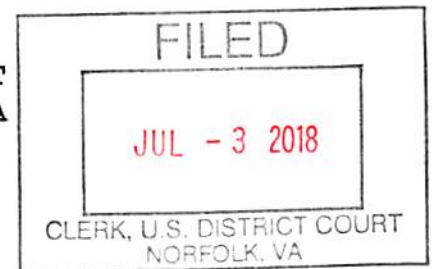


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



In re:
ZETIA (EZETIMIBE) ANTITRUST
LITIGATION

MDL NO. 2:18md2836

THIS DOCUMENT RELATES TO:
ALL CASES.

PRETRIAL ORDER NO. 1

This Pretrial Order, and subsequent such Orders, shall govern the practice and procedure in all actions transferred to this court by the Judicial Panel on Multidistrict Litigation ("JPML") pursuant to the Transfer Order filed on June 15, 2018, ECF No. 1, and the Conditional Transfer Order filed on June 18, 2018, ECF No. 2; in all related actions originally filed in this court, see ECF Nos. 4-8; and in any other "tag-along" actions subsequently transferred to this court by the JPML.¹ The court's charge and objective are to complete pretrial proceedings in these cases expeditiously, efficiently, and fairly.

1. LOCAL RULES AND PRACTICES APPLY

All counsel must familiarize themselves with the Local Rules of the Eastern District of Virginia, which, together with

¹ A list of all current member cases is appended as Attachment A.

the Federal Rules of Civil Procedure, shall govern in this case, unless otherwise directed by the court. In that regard, the court will follow its usual practice with respect to the role of the Magistrate Judge. All non-dispositive motions, not requiring a ruling by the undersigned District Judge, will initially and automatically be referred to the Magistrate Judge for consideration. Counsel are encouraged to reach agreements on non-controversial matters, and to use this court's procedures for agreed motions.

Additionally, a webpage particular to this case will be created under the "Notable Cases" section of the Resources tab of the Eastern District of Virginia court website.²

2. CONSOLIDATION AND CLASSIFICATION

The civil actions listed in Attachment A are consolidated for pretrial purposes. Any related "tag-along" actions later filed in, removed to, or transferred to this court will automatically be consolidated with this action without the necessity of future motions or orders by this court. This consolidation, however, does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any person or entity a party to any action in which that person or entity has not been named, served, or added in accordance with the Federal Rules of Civil Procedure.

² See www.vaed.uscourts.gov/notablecases/index.htm.

From the court's familiarity with the cases initially filed in this district, it appears that all member cases involve the same allegations related to the Defendants' allegedly improper efforts to delay generic competition in the market for the brand-name pharmaceutical drug Zetia (ezetimibe), used to treat cholesterol disorders. The Plaintiffs appear to fall into two (2) distinct classifications: Direct Purchaser Plaintiffs ("DPP"), which purchased the drug directly from Merck Sharp & Dohme Corp., and End Payer Plaintiffs ("EPP"), which reimbursed other purchasers at allegedly inflated prices. The DPP cases seek remedies under federal antitrust provisions, which are not alleged in the EPP cases. The EPP cases assert a variety of claims, primarily under various state laws prohibiting unfair competition. The court anticipates classifying all existing member cases and any "tag-along" cases as either DPP cases or EPP cases.

3. APPOINTMENT OF LEAD COUNSEL

The court intends to select lead counsel for each of the following: the Direct Purchaser Plaintiffs ("DPP"), the End Payer Plaintiffs ("EPP"), the Merck Defendants,³ the Glenmark

³ The Merck Defendants consist of Merck & Co., Inc.; Merck Sharp & Dohme Corp.; Schering-Plough Corp.; Schering Corp.; and MSP Singapore Co. LLC.

Defendants,⁴ and Par Pharmaceutical, Inc. ("Par"). Accordingly, counsel for each of these groups shall confer and seek consensus, to the extent possible, on a nomination to the court for lead counsel of their respective group. If no consensus nomination can be reached among the parties in any of the described groups, counsel for that group shall submit recommendations for the position of lead counsel, as well as a proposed schedule for resolving the issue.

Appointment of lead counsel shall be subject to the approval of the court. Therefore, counsel for the DPP, EPP, Merck Defendants, and Glenmark Defendants must file their nomination or recommendations for their respective groups with the Clerk's Office by **July 27, 2018**. Such nominations or recommendations must include a current curriculum vitae and state the counsel's qualifications, specifically including experience in multidistrict litigation and in the Eastern District of Virginia.⁵

⁴ The Glenmark Defendants consist of Glenmark Pharmaceuticals, Ltd., and Glenmark Generics Inc., USA.

⁵ The court notes that on July 2, 2018, three (3) of the DPP filed a Motion for Consolidation, Coordination, and Appointment of Class Counsel ("Motion"). ECF No. 16. The Motion seeks to (1) consolidate three of the DPP actions, (2) coordinate the DPP actions with the EPP actions and the action filed on behalf of retailer plaintiffs, (3) appoint local counsel, lead counsel, and an executive committee for the DPP actions, and (4) appoint class counsel for the proposed direct purchaser class. *Id.* at 1. The court will consider the issues raised in the Motion at the

4. COMMUNICATIONS AMONG COUNSEL AND WITH THE COURT

The communication of information among and between Plaintiffs' counsel, or among and between Defendants' counsel, shall not be deemed a waiver of the attorney-client privilege or the protections afforded attorney work-product. Likewise, communications between lead counsel, or their representatives, and the cooperative efforts between them, shall not be deemed a waiver of the attorney-client privilege or the protection afforded attorney work-product, unless reflected in writing signed by all lead counsel; nor shall any communications among counsel be used by or against any Plaintiff or Defendant. Nothing contained in this Pretrial Order shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work-product doctrine.

Additionally, unless otherwise authorized by this court, all substantive communications with the court shall be in writing, by motion or letter, with copies to opposing counsel. Neither parties nor counsel should contact the court ex parte.

5. INITIAL STATUS CONFERENCE

An initial status conference will be held on **August 9, 2018, at 2:00 p.m.** in Courtroom One of the federal courthouse in Norfolk, Virginia. The conference will be held for the purposes

initial status conference, after hearing argument from all interested parties.

generally identified in Federal Rules of Civil Procedure 16 and 26(f). Specific matters to be discussed are contained in a tentative agenda, appended as Attachment B. Counsel should be prepared to discuss all issues listed in this agenda, and are encouraged to advise the Clerk, no later than **July 27, 2018**, of any items that should be added to the agenda.

Counsel are expected to familiarize themselves with the Manual for Complex Litigation, (4th ed. 2004), and be prepared at the conference to discuss procedures that will facilitate the just, expeditious, and economical resolution of this matter. Prior to the conference, the court **DIRECTS** counsel to confer and seek consensus, to the extent possible, with respect to the matters listed in the agenda, as well as a suggested schedule under Federal Rule of Civil Procedure 16(b).

One attorney representing each party shall appear at the initial conference. To minimize costs and facilitate a manageable conference, parties with similar interests may agree to have an attending attorney represent their interests at the conference. By designating an attorney to represent its interests at the initial conference, a party will not be precluded from other representation during the litigation, nor will attendance at the conference constitute waiver of any objections to jurisdiction, venue, or service.

To assist the court in identifying any issues of recusal, disqualification, or required divestiture, counsel will submit to the court, on or before **August 1, 2018**, a list of all companies affiliated with the parties and all counsel associated with the litigation. See Fed. R. Civ. P. 7.1.

6. ATTORNEY ADMISSION

Initially, separate local counsel for each party will not be required. The court may revisit this decision if warranted. However, lead counsel for the DPP, EPP, Merck Defendants and Glenmark Defendants, to be designated as set forth herein,⁶ must associate with and designate for the court's approval a member of the Bar of this court to serve as local counsel, who will have for all related parties the responsibilities set out in Local Civil Rule 83.1.

All foreign attorneys who wish to be admitted for purposes of this case shall comply with Local Civil Rule 83.1(D), and shall file an appropriate motion for pro hac vice admission, prior to the initial status conference.

7. FILING AND DOCUMENT CAPTIONING

Foreign attorneys who have associated local counsel, including all lead counsel who are required to affiliate local

⁶ See supra Part 3.

counsel,⁷ will not be issued a CM/ECF login and password. Their local counsel shall file all documents, as in other cases before this court. Further, where a law firm represents plaintiffs in more than one (1) case, the same login and password must be used in all such cases.

In each member case and "tag-along" case where one or more foreign attorneys represent a party without local counsel, only one (1) foreign attorney per party shall register for CM/ECF credentials, no matter how many attorneys have entered appearances for that party. The Clerk shall issue only one (1) CM/ECF login and password for each party represented only by foreign attorneys, for use only in filings made in this case.⁸ Counsel for each party are responsible for (a) determining in whose name the login and password will be issued, and (b) the consequences of all use and any misuse of that login and password. The login and password will not be issued, until the designated attorney for each applicable party has completed the mandatory online training and passed the online EDVA ECF Policies and Procedures Quiz with a score of 92% or better. The

⁷ See supra Part 6.

⁸ Foreign attorneys receiving a CM/ECF login and password may use them only for this litigation. They will be deactivated at the end of a foreign attorney's involvement in this litigation.

designated attorney shall further complete the ECF Certification Form, attached to this Pretrial Order as Attachment C.⁹

All documents filed in this multidistrict litigation must be filed electronically on this court's CM/ECF system. All documents filed in these actions shall be styled in the same manner as this Pretrial Order, with the docket number 2:18md2836, and shall be filed in that case only. If the document relates to all actions, the docket number shall be followed by the notation "THIS DOCUMENT RELATES TO ALL CASES." If the document relates to all End Payer cases, it shall be followed by the notation "THIS DOCUMENT RELATES TO ALL END PAYER CASES." If the document relates to all Direct Purchaser cases, it shall be followed by the notation "THIS DOCUMENT RELATES TO ALL DIRECT PURCHASER CASES." If the document does not relate to all member cases nor to a defined subgroup, the individual docket number(s) of the action(s) to which the document relates shall instead be listed. See Order, ECF No. 3. Attachment D to this Pretrial Order further explains how to file documents in these actions.

⁹ See <http://www.vaed.uscourts.gov/ecf/>. If a foreign attorney finds it necessary to file a document with the Clerk before completing CM/ECF registration, he or she may do so in paper form, with a copy to chambers. The Clerk will file the paper document electronically and the email "Notice of Electronic Filing" generated thereby shall constitute service on all parties for all purposes under the Federal and Local Rules of Civil Procedure.

8. REQUESTS TO SEAL FILED MATERIAL

A party seeking to file any document under seal shall comply with Local Civil Rule 5. That rule specifically provides:

Motions to file documents under seal are disfavored and discouraged. Agreement of the parties that a document or other material should be filed under seal or the designation of a document or other material as confidential during discovery is not, by itself, sufficient justification for allowing a document or other material to be filed under seal. Anyone seeking to file a document or other material under seal must make a good faith effort to redact or seal only as much as necessary to protect legitimate interests. Blanket sealing of entire briefs, documents, or other papers is rarely appropriate.

Local Civ. R. 5(C).

9. CONSOLIDATED COMPLAINTS AND PENDING MOTIONS

The court may require the filing of consolidated complaint(s) in the EPP and DPP cases, and may make other directives to avoid and reduce duplicative filings. Although Motions to Dismiss have been filed in certain individual member cases, they may or may not be sufficient to represent all parties affected by the contested issues. Accordingly, counsel shall be prepared to address the desirability or necessity of consolidated complaints, and a schedule for briefing renewed Motions to Dismiss. Counsel are expected to make every effort to avoid duplicate filings. Any filing in these actions that is substantially identical to any other filing in these matters shall be sufficient if it incorporates by reference the filing

to which it is substantially identical. When counsel for more than one party intend to file substantially identical documents, they shall join in the submission of a single filing.

The Clerk is **DIRECTED** to forward copies of this Pretrial Order to all counsel of record in all member cases of this action.

IT IS SO ORDERED.



Rebecca Beach Smith
Chief Judge

July 3 , 2018

**In re:
ZETIA (EZETIMIBE) ANTITRUST
LITIGATION**

MDL NO. 2:18md2836

ATTACHMENT A

LIST OF CURRENT MEMBER CASES

FWK Holdings, LLC v. Merck & Co., et al, No. 2:18cv23;

Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund, on behalf of itself and all others similarly situated v. Merck & Co., Inc. et al, No. 2:18cv35;

Cesar Castillo, Inc., individually and on behalf of all those similarly situated v. Merck & Co., Inc. et al, No. 2:18cv39;

Rochester Drug Cooperative, Inc., on behalf of itself and all others similarly situated v. Merck & Co., Inc. et al, No. 2:18cv71;

Sergeants Benevolent Association Health & Welfare Fund v. Merck & Co., Inc. et al, No. 2:18cv108;

UFCW Local 1500 Welfare Fund v. Merck & Co., Inc. et al, No. 2:18cv1000;

Philadelphia Federation of Teachers Health and Welfare Fund v. Merck & Co., Inc. et al, No. 2:18cv1001;

City of Providence, Rhode Island v. Merck & Co., Inc. et al, No. 2:18cv1002;

Law Enforcement Health Benefits Inc. v. Merck & Co., Inc. et al, No. 2:18cv1003;

Painters District Council No. 30 Health and Welfare Fund, on behalf of itself and all others similarly situated v. Merck & Co., Inc. et al, No. 2:18cv116;

International Union of Operating Engineers Local 49 Health and Welfare Fund, on behalf of itself and all others similarly situated v. Merck & Co., Inc. et al, No. 2:18cv130;

Wisconsin Masons' Health Care Fund, on behalf of itself and all others similarly situated v. Merck & Co., Inc. et al, No. 2:18cv213;

St. Paul Electrical Workers Health Plan, individually and on behalf of all those similarly situated v. Merck & Co., Inc. et al, No. 2:18cv232;

Walgreen Co. et al v. Merck & Co., Inc. et al, No. 2:18cv266;

Self Insured Schools of California v. Merck & Co., Inc. et al, No. 2:18cv1004;

Turlock Irrigation District, individually and on behalf of all those similarly situated v. Merck & Co., Inc. et al, No. 2:18cv352.

**In re:
ZETIA (EZETIMIBE) ANTITRUST
LITIGATION**

MDL NO. 2:18md2836

ATTACHMENT B

TENTATIVE INITIAL STATUS CONFERENCE AGENDA

1. Introduction of participants
2. Expectations regarding additional cases to be consolidated
3. Process for appointment of lead counsel
4. Potential use of steering committees or liaison counsel
5. Partial waiver of the Local Rules regarding local counsel requirement
6. Whether consolidated complaints are required, and, if so, the schedule for such filing
7. Discussion of pending and/or anticipated motions
8. Schedule for possible Motion(s) to Dismiss or other responsive pleadings
9. Discussion of preliminary disclosures
10. Utilization of monthly status reports
11. Class certification schedule and process
12. Other issues identified by counsel

**In re:
ZETIA (EZETIMIBE) ANTITRUST
LITIGATION**

MDL NO. 2:18md2836

ATTACHMENT C

ECF Certification Form

MEMBER CASE No.: 2:18cv_____

*Complete this form in its entirety, attach a photocopy of a government-issued photo id, and mail or deliver both documents in an envelope addressed as follows: **ECF Certification, U.S. District Court, EDVA, Clerk's Office, 600 Granby Street, Norfolk, VA 23510.** Then, if you haven't already done so, register to e-file online by going to www.vaed.uscourts.gov.*

This notice informs all attorneys and their staffs who do business with the United States District Court for the Eastern District of Virginia (EDVA) that improper registration to e-file with us is a serious matter that may have serious consequences. Falsely certifying and/or registering to e-file with the EDVA constitutes making false statements to the Court, which is a grave offense. Such actions may lead to disbarment and a referral to the Virginia State Bar. The Court will act on any known instance of false certification and/or registration for e-filing in the CM/ECF system.

[First Name] [Middle Name] [Last Name]

Phone Number: _____ E-mail Address _____

You may not register to e-file with the EDVA until you have completed the mandatory training requirement by passing the online EDVA ECF policies and procedures quiz with a score of 92% or higher.

*You must check in **all** of the boxes below.*

As an officer of the Court, I certify the following:

- No other attorney representing this plaintiff in this case has already received an ECF login and password in the Eastern District of Virginia.
- I passed the EDVA online ECF policies and procedures quiz.
- A photocopy of government-issued photo identification accompanies this form. (We are collecting this photocopy as proof of the identity of the signer of this form. The photocopies will be secured and not made available to the public in any way.)
- I agree to abide by all Court rules, orders, and policies and procedures governing the use of the electronic filing system. I also consent to receiving notice of filings pursuant to Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure via the Court's electronic filing system.

[Your signature]

[Date]

**In re:
ZETIA (EZETIMIBE) ANTITRUST
LITIGATION**

MDL NO. 2:18md2836

ATTACHMENT D

Introduction This document contains instructions for filing documents in MDL 2836 In re Zetia (Ezetimibe) Antitrust Litigation.

Effective Date June 22, 2018

Attorney Filers Some of the attorneys who will be filing in this case are not admitted to the Eastern District of Virginia. By order of the court, these attorneys admitted pro hac vice will be allowed to electronically file in the case but must abide by all EDVA ECF policies and procedures. Attorneys not admitted will have their ECF account deactivated once their case(s) conclude.

Lead Case The lead case number is 2:18md2836. All filing is to be done in the lead case.

Electronically Filing Pleadings To file in this MDL case, use events located under the civil menu like you would any other civil case. Do not use the events under the *MDL Cases Only* category, to prevent spreading of text to member cases. Attorneys should never spread text in this MDL case 2:18md2836 to any member case.

The Clerk's Office staff will docket miscellaneous documents and will be able to spread the text to each member case that it applies.

Continued on next page

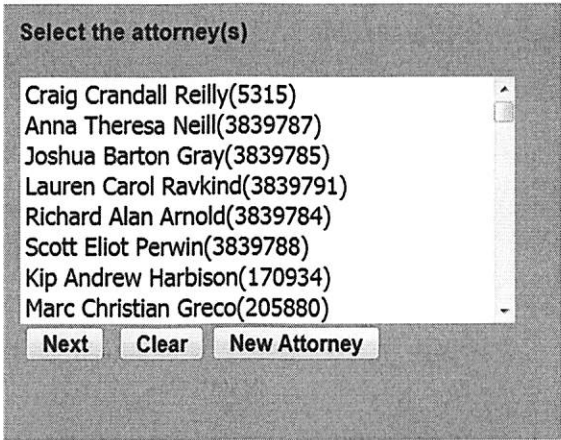
MDL 2836 ZETIA (EZETIMIBE) ANTITRUST LITIGATION, Continued

Electronically Filing Pleadings, Continued Take the following steps to file in the lead case:

Step	Action
1	Log in to the Eastern District of Virginia E-Filing System.
2	Select <i>Civil</i> from the main blue menu.
3	Select an event located under the <i>Motions and Related Filings</i> or <i>Other Filings</i> category depending on the pleading.
4	<p>Example: to file a miscellaneous motion, you would select <i>Motions</i> found under the <i>Motions and Related Filings</i> category.</p> <div data-bbox="561 636 1230 804" style="border: 1px solid black; padding: 5px; background-color: #f0f0f0;"> <p>Motions and Related Filings</p> <p><u>Motions</u></p> <p><u>Responses, Replies and Memoranda</u></p> </div> <p>Select the appropriate event such as <i>Extension of Time to File Response/Reply</i> from the drop down menu and <i>Next</i> button.</p> <div data-bbox="561 915 1230 1398" style="border: 1px solid black; padding: 5px; background-color: #f0f0f0;"> <p>Available Events (click to select events)</p> <ul style="list-style-type: none"> Extension of Extension of Time re Transcript Extension of Time to Amend Extension of Time to Complete Discovery Extension of Time to File Answer <li style="background-color: #d3d3d3;">Extension of Time to File Response/Reply File Excess Pages Forfeiture of Property Hearing In Limine Intervene Issuance of Subpoenas Issuance of Warrant in rem Joinder Judgment Debtor Exam <p><input type="button" value="Next"/> <input type="button" value="Clear"/></p> </div>

Continued on next page

MDL 2836 ZETIA (EZETIMIBE) ANTITRUST LITIGATION, Continued

Electronically Filing Pleadings, Continued	Step	Action
	5	Enter the lead case number 2:18md2836 and then click the <i>Next</i> button.
	6	Select the attorney who is filing the document then click the <i>Next</i> button. 
	7	Select the filing party name then click the <i>Next</i> button.
	8	Upload the PDF document and then continue until complete.
	9	Make sure all pleadings filed have the following information: <ul style="list-style-type: none"> • In Re: Zetia (Ezetimibe) Antitrust Litigation • (Lead Case) MDL No. 2:18md2836 and note whether the filing applies to ALL MEMBER CASES; ALL END PAYER CASES; ALL DIRECT PURCHASER CASES, or the coordinating Member Case No.(s) to which it does apply.

Continued on next page

MDL 2836 ZETIA (EZETIMIBE) ANTITRUST LITIGATION, Continued

**Filing
Exceptions**

Exceptions:

- **Notices of Appearance:** These documents must be electronically filed separately, using the *Notice of Appearance* event, in every case to which it belongs. The spread text feature does not work on this entry and in order to be listed on the member case docket sheets, you must file in the individual member cases.
 - **Pro Hac Vice Motions:** These documents must be electronically filed in the lead case only. The MDL case manager will add the pro hac vice counsel to the docket sheet upon signature of the Judge. On the application, please specify as to what member cases the pro hac vice attorney should be added.
 - **Notices of Appeal:** Notices of Appeal must be electronically filed using the event notice of appeal, filed only in the member case that is being appealed. These documents are **not** docketed in the lead case. A Notice of Appeal must be filed in the individual member cases and the appeal fee paid.
-