

**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)	MDL No. 2:14-mn-02502-RMG
LITIGATION)	
)	This Document Relates to All Actions
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**JOINT PROPOSED CASE MANAGEMENT ORDER REGARDING
MASTER PLEADINGS, PLAINTIFFS’ DISCOVERY PLAN, TRIAL CASE
SELECTION, EXPERT REPORTS, AND SCHEDULE THROUGH TRIAL**

Pursuant to this Court’s Case Management Order No. 4, the parties have conferred and jointly submit a Proposed Case Management Order (“CMO”) regarding master pleadings, Plaintiffs’ discovery plan, trial case (or bellwether) selection process, expert reports, and schedule through the first trial in these MDL proceedings, 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 Proposes” or “Pfizer’s Proposal” (highlighted in blue) and “PSC proposes” or “PSC’s Proposal” (highlighted in pink).

The parties would like to discuss these provisions at the upcoming status conference on May 16, 2014.

Respectfully submitted,

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Counsel for Defendant Pfizer Inc.

Dated: May 9, 2014

CERTIFICATE OF SERVICE

I hereby certify that, this 9th day of May, 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 _____

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
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JOINT PROPOSED CASE MANAGEMENT ORDER NO. ____
**[MASTER PLEADINGS, PLAINTIFFS’ DISCOVERY PLAN, TRIAL CASE
SELECTION, EXPERT REPORTS, AND SCHEDULE THROUGH TRIAL]**

This Order reflects agreement to date between the parties with respect to master pleadings, a Plaintiffs’ discovery plan, a trial case (or bellwether) selection process, expert reports, and a schedule through the first trial in these MDL proceedings.

PLAINTIFFS’ DISCOVERY PLAN

1. **Master Pleadings.** The parties agree that Plaintiffs will file a Master and Short Form Complaint by May 16, 2014, and the parties intend to submit a proposed case management order on master pleadings by the same date.

2. **Plaintiff Fact Sheet.** As set forth in Case Management Order No. 5 (“CMO 5”) (entered May 2, 2014), the parties reached agreement on the format of a Plaintiff Fact Sheet (the “PFS”) and the timeframe within which each Plaintiff must provide to Defendant Pfizer Inc. (“Pfizer”) a completed PFS. The parties further agree that Plaintiffs shall serve completed PFS’s and the required authorizations and other Mandatory Disclosures by e-mail on the

following list of recipients, which shall supersede, *only for the purpose of service of PFSs*, the provisions of CMO 4 addressing service:

Recipients for Pfizer:

Nelson Mullins: MDL2502PFS@nelsonmullins.com

Quinn Emanuel: michanandaraj@quinnemanuel.com

Recipients for Plaintiffs:

Plaintiffs' Lead Counsel: lipitorpfs@rpwb.com

Plaintiffs' Liaison Counsel: lipitorserviceofdiscovery@tanenbaumlaw.com

3. Authorizations for Records.

a. As set forth in CMO 5, and except as otherwise set forth below, each Plaintiff shall provide to Pfizer with her signed PFS the Mandatory Disclosures identified in Exhibit B to the PFS, including signed authorizations. Such authorizations shall include: (1) signed authorizations for all third-party custodians (hereinafter, "records custodians") identified in Plaintiff's completed PFS or in documents provided with the PFS as part of the Mandatory Disclosures; 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 PFS for medical (including pharmacy) and insurance records, which may be duplicated and used only as set forth in paragraph 3.b. In addition, for all cases selected for the Discovery Pool, Plaintiffs shall provide signed blank authorizations in the form set forth as attachments to the PFS for educational and employment records, which may be duplicated and used only as set forth in paragraph 3.b.

b. 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 PFS 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.

c. 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, Medicare, and other government records.

4. Plaintiffs' Liaison Counsel will notify each new Plaintiff of her obligations under paragraphs 1 and 2 above.

5. **Discovery Pool.**

a. Plaintiffs and Pfizer shall each select cases to be part of a Discovery Pool from which the first cases to be tried shall be selected as set forth below in paragraph 6.

b. On June 20, 2014, the PSC shall select seven (7) cases for the Discovery Pool and provide notice to Pfizer of its selections by case name and number.

c. On June 23, 2014, Pfizer shall select seven (7) cases for the Discovery Pool and provide notice to the PSC of its selections by case name and number.

d. If a Discovery Pool case selected by the PSC is dismissed before August 1, 2014, the PSC may select a replacement case.

e. If a Discovery Pool case selected by Pfizer is dismissed at any time, Pfizer may select a replacement case.

f. **PFIZER'S PROPOSAL:** Any Discovery Pool selection may be dismissed only with prejudice. In addition, if a Discovery Pool case selected by Pfizer is dismissed after September 12, 2014, Pfizer may de-designate an additional Discovery Pool case selected by the PSC from consideration as an initial trial selection by the December 12, 2014 deadline identified in paragraph 4.j below.

g. On June 23, 2014 (or within three (3) days of inclusion in the Discovery Pool for any later-selected replacement case), Pfizer may serve written discovery on all Discovery Pool Plaintiffs. Such discovery may include: (a) up to thirty (30) requests for production; (b) up to twenty-five (25) interrogatories, including discrete subparts; and (c) up to twenty-five (25) requests for admission to Plaintiffs. Plaintiffs shall serve any responses within thirty (30) days after service of the discovery requests.

h. Beginning August 1, 2014, Pfizer may take depositions of up to **PFIZER PROPOSES six (6)/PSC PROPOSES four (4)** fact witnesses in each Discovery Pool case, which may include: Plaintiff, Plaintiff's spouse or immediate family member(s), Plaintiff's healthcare provider(s) who prescribed Lipitor or atorvastatin, and Plaintiff's treating healthcare provider(s). Depositions of Plaintiffs shall be completed by October 24, 2014. In addition, on August 1, 2014, Plaintiffs may begin noticing depositions of up to two (2) sales representatives identified by Pfizer in each Discovery Pool case, with such depositions to be completed by October 24, 2014.

i. The parties are currently working to reach agreement on a proposed Defendant Fact Sheet, which shall be submitted for entry by the Court by May 30, 2014. Pfizer

shall serve completed Defendant Fact Sheets in each Discovery Pool case by July 23, 2014, or, in any later-selected replacement case, within thirty (30) days of service of a Plaintiff Fact Sheet or thirty (30) days of selection of the case, whichever is later. The Defendant Fact Sheet 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 will seek additional case-specific discovery only for cases selected for the trial pool, following a meet and confer about the scope of additional discovery for both sides in any trial selected cases.

j. On PFIZER PROPOSES December 12, 2014/PSC PROPOSES January 9, 2015, the PSC and Pfizer may each de-designate three (3) Discovery Pool cases from consideration as initial trial selections. PFIZER'S PROPOSAL: Pfizer may also de-designate any additional cases based on any dismissals of Pfizer's Discovery Pool cases by Plaintiffs after September 12, 2014.

k. Also on PFIZER PROPOSES December 12, 2014/PSC PROPOSES January 9, 2015, the parties shall provide to the Court a list of all remaining Discovery Pool cases, which shall identify whether each case was a PSC or a Pfizer Discovery Pool case.

6. Dismissal of Claims for Failure to Comply with Discovery Obligations.

a. Any Plaintiff who fails to comply with any discovery obligations imposed by CMO 5 or by this Order within the time periods set forth herein — including provision of a PFS or required authorizations and other Mandatory Disclosures — may be subject to having 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. When any Plaintiff has failed to materially comply with her obligations under CMO 5 or this Order within the applicable timelines, 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"). In a non-Discovery Pool case, 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. In a Discovery Pool case, the deficiency letter shall identify the alleged material deficiency, state that that Plaintiff will have seven (7) 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), the case shall be subject to dismissal with prejudice upon an appropriate showing.

SELECTION OF FIRST CASES FOR TRIAL

7. On **PFIZER PROPOSES December 15, 2014**/**PSC PROPOSES January 12, 2015**, the Court will randomly select one of the remaining Discovery Pool cases for the first trial. If the selected case is one of the PSC's Discovery Pool cases, the Court will randomly select the second case for trial from Pfizer's remaining Discovery Pool cases. If the first random selection for trial is one of Pfizer's Discovery Pool cases, the Court will randomly select the second case for trial from the PSC's remaining Discovery Pool cases.

8. On **PFIZER PROPOSES December 17, 2014**/**PSC PROPOSES January 16, 2015**, the parties shall submit joint or competing proposals governing additional case-specific discovery for the first two cases selected for trial.

EXPERT REPORTS AND DISCOVERABILITY OF EXPERT MATERIALS

9. 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.

10. 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.

SCHEDULE THROUGH FIRST TRIAL

11. The following schedule, which incorporates scheduling provisions and deadlines set forth above and in CMO 5 and additional deadlines as specified below, is hereby adopted:

Date	Action
Monday, June 2, 2014	Plaintiff Fact Sheets, authorizations, and medical records and other documents required by Plaintiff Fact Sheet due to Pfizer for all cases transferred to or directly filed in the MDL by May 9, 2014.

Date	Action
Friday, June 20, 2014	PSC to select seven (7) cases for Discovery Pool. If a PSC selection is dismissed before August 1, 2014, the PSC may select a replacement.
Monday, June 23, 2014	Pfizer to select seven (7) cases for Discovery Pool. PFIZER'S PROPOSAL: Any Discovery Pool selection may be dismissed only with prejudice. If a Pfizer selection is dismissed after September 12, 2014, Pfizer may select a replacement and de-designate an additional Discovery Pool case from consideration as an initial trial selection by the December 12, 2014 deadline below.
Monday, June 23, 2014	Pfizer may serve written discovery on Discovery Pool Plaintiffs on this date (or three (3) days after inclusion in the Discovery Pool for any later-selected replacement case).
Friday, June 27, 2014	PSC'S PROPOSAL: Discovery Pool Plaintiffs who do not waive Lexecon must notify in writing Lead Counsel for Plaintiffs and Pfizer by 5:00 p.m. EDT. PFIZER'S POSITION: Pfizer submits that cases selected for the Discovery Pool shall be considered eligible for trial selection unless de-designated (on December 12 under Pfizer's proposal or on January 9 under the PSC's). In other words, either side may choose not to waive Lexecon in a case by de-designating it. However, if the Court determines to adopt the PSC's proposal above, it shall apply to both sides, thus allowing Pfizer to also identify, on June 28, 2014, Discovery Pool cases in which it does not waive Lexecon.
Wednesday, July 23, 2014	Deadline for Discovery Pool Plaintiffs to respond to written discovery (or within thirty (30) days of service of discovery for any later-selected replacement case). Deadline for Pfizer to provide completed Defendant Fact Sheets in Discovery Pool cases (or, in any later-selected replacement case, within thirty (30) days of service of a Plaintiff Fact Sheet or thirty (30) days of selection of the case, whichever is later).

Date	Action
Friday, August 1, 2014	<p>Pfizer may begin taking depositions of up to PFIZER PROPOSES six (6)/PSC PROPOSES four (4) fact witnesses in each Discovery Pool case, which may include: Plaintiff, Plaintiff's spouse or immediate family member(s), Plaintiff's prescribing physician(s), and Plaintiff's treating physician(s).</p> <p>In addition, Plaintiffs may begin noticing depositions of up to two (2) sales representatives identified by Pfizer in each Discovery Pool case.</p>
October 24, 2014	Deadline for completing depositions of Plaintiffs and sales representatives in Discovery Pool cases.
Friday, November 7, 2014	<p>Deadline for PSC to serve general causation and liability expert reports.</p> <p>PFIZER'S PROPOSAL: The PSC shall also provide two (2) deposition dates for each expert between November 17 and December 5, 2014.</p> <p>PSC'S PROPOSAL: The PSC shall also provide two (2) deposition dates for each expert between December 1, 2014, and January 23, 2015.</p>
Friday, November 21, 2014	PSC'S PROPOSAL: Deadline for Pfizer to serve general causation and liability expert reports and to provide two (2) deposition dates for each expert between December 10, 2014, and January 30, 2015. Depositions of both Plaintiffs' and Pfizer's experts will run concurrently except that Plaintiffs' expert in a particular area of expertise will be deposed ten (10) days prior to any Pfizer expert in the same area of expertise.
Friday, December 12, 2014	PFIZER'S PROPOSAL: Deadline for Pfizer to serve general causation and liability expert reports and to provide two (2) deposition dates for each expert between December 19, 2014, and January 16, 2015.
<p>PFIZER'S PROPOSAL: Friday, December 12, 2014</p> <p>PSC'S PROPOSAL: Friday, January 9, 2015</p>	<p>Deadline for each side to de-designate three (3) Discovery Pool cases from consideration as an initial trial selection.</p> <p>PFIZER'S PROPOSAL: Pfizer may also de-designate any additional cases based on dismissals of Pfizer's Discovery Pool cases by Plaintiffs after September 12, 2014.</p>

Date	Action
PFIZER'S PROPOSAL: Monday, December 15, 2014 PSC'S PROPOSAL: Monday, January 12, 2015	The Court will randomly select one of the remaining Discovery Pool cases for the first trial. If the selection is a case selected by the PSC for the Discovery Pool, the Court will randomly select the second case for trial from Pfizer's remaining Discovery Pool cases. If the first random selection is a case selected by Pfizer for the Discovery Pool, the Court will randomly select the second case for trial from the PSC's remaining Discovery Pool cases.
PFIZER'S PROPOSAL: Wednesday, December 17, 2014 PSC'S PROPOSAL: Friday, January 16, 2015	Deadline for the parties to submit a proposed order governing additional case-specific discovery for the first two cases selected for trial.
Thursday, January 15, 2015	PFIZER'S PROPOSAL: Plaintiffs' case-specific expert reports due for first two cases selected for trial, together with two (2) dates for the deposition of each expert to take place between January 22 and February 5, 2015.
Friday, January 30, 2015	PSC'S PROPOSAL: Plaintiffs' case-specific expert reports due for first two cases selected for trial, together with two (2) dates for the deposition of each expert to take place between February 18 and March 20, 2015. Depositions of both Plaintiffs' and Pfizer's experts will run concurrently except that Plaintiffs' expert in a particular area of expertise will be deposed ten (10) days prior to any Pfizer expert in the same area of expertise.
Thursday, February 12, 2015	PFIZER'S PROPOSAL: Pfizer's case-specific expert reports due for first two cases selected for trial, together with two (2) dates for the deposition of each expert to take place between February 19 and March 5, 2015.
Friday, February 13, 2015	PSC'S PROPOSAL: Pfizer's case-specific expert reports due for first two cases selected for trial, together with two (2) dates for the deposition of each expert to take place between February 18 and March 20, 2015.
Friday, March 6, 2015	Deadline to file Daubert motions on general causation and general liability experts.
Friday, April 3, 2015	Deadline for completion of additional case-specific discovery for the first two cases selected for trial.
Friday, April 3, 2015	Deadline for responses to Daubert motions on general causation and general liability experts.
Wednesday, April 15, 2015	Deadline for case-specific Daubert and dispositive motions for the first two cases selected for trial.

Date	Action
Friday, April 17, 2015	Deadline for reply briefs in support of Daubert motions on general causation and general liability experts.
Week of April 27, 2015 (or as otherwise set by the Court)	Hearing on Daubert motions on general causation and general liability experts.
Friday, May 1, 2015	Deadline for responses to case-specific Daubert and dispositive motions.
Friday, May 8, 2015	Deadline for replies in support of case-specific Daubert and dispositive motions.
To be set by the Court	Hearing on case-specific Daubert and dispositive motions.
Wednesday, July 1, 2015	The first case to be tried shall be subject to being called for jury selection and/or trial on or after this date.

AND IT IS SO ORDERED.

Richard Mark Gergel
United States District Court Judge

May ____, 2014
Charleston, South Carolina