

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

IN RE ZETIA (EZETIMIBE) ANTITRUST
LITIGATION

MDL No. 2:18-md-2836

THIS DOCUMENT RELATES TO:

ALL ACTIONS



JOINTLY PROPOSED PRETRIAL ORDER NO. 5

Pursuant to this Court’s Pretrial Order No. 4 (PTO 4),¹ the parties to the above-referenced actions, through their respective counsel, hereby jointly stipulate as follows with respect to (1) a complete pretrial schedule, (2) number of depositions, (3) number of interrogatories, and (4) number of requests for admissions.

1. Pretrial Schedule

The parties shall adhere to the agreed upon dates in the following schedule. Should any future modification to the schedule become necessary in the view of any party, the parties shall confer and submit a request to the Court to amend the schedule on a joint or opposed basis, as appropriate.

Event	Date
Deadline for Direct Purchaser Plaintiffs (“DPPs”) and End-Payer Plaintiffs (“EPPs”) to file consolidated complaints; Retailers to file amended complaint, if desired (PTO 4, Dkt. No. 106)	September 13, 2018

¹ ECF No. 106.

Event	Date
Submission of Proposed Pretrial Schedule (PTO 4, Dkt. No. 106)	October 1, 2018
Defendants answer or otherwise move in response to DPP and EPP consolidated complaints as well as Retailer complaints (PTO 4, Dkt. No. 106)	October 11, 2018
Service of Rule 26(a) Disclosures	October 15, 2018
Deadline for Defendants to produce document productions made in connection with underlying, Zetia-related patent litigation, ² as well as any productions made in connection with any Federal Trade Commission or Congressional investigation or litigation, that Defendants have located by the date specified for this early production (should any such productions be requested and discoverable under the Federal Rules of Civil Procedure and subject to Defendants' objections to such requests).	November 12, 2018
Deadline for Initial Rule 33 Interrogatories and Rule 34 Document Requests. Initial paper discovery may be served in advance of this deadline. If that occurs, the responding	October 19, 2018

² Such actions are *Schering Corporation, et al. v. Glenmark Pharmaceuticals Inc., et al.*, C.A. No. 2:07-cv-01334 (D.N.J.); *Schering Corporation, et al., v. Mylan Pharmaceuticals Inc. et al.*, C.A. No. 2:10-cv-03085 (D.N.J.); *Schering Corporation, et al., v. Teva Pharmaceuticals USA, Inc.*, C.A., No. 2:10-cv-04473 (D.N.J.); and *Merck Sharp & Dohme Corp., et al. v. Sandoz Inc.*, C.A. No. 2:12-cv-06077 (D.N.J.).

Event	Date
party shall not be required to respond before the time allowed by the Federal Rules, or October 19, 2018, whichever is later. ³	
Submission of Protective Order and ESI Order/Position Papers on Disputed Issues	October 19, 2018
Plaintiffs ⁴ to file oppositions to any Rule 12 motion(s) (PTO 4, Dkt. No. 106)	November 1, 2018
Defendants shall reply to Plaintiffs' oppositions to Rule 12 motion(s) (PTO 4, Dkt. No. 106)	November 16, 2018
Deadline for parties to produce transaction level data, subject to the parties reaching agreement on content, scope, and time period.	December 14, 2018
Substantial completion of documents responsive to initial Rule 34 Document Requests.	April 22, 2019
Deadline for any supplemental Rule 33 Interrogatories and Rule 34 Document Requests,	May 6, 2019

³ In propounding these initial requests, the parties shall attempt to be as comprehensive as possible.

⁴ The term "Plaintiffs" as used herein means DPPs, EPPs, and Retailer plaintiffs. In the event that any additional Plaintiffs are added to this MDL proceeding, they shall be included within the definition of the term "Plaintiffs" and bound by this schedule.

Event	Date
and Rule 36 Requests for Admissions ⁵	
Parties provide final privilege logs for documents produced in response to initial Rule 34 Document Requests. The parties will work in good faith to produce privilege logs for documents reviewed and identified earlier in the production in advance of the deadline, and thus anticipate producing logs on a rolling basis.	June 7, 2019
Deadline for filing discovery motions and privilege challenges.	July 16, 2019
Fact Discovery closes	August 1, 2019
Deadline to seek leave to amend the complaint(s) and/or add parties	September 16, 2019
DPPs and EPPs move for class certification and disclose expert reports on which they rely for class certification. ⁶	August 5, 2019
Defendants oppose class certification and serve expert reports on which they rely in	September 30, 2019

⁵ Requests for admissions pertaining solely to the authenticity of documents/admissibility of documents for use at trial shall be exempt from this deadline.

⁶ At the time Plaintiffs serve their expert reports they intend to rely upon for purposes of class certification, they will provide three available dates that would allow Defendants to depose such experts sufficiently in advance of the due date for Defendants' opposition(s) to Plaintiffs' motions.

Event	Date
opposition to class certification. ⁷	
DPPs and EPPs file replies in support of class certification and supporting reply expert reports. ⁸	November 5, 2019
Class certification hearing	Early December, 2019
Plaintiffs disclose any merits experts required to be disclosed under Rule 26(a)(2) ⁹	September 30, 2019
Defendants disclose any merits experts required to be disclosed under Rule 26(a)(2) ¹⁰	November 6, 2019
Plaintiffs serve rebuttal merits expert reports, if any.	November 26, 2019
Deadline for deposing any merits experts disclosed pursuant to Rule 26(a)(2)	December 20, 2019

⁷ At the time Defendants serve their expert reports they intend to rely upon for purposes of opposing class certification, they will provide three available dates that would allow Plaintiffs to depose such experts sufficiently in advance of the due date for Plaintiffs' replies.

⁸ Plaintiffs' reply class certification expert reports shall respond to Defendants' class certification expert reports.

⁹ At the time Plaintiffs serve any additional expert reports pursuant to Rule 26(a)(3), they will provide three available dates that would allow Defendants to depose such experts sufficiently in advance of the due date for Defendants' reports.

¹⁰ At the time Defendants serve any additional expert reports pursuant to Rule 26(a)(3), they will provide three available dates that would allow Plaintiffs to depose such experts by the deadline to depose any non-class certification experts.

Event	Date
Deadline for filing Rule 56 and <i>Daubert</i> motions ¹¹	January 21, 2020
Deadline for filing Rule 56 and <i>Daubert</i> oppositions	February 21, 2020
Deadline for filing Rule 56 and <i>Daubert</i> replies	March 20, 2020
Hearing on Rule 56 and <i>Daubert</i> motions	Late March/Early April 2020
Parties exchange Rule 26(a)(3) disclosures	March 29, 2020
Parties serve objections to Rule 26(a)(3) disclosures	April 10, 2020
Parties file motions in <i>limine</i>	April 24, 2020
Oppositions to motions in <i>limine</i>	May 8, 2020
Attorneys conference	May 20, 2020
Proposed Draft of Pretrial Order Served	June 3, 2020
Parties file proposed voir dire, jury instructions, trial briefs, and witness summaries.	June 17, 2020
Final pre-trial conference	

¹¹ In the event of a summary judgment motion or *Daubert* motion filed before the deadline, briefing on such motions shall proceed in accordance with E.D. Va. Local Rule 7(F)(1) unless otherwise agreed or ordered.

Event	Date
	A day during the week of June 22, 2020
Trial Date	July 6, 2020

2. Number of Depositions

Each side shall be allowed to take 25 fact depositions of parties, employees, former employees and outside counsel of parties, with DPPs, EPPs, and Retailer plaintiffs grouped together on one side and the Merck and Glenmark Defendants grouped together on the other.

Each side shall be allowed to take 15 non-party depositions, pursuant to Federal Rule of Civil Procedure 45.

Notwithstanding the foregoing, the parties reserve the right to seek leave of the Court to increase the number of depositions.

The above caps do not apply to expert depositions.

3. Number of Interrogatories

Each side shall be allowed to serve 30 interrogatories, with DPPs, EPPs, and Retailer plaintiffs grouped together on one side and the Merck and Glenmark Defendants grouped together on the other. Notwithstanding the foregoing, the parties reserve the right to seek leave of the Court to increase the number of interrogatories, either by stipulation or for good cause shown.

4. Number of Requests for Admission

Each side shall be allowed to serve 25 requests for admission (“RFAs”) with DPPs, EPPs, and Retailer plaintiffs grouped together on one side and the Merck and Glenmark Defendants grouped together on the other. Notwithstanding the foregoing, the parties reserve the right to seek leave of the Court to increase the number of RFAs, either by stipulation or for good cause

shown. The 25 RFA limit shall not include requests for admission going solely to the authenticity or admissibility of documents.

IT IS SO STIPULATED, through counsel of record

SO ORDERED.

Dated: October 2, 2018


Chief Judge Rebecca Beach Smith

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