

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

In re: POOL PRODUCTS DISTRIBUTION	*	MDL Docket No. 2328
MARKET ANTITRUST LITIGATION	*	
	*	SECTION R(2)
	*	
	*	JUDGE VANCE
	*	
This document relates to All Cases	*	MAG. JUDGE WILKINSON
	*	

**JOINT STATUS REPORT AND AGENDA FOR
FEBRUARY 13, 2014 STATUS CONFERENCE**

In accordance with Pretrial Order No. 20, Rec. Doc. 334, the parties respectfully submit the following report describing (a) the progress of discovery since the October 21, 2013 status conference and (b) a list of items for discussion at the February 13, 2014 status conference. The Direct Purchaser Plaintiffs' and the Indirect Purchaser Plaintiffs' set forth their report in Section I. The defendants set forth their report in Section II.

I. Plaintiffs' Report on the Status of Discovery and Issues to be Addressed at the February 13, 2014 Conference

A. Status Report by the DPPs

1. Discovery from Defendants to Plaintiffs

a. Transactional Data

Direct Purchaser Plaintiffs ("DPP") are continuing to follow-up with Defendants regarding outstanding questions concerning their transactional data.

b. Third- Party Discovery

Pursuant to previously served subpoenas *duces tecum*, DPPs have been in contact with two trade associations, Independent Pool and Spa Services Association, Inc. (“IPSSA”) and Association of Pool and Spa Professionals (“APSP”), in an effort to obtain documents from these parties. Both IPSSA and APSP have agreed to produce documents. DPPs have informed Defendants of the documents offered for production by IPSSA and APSP and received no objections to the scope of the production. DPPs have informed both trade associations that the DPPs and the defendants are in agreement regarding the scope of IPSSA’s and APSP’s proposed document offerings and are proceeding with production.

2. Direct Purchaser Plaintiffs’ Motion to Strike Pentair Water Pool & Spa, Inc.’s Answer and Affirmative Defenses

On February 7, 2014, DPPs filed a motion to strike defendant Pentair Water Pool & Spa, Inc.’s Answer to the Second Amended Consolidated Class Action Complaint on the grounds that the Answer is highly irregular, is contrary to the Court’s express statement to all counsel at the Motion to Dismiss Oral Argument, and contains redundant and impertinent matter.

B. Status Report by the IPPs

The IPPs are monitoring the merits depositions of Defendants and cooperating with DPP counsel on discovery matters. The IPPs are continuing to work with third party swimming pool product retailers and builders in California, Arizona, Florida, and Missouri to obtain financial data. The IPPs continue to analyze and designate Defendants’ documents for use by IPPs expert relating to damage issues. There are no discovery matters or issues in dispute relating to IPPs at this time.

II. Defendants' Report on the Status of Discovery and Issues to be Addressed at the February 13, 2014 Conference

A. Fact Discovery Status Reports

Since the Defendant's Eleventh Report on the Status of Fact Discovery, Rec. Doc. 339, filed on November 4, 2013, the following depositions have been taken:

Date	Deponent	Affiliation
11/6/2013	George Metkovich	Hayward
11/8/2013	Denny St. Romain	PoolCorp
11/12/2013	James Hilton, Jr.	Third Party
11/14/2013	Steve Dwyer	PoolCorp
11/15/2013	Mike Wallace	Third Party
11/19/2013	Calvin Johnston	Zodiac
11/21/2013	Robert Rankin	PoolCorp
12/10/2013	Troy Franzen	Zodiac
12/10/2013	Lawrence H. Silber	Hayward
12/12/2013	Todd Cramer	Zodiac
12/17/2013	Dave Murray	Pentair
12/18/2013	Steve Zorn	Pentair
12/19/2013	Karl Frykman	Pentair
1/7/2014	Bruce Fisher	Hayward
1/8/2014	Robert Rasp	Zodiac
1/10/2014	Vance Gillette	Zodiac
1/16/2014	Ernesto Salas	PoolCorp
1/17/2014	Dave Cook	PoolCorp
1/22/2014	Carlos Del Amo	Pentair
1/23/2014	Manny Perez de la Mesa	PoolCorp
1/24/2014	Jeffrey Fausett	Third Party
1/30/2014	Bill Whitehurst	Pentair
1/31/2014	Jim Fisher	Pentair

The parties have obtained leave of court to take the following depositions after the February 10, 2014, close of all fact and class certification discovery:

Date	Deponent	Affiliation
2/12/2014	Michael Massa	Hayward
2/12/2014	Scott Frost	Zodiac

2/20/2014	Carlo Buffa	Hayward
2/21/2014	Gary Golden	Pentair

The deposition of Scott Levin was noticed for February 6, 2014, but was cancelled by agreement due to inclement weather. The parties have filed a joint motion for leave to take the deposition of Mr. Levin on March 13, 2013.

Additionally, in the event the parties cannot agree as to the authenticity of business records, the Court granted the parties leave to take depositions regarding the authentication of such business records any time prior to the date four (4) weeks before the deadline the Court sets for submission of a proposed Final Pretrial Order, Rec. Docs. 360, 360-1, and 364.

B. Pentair's Answer and Affirmative Defenses

Pentair just learned of the Direct Purchaser Plaintiffs' objections to its Answer this afternoon but will be filing an opposition to the motion to strike by Tuesday, February 11, 2014. Pentair's opposition will show that its Answer does not contain "any redundant, immaterial, impertinent or scandalous matter" within the meaning of Fed. R. Civ. P. 12(f). To the contrary, Pentair's Answer merely cites the evidence—including the documents referenced in the Second Amended Complaint and the testimony of the witnesses identified in the Second Amended Complaint—that establishes why the Direct Purchaser Plaintiffs' allegations are without merit.

C. Mediation

Pretrial Order 20 ordered the parties to Judge Layn Phillips to schedule a mediation session around the date of the close of fact discovery. Rec. Doc. 334. The parties have contacted have scheduled mediation for March 20, 2014.

III. NEXT STATUS CONFERENCE

Direct Purchaser Plaintiffs' Co-Liaison Counsel and Executive Committee, Indirect Purchaser Plaintiffs' Liaison Counsel, Pool Corp. Defendants' Counsel, and Manufacturer Defendants' Liaison Counsel will be prepared to schedule the next status conference on a date to be selected by the Court.

Dated: February 7, 2014

Respectfully submitted,

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