

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION

VICTORIA KLEIN, et al.,	§	
	§	
Plaintiffs,	§	
	§	Civil Action No. 7:03-CV-102-D
VS.	§	
	§	
O'NEAL, INC., d/b/a O'NEAL, JONES &	§	
FELDMAN PHARMACEUTICALS, et al.,	§	
	§	
Defendants.	§	

**ORDER**

In response to the court’s August 30, 2005 order, the parties have conferred and submitted joint scheduling recommendations and their respective recommendations concerning the content of the scheduling order in this case. Having considered the submissions, the court has decided to enter the following scheduling order. The court has deferred consideration of other proposed deadlines as to which the parties disagree and that may require consideration of additional submissions on substantive issues, such as causation, and/or convening a scheduling conference.

I

The parties have included in their joint scheduling recommendations proposed deadlines concerning plaintiffs’ motion for non-opt-out class and notice. The court has not included such deadlines in this order. On October 20, 2005 plaintiffs filed an amended motion to modify the court’s May 11, 2004 class certification order (“motion for non-opt-out class”). The court will adhere to the briefing regimen established by N.D. Tex. Civ. R. 7.1(e) and (f) unless, subject to court approval, the parties agree to extend the deadlines established by these rules.

II

The parties must comply with the following deadlines unless a deadline is modified by court order upon a showing of good cause. A proposed agreed order to modify a deadline must be accompanied by a written submission (e.g., a cover letter) that explains the reason for the modification.

A. Claimant Questionnaire

The parties must submit a proposed claimant questionnaire no later than November 30, 2005. If a party objects to the proposed questionnaire, the party must submit objections or an alternative proposed questionnaire no later than December 30, 2005. If the court grants plaintiffs' motion for non-opt-out class, the questionnaire must be sent with the non-opt-out class notice. If the court denies the motion, the questionnaire must be sent no later than a date to be determined after the opt-out deadline has passed, to class members who have not opted out. Questionnaire responses are due 45 days after the questionnaire has been sent to class members.

B. Class Notice

Plaintiffs must send class notice to identified class members no later 30 days after the court decides plaintiffs' motion for non-opt-out class (or, if the court has yet to resolve objections to a questionnaire to be sent with a non-opt-out class notice, 30 days after the objections are resolved). If the court grants the motion for non-opt-out class, the notice must contain a deadline of 60 days for filing objections to the non-opt-out class and specify the date of a hearing on such objections (to be determined by counsel by contacting the court and including the chosen date in the notice). If the court denies the motion for non-opt-out class, the notice must contain a deadline for opt-outs that is 60 days after the notice is sent.

C. Non-Opt-Out Class Hearing

If applicable, the court will conduct a hearing on objections to a non-opt-out class on the date chosen in accordance with the procedure specified in § II(B).

D. Amendment of Pleadings

A party must file a motion for leave to amend pleadings no later than June 1, 2006.

E. Summary Judgment Motions

A party must file a motion for summary judgment no later than July 1, 2006 on any issue that does not require individualized fact discovery. Unless modified by agreement of the parties with court approval, the time limits of N.D. Tex. Civ. R. 7.1(e) and (f) apply to the filing of response and reply briefs. With leave of court, a party may later file one or more additional motions for summary judgment on issues that relate to remaining class members' rights of recovery.

III

The court intends to decide plaintiffs' motion for non-opt-out class before requesting additional substantive submissions that may affect scheduling and/or convening a scheduling conference.

**SO ORDERED.**

October 31, 2005.

  
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SIDNEY A. FITZWATER  
UNITED STATES DISTRICT JUDGE