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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KIM ALLEN, LAINIE RIDEOUT and
KATHLEEN HAIRSTON, on behalf
of themselves, all others similarly
situated, and the general public,

Plaintiffs,

vs.

Similasan Corporation,

Defendant.

CASE NO. 12cv376-BTM (JLB)

Order Granting In Part Motion to
Compel Production of Defendant's
Responsive Documents for Duration of
Class Period

[ECF. No. 79]

Plaintiffs Lainie Rideout and Kathleen Hairston (collectively, "Plaintiffs") are pursuing this consumer protection putative class action lawsuit against homeopathic drug manufacturer Similasan Corporation ("Defendant") for alleged false, deceptive and misleading advertising of certain homeopathic products. Before the Court is Plaintiff's Motion to Compel Production of Defendant's Responsive Documents for the Duration of the Class Period. (ECF No. 79.) For the reasons stated below, the motion is GRANTED IN PART.

I. Legal Standard

"Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense. . . . Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). "For good cause, the court may order

1 discovery of any matter relevant to the subject matter involved in the action.” *Id.*

2 Rule 37 of the Federal Rules of Civil Procedure enables the propounding party
3 to bring a motion to compel responses to discovery. Fed. R. Civ. P. 37(a)(3)(B).
4 “Relevance for purposes of discovery is defined very broadly.” *Garneau v. City of*
5 *Seattle*, 147 F.3d 802, 812 (9th Cir.1998). “The party seeking to compel discovery has
6 the burden of establishing that its request satisfies the relevancy requirements of Rule
7 26(b)(1). Thereafter, the party opposing discovery has the burden of showing that the
8 discovery should be prohibited, and the burden of clarifying, explaining or supporting
9 its objections.” *Bryant v. Ochoa*, 2009 WL 1390794 at *1 (S.D. Cal. May 14, 2009).
10 Those opposing discovery are “required to carry a heavy burden of showing” why
11 discovery should be denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir.
12 1975).

13 **II. Analysis**

14 The parties dispute whether the end date for responsive discovery should be set
15 according to the length of the class period pled in the Third Amended Complaint. The
16 consumer classes that remain at issue in this action are defined in the Third Amended
17 Complaint as follows: “all purchasers of Similasan Corporation homeopathic Products
18 in California, for personal or household use and not for resale, labeled Earache Relief,
19 Dry Eye Relief and Pink Eye Relief (also called Irritated Eye Relief) from June 4, 2010
20 to present.”¹ (ECF No. 58, ¶134.) The parties have until May 19, 2014 to complete
21 class discovery, and Plaintiffs have until May 30, 2014 to move for class certification.

22 Plaintiffs argue that the end date for responsive discovery must go to present day
23 in order to encompass the potential claims of all putative class members on whose
24 behalf Plaintiffs will be moving for class certification. In contrast, Defendant argues
25 the end date for responsive discovery must be determined by the statute of limitations
26

27 ¹ The putative class period spans from April 2, 2008 to the present for the relevant
28 products purchased by Plaintiff Rideout, and from June 4, 2009 to the present for the
relevant products purchased by Plaintiff Hairston.

1 periods applicable to the named plaintiffs' claims. Based on this argument, Defendant
2 limited its discovery responses to the period of 2008 to 2012 and objected to producing
3 discovery after 2012 on relevance grounds.

4 The Court concludes that Plaintiffs have met their burden of establishing that
5 relevant discovery includes discovery for the end portion of their putative class period.
6 Discovery for the end portion of the class period is relevant to whether Plaintiffs can
7 satisfy the Federal Rule of Civil Procedure 23 class action requirements. Plaintiffs
8 allege in the complaint that "Defendant is still labeling the products with the false and
9 deceptive, and unlawful, unfair and fraudulent advertise[ments]." (ECF No. 58, ¶133.)
10 The discovery necessary to prove that allegation includes discovery after 2012 and
11 until present day. Further, should the district court certify a class in this action,
12 reasonable discovery for the entire putative class period is relevant to the district
13 court's ultimate decision as to what class definition best "captures all members
14 necessary for efficient and fair resolution of common questions of fact and law in a
15 single proceeding." *Manual for Complex Litig.* § 21.222 (4th ed. 2004). Finally,
16 reasonable discovery for the entire putative class period is relevant to plaintiffs' claims
17 for injunctive relief.

18 The Court further concludes that Defendant has *not* met its burden of showing
19 that discovery after 2012 should be prohibited. According to Defendant, discovery
20 after 2012 is not relevant to any claims or defenses in this matter because Plaintiffs
21 cannot represent persons who purchased the relevant products after the complaint was
22 filed in 2012. Defendant's reasoning appears to be that any claims that accrued after
23 the filing of the complaint are barred from this litigation by the named plaintiffs' statute
24 of limitations. Defendant's position is not persuasive.

25 First, Defendant's argument is more appropriately addressed at the class
26 certification stage. Plaintiffs may persuade the district court that claims that accrued
27 after the filing of the complaint in 2012 can be efficiently addressed and managed in
28 this litigation as a class action.

1 Second, Defendant’s position is not supported by the purpose of statutes of
2 limitations. Traditionally, statutes of limitations run from the accrual of the relevant
3 cause of action – “the occurrence of the last element essential to the cause of action.”
4 *Aryeh v. Canon Bus. Solutions, Inc.*, 292 P.3d 871, 875 (Cal. 2013). “An affirmative
5 defense, the statute of limitations exists to promote the diligent assertion of claims,
6 ensure defendants the opportunity to collect evidence while still fresh, and provide
7 repose and protection from dilatory suits once excess time has passed.” *Id.* Thus,
8 statutes of limitations may be relevant to assess the timeliness of a lawsuit, but do not
9 necessarily determine the relevant time period for discovery, especially where the
10 Court has not yet ruled on class certification.

11 Finally, Defendant’s position is not supported by the legal authority to which it
12 cites. For example, Defendant cites to the securities case captioned *In re Syntex Corp.*
13 *Sec. Litig.*, 95 F.3d 922 (9th Cir. 1996). However, the close of the class period in a
14 securities fraud case is determined by an event uniform to the class – generally the date
15 on which the previously undisclosed facts constituting the alleged fraud are publicly
16 revealed, causing the defendant corporation’s stock price to decline. Here, there is no
17 such uniform event alleged in the complaint, such as a correction to the false
18 advertising language at issue. Instead, Plaintiffs’ allege that Defendant’s unlawful
19 advertising is ongoing. Thus, the district court may choose to certify a class period that
20 mirrors the duration of Defendant’s challenged advertising.

21 At this procedural juncture, the parties agree that there are three and four year
22 statutes of limitations at issue. While Plaintiffs’ claims accrued prior to the filing of
23 the complaint, it does not follow that each claim of every class member similarly
24 accrued prior to the filing of the complaint. Claims that accrued less than three and
25 four years ago are not barred by the statutes of limitations. Should the district court
26 certify a class in this action, it may decide that the balance of factors at issue weighs
27 in favor of a class definition that includes individuals with claims that accrued after the
28 filing of the complaint.

1 The Court further concludes that Defendant has *not* met its burden of showing
2 that discovery after 2012 should be prohibited because the district court has previously
3 granted Defendant's motions to dismiss Plaintiffs' claims for injunctive relief in prior
4 complaints. The operative complaint, the Third Amended Complaint, contains claims
5 for injunctive relief. Defendant has not moved to dismiss those claims and they remain
6 a part of the current litigation.

7 Therefore, Defendant's relevance objection to producing class discovery for the
8 post-2012 putative class period is overruled to the extent the objection is based on
9 Plaintiffs' limitations periods or on anticipated rejection of Plaintiffs' claims for
10 injunctive relief.²

11 **III. Conclusion**

12 For the reasons stated above, Plaintiffs' Motion to Compel, (ECF No. 79), is
13 GRANTED IN PART. The Court OVERRULES Defendant's relevance objection to
14 producing class discovery for the post-2012 putative class period. The parties are
15 directed to meet and confer regarding a plan to expeditiously proceed with reasonable
16 class discovery responses in this action.

17 IT IS SO ORDERED.

18 DATED: April 28, 2014

19 
20 JILL L. BURKHARDT
21 United States Magistrate Judge
22
23

24 ² Defendant also argues that expanding the relevant time period to the present is
25 an "unduly burdensome and unsustainable neverending discovery obligation." (ECF
26 No. 85 at 5.) Defendant fails to present sufficient detail for the Court to analyze
27 Defendant's burden. Further, the substance of Plaintiffs' motion is really only directed
28 toward Defendant's relevance objection. Thus, the Court declines to address
Defendant's undue burden objection. Having overruled Defendant's relevance
objection, the Court directs the parties to meet and confer regarding any outstanding
objections of undue burden.