in both units and dollars) of the Pool Products offered by the denial; and
- (f) The details of any communications relating to the denial, including but not limited to any reasons stated for the denial.

**Response to Interrogatory No. 2**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome, and more appropriately obtained by deposition.

**Interrogatory No. 3**

Identify each distributor of Pool Products that Plaintiffs contend has been foreclosed from selling Pool Products as a result of the conduct alleged in the Complaint and, for each such distributor:

- (a) Identify the Pool Product(s) that such distributor was foreclosed from selling;
- (b) State how much higher each Plaintiff contends that its prices for such Pool Product(s) were as a result of the alleged foreclosure;
- (c) State the basis for the foregoing contention; and
- (d) Identify which Manufacturer Defendant(s) was or were responsible for such foreclosure and the factual basis for that contention.

**Response to Interrogatory No. 3**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. In addition, plaintiffs object that this is a contention interrogatory, which is premature at this stage of the litigation. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome.

**Interrogatory No. 4**

Provide the following information for each Pool Product sold by each Plaintiff during the Relevant Time Period:

- (a) The bill-to customer name and address;
- (b) The ship-to customer name and address;
- (c) The ship-from address and name of the shipper if different than Plaintiff;
- (d) The date of each sale;
- (e) The quantity sold and the applicable units;
- (f) The name of the Pool Product sold, including the brand name and/or trade name, any SKU and product numbers;
- (g) The list and net price per product unit;
- (h) Any rebates, discounts, allowances, credits, chargebacks, or other incentives or reductions in price or payments offered by each Plaintiff in connection with the sale, including promotional allowances or sales programs; and
- (i) The address from which each Pool Product was sold by Plaintiff.

**Response to Interrogatory No. 4**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome. Plaintiffs further object on the grounds that this interrogatory calls for the production of information concerning plaintiffs' sales to customers,

which is not relevant to the claims or defenses in this litigation, and is not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 5**

Identify all competitors of each Plaintiff for the sale of Pool products and state:

- (a) The dates of the existence of such competition;
- (b) The Pool Products sold by each competitor;
- (c) The entity and location from which each competitor purchased Pool Products;
- (d) The geographic area(s) in which each Plaintiff sells or attempts to sell each category of Pool Products; and
- (e) The geographic area in which Plaintiff has competed with each competitor.

**Response to Interrogatory No. 5**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome. Plaintiffs further object on the grounds that this interrogatory calls for the production of information concerning plaintiffs' sales to customers, which is not relevant to the claims or defenses in this litigation, and is not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 6**

Identify all competitors of each Manufacturer Defendant in the manufacture of Pool Products and state:

- (a) The dates of the existence of such competition;
- (b) The Pool Products sold by each competitor; and

- (c) The geographic area in which each Manufacturer Defendant has cooperated with each competitor.

**Response to Interrogatory No. 6**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome and is more appropriately obtained by deposition.

**Interrogatory No. 7**

Identify each instance during the Relevant Time Period in which any Plaintiff has been contacted by or had any communications with any supplier (other than any of the Defendants) regarding the Plaintiff's possible purchase of Pool Products, and in each such instance provide:

- (a) The name and address of the supplier involved;
- (b) The type of Pool Products offered for sale by that supplier;
- (c) The terms of any offer by the supplier to sell Pool Products to any Plaintiff; and
- (d) If any products were purchased by Plaintiff, the name of each Pool Product purchased, including the brand name and/or trade name, any SKU and product numbers.

**Response to Interrogatory No. 7**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome and is more appropriately obtained by deposition. Plaintiffs will not agree to create information responsive to this interrogatory, but will produce documents sufficient to identify the suppliers from which each named plaintiff purchased pool products.

**Interrogatory No. 8**

Identify all persons employed by any Plaintiff during the Relevant Time Period that are or were responsible for purchasing Pool Products on its behalf.

**Response to Interrogatory No. 8**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome and is more appropriately obtained by deposition.

**Interrogatory No. 9**

Identify each and every conversation, communication, or meeting between any Plaintiff and a buying group for the purchase of Pool Products, including but not limited to, Carecraft, IDN, or WINDO.

**Response to Interrogatory No. 9**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome. Plaintiffs further object to the extent that this interrogatory calls for the production of information concerning plaintiffs' sales of Pool Products, which is not relevant to the claims or defenses in this litigation, and is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs will produce existing and reasonably accessible documents reflecting conversations, communications, or meetings between any named plaintiff and a buying group concerning plaintiffs' purchase of Pool Products.

**Interrogatory No. 10**

Identify the name and address of all retail, warehouse, or other locations in which you inventory, store, advertise, or sell Pool Products.

**Response to Interrogatory No. 10**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. Plaintiffs further object that this interrogatory calls for information concerning plaintiffs' sales and marketing of pool products, which is irrelevant to any claim or defense in this litigation, and is not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 11**

Identify all internet website addresses (including any third-party websites such as Amazon or eBay) from which you advertise or sell Pool Products.

**Response to Interrogatory No. 11**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. Plaintiffs further object that this interrogatory calls for information concerning plaintiffs' sales and marketing of pool products, which is irrelevant to any claim or defense in this litigation, and is not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 12**

Identify by state and county the geographical areas of the United States in which you contend that you are able to sell each category of Pool Products to customers.

**Response to Interrogatory No. 12**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome. Plaintiffs further object that this interrogatory calls for information concerning plaintiffs' sales and marketing of pool products, which is irrelevant to

any claim or defense in this litigation, and is not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 13**

Identify, on an allegation-by-allegation basis, all persons with any knowledge concerning each allegation in the Complaint.

**Response to Interrogatory No. 13**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. In addition, plaintiffs object that this is a contention interrogatory, which is premature at this stage of the litigation. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome.

**Interrogatory No. 14**

Identify, on an allegation-by-allegation basis, all facts Plaintiffs contend support each allegation in the Complaint.

**Response to Interrogatory No. 14**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. In addition, plaintiffs object that this is a contention interrogatory, which is premature at this stage of the litigation. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome.

**Interrogatory No. 15**

In regard to the allegation contained in your complaint that Defendants engaged in an unlawful combination or conspiracy in restraint of trade, identify and describe:

- (a) The date that you claim such act, event, transaction, or occurrence happened;

- (b) The location at which you claim each act, event, transaction or occurrence transpired;
- (c) Each person that you claim participated in each act, event, transaction, or occurrence, and on whose behalf he or she was acting;
- (d) Each person that you claim authorized or sanctioned participation in the alleged combination and conspiracy by the person identified in your answer to subpart (c) of this interrogatory; and
- (e) Each conversation, communication, documents, or meeting that you claim constitutes, embodies, or was made in furtherance of the combination or conspiracy alleged in your complaint.

**Response to Interrogatory No. 15**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. In addition, plaintiffs object that this is a contention interrogatory, which is premature at this stage of the litigation. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome.

**Interrogatory No. 16**

Identify and set forth all information concerning or supporting the allegations in the Complaint that Defendant fraudulently concealed their contract, combination, or conspiracy.

**Response to Interrogatory No. 16**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. In addition, plaintiffs object that this is a contention interrogatory, which is premature at this stage of the litigation. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome.

**Interrogatory No. 17**

Describe in detail each way in which each Plaintiff contends it was injured or has suffered damages, including but not limited to:

- (a) Stating the total amount of damages claimed;
- (b) Itemizing the amount of each element of damages claimed;
- (c) Stating all facts or grounds on which you rely to support each element of damages claimed; and
- (d) Describing the methodology used to calculate each element of damages claimed.

**Response to Interrogatory No. 17**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. In addition, plaintiffs object that this is a contention interrogatory, which is premature at this stage of the litigation. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome.

**Interrogatory No. 18**

Identify each purchase of Pool Products during the Relevant Time Period as to which Plaintiffs claim the price was inflated by the alleged conspiracy. For each purchase, identify, for each Plaintiff:

- (a) The name and address of the supplier from which the Pool Products were purchased;
- (b) The date of each purchase;
- (c) The Pool Product purchased from each entity, including the brand name and/or trade name, any SKU and product numbers;
- (d) The quantity purchased and the applicable units;
- (e) The method of delivery that was used (*e.g.*, common carrier) and any freight or transportation charges;
- (f) The price paid, including list price and net unit price;
- (g) Any rebates, discounts, allowances, credits, chargebacks, freight allowances, or other incentives offered to or received by you in connection with the purchase, including any promotional allowances or sales programs;
- (h) The terms of sale;

- (i) Each Plaintiff's knowledge at the time of purchase of the availability and pricing of equivalent products.

**Response to Interrogatory No. 18**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome, and more appropriately obtained by deposition. Plaintiffs will not agree to create information responsive to this interrogatory, but will produce documents to identify the suppliers from which each named plaintiff purchased pool products, and will meet and confer with defendants concerning the production of existing and reasonably accessible transaction data.

**Interrogatory No. 19**

State the difference between the price each Plaintiff actually paid for each of the Pool Products it purchased and the price each plaintiff would have paid during the Relevant Time Period but for Defendants' alleged combination or conspiracy as described in the Complaint, and the basis for this claim.

**Response to Interrogatory No. 19**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. In addition, plaintiffs object that this is a contention interrogatory, which is premature at this stage of the litigation. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome.

**Interrogatory No. 20**

Identify any steps each Plaintiff has taken to mitigate the damages it claims against any Defendant in this action, including the costs and benefits of taking each such step.

**Response to Interrogatory No. 20**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. In addition, plaintiffs object that this is a contention interrogatory, which is premature at this stage of the litigation. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome. Plaintiffs further object that plaintiffs are under no obligation to mitigate damages, and therefore the information sought is irrelevant to any claim or defense in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 21**

Identify each and every person who has performed any accounting services for each Plaintiff, including persons regularly employed by each Plaintiff (whether previously or currently employed), as well as outside, independent accountants.

**Response to Interrogatory No. 21**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. Plaintiffs further object that the creation of written information responsive to this interrogatory is unduly burdensome and is more appropriately obtained by deposition.

**Interrogatory No. 22**

Identify each audit report, balance sheet, profit and loss statement, and other financial statement, analysis, or projection of results of past or future operations, that has been prepared by each Plaintiff or on its behalf during the Relevant Time period.

**Response to Interrogatory No. 22**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. Plaintiffs object that the creation of written information responsive to this interrogatory is unduly burdensome. Plaintiffs further object that the information called for by

this interrogatory is irrelevant to any claim or defense in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 23**

State the dollar amount of net profit or loss for each month, fiscal year, or other period for the operations of the corporation as stated in its profit and loss statements and identify the source of all such information.

**Response to Interrogatory No. 23**

Plaintiffs object to responding to interrogatories, which have not been authorized by Pretrial Order No. 5. Plaintiffs object that the creation of written information responsive to this interrogatory is unduly burdensome. Plaintiffs further object that the information called for by this interrogatory is irrelevant to any claim or defense in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

**Requests for Documents**

**Request No. 1**

All documents that were identified in answer to or the identification of which was requested in Manufacturer Defendants' interrogatories.

**Response to Request No. 1**

Plaintiffs refer to their responses to manufacturer defendants' interrogatories.

**Request No. 2**

All documents showing the ownership of, organization and structure of, lines of authority and persons having authority to act for each Plaintiff, including:

- (a) articles of incorporation and amendments thereto;
- (b) bylaws;

- (c) minutes of shareholders, directors, and executive committee meetings relating to officers and authority, including any resolutions pertaining thereto;
- (d) all internal and external organizational charts, reports, and schedules relating to officers, authority, responsibility, organization, and structure; and
- (e) a list of all officers, directors, and executives of plaintiff and the duties of each.

**Response to Request No. 2**

Plaintiffs will produce existing and reasonably accessible non-privileged documents, if any, responsive to this request.

**Request No. 3**

All documents embodying, referring or relating to, or memorializing each Plaintiff's communications with sellers of Manufacturer Defendants' Pool Products other than Pool Corp. including but not limited to correspondence, marketing materials, purchase orders, and invoices.

**Response to Request No. 3**

Plaintiffs will produce existing and reasonably accessible non-privileged documents, if any, responsive to this request.

**Request No. 4**

All documents identifying, relating to, or embodying any communications with a buying group that purchase Pool Products, including but not limited to, Carecraft, IDN, or WINDO.

**Response to Request No. 4**

Plaintiffs object to producing documents relating only to buying groups relating to the plaintiffs' sales of Pool Products, which are irrelevant to any claim or defense in this action, and not reasonably calculated to lead to the discovery of admissible evidence. However, plaintiffs will produce existing and reasonably accessible non-privileged documents otherwise responsive to this request, if any.

**Request No. 5**

All documents relating to any advertising or marketing materials used by any Plaintiff or by any supplier of Pool Products other than PoolCorp.

**Response to Request No. 5**

Plaintiffs object to producing documents relating only to plaintiffs' advertising or marketing materials, which are irrelevant to any claim or defense in this action, and not reasonably calculated to lead to the discovery of admissible evidence. However, plaintiffs will produce existing and reasonably accessible non-privileged materials otherwise responsive to this request, if any.

**Request No. 6**

All documents relating to the geographic area in which each Plaintiff purchases, looks to purchase, or can competitively purchase Pool Products.

**Response to Request No. 6**

Plaintiffs object to the use of the term "relating to" in this request as vague and overly broad. However, plaintiffs will produce existing and reasonably accessible non-privileged documents, if any, that include discussions of which geographic areas the named plaintiffs purchase, looks to purchase or can competitively purchase Pool Products.

**Request No. 7**

All documents identifying or relating to any competitor of any of the Manufacturer Defendants in the manufacture or sale of Pool Products.

**Response to Request No. 7**

Plaintiffs object to the use of the term "identifying or relating to" in this request as vague and overly broad. However, plaintiffs will produce existing and reasonably accessible non-

privileged documents, if any, that include discussions of which entities are competitors of the manufacturer defendants in the manufacture or sale of Pool Products.

**Request No. 8**

All documents containing, discussing, referring, or relating to any communications between any Plaintiff and any Defendant, including but not limited to any conversations with any former agents or employees of any Defendant.

**Response to Request No. 8**

Plaintiffs object to the use of “relating to” in this request as vague and overly broad. Plaintiffs will produce existing and reasonably accessible non-privileged documents containing, discussing or referring to communications between any plaintiff and any defendant.

**Request No. 9**

All documents that refer or relate to:

- (a) Any Plaintiff’s marketing strategies or policies;
- (b) Any Plaintiff’s Strategic plans;
- (c) Any Plaintiff’s Pricing policies;
- (d) Competition for the sale of Pool Products;
- (e) Any Plaintiff’s purchasing practices; and
- (f) Any Plaintiff’s suppliers.

**Response to Request No. 9**

Plaintiffs object to the use of the term “refer or relate” in this request as vague and overly broad. Plaintiffs further object because this request calls for information relating to plaintiffs’ sales and marketing of Pool Products, which is irrelevant to any claim or defense in this action, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs will

produce existing and reasonably accessible documents, if any, that contain a discussion of plaintiffs' purchasing practices pertaining to pool products. Plaintiffs will produce documents sufficient to identify plaintiffs' suppliers of pool products.

**Request No. 10**

All documents showing, relating, referring to, or evidencing the financial performance of each Plaintiff during the Relevant Period, including:

- (a) Financial statements;
- (b) Annual reports;
- (c) Balance sheets;
- (d) Income statements;
- (e) Statements of earned surplus;
- (f) Any consolidation statement relating to each Plaintiff whether prepared internally or externally; and
- (g) Income tax returns, state and federal.

**Response to Request No. 10**

Plaintiffs object to this request as irrelevant to any claim or defense in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

**Request No. 11**

All documents embodying, relating, or referring to any Plaintiffs' business plans, methods, models, strategies, pricing plans and strategies, purchasing plans and strategies, budgets, forecasts, and market studies and analyses, including but not limited to documents prepared for customers, suppliers, investors, partners, banks, creditors, and lenders.

**Response to Request No.11**

Plaintiff object to this request as vague, broad, and as calling for irrelevant information about plaintiffs' sales to customers, which is irrelevant to any claim or defense in this litigation and not reasonably calculated to lead to admissible evidence. Plaintiffs will produce existing and reasonably accessible non-privileged business plans, strategic plans, and market studies only to the extent that such plans discuss the Pool Product supply market or plaintiffs' purchasing strategies for Pool Products.

**Request No. 12**

All documents embodying, relating, or referring to any analysis or evaluation of the results and performance of any Plaintiff's business operations, including documents prepared for customers, suppliers, investors, partners, banks, creditors, and lenders.

**Response to Request No. 12**

Plaintiffs object to this request as calling for information relating to plaintiffs' sales and marketing to customers, which is irrelevant to any claim or defense in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

**Request No. 13**

Each Plaintiff's monthly and annual budget statements, and all other projections, estimates, compilation, memoranda, summaries, and reports relating to sales, territories, expenses, profits, and losses.

**Response to Request No. 13**

Plaintiffs object to this request as calling for information relating to plaintiffs' profits, losses and sales, which are irrelevant to any claim or defense in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs will produce existing and non-privileged documents, if any, relating to their purchases of Pool Products that are otherwise responsive to this request.

**Request No. 14**

Each Plaintiff's inventory records relating to Pool Products, including both Manufacturer Defendants' products and other Pool Products.

**Response to Request No. 14**

Plaintiffs object to this request as calling for information relating to plaintiffs' sales to customers, which is irrelevant to any claim or defense in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

**Request No. 15**

All documents referring or relating to, constituting, or memorializing lists of entities from which any Plaintiff purchased Pool Products during the Relevant Time Period.

**Response to Request No. 15**

Plaintiffs will produce existing and reasonably accessible non-privileged documents responsive to this request.

**Request No. 16**

All documents showing any trade association memberships and documents received from trade associations reflecting, referring, or relating to sources of Pool Products or prices offered or paid for Pool Products.

**Response to Request No. 16**

Plaintiffs object to this request to the extent it calls for information relating to plaintiffs' sales to customers, which is irrelevant to any claim or defense in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs will produce existing and reasonably accessible non-privileged documents received from trade associations, if

any, which refer to (i) distribution sources of Pool Products; (ii) prices paid for Pool Products by the plaintiffs; or (iii) prices offered for the sale of Pool Products to plaintiffs.

**Request No. 17**

All documents containing, discussing, referring, or relating to, any communications between any employee or agent of any Plaintiff with any other person or entity reflecting, referring, or relating to prices offered or paid for Pool Products, including but not limited to any analysis of pricing from different sources of Pool Products.

**Response to Request No. 17**

Plaintiffs object to the use of the terms “referring” and “relating to” in this request as vague and overly broad. Plaintiffs object to this request as calling for the production of information relating to plaintiffs’ sales to customers, which is irrelevant to any claim or defense in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs will produce existing and reasonably accessible non-privileged documents, if any, containing communications between plaintiffs and any other person reflecting to the prices paid by plaintiffs for Pool Products, including analyses of pricing available to plaintiffs from different distribution sources of Pool Products.

**Request No. 18**

All documents referring or relating to, constituting, or memorializing any agreement (whether formal or informal) between any Plaintiff and any person or entity regarding the purchase or sale of Pool Products.

**Response to Request No. 18**

Plaintiffs object to the use of the term “referring or relating to” in this request as vague and overly broad. Plaintiffs object to this request as calling for the production of plaintiffs’ sales agreements, which are irrelevant to any claim or defense in this litigation. Plaintiffs will produce

existing and reasonably accessible non-privileged documents constituting or memorializing any agreement for the purchase by plaintiffs of Pool Products.

**Request No. 19**

Documents sufficient to show each purchase of Pool Products during the Relevant Time Period by each Plaintiff.

**Response to Request No. 19**

Plaintiffs will produce existing and non-privileged documents, if any, responsive to this request.

**Request No. 20**

Documents sufficient to show each sale of Pool Products during the Relevant Time Period by each Plaintiff.

**Response to Request No. 20**

Plaintiffs object to this request as calling for the production of downstream information, which is irrelevant to any claim or defense in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

**Request No. 21**

Documents sufficient to show the profit margins for each sale of Pool Products during the Relevant Time Period by each Plaintiff.

**Response to Request No. 21**

Plaintiffs object to this request as calling for information that is irrelevant to any claim or defense in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

**Request No. 22**

All documents referring or relating to, constituting, or memorializing any request by any Plaintiff to purchase any Pool Products from any person or entity and any response thereto by that person or entity.

**Response to Request No. 22**

Plaintiffs object to the use of “relating to” in this request as vague and overly broad. Plaintiffs will produce existing and reasonably accessible non-privileged documents, if any, referring to, constituting, or memorializing a request by any plaintiff to purchase Pool Products from any person or entity and any response thereto by that person or entity.

**Request No. 23**

All documents referring or relating to, constituting, or memorializing the termination or discontinuance of a purchasing or sale relationship between any Plaintiff and any person or entity selling or purchasing Pool Products.

**Response to Request No. 23**

Plaintiffs object to the use of “relating to” in this request as vague and overly broad. Plaintiffs object to this request as calling for the production of plaintiffs’ sales information, which is irrelevant to any claim or defense in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs will produce existing and reasonably accessible non-privileged documents, if any, referring, constituting or memorializing the termination of a purchasing relationship between plaintiffs and any supplier of Pool Products.

**Request No. 24**

All documents relating to or supporting each Plaintiff’s alleged damages in this lawsuit including, but not limited to:

- (a) Any injury or damage each Plaintiff claims to have suffered as a result of any of the Manufacturer Defendant’s alleged unlawful activities;

- (b) The nature and amount of money damages each Plaintiff claims to be damaged as a result of any Manufacturer Defendant's alleged unlawful activities;
- (c) Any overcharges each Plaintiff claims to have incurred as a result of any Manufacturer Defendant's alleged unlawful activities; and
- (d) Any steps any Plaintiff has taken to mitigate the damages it claims against any Manufacturer Defendant in this action, including the cost and benefits of taking each such step.

**Response to Request No. 24**

Plaintiffs object to the use of the term "relating to" in this request as vague and overly broad. Plaintiffs further object to this request as premature to the extent it requires plaintiffs at this time to produce all documents that may be used to support specific contentions, and which will likely be further developed through expert discovery. Plaintiffs further object to producing documents pertaining to the mitigation of damages, which is irrelevant to this litigation. Plaintiffs will produce existing and reasonably accessible non-privileged documents, if any, known at this time to support its claims for damages.

**Request No. 25**

All documents referring or relating to, or supporting, the allegations in the Complaint that the Manufacturer Defendants engaged in an unlawful combination or conspiracy in restraining of trade.

**Response to Request No. 25**

Plaintiffs object to the use of the term "relating to" in this request as vague and overly broad. Plaintiffs further object to this request as premature to the extent it requires plaintiffs at this time to produce all documents that may be used to support specific contentions, and which will likely be further developed through expert discovery. Plaintiffs further object to producing documents pertaining to the mitigation of damages, which is irrelevant to this litigation. Plaintiffs will produce existing and reasonably accessible non-privileged documents, if any,

known at this time to support its claims that the defendants engaged in an unlawful combination or conspiracy.

**Request No. 26**

All documents containing, discussing, referring or relating to, any communications with any other person about any Defendant behaving in any anticompetitive manner, the Federal Trade Commission's ("FTC") investigation, or this lawsuit.

**Response to Request No. 26**

Plaintiffs object to this request to the extent it calls for information covered by the attorney-client privilege or work-product doctrine. Plaintiffs will produce existing and reasonably accessible non-privileged documents, if any, containing communications about any defendants' participation in anticompetitive activity or the FTC investigation of the Pool Products industry.

**Request No. 27**

Documents concerning any government or other investigation relating to the matters alleged in the Complaint, including documents any Plaintiff provided to any government agency, commission, or entity regarding or relating to any of the matters alleged in the Complaint,

**Response to Request No. 27**

Plaintiffs object to the use of the term "concerning" in this request as vague and overly broad. Plaintiffs further object to this request to the extent it calls for information covered by the attorney-client privilege or work-product doctrine. Plaintiffs will produce any documents provided by plaintiffs to any government agency investigating the defendants' anticompetitive activities alleged in the complaint, to the extent such documents exist.

Dated: September 6, 2012

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**Liaison Counsel and Executive Committee Counsel  
for the Direct Purchaser Plaintiffs and the Class**

8/23/12

## **Direct Purchaser Plaintiffs' Document List to PoolCorp<sup>1</sup>**

### **A. For the period 1999 to the present:**

- 1) Document retention policy and practice.
- 2) Antitrust compliance policy and practice.
- 3) Organizational charts.
- 4) For each individual identified in initial disclosures, expense reports, calendars and diaries, phone logs (including business and cell phone call records).
- 5) Price announcements.
- 6) Price change letters to customers.
- 7) Price lists.
- 8) Product catalogs.
- 9) Business plans, including strategic plans.
- 10) Yearly budgets and other projections.
- 11) Profit and loss statements on a monthly basis.
- 12) Profit and loss statements per product, SKU or other internal product grouping for the shortest time-reporting period used by PoolCorp internally.
- 13) Market studies and analysis for pool products, which relate to the United States or any part of it.
- 14) Regularly prepared sales and marketing reports, including supplier and customer "call" reports.
- 15) Market analysts' reports.
- 16) Transcripts of earnings conference calls.
- 17) Documents relating to PoolCorp's:
  - a) Acquisition strategy;
  - b) Pricing structure or methodology; and
  - c) Dealings with suppliers, competitors and customers.
- 18) Documents relating to the Preferred Vendor Program including:
  - a) Program formation and rollout, including discussion of the reasons or need for, or possible value of, the program;
  - b) Program goals and objectives;
  - c) Program operations and performance;

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<sup>1</sup> The requests on this list are directed to Pool Corporation, Inc., SCP Distributors LLC, and Superior Pool and Products LLP, as well as to their respective present or former subsidiaries distributing pool products in the United States during the specified time period.

8/23/12

- d) Program participants, their selection, and benefits provided to them on a participant-by-participant basis;
  - e) Termination, whether actual or considered, of any program participant;
  - f) Reviews and evaluations of the program and of participants in it.
- 19) Acquisition “deal” books.
- 20) Communications between PoolCorp and its 10 largest suppliers (measured by yearly dollar volume of purchases by PoolCorp) (“Top 10 Suppliers”), including communications about any other Pool Products distributor or about any other supplier.
- 21) Communications between any two or more of the Top 10 Suppliers, whether or not PoolCorp itself participated in the communication.
- 22) Communications between PoolCorp and any other Pool Products Distributor.
- 23) Trade association documents, including:
- a) Membership lists;
  - b) Meeting files with agendas, minutes, presentations and attendance records;
  - c) Committee lists and membership.
- 24) Communications with each plaintiff.

**B. For the period January 1, 1995 to the present:**

- 1) Transaction data for each sale by the PoolCorp, including:
- a) customer name and address;
  - b) ship-to name and address;
  - c) point shipped from;
  - d) invoice number;
  - e) purchase order number;
  - f) date of invoice;
  - g) date shipped;
  - h) product number;
  - i) product description;
  - j) units of product;
  - k) price per unit;
  - l) price for all units purchased;
  - m) discounts, credits, debits, rebates, or other adjustments;
  - n) shipment costs;
  - o) party paying shipment costs; and

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- p) whether the shipment costs are included in the price per unit or the price for all units purchased or are in addition to those prices.
- 2) Monthly inventory information for PoolCorp, including:
- a) location of inventory;
  - b) product number;
  - c) product description;
  - d) units of product; and
  - e) price per unit.



Sep 06 2012  
07:32PM

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

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<b>IN RE: POOL PRODUCTS</b>	:	
<b>DISTRIBUTION MARKET ANTITRUST</b>	:	<b>MDL No. 2328</b>
<b>LITIGATION</b>	:	<b>SECTION: R(2)</b>
	:	<b>Case No. 2:12md02328-SSV-JCW</b>

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**This Document Relates To: All Direct Purchaser Actions**

**Judge Vance  
Mag. Judge Wilkinson**

**POOL CORPORATION, SCP DISTRIBUTORS LLC, AND SUPERIOR POOL PRODUCTS LLC’S RESPONSES TO DIRECT PURCHASER PLAINTIFFS’ CATEGORIES OF DOCUMENTS AND INFORMATION FOR DISCOVERY**

Pool Corporation, SCP Distributors LLC and Superior Pool Products LLC (“Pool Defendants”) respond to Direct Purchaser Plaintiffs’ (“DPPs”) Categories of Documents and Information for Discovery served on August 23, 2012.

**For the period 1999 to the present:**

**General Response:** The time period identified is overbroad and as it is far in excess of the class period DPP’s have alleged in this case. Additionally, the identification of entities in fn. 1 is objectionable to the extent it seeks documents that Pool Defendants do not have possession or control over. Furthermore, the Pool Defendants have already made a production of hundreds of thousands of pages of documents, bytes of data and involves approximately 160,000 SKUs and 80,000 customers.

**1) Document retention policy and practice.**

**Response:** The term “practice” is vague and the Pool Defendants do not understand what documents are sought. This request also, to some extent, seeks attorney-client privileged or work product protected documents or information. Pool Defendants have already produced its ordinary document retention policy to the DPPs as it was produced to the FTC.

2) **Antitrust compliance policy and practice.**

**Response:** As stated above, the term “practice” is vague and the Pool Defendants do not understand what documents are sought. This request also, to some extent, seeks attorney-client privileged or work product protected documents or information. The Pool Defendants will produce a copy of the antitrust compliance policy.

3) **Organizational charts.**

**Response:** Organizational charts were already produced to DPPs pursuant to the disclosures made in this case on June 29, 2012.

4) **For each individual identified in initial disclosures, expense reports, calendars and diaries, phone logs (including business and cell phone call records).**

**Response:** This request is vague, because the term “each individual identified in initial disclosures” could be interpreted in a variety of ways and it could be requesting documents that are not in the Pool Defendants’ control or possession. Pool Defendants produced calendars and diaries to the DPPs as produced to the FTC. Providing expense reports and phone logs creates an undue burden and expense. Furthermore, based upon its investigation to date, Pool Defendants do not believe that phone logs and records are available or reasonably accessible.

5) **Price announcements.**

**Response:** The term “price announcements” is vague and pricing documents that announce Pool Defendants’ prices to customers have already been produced to DPPs as it was produced to the FTC.

6) **Price change letters to customers.**

**Response:** The term “price change letters” is vague and pricing documents that announce Pool Defendants’ prices to customers have already been produced to DPPs as it was produced to the FTC.

7) **Price lists.**

**Response:** The term “price lists” is vague and pricing documents that announce Pool Defendants’ prices to customers have already been produced to DPPs as it was produced to the FTC.

8) **Product catalogs.**

**Response:** Product catalogs have already been produced to DPPs as they were produced to the FTC.

9) **Business plans, including strategic plans.**

**Response:** These documents have already been produced to DPPs as they were produced to the FTC.

10) **Yearly budgets and other projections.**

**Response:** These documents have already been produced to DPPs as they were produced to the FTC.

11) **Profit and loss statements on a monthly basis.**

**Response:** These documents have already been produced to DPPs as they were produced to the FTC.

12) **Profit and loss statements per product, SKU or other internal product grouping for the shortest time-reporting period used by Pool Corp internally.**

**Response:** Pool Defendants have produced to DPPs P&Ls as they were produced to the FTC and are not required to create new documents to respond to a document request.

13) **Market studies and analysis for pool products, which relate to the United States or any part of it.**

**Response:** This request is vague. Analyses and studies have been produced to DPPs as they were produced to the FTC.

**14) Regularly prepared sales and marketing reports, including supplier and customer “call” reports.**

**Response:** These documents have already been produced to DPPs as they were produced to the FTC.

**15) Market analysts’ reports.**

**Response:** Stock market analyst reports relating to the products at issue in this case that were in Pool Defendants’ possession were produced to the DPPs as they were produced to the FTC.

**16) Transcripts of earnings conference calls.**

**Response:** This information is publicly available to the DPPs. Transcripts of Pool Corporation’s earnings conference calls were produced to the DPPs as they were produced to the FTC.

**17) Documents relating to PoolCorp’s:**

- a) Acquisition strategy;
- b) Pricing structure or methodology; and
- c) Dealings with suppliers, competitors and customers.

**Response:** This request is vague and very broad in scope. It could include a number of things that have no bearing on this case. Pool Defendants believe that the documents sought here were produced to the DPPs as they were produced to the FTC.

**18) Documents relating to the Preferred Vendor Program including:**

- a) Program formation and rollout, including discussion of the reasons or need for, or possible value of, the program;
- b) Program goals and objectives;
- c) Program operations and performance;
- d) Program participants, their selection, and benefits provided to them on a participant-by-participant basis;

- e) Termination, whether actual or considered, of any program participant;
- f) Reviews and evaluations of the program and of participants in it.

**Response:** These documents were produced to the DPPs as they were produced to the FTC.

**19) Acquisition “deal” books.**

**Response:** This request is overly broad to the extent it seeks any and all acquisition “deal” books. This request is also vague and objectionable to the extent it requests documents and information protected from disclosure by the attorney-client privilege and attorney work-product doctrine, or would otherwise violate the Pool Defendants’ confidentiality obligations to third parties. These documents were produced to the DPPs as they were produced to the FTC.

**20) Communications between Pool Corp and its 10 largest suppliers (measured by yearly dollar volume of purchases by Pool Corp) (“Top 10 Suppliers”), including communications about any other Pool Products distributor or about any other supplier.**

**Response:** These documents were produced to the DPPs as they were produced to the FTC.

**21) Communications between any two or more of the Top 10 Suppliers, whether or not Pool Corp itself participated in the communication.**

**Response:** This request is objectionable to the extent it request documents the Pool Defendants do not have in their possession. To the extent that any such documents exist, these documents have already been produced to DPPs as they were produced to the FTC.

**22) Communications between PoolCorp and any other Pool Products Distributor.**

**Response:** This request is very broad and could include a variety of communications that do not relate to the issues in this case. Documents reflecting any communications between Pool Defendants and any other distributor of “Pool Products” were produced to the DPPs as they were produced to the FTC.

**23) Trade association documents, including:**

- a) Membership lists;
- b) Meeting files with agendas, minutes, presentations and attendance records;
- c) Committee lists and membership.

**Response:** Documents reflecting any communications between Pool Defendants and any other distributor of “Pool Products” were produced to the DPPs as they were produced to the FTC.

**24) Communications with each plaintiff.**

**Response:** Documents reflecting communications between Pool Defendants and its customers were produced to the DPPs as they were produced to the FTC.

**For the period January 1, 1995 to the present:**

**General Response:** As set out by Pool Defendants in its disclosures dated June 29, 2012, Pool Corporation does not have transactional data prior to 2005 for some fields. Other fields have data going back to 2006.

**25) Transaction data for each sale by the Pool Corp, including:**

- a) customer name and address;
- b) ship-to name and address;
- c) point shipped from;
- d) invoice number;
- e) purchase order number;
- f) date of invoice;
- g) date shipped;
- h) product number;
- i) product description;

- j) units of product;
- k) price per unit;
- l) price for all units purchased;
- m) discounts, credits, debits, rebates, or other adjustments;
- n) shipment costs;
- o) party paying shipment costs; and
- p) whether the shipment costs are included in the price per unit or the price for all units purchased or are in addition to those prices

**Response:** Many of the requested categories were produced to DPPs as they were produced to the FTC. Pool Defendants are willing to meet and confer with the DPPs about other categories and whether they are available and can be reasonably accessed.

**2) Monthly inventory information for Pool Corp, including:**

- a) location of inventory;
- b) product number;
- c) product description;
- d) units of product; and
- e) price per unit.

**Response:** This request is overbroad and burdensome. The inventory level at any particular branch at any particular time is not relevant to DPP's claims in this case. Pool Defendants produced to DPPs data regarding purchases of inventory from suppliers as it was produced to the FTC.

Dated: September 6, 2012

DLA Piper LLP (US)

By: /s/ Deana L. Cairo  
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*-and-*

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*Counsel for Defendants Pool Corporation, SCP  
Distributors LLC and Superior Pool Products LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY the above and foregoing Pool Corporation's Responses to Direct Purchaser Plaintiffs' Categories of Documents and Information for Discovery has been served on Direct Purchaser Plaintiffs' Co-Liaison Counsel, Russ Herman and Camilo Salas, III, Indirect Purchaser Plaintiffs' Liaison Counsel, Thomas H. Brill, and Defendants' Liaison Counsel, William Gaudet, by e-mail and upon all parties by electronically uploading the same to Lexis Nexis File & Serve in accordance with Pretrial Order No. 8 on this 6th day of September, 2012.

/s/ Deana L. Cairo

Deana L. Cairo

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**Direct Purchaser Plaintiffs' Document List  
to the Manufacturer Defendants<sup>1</sup>**

**A. For the period 1999 to the present:**

- 1) Document retention policy and practice.
- 2) Antitrust compliance policy and practice.
- 3) Organizational charts.
- 4) For each individual identified in initial disclosures, expense reports, calendars and diaries, phone logs (including business and cell phone call records).
- 5) Price announcements.
- 6) Price change letters to customers.
- 7) Price lists.
- 8) Product catalogs.
- 9) Business plans, including strategic plans.
- 10) Yearly budgets and other projections.
- 11) Profit and loss statements on a monthly basis.
- 12) Profit and loss statements per product, SKU or other internal product grouping for the shortest time-reporting period used by the Manufacturer Defendant internally.
- 13) Market studies and analysis for pool products, which related to the United States or any part of it.
- 14) Regularly prepared sales and marketing reports, including supplier and customer "call" reports.
- 15) Market analysts' reports, and other company-specific reports.
- 16) Transcripts of earnings conference calls.
- 17) Documents relating to each Manufacturer Defendant's:
  - a) Pricing structure or methodology to determine product prices; and
  - b) Dealings with competitors and customers.
- 18) Documents relating to PoolCorp's Preferred Vendor Program including:
  - a) Program participation, including discussion of the reasons, or possible value of, participating in the program;
  - b) Program goals and objectives;
  - c) Program operations and performance;

---

<sup>1</sup> The requests on this list are directed to each "Manufacturer Defendant" – Hayward Industries, Inc., Pentair Water Pool and Spa, Inc., and Zodiac Pool Systems, Inc. – as well as to their respective present or former subsidiaries manufacturing or selling pool products in the United States during the specified time period.

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- d) Benefits provided under the program;
  - e) Reviews and evaluations of the program;
  - f) Cessation of participation in the program, whether actual or considered, permanent or temporary, and whether the cessation was voluntary, directed by PoolCorp, or jointly agreed to.
- 19) Communications between each Manufacturer Defendant and PoolCorp, including communications about any other Pool Products distributor or about any other manufacturer or supplier of Pool Products.
- 20) Communications between any two or more of the Manufacturer Defendants.
- 21) Trade association documents, including:
- a) Membership lists;
  - b) Meeting files with agendas, minutes, presentations and attendance records;
  - c) Committee lists and membership.
- 22) Communications with each plaintiff.

**B. For the period January 1, 1995 to the present:**

- 1) Transaction data for each sale by the Manufacturer Defendant, including:
- a) customer name and address;
  - b) ship-to name and address;
  - c) point shipped from;
  - d) invoice number;
  - e) purchase order number;
  - f) date of invoice;
  - g) date shipped;
  - h) product number;
  - i) product description;
  - j) units of product;
  - k) price per unit;
  - l) price for all units purchased;
  - m) discounts, credits, debits, rebates, or other adjustments;
  - n) shipment costs;
  - o) party paying shipment costs; and
  - p) whether the shipment costs are included in the price per unit or the price for all units purchased or are in addition to those prices.
- 2) Monthly inventory information for each Manufacturer Defendant, including:

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- a) location of inventory;
  - b) product number;
  - c) product description;
  - d) units of product; and
  - e) price per unit.
- 3) Monthly production cost information per product unit, SKU or other internal product grouping.

**The Manufacturer Defendants' Objections and Responses  
to the Direct Purchaser Plaintiffs' Document Request List**

The Manufacturer Defendants object to the time period for which the Direct Purchaser Plaintiffs seek documents and information. The Subpoenas previously issued by the FTC required the production of documents dating back only to January 1, 2007 with respect to most categories of documents. Similarly, the Civil Investigation Demands previously issued by the FTC required detailed product, sales, and cost data to be provided dating back only to January 1, 2005 with respect to most such data. The Direct Purchaser Plaintiffs should be required to explain why they are entitled to documents dating back to 1999 and data dating back to 1995—both of which predate the beginning of the “Class Period” alleged in the Amended Complaint by several years—before imposing the unduly burdensome and expensive task of collecting, reviewing, and producing this historic information on Manufacturer Defendants.

Further, the Direct Purchaser Plaintiffs should explain why they are supposedly entitled to documents and information for the time covered by the FTC Subpoenas and Civil Investigative Demands other than the responses that were provided to the FTC (the “Manufacturer Defendants’ FTC Responses”). Copies of the Manufacturer Defendants’ FTC Responses are being provided to Direct Purchaser Plaintiffs. Producing additional documents and information from the time periods addressed in the Manufacturer Defendants’ FTC Responses, or for earlier periods, would be unduly burdensome, oppressive, harassing, and not reasonably calculated to lead to the discovery of admissible evidence.

The Manufacturer Defendants also object to the production of documents generated after November 21, 2011—the effective date of the FTC Consent Decree referenced in the Amended Complaint. Since that date, PoolCorp has been subject to a consent decree enforced by the FTC that prohibits the conduct of which the Direct Purchaser Plaintiffs complain.

Zodiac Pool Systems, Inc. (“Zodiac”) further objects to producing any transactional records created prior to October 2008 because, as explained in Zodiac’s initial disclosures, no single database from prior to October 2008 exists that contains comprehensive transactional data for Zodiac and the FTC did not require Zodiac to provide transactional data prior to that date. Zodiac further notes that, given its two-year retention policy for emails, Zodiac custodians likely will have few, if any, electronic copies of emails created before July 2010.

The Manufacturer Defendants further object and respond to the Direct Purchaser Plaintiffs’ individual requests as follows:

**A. For the period 1999 to the present:**

- 1) Document retention policy practice.

**Response:** Subject to and without waiving their objections, the Manufacturer Defendants state that this request is duplicative of the Subpoenas and/or Civil Investigative Demands previously issued by the FTC in response to which they provided the Manufacturer Defendants’ FTC Responses. Copies of the Manufacturer Defendants’

FTC Responses are currently being provided to the Direct Purchaser Plaintiffs. The Manufacturer Defendants object to producing additional documentation for the period before or covered by the Manufacturer Defendants' FTC Responses. Subject to these objections, to the extent that additional responsive, non-privileged records exist for the period after the time period covered by the Manufacturer Defendants' FTC Responses but before November 21, 2011, and to the extent that such documents are in the possession of certain custodians to be identified by the Manufacturer Defendants, they will be produced.

- 2) Antitrust compliance policy and practice.

**Response:** To the extent that responsive, non-privileged records exist that were not previously produced to the FTC or otherwise, they will be produced for the time period covered by the Manufacturer Defendants' FTC Responses through November 21, 2011.

- 3) Organizational charts.

**Response:** The Manufacturer Defendants object to producing additional organizational charts beyond those produced as a part of the Manufacturer Defendants' FTC Responses and those produced as a part of Mandatory Disclosures required by Pretrial Order #10.

- 4) For each individual identified in initial disclosures, expense reports, calendars and diaries, phone logs (including business and cell phone call records).

**Response:** The Manufacturer Defendants object to this request on the grounds that it seeks irrelevant information and is overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence.

- 5) Price announcements.

**Response:** Subject to and without waiving their objections, the Manufacturer Defendants state that this request is duplicative of the Subpoenas and/or Civil Investigative Demands previously issued by the FTC in response to which they provided the Manufacturer Defendants' FTC Responses. Copies of the Manufacturer Defendants' FTC Responses are currently being provided to the Direct Purchaser Plaintiffs. The Manufacturer Defendants object to producing additional documentation for the period before or covered by the Manufacturer Defendants' FTC Responses. Subject to these objections, to the extent that additional responsive, non-privileged records exist for the period after the period covered by the Manufacturer Defendants' FTC Responses but before November 21, 2011, and to the extent that such documents are in the possession of certain custodians to be identified by the Manufacturer Defendants, they will be produced.

6) Price change letters to customers.

**Response:** Subject to and without waiving their objections, the Manufacturer Defendants state that this request is duplicative of the Subpoenas and/or Civil Investigative Demands previously issued by the FTC in response to which they provided the Manufacturer Defendants' FTC Responses. Copies of the Manufacturer Defendants' FTC Responses are currently being provided to the Direct Purchaser Plaintiffs. The Manufacturer Defendants object to producing additional documentation for the period before or covered by the Manufacturer Defendants' FTC Responses. Subject to these objections, to the extent that additional responsive, non-privileged records exist for the period after the period covered by the Manufacturer Defendants' FTC Responses but before November 21, 2011, and to the extent that such documents are in the possession of certain custodians to be identified by the Manufacturer Defendants, they will be produced.

7) Price lists.

**Response:** Subject to and without waiving their objections, the Manufacturer Defendants state that this request is duplicative of the Subpoenas and/or Civil Investigative Demands previously issued by the FTC in response to which they provided the Manufacturer Defendants' FTC Responses. Copies of the Manufacturer Defendants' FTC Responses are currently being provided to the Direct Purchaser Plaintiffs. The Manufacturer Defendants object to producing additional documentation for the period before or covered by the Manufacturer Defendants' FTC Responses. Subject to these objections, to the extent that additional responsive, non-privileged records exist for the period after the period covered by the Manufacturer Defendants' FTC Responses but before November 21, 2011, and to the extent that such documents are in the possession of certain custodians to be identified by the Manufacturer Defendants, they will be produced.

8) Product catalogs.

**Response:** Subject to and without waiving their objections, the Manufacturer Defendants state that this request is duplicative of the Subpoenas and/or Civil Investigative Demands previously issued by the FTC in response to which they provided the Manufacturer Defendants' FTC Responses. Copies of the Manufacturer Defendants' FTC Responses are currently being provided to the Direct Purchaser Plaintiffs. The Manufacturer Defendants object to producing additional documentation for the period before or covered by the Manufacturer Defendants' FTC Responses. Subject to these objections, to the extent that additional responsive, non-privileged records exist for the period after the period covered by the Manufacturer Defendants' FTC Responses but before November 21, 2011, and to the extent that such documents are in the possession of certain custodians to be identified by the Manufacturer Defendants, they will be produced.

9) Business plans, including strategic plans.

**Response:** Object as overly broad and vague. Subject to and without waiving their objections, the Manufacturer Defendants state that this request is duplicative of the Subpoenas and/or Civil Investigative Demands previously issued by the FTC in response to which they provided the Manufacturer Defendants' FTC Responses. Copies of the Manufacturer Defendants' FTC Responses are currently being provided to the Direct Purchaser Plaintiffs. The Manufacturer Defendants object to producing additional documentation for the period before or covered by the Manufacturer Defendants' FTC Responses. Subject to these objections, to the extent that additional responsive, non-privileged records exist for the period after the period covered by the Manufacturer Defendants' FTC Responses but before November 21, 2011, and to the extent that such documents are in the possession of certain custodians to be identified by the Manufacturer Defendants, they will be produced.

10) Yearly budgets and other projections.

**Response:** Object as overly broad and vague. Subject to and without waiving their objections, the Manufacturer Defendants state that this request is duplicative of the Subpoenas and/or Civil Investigative Demands previously issued by the FTC in response to which they provided the Manufacturer Defendants' FTC Responses. Copies of the Manufacturer Defendants' FTC Responses are currently being provided to the Direct Purchaser Plaintiffs. The Manufacturer Defendants object to producing additional documentation for the period before or covered by the Manufacturer Defendants' FTC Responses. Subject to these objections, to the extent that additional responsive, non-privileged records exist for the period after the period covered by the Manufacturer Defendants' FTC Responses but before November 21, 2011, and to the extent that such documents are in the possession of certain custodians to be identified by the Manufacturer Defendants, they will be produced.

11) Profit and loss statements on a monthly basis.

**Response:** Object. Irrelevant and unduly burdensome. Furthermore, as this request is duplicative of the Subpoena and/or Civil Investigative Demands previously issued by the FTC, the Manufacturer Defendants' FTC Responses are currently being produced to the Direct Purchaser Plaintiffs.

12) Profit and loss statements per product, SKU or other internal product grouping for the shortest time-reporting period used by the Manufacturer Defendant internally.

**Response:** Object. Irrelevant and unduly burdensome. Furthermore, as this request is duplicative of the Subpoena and/or Civil Investigative Demands previously issued by the FTC, the Manufacturer Defendants' FTC Responses are currently being produced to the Direct Purchaser Plaintiffs.

- 13) Market studies and analysis for pool products, which related to the United States or any part of it.

**Response:** Subject to and without waiving their objections, the Manufacturer Defendants state that this request is duplicative of the Subpoenas and/or Civil Investigative Demands previously issued by the FTC in response to which they provided the Manufacturer Defendants' FTC Responses. Copies of the Manufacturer Defendants' FTC Responses are currently being provided to the Direct Purchaser Plaintiffs. The Manufacturer Defendants object to producing additional documentation for the period before or covered by the Manufacturer Defendants' FTC Responses. Subject to these objections, to the extent that additional responsive, non-privileged records exist for the period after the period covered by the Manufacturer Defendants' FTC Responses but before November 21, 2011, and to the extent that such documents are in the possession of certain custodians to be identified by the Manufacturer Defendants, they will be produced.

- 14) Regularly prepared sales and marketing reports, including supplier and customer "call" reports.

**Response:** Object. Irrelevant and overly broad. In particular, supplier reports are irrelevant. Subject to and without waiving their objections, the Manufacturer Defendants state that this request is duplicative of the Subpoenas and/or Civil Investigative Demands previously issued by the FTC in response to which they provided the Manufacturer Defendants' FTC Responses. Copies of the Manufacturer Defendants' FTC Responses are currently being provided to the Direct Purchaser Plaintiffs. The Manufacturer Defendants object to producing additional documentation for the period before or covered by the Manufacturer Defendants' FTC Responses. Subject to these objections, to the extent that additional responsive, non-privileged records exist for the period after the period covered by the Manufacturer Defendants' FTC Responses but before November 21, 2011, and to the extent that such documents are in the possession of certain custodians to be identified by the Manufacturer Defendants, they will be produced.

- 15) Market analysts' reports, and other company-specific reports.

**Response:** Object. Overly broad and vague. Subject to and without waiving their objections, the Manufacturer Defendants state that this request is duplicative of the Subpoenas and/or Civil Investigative Demands previously issued by the FTC in response to which they provided the Manufacturer Defendants' FTC Responses. Copies of the Manufacturer Defendants' FTC Responses are currently being provided to the Direct Purchaser Plaintiffs. The Manufacturer Defendants object to producing additional documentation for the period before or covered by the FTC Responses. Subject to these objections, to the extent that additional responsive, non-privileged records exist for the period after the period covered by the Manufacturer Defendants' FTC Responses but before November 21, 2011, they will be produced.

16) Transcripts of earnings conference calls.

**Response:** Zodiac and Hayward are private companies and, therefore, no records responsive to this request exist. Pentair objects to this request on the grounds of relevancy.

17) Documents relating to each Manufacturer Defendant's:

a) Pricing structure or methodology to determine product prices; and

b) Dealings with competitors and customers.

**Response:** Object. overly broad, vague and burdensome. Subject to and without waiving their objections, the Manufacturer Defendants state that this request is duplicative of the Subpoenas and/or Civil Investigative Demands previously issued by the FTC in response to which they provided the Manufacturer Defendants' FTC Responses. Copies of the Manufacturer Defendants' FTC Responses are currently being provided to the Direct Purchaser Plaintiffs. The Manufacturer Defendants object to producing additional documentation for the period before or covered by the Manufacturer Defendants' FTC Responses. Subject to these objections, to the extent that additional responsive, non-privileged records exist for the period after the period covered by the Manufacturer Defendants' FTC Responses but before November 21, 2011, and to the extent that such documents are in the possession of certain custodians to be identified by the Manufacturer Defendants, they will be produced.

18) Documents relating to PoolCorp's Preferred Vendor Program including:

a) Program participation, including discussion of the reasons, or possible value of, participating in the program;

b) Program goals and objectives;

c) Program operation and performance;

d) Benefits provided under the program;

e) Reviews and evaluations of the program;

f) Cessation of participation in the program, whether actual or considered, permanent or temporary, and whether the cessation was voluntary, directed by PoolCorp, or jointly agreed to.

**Response:** Subject to and without waiving their objections, the Manufacturer Defendants state that this request is duplicative of the Subpoenas and/or Civil Investigative Demands previously issued by the FTC in response to which they provided

the Manufacturer Defendants' FTC Responses. Copies of the Manufacturer Defendants' FTC Responses are currently being provided to the Direct Purchaser Plaintiffs. The Manufacturer Defendants object to producing additional documentation for the period before or covered by the Manufacturer Defendants' FTC Responses. Subject to these objections, to the extent that additional responsive, non-privileged records exist for the period after the period covered by the Manufacturer Defendants' FTC Responses but before November 21, 2011, and to the extent that such documents are in the possession of certain custodians to be identified by the Manufacturer Defendants, they will be produced.

- 19) Communications between each Manufacturer Defendant and PoolCorp, including communications about any other Pool Products distributor or about any other manufacturer or supplier of Pool Products.

**Response:** Object. overly broad. Subject to and without waiving their objections, the Manufacturer Defendants state that this request is duplicative of the Subpoenas and/or Civil Investigative Demands previously issued by the FTC in response to which they provided the Manufacturer Defendants' FTC Responses. Copies of the Manufacturer Defendants' FTC Responses are currently being provided to the Direct Purchaser Plaintiffs. The Manufacturer Defendants object to producing additional documentation or information for the period before or covered by the Manufacturer Defendants' FTC Responses. Subject to these objections, to the extent that additional responsive, non-privileged records exist for the period after the period covered by the Manufacturer Defendants' FTC Responses but before November 21, 2011, and to the extent that such documents are in the possession of certain custodians to be identified by the Manufacturer Defendants, they will be produced.

- 20) Communications between any two or more of the Manufacturer Defendants.

**Response:** Object. Irrelevant, overly broad and vague.

- 21) Trade association documents, including:

- a) Membership lists;
- b) Meeting files with agendas, minutes, presentations and attendance records;
- c) Committee lists and membership.

**Response:** Object. Irrelevant.

- 22) Communications with each plaintiff.

**Response:** Object. overly broad and vague. Subject to these objections, to the extent that responsive records exist, and to the extent that such documents are in the

possession of certain custodians to be identified by the Manufacturer Defendants, they will be produced.

**B. For the period January 1, 1995 to the present:**

- 1) Transaction data for each sale by the Manufacturer Defendant, including:
  - a) customer name and address;
  - b) ship-to name and address;
  - c) point shipped from;
  - d) invoice number;
  - e) purchase order number;
  - f) date of invoice;
  - g) date shipped;
  - h) product number;
  - i) product description;
  - j) units of product;
  - k) price per unit;
  - l) price for all units purchased;
  - m) discounts, credits, debits, rebates, or other adjustments;
  - n) shipment costs;
  - o) party paying shipment costs; and
  - p) whether the shipment costs are included in the price per unit or the price for all units purchased or are in addition to those prices.

**Response:** Object. Irrelevant, overly broad, and unduly burdensome. Furthermore, as this request is duplicative of the Subpoena and/or Civil Investigative Demands previously issued by the FTC, the Manufacturer Defendants' FTC Responses are currently being produced to the Direct Purchaser Plaintiffs.

- 2) Monthly inventory information for each Manufacturer Defendant, including:

- a) location of inventory;
- b) product number;
- c) product description;
- d) units of product; and
- e) price per unit.

**Response:** Object. Irrelevant.

- 3) Monthly production costs information per product unit, SKU or other internal product grouping.

**Response:** Object. Irrelevant. Furthermore, as this request is largely duplicative of the Subpoena and/or Civil Investigative Demands previously issued by the FTC, the Manufacturer Defendants' FTC Responses are currently being produced to the Direct Purchaser Plaintiffs.

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**Subject:** FW: Pool Products

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**From:** Cairo, Deana L.

**Sent:** Thursday, September 27, 2012 01:34 PM

**To:** Richard J. Kilsheimer <RKilsheimer@kaplanfox.com>; 'billy.gaudet@arlaw.com' <billy.gaudet@arlaw.com>; 'bjustus@mcguirewoods.com' <bjustus@mcguirewoods.com>; Bamberger, David; 'hfeller@mcguirewoods.com' <hfeller@mcguirewoods.com>; 'mlevitt@foley.com' <mlevitt@foley.com>; 'mlockerby@foley.com' <mlockerby@foley.com>; 'nabramson@liskow.com' <nabramson@liskow.com>; 'rhernandez@mccarter.com' <rhernandez@mccarter.com>; 'tflanagan@flanaganpartners.com' <tflanagan@flanaganpartners.com>; 'tgoodwin@mccarter.com' <tgoodwin@mccarter.com>

**Cc:** Robert Kaplan <RKaplan@kaplanfox.com>; Gregory Arenson <GArenson@kaplanfox.com>; Elana Katcher <ekatcher@kaplanfox.com>; 'Salzman, Hollis' <HSalzman@labaton.com>; Himes, Jay L. <jhimes@labaton.com>; 'mhollywood@labaton.com' <mhollywood@labaton.com>; 'aranoff@bernlieb.com' <aranoff@bernlieb.com>; 'dsmith@bernlieb.com' <dsmith@bernlieb.com>; 'rherman@hhkc.com' <rherman@hhkc.com>; 'ldavis@hhkc.com' <ldavis@hhkc.com>; 'aweintraub@hhkc.com' <aweintraub@hhkc.com>; csalas@salaslaw.com <csalas@salaslaw.com>

**Subject:** RE: Pool Products

Bob and Ron:

As discussed during our meet-and-confer session last week, we have attempted to group, by general categories, the document requests/interrogatories that you objected to (in part on in their entirety) because they were “not relevant” or that they involved so-called downstream data.

We note at the outset that it is difficult to understand whether some of your relevance objections are objections based on your position that the request is for documents that you define as “downstream” or for some other reason. The lack of specificity in your objections has made it somewhat difficult, so we have put all of your relevance objections that we believe to be based upon a “downstream” objection into categories. If some of these objections do not involve a “downstream” objection on your part, or there are requests that do and are not discussed below, please let us know.

We all know that there are cases on both sides of this issue. You cited to a sample of the ones we’d expect you to raise, and we expect to rely upon *Valley Drug Co. v. Geneva Pharmaceuticals, Inc.*, 350 F.3d 1181 (11th Cir. 2003) and *In re Urethane Antitrust Litigation*, 237 F.R.D. 454 (D. Kan. 2006) and progeny. With respect to your citation of *Air Cargo*, as you know, subsequent to the court’s opinion to which you cite (where we note there is also no indirect purchaser class), the Magistrate Judge ordered plaintiffs on defendants’ motion to compel to answer deposition questions to which plaintiffs’ objected as involving discovery of some of the same type of information sought here (e.g., profits, margins, information regarding sales to customers of the direct purchaser plaintiffs).

We hope that you will give due consideration to these categories and will be willing to work toward a compromise position when we talk later today.

**Categories of Discovery to Which DPPs Appear to Assert a “Downstream”  
Relevance Objection**

1. Transactional data that includes sales to DPPs’ customers. These data are an important part of the analysis of the relevant geographic and product markets in this case. These data are also relevant to understanding members of the putative class of indirect purchasers, who are too numerous to identify

and who are not likely to have any records, much less complete records, regarding their purchases of Pool Products. Pool Category No. 2, Manufacturer Defendants' Interrogatory No. 1, Request No. 20.

2. Information about the plaintiffs' businesses relating to alleged financial injuries and characteristics of named plaintiffs. E.g., P&Ls, profit margins, regularly prepared financial reports, data regarding revenues/profits. These requests are relevant to the typicality and adequacy of the named plaintiffs as representatives of the putative class, and are relevant to issues of damages alleged. This may be a non-issue at this point, as Russ conceded during our meet and confer that Pool Category 3 (P&Ls) is relevant. Pool Category Nos. 3-5, Manufacturer Defendants' Interrogatories 21-23, Request Nos. 10, 12-13, and 21.
3. Possible substitute manufacturers, distributors, products, geographic locations consumers will consider and competition faced by direct purchasers ("market facts"). These requests are all relevant to the supply and demand conditions and are relevant to your asserted product and geographic markets. Pool Category Nos. 9, 10, 11, 12, 13 (in part), 16 (you invite a discussion), 19 (in part), 20 (in part), 21 (in part), 24, 27 and Manufacturer Defendants' Request Nos. 4, 6, 9, 11, 16, 17 (in part), 18 (in part), 23 (in part) and Interrogatories 9, 10, and 12.
4. Characteristics of the putative class members. This is relevant to several aspects of class certification and is the kind of discovery allowed by the court in *Valley Drug* and *Urethane*. See item #2 above, and Manufacturer Defendants' Interrogatory Nos. 5 and 9.
5. Plaintiffs' inventory. This relates to plaintiffs' purchases from Manufacturers and other defendants, so we have no idea upon what basis you assert this is "downstream" at all. Manufacturer Defendants' Request No. 14.
6. DPPs' advertising, marketing, rebate/discounts of Pool Products. Pool Corporation and Manufacturers often provided advertising and marketing support to direct purchasers and they also provided rebates or discounts for direct purchasers' customers (indirect purchasers), and documents discussing any of the services provided by defendants are relevant and are not "downstream." Pool Category Nos. 28 and 30, Manufacturer Defendants' Request No. 5, Interrogatory No. 11.

We look forward to speaking with you later today.

Regards,

Deana

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**From:** Richard J. Kilsheimer [<mailto:RKilsheimer@kaplanfox.com>]

**Sent:** Tuesday, September 25, 2012 5:18 PM

**To:** 'billy.gaudet@arlaw.com'; 'bjustus@mcguirewoods.com'; Bamberger, David; Cairo, Deana L.; 'hfeller@mcguirewoods.com'; 'mlevitt@foley.com'; 'mlockerby@foley.com'; 'nabramson@liskow.com'; 'rhernandez@mccarter.com'; 'tflanagan@flanaganpartners.com'; 'tgoodwin@mccarter.com'

**Cc:** Robert Kaplan; Gregory Arenson; Elana Katcher; 'Salzman, Hollis'; Himes, Jay L.; 'mhollywood@labaton.com'; 'aranoff@bernlieb.com'; 'dsmith@bernlieb.com'; 'rherman@hhkc.com'; 'ldavis@hhkc.com'; 'aweintraub@hhkc.com'; [csalas@salaslaw.com](mailto:csalas@salaslaw.com)

**Subject:** Pool Products

Counsel,

During the meet and confer call last week, defendants' counsel asked Direct Purchaser Plaintiffs to cite antitrust cases where "downstream" and financial discovery of plaintiffs had not been permitted by courts. While the overwhelming weight of authority supports plaintiffs' position, the following list provides a representative (but not exhaustive) sample of such decisions:

*In re Air Cargo Shipping Services Antitrust Litigation*, MDL 1775, 2010 WL 4916723 (E.D.N.Y. Nov. 24, 2010); *Meijer, Inc. v. Abbott Laboratories*, 251 F.R.D. 431 (N.D.Cal. 2008); *In re Aspartame Antitrust Litigation*, No. 2:06-cv-1732-LDD, 2008 WL 2275528 (E.D.Pa. April 8, 2008); *In re K-Dur Antitrust Litigation*, No. 01-1652(JAG), 2007 WL 5302308 (D.N.J. Jan. 2, 2007); *In re Vitamins Antitrust Litigation*, 198 F.R.D. 296 (D.D.C. 2000).

Regards,

Richard

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