

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. 4

The parties convened on August 9, 2018, for the purposes outlined in Pretrial Order No. 1, among them to schedule the filing of consolidated complaints and responsive pleadings directed thereto. See ECF No. 84. The court also discussed competing schedules for discovery deadlines and other events in the case. Upon hearing argument, and reviewing the parties' submissions, the court advised the parties that it would set deadlines for the filing of consolidated complaints and the responses to those complaints, and direct further attempts to resolve the discovery and other deadlines by agreement.

The Plaintiffs proposed that a Direct Purchaser Plaintiff ("DPP") consolidated class action complaint, an End Payer Plaintiff ("EPP") consolidated amended class action complaint, and a Retailer Plaintiff amended complaint (if desired) be filed on September 6, 2018. See Pl. Proposed Schedule at 3, ECF

No. 48-2. The Defendants proposed that such consolidated or amended complaints be filed on September 20, 2018. See Def. Proposed Schedule at 2, ECF No. 83-1. After considering the filings and the arguments presented by all parties, the court hereby **ORDERS** that the DPP file a consolidated complaint no later than September 13, 2018; the EPP file a consolidated amended complaint no later than September 13, 2018; and the Retailer Plaintiffs file an amended complaint, if desired, no later than September 13, 2018.

The court further **DIRECTS** that the Defendants answer the DPP consolidated complaint, the EPP consolidated complaint, and the Retailer complaint, or move under Federal Rule of Civil Procedure 12, no later than October 11, 2018.<sup>1</sup> The Plaintiffs shall file any oppositions to the Rule 12 motion(s) no later than November 1, 2018. The Defendants shall reply to the Plaintiffs' opposition(s) no later than November 16, 2018.

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<sup>1</sup> The court notes that the briefing which has been already been filed in the DPP cases, with regard to the Merck Defendants' Motion to Dismiss All Claims, or in the Alternative to Stay All Proceedings, Pending Bilateral Arbitration Pursuant to FAA § 3, shall be construed to apply to the forthcoming DPP consolidated complaint, as discussed at the initial status conference of August 9, 2018. See Mots., No. 2:18cv23, ECF No. 92; No. 2:18cv39, ECF No. 69; No. 2:18cv71, ECF No. 80. Accordingly, with respect to those parties against whom the Motion to Dismiss or Stay has already been asserted, it does not need to be re-briefed or re-argued in connection with a new consolidated DPP complaint.

The parties' competing pretrial schedules failed to resolve dates for various discovery deadlines, class certification, expert witness deadlines, and other events. One reason for the parties' disagreement was a desire by the Defendants to postpone discovery pending the outcome in the DPP cases of the Merck Defendants' Motions to Dismiss All Claims, or in the Alternative to Stay All Proceedings, Pending Bilateral Arbitration Pursuant to FAA § 3 ("Motions to Dismiss or Stay"). See Mots., No. 2:18cv23, ECF No. 92; No. 2:18cv39, ECF No. 69; No. 2:18cv71, ECF No. 80. However, the court has scheduled the Motions to Dismiss or Stay for a hearing, and plans to resolve them promptly. Further, the Merck Defendants will be parties to this MDL action regardless of the disposition of the Motions to Dismiss or Stay, because they are defendants in the EPP and Retailer actions. Accordingly, there is no reason to delay discovery pending resolution of the Motions to Dismiss or Stay, and the court **DIRECTS** that discovery shall begin promptly.

After considering the parties' filings and arguments at the initial status conference, the court **DIRECTS** the parties to meet and confer, and submit to the court a complete proposed pretrial schedule for the duration of the case. If no consensus between the parties can be reached, the parties are to seek an additional hearing before the court for the resolution of those issues. The jointly proposed complete pretrial schedule, or as

