

1 NOT FOR PUBLICATION
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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 Federal Trade Commission,
10 Plaintiff,

11 v.

12 Vemma Nutrition Company, et al.,
13 Defendants.

No. CV-15-01578-PHX-JJT

RULE 16 SCHEDULING ORDER

14 Pursuant to the terms of the Case Management Plan and the representations made
15 by the parties at the Rule 16 Scheduling Conference, all parties shall comply with the
16 deadlines established in this Order.

17 The court cautions the parties and their counsel that it will strictly enforce the
18 deadlines set forth in this Rule 16 Scheduling Order. The court will not grant extensions
19 to the dispositive motion cutoff date due to case processing problems, discovery disputes
20 or settlement negotiations.

21 The Fed. R. Civ. P. as amended December 1, 2014, shall apply to all proceedings
22 concerning this case.

23 1. All Initial Disclosures as defined in Fed. R. Civ. P. 26(a), if not already
24 disclosed prior to the Scheduling Conference, shall be made no later than **Completed**.

25 2. To satisfy the requirements of Fed. R. Civ. P. 26(a), the parties shall file
26 with the Clerk of the Court a Notice of Initial Disclosure, rather than copies of the actual
27 disclosures.
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1 3. Motions to amend the complaint and to join additional parties shall be filed
2 no later than **March 4, 2016**.

3 4. Fact discovery shall be completed by **September 30, 2016**.

4 5. The Plaintiff(s) shall disclose the identity of all persons whom they may
5 call at trial to present evidence under Fed. R. Evid. 702, 703, 704, and 705 no later than
6 **October 21, 2016**. The Defendant(s) shall disclose the identity of all persons whom they
7 may call at trial to present evidence under Fed. R. Evid. 702, 703, 704, or 705 no later
8 than **November 18, 2016**. The parties shall disclose the identity of all rebuttal expert
9 testimony no later than **December 16, 2016**. These disclosures shall be full and complete
10 as required by Rule 26(a)(2)(A)-(C) of the Federal Rules of Civil Procedure.

11 The disclosures of the identities of all persons whom a party may call at trial to
12 present evidence under Fed. R. Evid. 702, 703, 704, or 705 shall also include all of the
13 disclosures required by Fed. R. Civ.P. 26(a)(2)(B) if the witness is either (1) retained or
14 specifically employed to provide expert testimony in the case, or (2) is an agent or
15 employee of the party offering the testimony whose duties regularly involve giving expert
16 testimony. No deposition of any expert witness shall occur before the disclosures
17 concerning expert witnesses mandated by this Order are made. Expert reports disclosed
18 under Rule 26(a)(2)(B) must set forth “the testimony the witness is expected to present
19 during direct examination, together with the reasons therefor.” Full and complete
20 disclosures of such testimony are required on or before the dates set forth above; absent
21 truly extraordinary circumstances, parties will not be permitted to supplement their expert
22 reports after these dates.

23 6. Closure of expert testimony and all discovery must be completed by
24 **January 20, 2017**.

25 7. Discovery by interrogatory shall be governed by Fed. R. Civ. P. 33 unless
26 otherwise ordered by the Court. Therefore, there is a limit of twenty-five (25)
27 interrogatories, including discrete subparts.

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1 8. Depositions shall be limited as provided by Rules 30 and 31 of the
2 Fed. R. Civ. P.

3 9. The parties shall not file written discovery motions without leave of the
4 court. Except during a deposition, if a discovery dispute arises and cannot be resolved
5 despite sincere efforts to resolve the matter through personal consultation (in person or by
6 telephone), the parties shall jointly file (1) a brief written summary of the dispute, not to
7 exceed one page, with explanation of the position taken by each party and (2) a joint
8 written certification that counsel or the parties have attempted to resolve the matter
9 through personal consultation and sincere effort as required by LRCiv 7.2(j) and have
10 reached an impasse. If the opposing party has refused to personally consult, the party
11 seeking relief shall describe the efforts made to obtain personal consultation. Upon
12 review of the filed written summary of the dispute, the court may set a telephonic
13 conference, order written briefing, or decide the dispute without conference or briefing.
14 Any briefing ordered by the court shall also comply with LRCiv 7.2(j). If a discovery
15 dispute arises in the course of a deposition and requires an immediate ruling of the court
16 – a circumstance that should be exceedingly rare – the parties shall jointly contact the
17 court telephonically.

18 10. The parties must complete all pre-trial disclosure required under
19 Fed. R. Civ. P. 26(a)(3), of all exhibits to be used and all witnesses to be called at trial, on
20 or before **February 10, 2017**. This order governs and supersedes the “30 days before
21 trial” disclosure deadline contained in Fed. R. Civ. P. 26(a)(3). Therefore, (1) failure to
22 timely supplement Rule 26(a) disclosures, including witnesses and exhibits for trial, (2)
23 failure to timely supplement responses to any valid discovery requests, and (3) attempts
24 to include witnesses or exhibits in the Proposed Final Pretrial Order that were not
25 previously disclosed in a timely manner may result in the exclusion of such evidence at
26 trial or the imposition of other sanctions pursuant to Fed. R. Civ. P. 37, the Local Rules
27 of the District Court, and the inherent power of the court.

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1 11. Good Faith Settlement discussions are to be held no later than **June 3,**
2 **2016.**

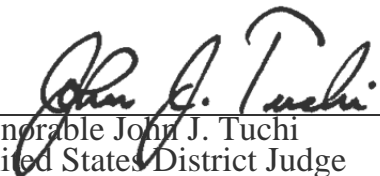
3 12. All dispositive motions, **including *Daubert* motions**, shall be filed no later
4 than **March 10, 2017.** A party or parties represented by the same lawyer shall file **no**
5 **more than one motion for summary judgment** unless leave of Court is obtained.

6 13. All parties are specifically admonished that pursuant to LRCiv. 7.2(i),

7 “if a motion does not conform in all substantial respects with
8 the requirements of this Local Rule, or if the unrepresented
9 party or counsel does not serve and file the required
10 answering memoranda, or if the unrepresented party or
11 counsel fails to appear at the time and place assigned for oral
12 argument, such non-compliance may be deemed a consent to
13 the denial or granting of the motion and the Court may
14 dispose of the motion summarily.”

15 14. If no dispositive motions are pending before the Court after the dispositive
16 motion deadline has passed, Plaintiff(s) shall file and serve a Notice of Readiness for
17 Final Pretrial Conference within ten (10) days of the dispositive motion deadline. If
18 dispositive motions are pending before the Court following the dispositive motions
19 deadline, Plaintiff(s) shall file and serve a Notice of Readiness for Final Pretrial
20 Conference within ten (10) days of the resolution of the last dispositive motion.

21 Dated this 14th day of December, 2015.

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Honorable John J. Tuchi
United States District Judge