

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

LAND O'LAKES, INC., and  
CUSHING, OKLAHOMA  
BROWNFIELDS, LLC,

Defendant.

Case No. 5:16-CV-00170-R

Judge David L. Russell

**JOINT MOTION TO ENTER  
FIRST AMENDED CASE  
MANAGEMENT SCHEDULING  
ORDER**

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The parties have negotiated a proposed First Amended Case Management Scheduling Order, included herein, and jointly move the Court to enter the First Amended Case Management Scheduling Order in this matter. As explained below, despite the parties' diligence in discovery to date, the amended schedule is needed by both sides to complete fact discovery.

**GROUND FOR MOTION**

The grounds for this motion are:

On October 3, 2016, the Parties filed a Joint Motion to Enter Case Management Scheduling Order [Doc. 55]. On October 4, 2016, the Court entered its Order Granting Joint Motion to Enter Case Management Scheduling Order [Doc. 56]. In the earlier Joint Motion [Doc. 55], the parties advised the Court "that they may seek to further amend the schedule as this matter proceeds."

Since the commencement of fact discovery, the parties have been diligent in discovery, but the inspection and exchange of documents and privilege logs is not complete as of this date. Both parties made substantial initial disclosure document productions, followed by rolling productions as documents were located and processed for production. To date the parties have produced a combined total of over 1.5 million pages of documents, as follows:

**Land O'Lakes' Document Productions**

(Total Documents = 35,211; Total Pages = 435,222):

- 8/5/2016 Initial Disclosures Production = 8,579 Documents (291,392 Pages)
- 12/5/2016 Production = 9,455 Documents (72,844 Pages)
- 3/15/2017 Production = 3, 863 Documents (27,519 Pages)
- 5/8/2017 Production = 6,569 Documents (22,715 Pages)
- 8/29/2017 Production = 6,745 Documents (20,752 Pages)

**United States' Document Productions**

(Total Documents = 54,879; Total Pages = 1,117,411):

- 8/5/2016 Initial Disclosures Production = 61 Documents (21,181 Pages)
- 12/15/2016 Production = 243 Documents (26,183 Pages)
- 12/23/2016 Production = 212 Documents (54,927 Pages)
- 1/23/2017 Production = 193 Documents (14,343 Pages)
- 2/17/2017 Production = 5,909 Documents (331,766 Pages)
- 3/23/2017 Production = 1,305 Documents (89,102 Pages)
- 4/25/2017 Production = 1,207 Documents (27,723 Pages)
- 5/22/2017 Production = 14,084 Documents (81,488 Pages)
- 6/27/2017 Production = 338 Documents (4,223 Pages)
- 7/21/2017 Production = 23,942 Documents (327,649 Pages)
- 7/24/2017 Production = 249 Documents (884 Pages)
- 8/1/2017 Production = 6,877 Documents (56,289 Pages)
- 8/25/2017 Production = 259 Documents (81,653 Pages)

The parties have agreed to produce rolling privilege logs following document productions and have each produced initial privilege logs, as follows:

- Land O'Lakes Privileged and Redaction Log Produced: 8/28/2017 (1078 Entries)
- United States' Privilege Logs Produced: 5/5/2017 (55 Entries) and September 7, 2017 (249 Entries)

Document production in this case was made more time consuming by the fact that a large portion of the relevant documents, and virtually all of the operational records for the refinery (which closed in 1982), predate the electronic document era, cover a large time period of many decades, and are in poor condition. As a result, the collection and review of documents required physical inspection and manual review and processing of very large numbers of hard copies, in inconsistent formats and sizes, many of which are not optically readable documents, and all of which required manual creation of electronic images for production. Two examples of the additional time required to process these old documents for production are as follows: First, most of the historical operational documents for, and photographs of, the Refinery, are in the custody of Region 6 of the EPA in its Dallas, Texas document repository because they were abandoned by the Refinery owners and recovered by EPA during its response actions. On March 28-29, 2017, Land O' Lakes reviewed 133 boxes of documents at EPA's document depository and requested a total of 14,333 documents (82,372 pages).<sup>1</sup> Land O' Lakes received copies of the requested documents

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<sup>1</sup> Land O' Lakes previously requested and was granted access by Region 6 counsel to the depository in 2008 and 2010. On those occasions, Land O' Lakes requested and received copies of a more limited set of documents than those requested after the 2017 document inspection at the EPA depository.

on May 22, 2017 (document copies) and July 24, 2017 (copies of photographic slides). Second, there are two collections of hard copy documents collected from the site by Land O' Lakes contractors and/or legal counsel which have not been fully imaged. One collection is with Land O'Lakes counsel in Minneapolis and one collection is with Land O'Lakes counsel in Oklahoma City. These documents which have been offered and maintained for inspection and production to the United States total 44 boxes, but have not yet been inspected by the United States.

Finally, despite the efforts of both sides noted above, the parties' document discovery is not complete. Land O'Lakes anticipates exchanging additional rolling document productions and privilege logs in the months of September and October, with productions of straggling documents following later. The United States anticipates completing its document productions and privilege logs in September with only productions of straggling documents following later.

With regard to depositions, the parties are discussing the scheduling of six fact witness depositions (three (3) former refinery employees and three (3) contractors for Land O' Lakes) identified by the United States, and they will likely occur in late October or early November. The scheduling of additional depositions will depend on the parties' completion of review of produced documents and responses to written discovery, both of which are incomplete as of the current date. For example, Land O' Lakes has not completed its review of the large volume of federal agency documents produced by the United States which is needed to identify agency personnel it will seek to depose.

**PROPOSED AMENDED SCHEDULE**

Based on the grounds above, the parties propose the following First Amended Case Management Scheduling Order (new proposed dates are indicated by strike-outs below):

| <b>Item</b>   | <b>Stipulated Schedule</b>                   |
|---|--|
| Discovery Begins (initial RFPs served)  | October 31, 2016                             |
| Motions to Join Additional Parties  | November 30, 2016                            |
| Motion to Amend Pleadings   | January 31, 2017                             |
| Close of Fact Discovery   | <del>October 31, 2017</del> April 30, 2018   |
| Deadline for Plaintiff's initial expert reports on Liability and Costs  | <del>November 30, 2017</del> May 31, 2018    |
| Deadline for Defendants' (1) rebuttal expert reports that respond to Plaintiff's initial expert reports; and (2) initial expert reports on affirmative defenses and counterclaims | <del>January 31, 2018</del> July 31, 2008    |
| Deadline for Plaintiff's rebuttal expert reports limited to Defendants' initial expert reports  | <del>March 31, 2018</del> September 28, 2018 |
| Expert depositions commence   | <del>April 30, 2018</del> October 31, 2018   |
| Expert depositions concluded  | <del>August 31, 2018</del> February 28, 2019 |
| All discovery closed  | <del>August 31, 2018</del> February 28, 2019 |
| Dispositive/Daubert Motions filed   | <del>September 30, 2018</del> April 30, 2019 |
| Dispositive/Daubert Oppositions filed   | <del>October 31, 2018</del> May 31, 2019     |
| Dispositive/Daubert Replies filed   | <del>November 15, 2018</del> June 14, 2019   |
| Pretrial filings  | As the Court schedules                       |
| Trial   | As the Court schedules                       |

The parties respectfully request that the Court sign and enter the proposed Order Granting Joint Motion to Enter First Amended Case Management Scheduling Order, attached hereto as Exhibit 1.

Dated: September 11, 2017

Respectfully submitted,

/s/ Scott M. Cernich

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UNITED STATES OF AMERICA,

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ORDER**

LAND O’LAKES, INC., and CUSHING,  
OKLAHOMA BROWNFIELDS, LLC,

Defendants.

Before the Court is the Parties’ Joint Motion to Enter First Amended Case Management Scheduling Order [Doc. \_\_\_\_]. For good cause show, the Court GRANTS the Joint Motion to Enter First Amended Case Management Scheduling Order.

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|---|---------------------|
| Discovery Begins (initial RFPs served)  | October 31, 2016    |
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| Close of Fact Discovery   | April 30, 2018      |
| Deadline for Plaintiff’s initial expert reports on Liability and Costs  | May 31, 2018        |
| Deadline for Defendants’ (1) rebuttal expert reports that respond to Plaintiff’s initial expert reports; and (2) initial expert reports on affirmative defenses and counterclaims | July 31, 2018       |

| Item   | Stipulated Schedule    |
|--|------------------------|
| Deadline for Plaintiff's rebuttal expert reports limited to Defendants' initial expert reports | September 28, 2018     |
| Expert depositions commence  | October 31, 2018       |
| Expert depositions concluded   | February 28, 2019      |
| All discovery closed   | February 28, 2019      |
| Dispositive/Daubert Motions filed  | April 30, 2019         |
| Dispositive/Daubert Oppositions filed  | May 31, 2019           |
| Dispositive/Daubert Replies filed  | June 14, 2019          |
| Pretrial filings   | As the Court schedules |
| Trial  | As the Court schedules |

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2017.

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JUDGE DAVID L. RUSSELL