

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

MICHELLE IRIZARRY; VALERIE WILLIAMS; and JOANN NIXON,

Plaintiffs,

v.

ORLANDO UTILITIES COMMISSION; LENNAR CORPORATION; U.S. HOME CORPORATION; AVALON PARK GROUP MANAGEMENT, INC.; and BEAT KAHLI,

Defendants.

Case No. 6:19-cv-00268-RBD-TBS

CASE MANAGEMENT REPORT

The parties have agreed on the following dates and discovery plan pursuant to Federal Rule of Civil Procedure 26(f) and Local Rule 3.05(c):¹

DEADLINE OR EVENT	AGREED DATE
Mandatory Initial Disclosures (pursuant to Fed.R.Civ.P. 26(a)(1) as amended effective December 1, 2000)	May 3, 2019
Certificate of Interested Persons and Corporate Disclosure Statement [each party who has not previously filed must file immediately]	Complete
Motions to Add Parties or to Amend Pleadings	May 17, 2019
Plaintiffs' Disclosure of Expert Reports Pertinent to Class Certification	March 2, 2020

¹ After in-depth and productive discussions before and during the case management conference, the parties respectfully submit that this action presents atypically complex issues and warrants scheduling and management consistent with a Track Three designation. For example, the parties anticipate engaging in extensive fact and expert discovery, and offering scientific testimony on complex issues at both the class certification and merits stages from numerous scientific experts. Accordingly, the parties jointly propose the following thirty-month schedule that incorporates additional matter-specific deadlines, including multiple mediations and a deadline for discovery of evidence that can be used for class-certification motions and responses.

DEADLINE OR EVENT	AGREED DATE
Defendants' Disclosure of Expert Reports Pertinent to Class Certification	April 17, 2020
Plaintiffs' Disclosure of Rebuttal Expert Reports Pertinent to Class Certification	May 4, 2020
Close of Class-Certification Discovery	June 12, 2020
Class Certification Motion and All Supporting Evidence	July 10, 2020
Class Certification Opposition Briefs and All Supporting Evidence	August 21, 2020
Class Certification Reply Briefs	September 11, 2020
Early Mediation Mediator: Barkett, John M. Address: 201 S Biscayne Blvd - Ste 2400 Miami, FL 33131 Telephone: (305) 358-5171	September 21, 2020
Plaintiffs' Disclosure of Expert Reports Unrelated to Certification	December 18, 2020
Defendants' Disclosure of Expert Reports Unrelated to Certification	January 22, 2021
Plaintiffs' Disclosure of Expert Rebuttal Reports Unrelated to Certification	February 15, 2021
Discovery Deadline	March 12, 2021
Dispositive Motions, <i>Daubert</i> , and <i>Markman</i> Motions	April 2, 2021
Final Mediation Mediator: Barkett, John M. Address: 201 S Biscayne Blvd - Ste 2400 Miami, FL 33131 Telephone: (305) 358-5171	May 3, 2021
Joint Final Pretrial Statement (<i>Including</i> a Single Set of Jointly-Proposed Jury Instructions, Verdict Form and Voir Dire Questions emailed to chambers_FLMD_Dalton@flmd.uscourts.gov in Word format), Witness Lists, Exhibit Lists with Objections on Approved Form) Trial Briefs	July 14, 2021
All Other Motions Including Motions <i>in Limine</i>	July 21, 2021
Final Pretrial Conference	August 11, 2021
Trial Term Begins	September 1, 2021
Estimated Length of Trial [trial days]	Four Weeks
Jury / Non-Jury	Jury
All Parties Consent to Proceed Before Magistrate Judge	No, and future consent is unlikely.

I. Meeting of Parties in Person

Lead counsel must meet *in person* and not by telephone absent an order permitting otherwise. Counsel will meet in the Middle District of Florida, unless counsel agree on a different location. Pursuant to Local Rule 3.05(c)(2)(B) or (c)(3)(A), a meeting was held in person on March 4 at 1:30 p.m. at the Orlando office of Greenberg Traurig, P.A., and was attended by:

Counsel	Party
Theodore Leopold Leslie M. Kroeger COHEN MILSTEIN SELLERS & TOLL, PLLC Vineet Bhatia Stephen Morrissey SUSMAN GODFREY LLP Neal Weinfield DEDENDUM GROUP LLC	Plaintiffs
Kent Mayo Sterling Marchand (telephonically) BAKER BOTTS L.L.P. David Weinstein Christopher Torres Ryan Hopper GREENBERG TRAUIG, PA Richard E. Mitchell GRAYROBINSON, P.A.	Defendant Orlando Utilities Commission
Daniel J. Gerber Suzanne Barto Hill Christian H. Tiblier RUMBERGER, KIRK & CALDWELL	Defendants Lennar Corporation and U.S. Home Corporation
Ralph A. Demeo Lauren D. Brooks (telephonically by order) BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, P.C. Brent Spain THERIAQUE & SPAIN	Defendants Avalon Park Group Management, Inc., and Beat Kahli

II. Pre-Discovery Initial Disclosures of Core Information Fed. R. Civ. P. 26(a)(1)(A) - (D) Disclosures

Federal Rule of Civil Procedure 26, as amended effective December 1, 2010, provides that these disclosures are mandatory in Track Two and Track Three cases, except as stipulated by the parties or otherwise ordered by the Court (the amendment to Rule 26 supersedes Middle District of Florida Local Rule 3.05, to the extent that Rule 3.05 opts out of the mandatory discovery requirements):

The parties agree to exchange information described in Federal Rule of Civil Procedure 26(a)(1)(A) - (D) by **May 3, 2019**.

Below is a description of information disclosed or scheduled for disclosure.

The parties are cooperatively working to disclose all information required by Federal Rule of Civil Procedure 26(a)(1) on or before May 3, 2019.

III. Electronic Discovery

The parties have discussed issues relating to disclosure or discovery of electronically stored information (“ESI”), including Pre-Discovery Initial Disclosures of Core Information in Section II above, and agree that (check one):

no party anticipates the disclosure or discovery of ESI in this case;

one or more of the parties anticipate the disclosure or discovery of ESI in this case.

If disclosure or discovery of ESI is sought by any party from another party, then the following issues shall be discussed:²

A. The form or forms in which ESI should be produced.

B. Nature and extent of the contemplated ESI disclosure and discovery, including

² See Generally: *Rules Advisory Committee Notes* to the 2006 Amendments to Rule 26(f) and Rule 16.

specification of the topics for such discovery and the time period for which discovery will be sought.

C. Whether the production of metadata is sought for any type of ESI, and if so, what types of metadata.

D. The various sources of ESI within a party's control that should be searched for ESI, and whether either party has relevant ESI that it contends is not reasonably accessible under Rule 26(b)(2)(B), and if so, the estimated burden or costs of retrieving and reviewing that information.

E. The characteristics of the party's information systems that may contain relevant ESI, including, where appropriate, the identity of individuals with special knowledge of a party's computer systems.

F. Any issues relating to preservation of discoverable ESI.

G. Assertions of privilege or of protection as trial-preparation materials, including whether the parties can facilitate discovery by agreeing on procedures and, only in the unusual event an agreement between the parties is insufficient, an Order under Federal Rules of Evidence Rule 502, If the parties agree that a protective order is needed, they shall attach a copy of the proposed order to the Case Management Report, together with a statement as to why an enforceable agreement between the parties is not sufficient. The parties should attempt to agree on protocols that minimize the risk of waiver. Any proposed protective order shall comply with Local Rule 1.09 and Section IV.F. below on Confidentiality Agreements.

H. Whether the discovery of ESI should be conducted in phases, limited, or focused upon particular issues.

Please state if there are any areas of disagreement on these issues and, if so, summarize the parties' positions on each: **The parties do not have any present disagreements on these issues and anticipate working cooperatively to resolve any that might arise in the future.**

If there are disputed issues specified above, or elsewhere in this report, then (check one):

one or more of the parties requests that a preliminary pre-trial conference under Rule 16 be scheduled to discuss these issues and explore possible resolutions. Although this will be a non-evidentiary hearing, if technical ESI issues are to be addressed, the parties are encouraged to have their information technology experts with them at the hearing.

If a preliminary pre-trial conference is requested, a motion shall also be filed pursuant to Rule 16(a), Fed.R.Civ.P.

all parties agree that a hearing is not needed at this time because they expect to be able to promptly resolve these disputes without assistance of the Court.

IV. Agreed Discovery Plan for Plaintiffs and Defendants

A. Certificate of Interested Persons and Corporate Disclosure Statement

This Court has previously ordered each party, governmental party, intervenor, non-party movant, and Rule 69 garnishee to file and serve a Certificate of Interested Persons and Corporate Disclosure Statement using a mandatory form. No party may seek discovery from any source before filing and serving a Certificate of Interested Persons and Corporate Disclosure Statement. A motion, memorandum, response, or other paper – including emergency motion – is subject to being denied or stricken unless the filing party has previously filed and served its Certificate of Interested Persons and Corporate Disclosure Statement. Any party who has not already filed and served the required certificate is required to do so immediately.

Every party that has appeared in this action to date has filed and served a Certificate of Interested Persons and Corporate Disclosure Statement, which remains current:

Yes

No

Amended Certificate will be filed by _____ (party) on or before _____ date).

B. Discovery Not Filed

The parties shall not file discovery materials with the Clerk except as provided in Local Rule 3.03. The Court encourages the exchange of discovery requests on diskette. *See* Local Rule 3.03(f). The parties further agree as follows: **The parties agree to cooperate and attempt to exchange discovery in mutually acceptable formats.**

C. Limits on Discovery

Absent leave of Court, the parties may take no more than ten depositions per side (not per party). Fed.R.Civ.P. 30(a)(2)(A); Fed.R.Civ.P. 31(a)(2)(A); Local Rule 3.02(b). Absent leave of Court, the parties may serve no more than twenty-five interrogatories, including sub-parts. Fed.R.Civ.P. 33(a); Local Rule 3.03(a). Absent leave of Court or stipulation of the parties each deposition is limited to one day of seven hours. Fed.R.Civ.P. 30(d)(2). The parties may agree by stipulation on other limits on discovery. The Court will consider the parties' agreed dates, deadlines, and other limits in entering the scheduling order. Fed.R.Civ.P. 29. In addition to the deadlines in the above table, the parties have agreed to further limit discovery as follows:

1. Depositions – **No additional limitations.**
2. Interrogatories – **No additional limitations.**
3. Document Requests – **No additional limitations.**
4. Requests to Admit – **No additional limitations.**

5. Supplementation of Discovery – **No additional limitations.**

D. Discovery Deadline

Each party shall timely serve discovery requests so that the rules allow for a response prior to the discovery deadline. The Court may deny as untimely all motions to compel filed after the discovery deadline. In addition, the parties agree as follows: **The parties agree to abide by the deadlines set forth in the table above, including that discovery conducted and information obtained after the June 12, 2020 deadline for class-certification discovery cannot be used to support any party's motion for class certification or opposition brief.**

E. Disclosure of Expert Testimony

On or before the dates set forth in the above table for the disclosure of expert reports, the parties agree to fully comply with Fed.R.Civ.P. 26(a)(2) and 26(e). Expert testimony on direct examination at trial will be limited to the opinions, basis, reasons, data, and other information disclosed in the written expert report disclosed pursuant to this order. Failure to disclose such information may result in the exclusion of all or part of the testimony of the expert witness. The parties agree on the following additional matters pertaining to the disclosure of expert testimony: **The parties agree to abide by the deadlines set forth in the table above, including that discovery conducted and information obtained after the June 12, 2020 deadline for class-certification discovery cannot be used to support any party's motion for class certification or opposition brief.**

F. Confidentiality Agreements

Whether documents filed in a case may be filed under seal is a separate issue from whether the parties may agree that produced documents are confidential. The Court is a public forum, and disfavors motions to file under seal. The Court will permit the parties to file documents under seal

only upon a finding of extraordinary circumstances and particularized need. *See Brown v. Advantage Engineering, Inc.*, 960 F.2d 1013 (11th Cir. 1992); *Wilson v. American Motors Corp.*, 759 F.2d 1568 (11th Cir. 1985). A party seeking to file a document under seal must file a motion to file under seal requesting such Court action, together with a memorandum of law in support. The motion, whether granted or denied, will remain in the public record.

The parties may reach their own agreement regarding the designation of materials as confidential. There is no need for the Court to endorse the confidentiality agreement. The Court discourages unnecessary stipulated motions for a protective order. The Court will enforce appropriate stipulated and signed confidentiality agreements. *See* Local Rule 4.15. Each confidentiality agreement or order shall provide, or shall be deemed to provide, that “no party shall file a document under seal without first having obtained an order granting leave to file under seal on a showing of particularized need.” With respect to confidentiality agreements, the parties agree as follows: **The parties agree that confidentiality agreements would be mutually beneficial and will work cooperatively to execute one or more, including a proposed Federal Rule of Evidence 502(d) order.**

G. Other Matters Regarding Discovery

No other discovery matters exist at this time.

VI. Settlement and Alternative Dispute Resolution.

A. Settlement

The parties agree that settlement is ____ likely X unlikely (check one)

The parties request a settlement conference before a United States Magistrate Judge.

Yes _____ No X

Likely to request in future: **No**

B. Arbitration

The Local Rules no longer designate cases for automatic arbitration, but the parties may elect arbitration in any case. Do the parties agree to arbitrate?

Yes _____ No X

Likely to agree in future: **No**

_____ Binding

_____ Non-Binding

C. Mediation

Absent arbitration or a Court order to the contrary, the parties in every case will participate in Court-annexed mediation as detailed in Chapter Nine of the Court's Local Rules. The parties have agreed on a mediator from the Court's approved list of mediators as set forth in the table above, and have agreed to the date stated in the table above as the last date for mediation. The list of mediators is available from the Clerk, and is posted on the Court's web site at <http://www.flmd.uscourts.gov>.

D. Other Alternative Dispute Resolution

The parties intend to pursue the following other methods of alternative dispute resolution:

None at this time.

[Attorney signatures on next page.]

Dated: March 11, 2018

Respectfully submitted,

/s/ Theodore Leopold

Theodore J. Leopold
E-mail: tleopold@cohenmilstein.com
Leslie M. Kroeger
E-mail: lkroeger@cohenmilstein.com
Diana L. Martin
E-mail: dmartin@cohenmilstein.com
COHEN MILSTEIN SELLERS & TOLL, PLLC
2925 PGA Boulevard, Suite 200
Palm Beach Gardens, Florida 33410
Telephone: (561) 515-1400
Counsel for Plaintiffs

/s/ Daniel Gerber

Daniel J. Gerber
E-mail: dgerber@rumberger.com
Suzanne Barto Hill
E-mail: shill@rumberger.com
Dara L. Lindquist
E-mail: djebrook@rumberger.com
Christian H. Tiblier
E-mail: ctiblier@rumberger.com
RUMBERGER, KIRK & CALDWELL
Lincoln Plaza, Suite 1400
300 South Orange Avenue
Orlando, Florida 32802
Telephone: (407) 872-7300
*Counsel for Lennar Corporation and
U.S. Home Corporation*

/s/ Ralph Demeo

Ralph A. Demeo
E-mail: rdemeo@bakerdonelson.com
Lauren D. Brooks, Esquire
E-mail: lbrooks@bakerdonelson.com
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.
101 N. Monroe Street, Ste. 925
Tallahassee, Florida 32301
Telephone: (850) 425-7560
*Counsel for Avalon Park Group Management,
Inc., and Beat Kahli*

/s/ David Weinstein

David B. Weinstein (FBN 604410)
E-mail: weinsteind@gtlaw.com
Christopher Torres (FBN 0716731)
E-mail: torresch@gtlaw.com
Ryan T. Hopper (FBN 0107347)
E-mail: hopperr@gtlaw.com
GREENBERG TRAUIG, P.A.
101 E. Kennedy Blvd., Suite 1900
Tampa, FL 33602
Telephone: (813) 318-5700
Facsimile: (813) 318-5900
Secondary Email: thomasm@gtlaw.com;
FLService@gtlaw.com

/s/ Kent Mayo

Kent Mayo
E-mail: kent.mayo@bakerbotts.com
Megan H. Berge
E-mail: megan.berge@bakerbotts.com
Sterling A. Marchand
E-mail: sterling.marchand@bakerbotts.com
BAKER BOTTS LLP
1299 Pennsylvania Ave.
Washington, DC 20004
Telephone: (202) 639-7700
Facsimile: (202) 639-7890

/s/ Richard E. Mitchell

Richard E. Mitchell (FBN 0168092)
E-mail: rick.mitchell@gray-robinson.com
GRAYROBINSON, P.A.
301 East Pine Street, Suite 1400
Post Office Box 3068 (32802-3068)
Orlando, Florida 32801
Telephone: (407) 843-8880
Facsimile: (407) 244-5690
Secondary
Email: maryann.hamby@grayrobinson.com

*Attorneys for Defendant
Orlando Utilities Commission*

CERTIFICATE OF SERVICE

I certify that on March 11, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to counsel of record.

/s/ David Weinstein
Attorney