IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: LIPITOR (ATORVASTATIN CALCIUM) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	MDL No. 2:14-mn-02502-RMG This Document Relates to All Actions

JOINT PROPOSED CASE MANAGEMENT ORDER
ON CASE MANAGEMENT AND DISCOVERY

Pursuant to this Court's Case Management Order No. 3, the parties have conferred and jointly submit a Proposed Case Management Order ("CMO") on Case Management and Discovery, attached as Exhibit A.

While the parties have reached agreement on many of the provisions in the Joint Proposed CMO, there remain certain provisions in the Proposed CMO where the parties have not been able to reach agreement. These provisions are highlighted in the attached CMO and denoted "Pfizer's Proposal" (highlighted in green) and "Plaintiffs' Proposal" (highlighted in blue).

The parties would like to discuss these provisions at the upcoming status conference on April 25, 2014.

Respectfully submitted,

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Dated: April 22, 2014

CERTIFICATE OF SERVICE

I hereby certify that, this 22nd day of April, 2014, I have electronically filed a copy of the above and foregoing with Clerk of the Court using the ECF system, which sent notification of such filing to counsel of record.

s/Amanda S. Kitts

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IN RE: LIPITOR (ATORVASTATIN CALCIUM) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	)	**MDL No. 2:14-mn-02502-RMG**
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JOINT PROPOSED CASE MANAGEMENT ORDER NO. ___
[CASE MANAGEMENT AND DISCOVERY]

This Order reflects agreement to date between the parties with respect to case management and discovery issues governing these MDL proceedings.

AND NOW, this __ day of _____, 2014, the Court hereby enters the following Case Management Order ("CMO") to govern further proceedings in this litigation.

1. **APPLICABILITY AND SCOPE OF ORDER**

a. **Scope.** This CMO is intended to conserve judicial resources, eliminate duplicative services by all counsel and co-counsel, eliminate duplicative discovery, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation. Consistent with this Court's CMO No. 1, dated February 26, 2014, this Order and, unless otherwise specified, any subsequent pretrial or case management orders issued in this MDL, shall govern the practice and procedure in those actions transferred to this Court by the Judicial Panel on Multidistrict Litigation ("JPML") pursuant to its order entered on February 18, 2014, any tag-along actions transferred to this Court by the JPML pursuant to Rules 7.1 and 7.2 of the Rules of Procedure of the Panel, after the filing of the final transfer order by the Clerk of

the Court, and all related actions originally filed in this Court or transferred or removed to this Court and assigned thereto as part of *In re: Lipitor (Atorvastatin Calcium) Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2502. These cases, which have been consolidated by the Court pursuant to CMO 1, will be referred to as the "MDL proceedings." The provisions of this Order, and any subsequent pretrial order or case management order issued in the MDL proceedings, shall supersede any inconsistent provisions of the Court's Local Rules. The consolidation of these cases, including certain of these cases that have been or may be directly filed into this MDL, does not constitute a waiver of any party's rights under *Lexecon v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998). This CMO shall not be construed to affect the governing law or choice-of-law rules in any case subject to the CMO.

b. **Application to All Parties and Counsel.** This Order and all subsequent pretrial or case management orders shall be binding on all parties and their counsel in all cases currently pending, or subsequently transferred to, removed to, or pending in the MDL proceedings and shall govern each case in the MDL proceedings unless the order explicitly states that it relates only to specific cases.

c. **Transferor Case Management Order Superseded.** Except as otherwise provided herein, any order entered in a transferor court or by this Court in any action consolidated in these MDL proceedings before the action became part of the MDL proceedings is vacated to the extent it relates to scheduling or discovery, and scheduling and discovery shall be governed by this and subsequent orders entered in this proceeding.

d. **Amendment and Exceptions.** This Order may be amended by the Court on its own motion, and any party may apply at any time to this Court for a modification or exception to this Order.

2. **ELECTRONIC FILING PROCEDURES**

The parties are expected to follow the District of South Carolina's policies and procedures on Electronic Case Filing. All counsel of record are hereby directed to take steps as necessary to be registered as electronic filers in the District of South Carolina and in the master docket, No. 2:14-mn-02502. All documents, except discovery documents that shall not be filed, shall be electronically filed in the master MDL docket. Any document that pertains to one or multiple specific cases shall be electronically filed in each case docket *and* in the master MDL docket. Electronic case filing of a document, other than an initial pleading, in the master docket shall be deemed to constitute proper service on all parties. Discovery and other documents not filed with the Court shall be served by electronic mail on the appropriate Lead and Liaison Counsel and other appropriate counsel as set forth below in paragraph 8.c.

3. **LEAD COUNSEL AND COMMUNICATION WITH THE COURT**

a. As set forth in CMO 3, Plaintiffs' Lead Counsel is H. Blair Hahn and Plaintiffs' Liaison Counsel is Mark C. Tanenbaum. The Court hereby makes the following additional appointments:

Defendants' Lead Counsel: Mark S. Cheffo, Quinn Emanuel Urquhart & Sullivan, LLP, 51 Madison Avenue, New York, New York 10010, (212) 849-7000, markcheffo@quinnemanuel.com (with copies to Rachel Passaretti-Wu at rachelpassarettiwu@quinnemanuel.com and Mara Cusker Gonzalez at maracuskergonzalez@quinnemanuel.com); and

Defendants' Liaison Counsel: Michael T. Cole, Nelson Mullins Riley & Scarborough LLP, Liberty Center, Suite 600, 151 Meeting Street, Charleston,

South Carolina 29401, (843) 853-5200, mike.cole@nelsonmullins.com (with copies to Amanda Kitts at amanda.kitts@nelsonmullins.com).

b. Unless otherwise ordered by this Court, all substantive communications with the Court shall be in writing, with copies to Lead and Liaison Counsel for both sides and, where the communication relates to a specific case or cases, to primary counsel for Plaintiff(s) and Defendant(s) in such cases as well as to Lead and Liaison Counsel for both sides. All substantive communications with the Court from any Plaintiff or counsel for Plaintiff must be sent first to Plaintiffs' Lead Counsel before being submitted to the Court.

4. **PLEADINGS AND MOTIONS**

a. **Direct Filing.** In order to eliminate delays associated with transfer to this Court of cases filed in or removed to other federal district courts, any plaintiff whose case would be subject to transfer to these MDL proceedings may file his or her case directly in the District of South Carolina, as follows:

PFIZER'S PROPOSAL: Any complaint that is directly filed in the MDL proceedings must be a "Single-Plaintiff Complaint." A "Single-Plaintiff Complaint" is a complaint filed: (1) by an individual plaintiff; (2) by a plaintiff and family member plaintiffs; or (3) on behalf of the estate of a deceased individual, together with any family members and/or beneficiaries of such estate. Multi-Plaintiff-complaints, or complaints joining two or more plaintiffs other than as expressly provided above, may not be directly filed into the MDL proceedings without Court approval.

PLAINTIFFS' PROPOSAL: The Plaintiffs would like to discuss at the hearing the possibility of filing Multi-Plaintiff-complaints.

Each complaint filed directly in the MDL proceedings must comply with the Federal Rules of Civil Procedure and allege the current state of residence of the plaintiff(s). Each complaint filed directly in the MDL proceedings (including any short-form complaint filed pursuant to the procedures established in connection with the Master Complaint described in paragraph 4.b.i below) also should allege that Plaintiff has been diagnosed with type 2 diabetes and, to the extent possible at the time of filing, include allegations identifying: (1) the state in which the plaintiff ingested Lipitor; (2) the plaintiff's gender; (3) the current age of plaintiff or date of death of deceased individual; and (4) the approximate dates plaintiff started and stopped taking Lipitor.

No reference in this Order to actions filed originally or directly in the United States District Court for the District of South Carolina shall constitute a waiver of any party's contention that jurisdiction or venue is improper or that the action should be dismissed or transferred. The fact that a case was filed directly in the MDL proceedings also shall have no impact on the choice of law to be applied in the case. Pfizer will not challenge the venue of any action filed directly in the MDL proceedings in the District of South Carolina pursuant to each of the provisions set forth above for purposes of pretrial proceedings, without prejudice to its right to seek transfer pursuant to 28 U.S.C. §§ 1404 and 1406 for trial.

At the conclusion of pretrial proceedings, should the parties agree both that a case filed directly in the MDL proceedings should be transferred and on the district to which it should be transferred, the parties will jointly advise the Court of the district to which the case should be transferred at the appropriate time. Should the parties disagree as to the district to which a case should be transferred, nothing in this Order precludes any party from filing a motion to transfer pursuant to 28 U.S.C. § 1404(a) or § 1406 at the conclusion of pretrial proceedings.

b. **Master Pleadings.** The parties shall file master pleadings as follows:

i. **Master Complaint:** Within thirty (30) days of the date of this Order, Plaintiffs shall file a Master Complaint. The parties will continue to confer about the form and procedures governing the Master Complaint, which shall be set forth in a separate order by **May 9, 2014**. Until such order is entered and the Master Complaint is filed, the complaint filed in each action shall govern the action.

ii. **Master Answer by Pfizer Inc.:** Within thirty (30) days of the filing of the Master Complaint, Pfizer shall file a Master Answer and Affirmative Defenses ("Master Answer"). The Master Answer shall be deemed to respond to the allegations of the Master Complaint, and for all of the complaints then pending in, filed in, or transferred to MDL No. 2502 as described above, the Master Answer shall be deemed the answer to those allegations that correspond to the Master Complaint and shall be deemed a denial of any allegations not contained in the Master Complaint.

(1) The Master Answer is not intended to and shall not waive any applicable defenses available to Pfizer, including any objections to service, jurisdiction or venue, and any defenses to any state law claims, and Pfizer may respond to any particular individual complaint by way of motions permissible under the Federal Rules of Civil Procedure. Pfizer may also file counterclaims, crossclaims, and/or third-party complaints, pursuant to Rules 13 and 14 of the Federal Rules of Civil Procedure, in connection with any particular individual action, with such filing to be made within sixty (60) days of transfer of the action to the MDL or, for those actions currently pending in the MDL, within sixty (60) days of the filing of the Master Answer, unless good cause is shown for filing at a later date.

(2) Because Pfizer shall be deemed to have answered all cases pending in, filed in, or subsequently transferred to MDL No. 2502 upon filing of the Master Answer, cases may only be voluntarily dismissed by order of the Court pursuant to Federal Rule of Civil Procedure 4l(a)(2) or a stipulation pursuant to Federal Rule of Civil Procedure 4l(a)(l)(ii) except that a complaint filed directly in the MDL proceedings may be voluntarily dismissed upon notice by Plaintiff within ten (10) days of the filing of the complaint.

(3) Neither the filing of the Master Answer nor the filing of a Notice of Appearance or ECF registration in an action nor the appearance at a status conference shall constitute a waiver of any defense of lack of personal jurisdiction.

iii. **Response to Master Answer:** Plaintiffs are deemed to deny each allegation of the Master Answer. Plaintiffs in any of the actions consolidated in MDL No. 2502 may also file responsive pleadings allowed under the Federal Rules of Civil Procedure to this Master Answer or any subsequent answer:

(1) within sixty (60) days of filing of the Master Answer for actions pending in the MDL at the time of said filing;

(2) within sixty (60) days of the filing of any separate individual answer;

(3) within sixty (60) days of transfer of the action to the MDL, if such transfer occurs after the filing of the Master Answer; or

(4) within sixty (60) days of direct filing a complaint in this MDL.

c. **Additional Parties.** Except as otherwise set forth herein, no party may be added to a case absent leave of Court or stipulation of the parties.

d. **General Motions and Briefing Requirements.** Except as otherwise provided herein, all motions and briefs shall conform to Local Civil Rules 7.04-7.07 DSC. All motions on behalf of Plaintiffs or the Plaintiffs' Steering Committee ("PSC") must be signed by Plaintiffs' Lead Counsel.

e. **Motion Hearings.** To be heard at a regularly-scheduled status conference, a non-dispositive motion[1] not otherwise subject to the provisions for discovery disputes set forth in paragraph 8.o below must be submitted or filed and served at least fourteen (14) days before the status conference, with any response to be filed at least seven (7) days before the status conference. Any such motion filed and served less than fourteen (14) days before a status conference shall not be heard at the upcoming status conference, absent order of the Court. Nothing in this paragraph is intended to preclude any party from raising discovery issues not yet the subject of a motion by including those issues in the joint status report submitted in advance of a status conference pursuant to CMO 2 and discussing such issues with the Court during a regularly scheduled status conference. Briefing schedules for dispositive motions shall be established separately.

5. **COORDINATION WITH STATE COURT PROCEEDINGS**

In order to achieve the full benefits of the MDL proceedings, this Court intends to coordinate with state courts presiding over related cases, and the parties will similarly coordinate discovery and other appropriate pretrial proceedings with any related state court litigations to the greatest extent possible. The parties will coordinate discovery activities and avoid unnecessary duplication and inconsistency by, at a minimum: (1) conferring with state court attorneys in

[1] For purposes of this order, motions to exclude testimony of experts pursuant to Federal Rule of Evidence 702, as interpreted by the Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) ("*Daubert* motions"), are excluded from this provision.

order to submit consistent proposed case management orders, protective orders, discovery plans, and discovery protocols, including as to electronic production, the form of production, and the number and scope of custodial searches; (2) the PSC providing access to a common document repository for discovery from common defendants to state court attorneys who agree to be bound by the protective order entered by this Court as set forth in paragraphs 8.d and 8.e below and to pay any assessments approved by this Court; (3) cross-noticing, by Defendants, of depositions of defense witnesses and providing for participation of counsel in state court actions at such depositions; (4) making reasonable efforts to ensure that, absent agreement, no witness will have to give more than a single deposition; (5) timely communicating to Plaintiffs' and Defendants' Lead and Liaison Counsel relevant developments in, and opportunities for coordinating with, any related state court proceedings; and (6) keeping the Court informed of such activities through regular joint reports. The Court retains the power to enforce these coordination and cooperation requirements, including through protective orders precluding or narrowing duplicative discovery.

6. **PRESERVATION**

a. All parties and their counsel are reminded of their duty, consistent with the Federal Rules of Civil Procedure, to take reasonable measures to preserve documents, electronically stored information, and things that are potentially relevant.

b. **PFIZER'S PROPOSAL:** Each Plaintiff should timely send preservation letters to all healthcare providers and other third-party records custodians (e.g., pharmacies, employers, academic institutions, and insurance companies), directing such custodians to retain all records for the Plaintiff.

c. In addition, the parties shall maintain and preserve documents produced pursuant to the Discovery Plan set forth below and/or in response to requests for production of

documents so that they shall be available to all attorneys, on reasonable terms and conditions, and to the Courts in which the actions subject to this Plan are pending.

7. **DISCOVERY GROUPS AND TRIAL POOLS**

PFIZER'S PROPOSAL:[2]

a. **Tier 1 Discovery Group and Trial Cases (Initial South Carolina Cases).** The Tier 1 Discovery Group shall consist of the fourteen (14) Lipitor cases initially coordinated before this Court, namely:.

Janice C. Adams v. Pfizer Inc., D.S.C. 8:13-cv-01735-RMG

Margaret A. Clark v. Pfizer Inc., D.S.C. 2:13-cv-01164-RMG

Juanita Durocher v. Pfizer Inc., D.S.C. 7:13-cv-01965-RMG

Patricia Fernandez v. Pfizer Inc., D.S.C. 4:13-cv-01423-RMG

Waltina W. Gadsden v. Pfizer Inc., D.S.C. 2:13-cv-01921-RMG

Joyce Jones v. Pfizer Inc., D.S.C. 2:13-cv-01785-RMG

Marguerite W. Jones v. Pfizer Inc., D.S.C. 1:13-01786-RMG

Waltraud Gina Kane v. Pfizer Inc., D.S.C. 2:13-cv-01012-RMG

Bonnie C. Knight v. Pfizer Inc., D.S.C. 0:13-cv-01375-RMG

Harriet L. McClam v. Pfizer Inc., D.S.C. 4:13-cv-02148-RMG

Christine Papcun v. Pfizer Inc., D.S.C. 4:13-cv-01422-RMG

Evalina Smalls v. Pfizer Inc., D.S.C. 2:13-cv-00796-RMG

Susan Marie Turner v. Pfizer Inc., D.S.C. 2:13-cv-01108-RMG

Brenda K. Williams v. Pfizer Inc., D.S.C. 8:13-cv-01421-RMG

[2] Pfizer is also submitting its full proposed schedule through the first trial in chart form at the end of this proposed CMO.

i. By **May 23, 2014**, Plaintiffs in the Tier 1 Discovery Group shall provide all outstanding discovery, including written discovery, authorizations, and documents required under the discovery orders entered in the Lipitor cases previously consolidated before this Court, including *Smalls v. Pfizer Inc.*, No. 2:13-cv-00796, or requested by Pfizer pursuant to requests served pursuant to such orders.

ii. **May 23, 2014**, shall be the deadline for any Plaintiff in the Tier 1 Discovery Group to voluntarily dismiss her case without prejudice.

iii. By **July 18, 2014**, the parties shall submit joint or competing proposals governing selection of the first cases to be tried from Tier 1 Discovery Group cases, with such cases to be selected by **September 12, 2014**.

iv. By **September 5, 2014**, Threshold Discovery depositions and all other Threshold Discovery, as defined in paragraph 8.k below (with the exception of Plaintiff Fact Sheet discovery, which shall not apply to the Tier 1 Discovery Group), shall be completed in Tier 1 Discovery Group cases.

v. The remaining schedule through trial for the first Tier 1 case(s) to be tried is set forth in paragraph 11 below.

b. **Tier 2 Discovery Group and Trial Pool.** The Tier 2 Discovery Group shall be selected from those cases not included in the Tier 1 Discovery Group.

i. By **May 23, 2014**, the parties shall submit joint or competing proposals governing selection of Tier 2 Discovery Group cases, with such cases to be selected by **July 18, 2014**.

ii. **August 22, 2014**, shall be the deadline for any Plaintiff in the Tier 2 Discovery Group to voluntarily dismiss her case without prejudice.

iii. By **September 26, 2014**, the parties shall submit joint or competing proposals governing selection of Tier 2 Trial Pool cases, with such cases to be selected by **February 13, 2015**, and the selection of the first Tier 2 Trial Pool case(s) to be tried, with such cases to be selected by **April 10, 2015**.

iv. By **January 9, 2015**, all Threshold Discovery, as defined in paragraph 8.k below, shall be completed in Tier 2 Discovery Group cases.

v. By **May 8, 2015**, the parties shall submit joint or competing proposed schedules for expert disclosure and motion deadlines for the first Tier 2 Trial Pool case(s) to be tried.

PLAINTIFFS' PROPOSAL: The Parties will continue to meet and confer and submit a joint or competing comprehensive Plaintiffs' Discovery Order by **May 9, 2014,** which shall include Plaintiffs' Fact Sheets, Discovery Groups and a Bellwether Trial selection process.

8. **PRELIMINARY DISCOVERY PLAN AND PROCEDURES**

a. **Discovery Under the Plan.** No party may conduct any discovery of another party not expressly authorized by this Discovery Plan absent further Order of this Court or express agreement of the parties. This provision shall not preclude third-party discovery; provided, however, that any party intending to serve third-party discovery shall give ten (10) days written notice to the other party of the third-party discovery to be served. Such notice shall include a copy of the discovery to be served.

b. **Waiver of Initial Disclosures, Withdrawal of Pending Discovery.** For all cases in the MDL proceedings, the parties are relieved from complying with the requirements of Federal Rule of Civil Procedure 26(a)(1) and Local Civil Rule 26.01, DSC. Except as

otherwise provided herein, any request for discovery or notice of deposition served in a case before it was transferred to the MDL proceedings is deemed withdrawn.

c. **Service of Discovery.** Unless otherwise directed by this Court, the parties shall serve all papers that are not to be filed with the Court, including, but not limited to, disclosures under Federal Rule of Civil Procedure 26, Fact Sheets, deposition notices, interrogatories, requests for documents, requests for admission, responses thereto, and certificates of service thereof, by electronic mail on Plaintiffs' Lead and Liaison Counsel and Defendant's Lead and Liaison Counsel. Such papers are not to be filed with the Clerk, nor are courtesy copies to be delivered to the Court, except when specifically ordered by the Court or to the extent needed in connection with a motion, and only in accordance with the protective order governing the MDL proceedings. Where a paper is applicable to all cases or substantially all cases, or such categories of cases as may be defined in subsequent Orders, Plaintiffs' Liaison Counsel also shall electronically serve such paper on counsel of record for the individual Plaintiff(s) to whom the paper is applicable. Where a paper to be served by a Defendant is applicable to a particular case, Defendants' Lead and Liaison Counsel shall electronically serve such paper on the counsel of record for the individual Plaintiff(s) in that case as well as Plaintiffs' Lead and Liaison Counsel. Where a paper to be served by one or more Plaintiffs is applicable to a particular case and a particular Defendant other than a Pfizer entity, Plaintiffs' counsel shall electronically serve such paper on the counsel of record for the individual Defendant(s) as well as Defendants' Lead and Liaison Counsel.

All discovery directed to Defendants and non-party witnesses on behalf of Plaintiffs shall be undertaken by, or under the direction of, the PSC on behalf of all Plaintiffs with cases in these MDL proceedings.

d. **Protective Order.** The protection of confidential documents and information and the inadvertent production of confidential and/or privileged information shall be subject to the terms of the Joint Confidentiality and Protective Order entered by this Court on July 3, 2013 (the "Protective Order"), in the Lipitor cases previously consolidated before this Court, including *Smalls v. Pfizer Inc.*, No. 2:13-cv-00796 (hereinafter, the *Smalls* cases). The Protective Order, attached here as Exhibit A, is hereby adopted in and applicable to the MDL proceedings and is binding on all parties and counsel to ensure the protection of confidential information. The Protective Order may be modified only on agreement of the parties or by order of the Court.

e. **Sharing of Confidential Information.** An attorney of record in the MDL proceedings may share documents or information produced by Pfizer in the MDL proceedings with attorneys of records for plaintiffs in other pending state or federal court litigation within the United States filed against Pfizer and involving the alleged use of Lipitor and alleged injury of diabetes, pursuant to the following provisions: (1) prior to disclosure of confidential documents or information to any such attorney, counsel for the disclosing party shall deliver a copy of the Protective Order in the MDL proceedings to such attorney, shall explain its terms to such person, and shall secure the signature of such person on a statement in the form attached to the Protective Order as Exhibit A, which shall be retained by counsel for the disclosing party; (2) it shall be the obligation of counsel, upon learning of any breach or threatened breach of the Protective Order by any such attorney with whom confidential documents or information are shared, to promptly notify counsel for the designating party of such breach or threatened breach; (3) the name of each such attorney with whom confidential information is shared shall be provided to Defendants' Lead Counsel; and (4) disclosure shall not be made to any attorney whom the disclosing attorney

knows to have been found to have violated the terms of a protective order in any litigation or legal proceeding.

f. **Format of Production.** The protocol for and format of production of documents shall follow the Document Production Protocol the parties are currently working to finalize and submit for entry by this Court.

g. **Assertion of Privilege.** Any party that withholds the production of requested documents or materials on the ground of any privilege or application of the work-product doctrine must provide a Privilege Log. Each Privilege Log shall describe each document or thing for which a privilege or the work product doctrine is asserted in sufficient detail to reasonably permit the party seeking discovery to assess whether or not to dispute any such assertion of privilege or application of the work product doctrine. This will include but is not limited to information regarding the document's subject, date, author, and all recipients, the specific privilege asserted, and the factual basis for the privilege. Each party withholding materials shall provide opposing counsel a copy of the Privilege Log in electronic form contemporaneously with each production whenever possible, but in no case later than ninety (90) days after the production absent agreement of the parties. If a partial production is made, the party shall produce a privilege log relating to such partial production.

h. **Records Collection.** The parties are working to reach agreement on the joint designation of a single company for the collection and management of medical, pharmacy, insurance, educational, employment and other relevant third-party records in the MDL proceedings. The parties are working to reach agreement on a protocol for sharing the costs of records collection and will set forth the terms of such agreement on cost-sharing in a separate

document. Records will be accessible through the designated collection company, and Pfizer will not be required or expected to provide separate or additional copies thereof to any Plaintiff.

i. **Authorizations for Records.** **PFIZER'S PROPOSAL:** As set forth in paragraph 8.j below, each Plaintiff not included in the Tier 1 Discovery Group shall provide to Pfizer with her signed Plaintiff Fact Sheet: (1) signed authorizations for all third-party custodians (hereinafter, "records custodians") identified in the Plaintiff Fact Sheet; and (2) signed blank authorizations (that is, authorizations that do not set forth the identity of the custodian of the records) in the form set forth as attachments to the Plaintiff Fact Sheet for medical, pharmacy, insurance, educational, employment, Medicare, and other government records, which may be duplicated and used only as follows. In the event that Pfizer desires or intends to obtain records from a records custodian for whom Plaintiff did not provide an authorization with her Plaintiff Fact Sheet or otherwise, Pfizer or the designated records-collection company shall first give prior written notice to counsel for Plaintiff of its intent to make such request(s). Plaintiff's counsel shall have seven (7) days from the date of such notice in which to object to use of such authorization and to initiate a meet and confer to discuss the propriety of obtaining the requested records. Counsel for Pfizer and counsel for Plaintiff shall resolve any disputed requests prior to the service of any authorization at issue on a records custodian. If Pfizer wishes to obtain records from a records custodian who will not accept the authorization a Plaintiff has provided, that Plaintiff will cooperate with Pfizer and provide the necessary authorization(s) within fourteen (14) days of the initial request. This provision is intended to include, but is not limited to, requests for proprietary authorization and for authorizations involving records related to military service, Social Security, and Medicare

records. To the extent not already provided, Plaintiffs in the Tier 1 Discovery Group shall provide all such authorizations by **May 23, 2014**.

PLAINTIFFS' PROPOSAL: Authorizations for Records to be included in the comprehensive Plaintiffs' Discovery Order to be submitted **May 9, 2014.**

j. **Plaintiff Fact Sheet.** **PFIZER'S PROPOSAL:** The parties are working to reach agreement on the format of a proposed Plaintiff Fact Sheet (the "PFS") and shall submit joint or competing proposals on the PFS by **May 9, 2014**. Within forty-five (45) days of entry by this Court of an order governing the PFS, each Plaintiff, other than those Plaintiffs included in the Tier 1 Discovery Group, whose case has already been filed in or transferred to the MDL proceedings at that time, and, for all other cases, within thirty (30) days of the transfer of the case to the MDL proceedings[3] or of the direct filing of a complaint in the MDL proceedings, each Plaintiff shall provide the following materials (hereinafter, "disclosures") to Pfizer: (1) a completed PFS; (2) executed copies of authorizations for all records custodians identified in the PFS; (3) signed blank authorizations for medical, pharmacy, insurance, educational, employment, Medicare, and other governmental records to be used as set forth in paragraph 8.i above; and (4) copies of any of the Plaintiff's and/or Plaintiff's decedent's medical, pharmacy, insurance, educational, and employment records within their possession, and any other documents requested at the end of the PFS. Plaintiffs' Liaison Counsel will notify each new Plaintiff of her obligations under this paragraph. All responses in the PFS or an amendment thereto are binding on the Plaintiff as if they were contained in answers to interrogatories. Each

[3] A case shall be deemed transferred to the MDL proceedings either: (a) for cases filed directly in the MDL, the date the complaint is filed; or (b) for cases not filed directly in the MDL, the date that the certified copy of the Conditional Transfer Order issued by the JPML is entered in the docket of this Court.

PFS and amendment thereto shall be signed and dated by the Plaintiff or the proper Plaintiff representative under penalty of perjury.

PLAINTIFFS' PROPOSAL: Plaintiffs' Fact Sheets to be included in the comprehensive Plaintiffs' Discovery Order to be submitted **May 9, 2014.**

k. **Threshold Plaintiff Discovery.** **PFIZER'S PROPOSAL:** Discovery from Plaintiffs in the Tier 1 and Tier 2 Discovery Groups shall be presumptively limited to Threshold Discovery. Threshold Discovery includes the following: (a) discovery obtained in response to Plaintiffs and Defendant's Interrogatories and Requests for Production propounded in any case prior to the JPML Order establishing the MDL proceedings, including, for the Tier 1 Discovery Group cases, written discovery, authorizations, and documents required under the discovery orders entered in the *Smalls* coordinated cases or requested by Pfizer pursuant to requests served pursuant to such orders; (b) for the Tier 2 Discovery Group, Plaintiff Fact Sheets, including documents and authorizations required therein; (c) up to thirty (30) requests for production to Plaintiffs (including any such requests already served on Tier 1 Discovery Group Plaintiffs); (d) up to twenty-five (25) requests for admission to Plaintiffs; and (e) Defendant Fact Sheets. In addition, without requiring further consent or Court order, the following depositions may be noticed upon the identification of cases for the Discovery Group: (i) the Plaintiff(s); (ii) Plaintiff's spouse, whether or not named as plaintiff (or, if Plaintiff is unmarried, widowed, or her spouse is unable or incompetent to provide testimony due to mental impairment, another member of the Plaintiff's family or household at Pfizer's choosing); (iii) any healthcare provider(s) who prescribed Lipitor for Plaintiff, (iv) up to four healthcare providers who treated Plaintiff.

PLAINTIFFS' PROPOSAL: Threshold Plaintiff Discovery to be included in the comprehensive Plaintiffs' Discovery Order to be submitted **May 9, 2014.**

l. **Written and Document Discovery of Pfizer:**

i. To date, Pfizer has responded to Requests for Production of Documents and Interrogatories and produced documents pursuant to agreed Orders entered in the *Smalls* cases, including the Joint Scheduling Order entered September 13, 2013 (*Smalls* doc. 36) and the Agreed Order on Production of Documents entered January 21, 2014 (*Smalls* doc. 59). Plaintiffs' requests and Pfizer's written discovery responses and productions to date in the *Smalls* cases are hereby deemed applicable to and made in the MDL proceedings, and no duplicative discovery requests shall be served on Pfizer.

ii. In response to Plaintiff's Requests for Production in *Smalls*, Pfizer agreed to produce the following categories of documents:

1. Investigational New Drug Application Files ("IND");
2. New Drug Application Files ("NDA");
3. Spontaneous Adverse Event Reports ("AERs");
4. Standard Operating Procedures ("SOPs");
5. Prescribing Information ("Labeling");
6. Certain Custodial Files;
7. Medical Information Letters;
8. Minutes of Safety and Labeling Multidisciplinary Committees ("Minutes");
9. Records of Contact;
10. Periodic Safety Update Reports ("PSURs");
11. Lipitor Learning System;

12. Sales Representative Call Notes for Prescribing Physicians ("Sales Representative Materials"); and

13. Review Committee Marketing Materials ("Review Committee Files").

Pfizer has produced some of these categories of documents to Plaintiffs and shall complete the production of all categories of documents above on a rolling basis with the exception of Certain Custodial Files and Sales Representative Call Notes (which will be produced in Discovery Group Cases as part of the Defendant Fact Sheet) by **July 11, 2014**.

In addition to the categories of documents listed above, Pfizer agreed to produce the SAS datasets, SAS codebooks, study protocols, and final study reports for certain clinical studies of Lipitor and has already produced some of that material. Pfizer shall complete production of that material by **June 27, 2014**.

With regard to Certain Custodial Files referenced above, this Court previously ordered the production of the custodial files of twenty-five (25) witnesses (fifteen (15) initially chosen by Pfizer, and ten (10) additional witnesses chosen by Plaintiffs). Pfizer has begun producing documents from those custodial files, and Plaintiffs may identify an additional fifteen (15) witnesses for whom Pfizer shall produce custodial files (bringing the total to forty (40) custodial files). Plaintiffs shall request such witness files on a rolling basis and no later than **July 18, 2014**. Pfizer shall complete the production of documents from all forty (40) custodial files on a rolling basis by **September 8, 2014**.

iii. In addition to the twenty (20) interrogatories Plaintiffs served in the *Smalls* cases, Plaintiffs may serve up to twenty-five (25) additional interrogatories on Pfizer.

iv. Defendant Fact Sheet:

PFIZER'S PROPOSAL: The parties are currently conferring about the form of a Defendant Fact Sheet ("DFS"), which shall be provided by Pfizer in Discovery Group cases within forty-five (45) days of a case being selected for inclusion in the Discovery Group or within the deadline for PFS completion in the same case, if later. The DFS shall be provided in place of any case-specific document requests or interrogatories, which shall not be permitted absent agreement or Order of the Court.

PLAINTIFFS' PROPOSAL: The parties are currently conferring about the form of a Defendant Fact Sheet ("DFS"), which shall be provided by Pfizer within forty-five (45) days of receipt of a substantially complete Plaintiff's Fact Sheet. The DFS shall be provided in place of any case-specific document requests or interrogatories, which shall not be permitted absent agreement or Order of the Court.

m. **Depositions.**

i. Depositions of Pfizer:

(1) Depositions of common fact witnesses currently or formerly employed by Pfizer, other than any depositions conducted pursuant to Federal Rule of Civil Procedure 30(b)(6) (collectively "common Pfizer witnesses"), shall commence on **September 26, 2014**, but may commence earlier if the parties agree.

(2) The parties in the *Smalls* cases previously agreed that Pfizer would provide a witness for Rule 30(b)(6) deposition on topics related to electronically stored information ("ESI"), but such deposition was cancelled due to inclement weather. Pfizer has agreed to provide its witness on ESI topics by **June 13, 2014**. In addition, by **May 9, 2014**, the PSC will provide Pfizer with 30(b)(6) deposition notices directed at corporate organization/structure and pharmacovigilance. By **May 23, 2014**, Pfizer will identify witnesses

and propose dates for such depositions to take place, which proposed dates will be before **June 27, 2014**. Pfizer will serve any objections to such notices at least two weeks before the agreed deposition date.

(3) **PFIZER'S PROPOSAL:** Generally, a 30(b)(6) deponent's testimony shall be limited to his or her corporate capacity and to only the issues outlined in the 30(b)(6) notice. Plaintiffs may later depose that witness as a fact witness. No witness shall be considered a party or officer of a party for purposes of FRCP 45 merely because that person has been designated pursuant to 30(b)(6). Pfizer will serve any objections to such notices at least two weeks before the agreed deposition date. Pfizer will make a good faith effort to produce non-privileged documents relevant to such 30(b)(6) depositions at least one week prior to the deposition and will notify Plaintiffs' Lead Counsel at least one week before the deposition is scheduled to take place whether there are relevant, non-privileged documents of which it is aware that it is unable to produce within that timeframe.

(4) **PFIZER'S PROPOSAL:** If Pfizer has indicated that a fact witness designated by Plaintiffs will also testify as a 30(b)(6) witness, Pfizer will make a good faith effort to produce, at least thirty (30) days prior to the deposition, relevant non-privileged documents (without waiving its objections), including such documents from any custodial file review, for that witness. Plaintiffs agree not to seek a second deposition of such witness absent good cause shown.

(5) With regard to fact witnesses, absent agreement or a showing of good cause, Plaintiffs may take up to forty (40) fact witness depositions of Pfizer employees and/or former employees. The parties will meet and confer regarding the timing of those depositions, consistent with paragraph 8(m)(i)(1). Plaintiffs agree not to seek a second

deposition of a fact witness absent good cause shown. No more than six (6) depositions of Pfizer witnesses (including fact and 30(b)(6) witnesses) may be taken per month, absent agreement of the parties or good cause shown.

ii. Deposition Protocol: The parties are currently working to finalize and submit for entry by this Court a protocol governing depositions, including with respect to the scheduling, noticing, taking, and recording of depositions.

n. **Extension of Discovery Deadlines.** Nothing in this Order shall be interpreted to restrict the ability of the parties to stipulate in writing to an extension of discovery deadlines or to move for an extension of discovery deadlines as permitted by the Rules. The parties further agree that, should any of the deadlines set forth above become infeasible as a result of an unexpected technical or similar matter, the responding or producing party shall provide advance notice and an estimated date for the response or production. If, after meeting and conferring in good faith, the receiving party objects to any modified date for production, it may seek a conference with the Court.

o. **Discovery Dispute Resolution.** To avoid unnecessary litigation concerning discovery disputes, counsel are directed to meet and confer before contacting the Court on discovery issues. Unless the Court requests formal briefing, any discovery dispute – other than a dispute arising in the course of a deposition, addressed below – will be submitted to the Court by letter as follows: (1) the movant will email to the Court and to Lead and Liaison Counsel for the opposing side a letter of no more than seven (7) double-spaced pages setting forth its position and certifying that the movant has in good faith conferred or attempted to confer with the party or person failing to make discovery in an effort to obtain it without court action; (2) the responding party may submit a responsive letter of no more than seven (7) double-

spaced pages within ten (10) business days with a copy to opposing counsel; and (3) the movant may submit a reply of no more than five (5) double-spaced pages within seven (7) business days of the responding letter. The Court, at its discretion, will then either: (1) schedule a meeting with Lead and Liaison Counsel for the parties and any other relevant counsel; (2) conduct a telephonic conference call with such counsel; or (3) invite additional written submissions from the parties. Any motion to compel or motion for protective order not previously authorized by the Court will be summarily denied for failure to follow this procedure. This CMO obviates the obligation of any party to comply with the timing requirement in Local Civil Rule 37.01.

9. **DISMISSAL OF PLAINTIFFS' CLAIMS FOR FAILURE TO COMPLY WITH DISCOVERY OBLIGATIONS**

a. **Notice that Claims May Be Dismissed.** Any Plaintiff who fails to comply with any discovery obligations imposed by this Order within the time periods set forth herein — including provision of a Plaintiff Fact Sheet — may be subject to having his or her claims, as well as any derivative claim(s), dismissed if good cause is shown. Good cause shall exist where there is a material deficiency in responding to the required discovery, i.e., one that prejudices Pfizer through a failure to provide necessary information, thereby impeding Pfizer's access to material and relevant evidence.

b. **Notice of Overdue or Deficient Discovery.** When any Plaintiff has failed to materially comply with his or her obligations under this Order within the timelines established herein, Pfizer's counsel shall send a notice of the material deficiency to the Plaintiff's counsel for the individual whose responses are alleged to be defective (the "deficiency letter"). The deficiency letter shall identify the alleged material deficiency, state that the Plaintiff will have fourteen (14) days to cure the alleged material deficiency, and state that absent the alleged

material deficiency being cured within that time (or within any extension of that time as agreed to by the parties), Pfizer may move for dismissal of Plaintiff's claims, including dismissal with prejudice upon an appropriate showing.

10. **EXPERT REPORTS AND PRODUCTION AND DISCOVERABILITY OF EXPERT MATERIALS**

a. The designation of experts whose opinions may be submitted at trial must be accompanied by a report that complies with Federal Rule of Civil Procedure 26(a)(2)(B). The report must be provided contemporaneously with the expert designation. All parties' experts whose opinions may be submitted at trial shall be subject to deposition as directed in Federal Rule of Civil Procedure 26(b)(4)(A) prior to the close of expert discovery.

b. Unless otherwise stipulated or ordered by the Court, each disclosed expert will produce his or her final report pursuant to and consistent with Fed. R. Civ. P. 26(a)(2)(B), together with a copy of all documents that the expert has considered in preparing and/or rendering the expert's opinion. No other documents relating to expert reports will be produced, provided, however, that nothing in this agreement is intended to bar discovery of documents that are otherwise discoverable from a party or third party outside of the context of expert discovery. Consistent with Fed. R. Civ. P. 26(b)(4), no party will seek discovery of any experts' notes, drafts of expert reports, or communications with counsel, provided, however, that counsel may serve discovery or inquire at a deposition about any facts, data, or assumptions provided to the expert by counsel and upon which such expert is relying in expressing the expert's opinions. Each party also agrees to bear its own expert costs.

11. **SCHEDULE FOR EXPERT DISCLOSURES AND *DAUBERT* AND DISPOSITIVE MOTIONS**

PFIZER'S PROPOSAL: The following schedule is established for the first Tier 1 case(s) selected for trial:

October 24, 2014	The PSC will serve general causation and liability expert reports and specific causation expert reports for the first Tier 1 case(s) selected for trial. The PSC will also provide at least two proposed deposition dates for each designated expert to take place within seven (7) to twenty-one (21) days of the expert report.
December 12, 2014	Deadline for Pfizer to depose Plaintiffs' experts (general and Tier 1).
January 16, 2015	Pfizer will serve general causation and liability expert reports and specific causation expert reports for the first Tier 1 case(s) selected for trial. Pfizer will also provide at least two proposed deposition dates for each designated expert to take place within seven (7) to twenty-one (21) days of the expert report.
February 27, 2015	Deadline for Plaintiffs to depose Pfizer's experts (general and Tier 1).
March 6, 2015	*Daubert* motions or other dispositive motions and opening briefs shall be due (general and Tier 1).
April 3, 2015	Responses to such motions shall be due.
April 17, 2015	Reply briefs in support of such motions shall be due.
Week of April 27, 2015, or as otherwise set by the Court	Hearings on *Daubert* and other such motions.

PLAINTIFFS' PROPOSAL:

December 5, 2014	Deadline for PSC to serve general causation and liability expert reports
January 23, 2015	Deadline for Pfizer to depose Plaintiffs' experts
February 6, 2015	Deadline for Pfizer to serve general causation and liability expert reports
March 6, 2015	Deadline for Plaintiffs to depose Pfizer's experts
March 13, 2015	Deadline to file *Daubert* motions or other dispositive motions
April 10, 2015	Deadline to file responses to such motions
April 24, 2015	Deadline to file reply briefs in support of *Daubert* and dispositive motions
Week of May 4, 2015 (or as otherwise set by the Court)	Hearing on *Daubert* and dispositive motions

12. **INITIAL TRIAL SETTING**

The first case to be tried shall be subject to being called for jury selection and/or trial on or after **June 15, 2015**, subject to the completion of all appropriate discovery and expert briefing and subject to further Order of the Court.

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AND IT IS SO ORDERED.

Richard Mark Gergel
United States District Court Judge

April ___, 2014
Charleston, South Carolina

PFIZER'S PROPOSED SCHEDULE

MASTER SCHEDULE (TIER 1 AND TIER 2 DISCOVERY GROUPS):

Date	Action
May 9, 2014	Plaintiffs to serve 30(b)(6) notices re: corporate organization and pharmacovigiliance
May 9, 2014	Deadline for the parties to submit joint or competing proposals on the Plaintiff Fact Sheet
May 9, 2014	Deadline for agreement on the form and procedures governing the Master Complaint
May 23, 2014	Pfizer will identify 30(b)(6) witnesses and dates for corporate organization and pharmacovigilance depositions (to take place by June 27)
May 23, 2014	Deadline for production of all outstanding discovery, including written discovery, authorizations, and documents for Tier 1 Discovery Group cases (Initial South Carolina Cases), and deadline for voluntary dismissal without prejudice of Tier 1 Discovery Group cases
May 23, 2014	Deadline for joint or competing proposals governing selection of Tier 2 Discovery Group cases (with cases to be selected by July 18)
June 13, 2014	Pfizer agrees to produce ESI 30(6)(6) witness by this date
June 27, 2014	Pfizer to produce 30(b)(6) witnesses on corporate structure and pharmacovigilance by this date
June 27, 2014	Deadline for Pfizer to complete the production of SAS datasets, SAS codebooks, study protocols and final study reports for certain clinical studies of Lipitor
July 11, 2014	Deadline for Pfizer to complete the production of all other categories of documents agreed-upon, with the exception of certain custodial files and sales representative call notes
July 18, 2014	Deadline to submit joint or competing proposals governing selection of first cases to be tried from Tier 1 Discovery Group cases (to be selected by September 12)
July 18, 2014	Deadline for selecting Tier 2 Discovery Group cases
July 18, 2014	Deadline for Plaintiffs to request the production of documents of 40 custodial files
August 22, 2014	Deadline for voluntary dismissal without prejudice of Tier 2 Discovery Group cases

Date	Action
September 5, 2014	Deadline for completion of Threshold Discovery depositions and other Threshold Discovery (other than Plaintiff Fact Sheets) in Tier 1 Discovery Group
September 8, 2014	Deadline for Pfizer to complete the production of documents of 40 custodial files
September 12, 2014	Deadline to select first Tier 1 Discovery Group case(s) to be tried
September 26, 2014	Start date for depositions of common fact witnesses currently or formerly employed by Pfizer
September 26, 2014	Deadline to submit joint or competing proposals governing selection of Tier 2 Trial Pool cases (with cases to be selected by February 13, 2015) and selection of first Tier 2 Trial Pool case(s) to be tried (to be selected by April 10, 2015)
October 24, 2014	Deadline for PSC to serve general causation and liability expert reports and specific causation reports for first Tier 1 case(s) to be tried and to provide 2 deposition dates for each within 7-21 days of the report
December 12, 2014	Deadline for Pfizer to depose Plaintiffs' experts (general and Tier 1 cases)
January 9, 2015	Deadline for completion of Threshold Discovery in Tier 2 Discovery Group cases
January 16, 2015	Deadline for Pfizer to serve general causation and liability expert reports and specific causation reports for first Tier 1 case(s) to be tried and to provide 2 deposition dates for each within 7-21 days of the reports
February 13, 2015	Deadline to select Tier 2 Trial Pool cases
February 27, 2015	Deadline for Plaintiffs to depose Pfizer's experts (general and Tier 1 cases)
March 6, 2015	Deadline to file *Daubert* motions or other dispositive motions and opening briefs (including in first Tier 1 case(s) to be tried)
April 3, 2015	Deadline to file responses to such motions
April 10, 2015	Deadline to select first Tier 2 Trial Pool case(s) to be tried
April 17, 2015	Deadline to file reply briefs in support of *Daubert* and dispositive motions

Date	Action
Week of April 27, 2015 (or as otherwise set by the Court)	Hearing on *Daubert* and dispositive motions
May 8, 2015	Deadline to submit joint or competing proposed schedules for expert disclosure and motion deadlines for first Tier 2 Trial Pool case(s) to be tried
June 15, 2015	First Tier 1 trial to start on or after this date

TIER 1 DISCOVERY GROUP SUMMARY (INITIAL SOUTH CAROLINA CASES):

Date	Action
May 23, 2014	Deadline for production of all outstanding discovery, including written discovery, authorizations, and documents for Tier 1 Discovery Group cases (Initial South Carolina Cases), and deadline for voluntary dismissal without prejudice of Tier 1 Discovery Group cases
July 18, 2014	Deadline to submit joint or competing proposals governing selection of first cases to be tried from Tier 1 Discovery Group cases (to be selected by September 12)
September 5, 2014	Deadline for completion of Threshold Discovery depositions and other Threshold Discovery (other than Plaintiff Fact Sheets) in Tier 1 Discovery Group
September 12, 2014	Deadline to select first Tier 1 Discovery Group case(s) to be tried
October 24, 2014	Deadline for PSC to serve general causation and liability expert reports and specific causation reports for first Tier 1 case(s) to be tried and to provide 2 deposition dates for each within 7-21 days of the report
December 12, 2014	Deadline for Pfizer to depose Plaintiffs' experts (general and Tier 1 cases)
January 16, 2015	Deadline for Pfizer to serve general causation and liability expert reports and specific causation reports for first Tier 1 case(s) to be tried and to provide 2 deposition dates for each within 7-21 days of the reports
February 27, 2015	Deadline for Plaintiffs to depose Pfizer's experts (general and Tier 1 cases)
March 6, 2015	Deadline to file *Daubert* motions or other dispositive motions and opening briefs (including in first Tier 1 case(s) to be tried)

Date	Action
April 3, 2015	Deadline to file responses to such motions
April 17, 2015	Deadline to file reply briefs in support of *Daubert* and dispositive motions
Week of April 27, 2015 (or as otherwise set by the Court)	Hearing on *Daubert* and dispositive motions
June 15, 2015	First Tier 1 trial to start on or after this date

TIER 2 DISCOVERY GROUP SUMMARY:

Date	Action
May 23, 2014	Deadline for joint or competing proposals governing selection of Tier 2 Discovery Group cases (with cases to be selected by July 18)
July 18, 2014	Deadline for selecting Tier 2 Discovery Group cases
August 22, 2014	Deadline for voluntary dismissal without prejudice of Tier 2 Discovery Group cases
September 26, 2014	Deadline to submit joint or competing proposals governing selection of Tier 2 Trial Pool cases (with cases to be selected by February 13, 2015) and selection of first Tier 2 Trial Pool case(s) to be tried (to be selected by April 10, 2015)
January 9, 2015	Deadline for completion of Threshold Discovery in Tier 2 Discovery Group cases
February 13, 2015	Deadline to select Tier 2 Trial Pool cases
April 10, 2015	Deadline to select first Tier 2 Trial Pool case(s) to be tried
May 8, 2015	Deadline to submit joint or competing proposed schedules for expert disclosure and motion deadlines for first Tier 2 Trial Pool case(s) to be tried