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15 **UNITED STATES DISTRICT COURT**

16 **EASTERN DISTRICT OF CALIFORNIA**

18 JOANN MARTINELLI, individually and on
behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 JOHNSON & JOHNSON and McNEIL
22 NUTRITIONALS, LLC,

23 Defendants.

Case No. 2:15-cv-01733-MCE-DAD

**JOINT STIPULATION AND ORDER
EXTENDING CASE SCHEDULE**

Judge Morrison C. England, Jr.

1 Pursuant to Rule 16(b)(4), Plaintiff Joann Martinelli (“Plaintiff”) and Defendants Johnson
2 & Johnson and McNeil Nutritionals, LLC (“Defendants”) (collectively, the “Parties”) submit this
3 joint stipulation to extend the current case deadlines in this consumer class action regarding
4 Benecol. In this case, the Court has certified two classes of Benecol purchasers, and the Parties
5 are currently engaged in discovery to prepare for trial. However, as a result of the current health
6 crisis, the Parties agree that there is good cause to extend the current deadlines in this Court’s
7 December 20, 2019 Supplemental Pretrial Scheduling Order (Dkt. No. 218) (“Supplemental
8 Pretrial Scheduling Order”). Accordingly, by and through their counsel of record, the Parties
9 hereby stipulate as follows:

10 WHEREAS, on March 29, 2019, the Court issued an order certifying two classes of
11 consumers of Benecol: the California Class and the Multi-State Warranty Class (Dkt. No. 216 at
12 19);

13 WHEREAS, on December 20, 2019 this Court entered the Supplemental Pretrial
14 Scheduling Order setting the schedule for completion of fact and expert discovery and the
15 deadline for dispositive motions;

16 WHEREAS, under the Supplemental Pretrial Scheduling Order, non-expert discovery
17 must be completed by July 27, 2020 (220 days from the date of the Order) (Dkt. 218 at 1:21-22);
18 expert witness designations and reports must be served by September 25, 2020 (60 days after the
19 close of non-expert discovery) (*id.* at 2:2-6); supplemental expert witnesses designations must be
20 served by October 25, 2020 (30 days after the designation of expert witnesses) (*id.* at 2:7-12);
21 and dispositive motions must be filed by October 25, 2020 (90 days after the close of non-expert
22 discovery) (*id.* at 3:14-15);

23 WHEREAS, the Court has not yet set a trial date, but has instructed the Parties to file a
24 Joint Notice of Trial Readiness thirty days after receiving the Court’s ruling on dispositive
25 motions, and if no dispositive motions are filed, on November 25, 2020 (30 days after the time
26 for designation of supplemental expert witnesses) (Dkt. No. 218 at 5:2–7);

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1 WHEREAS, the Parties are diligently preparing this case for trial. The parties have
2 served and responded to written discovery, including interrogatories and requests for production.
3 On March 18, 2020, Plaintiff filed a motion for an order approving her plan for providing notice
4 to the certified classes, (Dkt. No. 221), which Defendants opposed and which is currently
5 pending. On April 2, 2020, Defendants filed a motion to amend the current class definition,
6 (Dkt. No. 227), which Plaintiff opposed and which is also pending;

7 WHEREAS, Defendants are also engaged in third-party discovery. Defendants have
8 issued subpoenas seeking the deposition testimony of Plaintiff's husband, Larry Martinelli, and
9 Plaintiff's physician Dr. James T. Foster. On March 10, 2020, Larry Martinelli and Dr. Foster
10 filed motions to quash the subpoenas, with hearings originally noticed for April 3, 2020 (Dkt.
11 Nos. 219, 220) ("Motions to Quash");

12 WHEREAS, Magistrate Judge Deborah Barnes continued the hearings on the Motions to
13 Quash to June 5, 2019 due to the current health crisis and related restrictions. (Dkt. Nos. 222
14 (continuance to May 8, 2020 in the "interest of public health and safety"), 231 (continuance to
15 June 5, 2020 in light of General Order 617));

16 WHEREAS, if Judge Barnes denies the Motions to Quash, allowing the depositions of
17 Larry Martinelli and Dr. Forster to proceed, it is uncertain when those depositions can take place
18 in light of the current stay-at-home orders. In addition, Defendants had anticipated pursuing
19 additional discovery depending on the outcome of the Court's ruling on the Motions to Quash;
20 however, because the hearings have been continued to June 5, 2020, it will be difficult to
21 complete that additional discovery prior to the July 27, 2020 cut-off for non-expert discovery;

22
23 WHEREAS, the Parties have not previously requested an extension of the dates in the
24 Supplemental Pretrial Scheduling Order;

25 WHEREAS, the Parties agree that there is good cause to extend the case deadlines to take
26 into account the additional time that may be required to complete discovery;

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2 NOW, THEREFORE, believing that good cause exists, the Parties STIPULATE AND
3 AGREE, subject to the approval of this Court, that the current case schedule should be extended
4 as follows:

- 5 1. Non-expert discovery shall be completed by September 25, 2020.
- 6 2. Expert designations and reports pursuant Federal Rule of Civil Procedure
7 26(a)(2)(B) shall be due November 20, 2020.
- 8 3. Supplemental designations and reports of experts who will express an opinion on
9 a subject covered by an expert designated by an adverse party shall be due January 22, 2021.
- 10 4. Dispositive motions shall be filed by January 22, 2021.
- 11 5. The Parties shall file a Joint Notice of Trial Readiness not later than thirty (30)
12 days after receiving the Court's ruling(s) on dispositive motion(s). If the parties do not file
13 dispositive motions, the Parties shall file a Joint Notice of Trial Readiness by February 22, 2021.
- 14 6. Other than as stated herein, the Parties will comply with the terms of the Court's
15 December 20, 2019 Supplemental Pretrial Scheduling Order, Dkt. No. 218.

16
17 IT IS SO STIPULATED.

18
19 Dated: May 22, 2020

O'MELVENY & MYERS, LLP

By: /s/ Carlos M. Lazatin
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Dated: May 22, 2020

BURSOR & FISHER, P.A.

By: /s/ Frederick J. Klorczyk III (as authorized on 5/22/20)
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ORDER

PURSUANT TO THE FOREGOING STIPULATION, AND FINDING GOOD CAUSE
THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. Non-expert discovery shall be completed no later than September 25, 2020.
2. Expert designations and reports pursuant Federal Rule of Civil Procedure 26(a)(2)(B) shall be due November 20, 2020.
3. Supplemental designations and reports of experts who will express an opinion on a subject covered by an expert designated by an adverse party shall be due January 22, 2021.
4. Dispositive motions shall be filed by January 22, 2021.
5. The Parties shall file a Joint Notice of Trial Readiness not later than thirty (30) days after receiving the Court's ruling(s) on dispositive motion(s). If the parties do not file dispositive motions, the Parties shall file a Joint Notice of Trial Readiness not later than February 22, 2021.
6. Other than as stated herein, the Parties will comply with the terms of the Court's December 20, 2019 Supplemental Pretrial Scheduling Order, Dkt. No. 218.

IT IS SO ORDERED.

Dated: May 29, 2020


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE