IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re: TESTOSTERONE REPLACEMENT THERAPY PRODUCTS LIABILITY LITIGATION	)	MDL No. 2545
This document relates to all cases	)	Honorable Matthew F. Kennelly

ABBVIE'S MOTION TO MODIFY CASE MANAGEMENT ORDER NO. 9

AbbVie respectfully moves this Court for an order modifying Case Management Order No. 9 (the "PFS Order") because circumstances have changed and the timing provisions in the order are no longer practical or supportive of an informed bellwether selection process. Last fall, when the parties negotiated the PFS Order, which instructs each Plaintiff to submit a completed Plaintiff Fact Sheet ("PFS") within 45 days after service of Defendants' answers, the parties expected a steady, rolling stream of PFS and medical records to inform the bellwether selection process. Since that time, however, the parties have engaged in negotiations regarding master and short-form pleadings, which have delayed the filing of answers (and thus the submission of PFS). Combined with the fact that the vast majority of PFS served on AbbVie are deficient (particularly regarding record authorizations), the result has been that ***less than 10 percent of the MDL cases against AbbVie have sufficient PFS for medical record collection and review***.

In the meantime, AbbVie and Plaintiffs are scheduled to make a joint submission to the Court regarding bellwether selection on July 11, 2015—less than five months away. AbbVie and Plaintiffs have each expressed a desire for meaningful review of PFS and collection and review of medical records before making any recommendation to the Court regarding the process for bellwether selection. But under the current PFS Order, AbbVie and Plaintiffs will have access to completed PFS and medical records for just a small percentage of Plaintiffs before making their July submission—an unintended, uninformed, and prejudicial result for both parties.

In order for the parties to have any chance of reviewing a more representative set of cases and records, the submission of PFS should no longer be held up by the unrelated status of master pleadings and Defendants' answers to complaints. Despite negotiations, the parties have not been able to reach agreement on a new PFS deadline. Accordingly, AbbVie respectfully requests that CMO 9 be modified to require the service of complaints and the submission of completed and non-deficient PFS, including proper authorizations and production of requested documents (i) within 60 days after the entry of the order granting this motion, for all cases filed before that date, and (ii) within 60 days of the filing of all complaints thereafter. Plaintiffs should bear the burden of submitting non-deficient PFS on such a schedule, and if they cannot do so by the deadlines necessary for the July submission, a change in the schedule clearly is warranted.

BACKGROUND

I. The parties' negotiations regarding the PFS Order.

Defendants moved to dismiss the first 39 cases in this MDL on June 4, 2014. Eight days later, all other responses to complaints in this MDL were stayed. (Dkt. 95.)

In August and September, the parties began negotiating the PFS Order and continued to negotiate a case schedule. Among the issues being negotiated for the case schedule were (i) the date the parties would submit a proposed order on how bellwether Plaintiffs would be selected and (ii) the date those bellwether Plaintiffs actually would be selected.

In the negotiations on the PFS Order, the parties initially disagreed on when PFS should be due for Plaintiffs. Plaintiffs preferred more time to prepare PFS, and Defendants preferred to receive PFS sooner, in order to allow time for the collection and review of medical records. In October, the parties reached a compromise: Plaintiffs who had a case in the MDL as of the date of the PFS Order would submit their PFS by December 29, 2014, while Plaintiffs who filed cases later would submit their PFS within 45 days of receiving the answers of all Defendants.

When Defendants agreed to this compromise, they expected to receive a significant number of PFS for cases that pre-dated the PFS Order. They also expected to receive in short order a ruling on their motion to dismiss. Assuming the cases survived the motion, the ruling would lead to answers, and thus to more PFS, on a rolling basis. Moreover, at that time, Defendants were advocating a schedule in which the bellwether selection process would begin in 2016. That schedule would have allowed Defendants roughly a year and a half to collect PFS and the corresponding medical records for Plaintiffs whose cases were filed after the PFS Order.

II. The PFS Order (CMO 9) is entered.

The Court entered the PFS Order on October 6, 2014. Among other things, the order requires Plaintiffs to "[c]omplete and execute a PFS," produce responsive and non-privileged documents (including medical and pharmacy records), and "[p]rovide duly executed record release authorizations," such as medical records authorizations, mental health records authorizations, and employment records authorizations.[1] (CMO 9 at II.A, V.A.)

A. The record collection process.

The PFS Order "designate[s]" Medical Research Consultants ("MRC") "as Defendants' plaintiff-specific record management company." (*Id.* at IV. A.) The order states that once a Plaintiff provides "a completed PFS and/or any information identifying a plaintiff's healthcare providers, employers, disability providers, and or insurers, MRC, at Defendant(s)' request, may

[1] If a Plaintiff fails to submit a PFS or required authorization(s), the Defendant "shall send a warning letter to that Plaintiff's attorney of record." (*Id.* at II.E.1.) The parties then have 35 days to meet and confer. (*Id.*) If that Plaintiff still fails to provide either a PFS or authorizations, the Defendant can move to dismiss. (*Id.* at II.E.2.) If a Plaintiff does submit a PFS and authorizations, but they are deficient, the Defendant "shall notify Plaintiff's attorney of record of the purported deficiencies in writing via email and allow such Plaintiff an additional thirty (30) days to correct the alleged deficiency." (*Id.* at II.D.1.) If the Defendant still believes the deficiencies have not been cured, it may file a motion to compel. (*Id.* at II.D.2.)

immediate undertake to obtain those records by use of the written authorizations that are provided." (*Id.* at IV. B.)

It takes approximately 45 days for MRC to collect records from particular healthcare providers, employers, and others that the PFS and accompanying authorizations identify. After those records have been collected, additional healthcare providers and document sources are identified, and it typically takes at least another 45 days to collect those records. Thus, it takes MRC at least 90 days (and usually longer) to collect all records for a particular Plaintiff.

III. Subsequent events and unintended consequences.

As explained below, since the entry of the PFS Order, there have been several significant developments in the litigation: (i) the Court entered a bellwether schedule; (ii) the number of cases in the MDL significantly increased; (iii) the Court denied Defendants' motion to dismiss (in part) and the parties began to work toward developing a master pleadings CMO; (iv) Defendants began receiving PFS, record authorizations, and records in Plaintiffs' possession; and (v) a significant number of complaints filed since the PFS Order have still not been served on AbbVie. Each of these events has resulted in unintended consequences detrimental to the PFS Order and the current case schedule regarding bellwether selection.

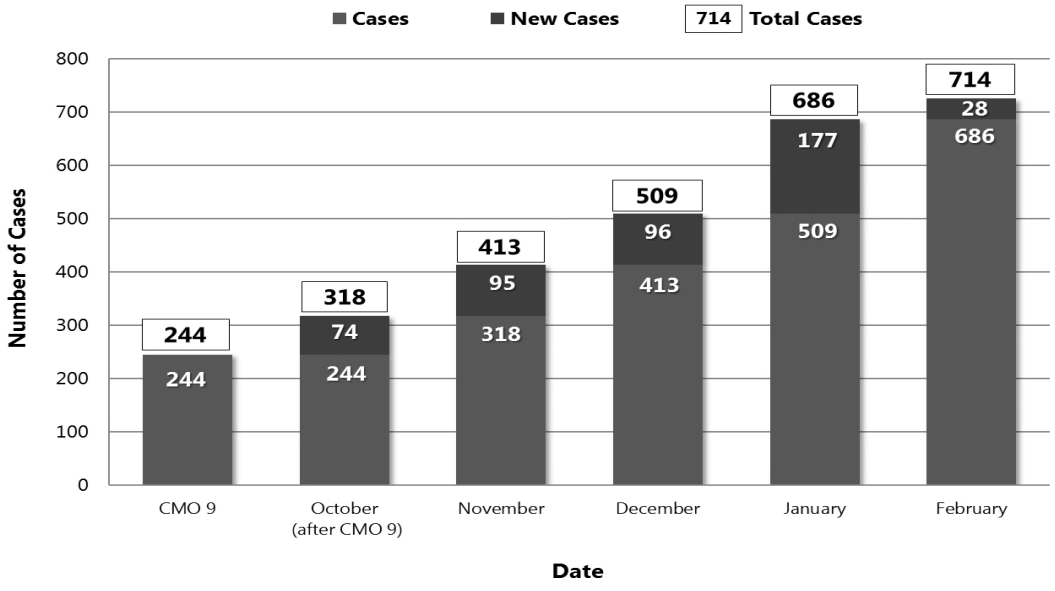
A. Plaintiffs asked for and received an expedited bellwether schedule.

After the PFS Order was entered, the parties continued to negotiate about the case schedule, submitting competing proposals to the Court on October 20, 2014 regarding when the bellwether process would begin. Defendants proposed that the parties submit a CMO on the bellwether process by July 15, ***2016***, and that the parties select the bellwethers by August 15, 2016. (Dkt. 429-4.) Plaintiffs proposed a far shorter schedule, with the proposed CMO submitted by March 27, ***2015*** and the bellwethers selected by April 29, 2015. (Dkt. 428-1.)

Nevertheless, Plaintiffs specifically recommended that the parties be allowed "***the opportunity to receive completed Plaintiff Fact Sheets and accompanying medical records before making a recommendation to the Court on what factors are relevant for selection of bellwether cases.***" (Dkt. 428 at 6 n.8) (emphasis added). After the October 24 status hearing, the parties submitted revised proposals. Then, on November 6, 2014, the Court entered a schedule for AbbVie-only Plaintiffs that required the CMO on the bellwether process to be submitted by July 11, 2015, and the bellwethers selected by October 31, 2015. Thus, the final schedule required the CMO on the bellwether process to be submitted over a year in advance of Defendants' proposal.

B. There has been a significant increase in cases filed since October.

At the time of the PFS Order, in early October, there were only 244 cases against AbbVie (and 351 cases against all Defendants) in the MDL. Since that time, the number of cases has risen sharply. As shown in the chart below, by early February there were 714 cases against AbbVie in the MDL. (The total against all Defendants was roughly 1,100.) Thus, the number of cases filed in the four months after the PFS Order was roughly triple the number filed in the eight months prior, as shown below:



C. Negotiations over a CMO to govern master pleadings remain unresolved.

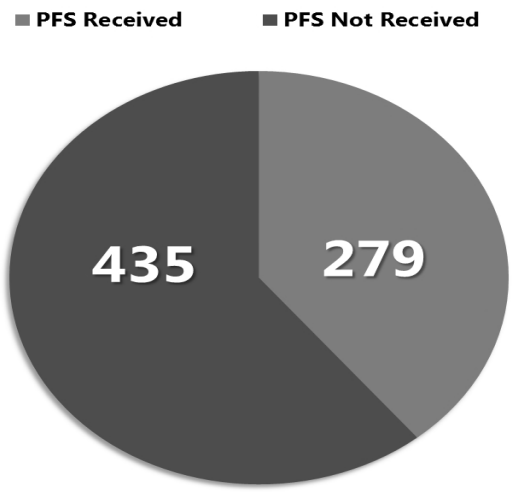
On December 23, 2014, roughly two and half months after the PFS Order, the Court largely denied the motion to dismiss. At the end of its order, the Court instructed the parties to confer about "the timing of defendants' responses to the remaining complaints." (Dkt. 526 at 31.) By the time of this order, there were over 500 cases in the MDL against AbbVie, more than double the number at the time of the PFS Order.

In light of the large number of cases, Defendants proposed to Plaintiffs the use of a master complaint and master answer in an effort to streamline the pleadings. Plaintiffs refused. At the January 13, 2015 status hearing, Plaintiffs stated that they "[did not] believe this litigation . . . is particularly well-suited" for a master complaint and answer. (1/13/15 Tr. at 5.) After arguments by the parties, and the Court's request to Plaintiffs to "think harder about this," Plaintiffs "decided it's probably a good idea for us to do a master complaint." (*Id.* at 5-12, 40.) After this status hearing, the parties began the process of negotiating a CMO governing master pleadings. Those negotiations are still underway.

D. Defective PFS and authorizations arrive, along with insufficient records.

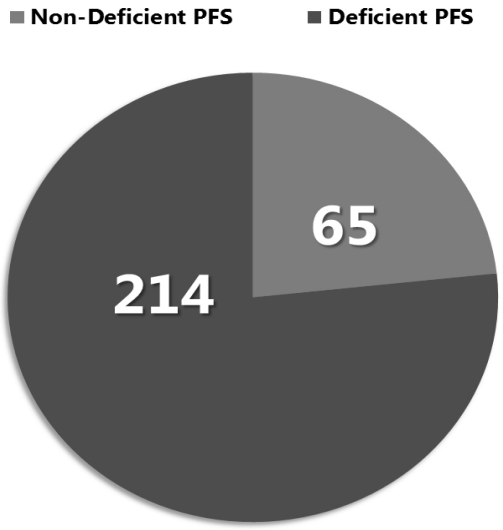
A few weeks earlier, at the end of December, the first round of PFS were due. AbbVie was expecting 244 PFS, of which 181 arrived, 24 were subject to a request for extension (all extensions were granted), and 39 were missing and thus made the subject of warning letters.[2] By mid-February, AbbVie had received all 63 extended and missing PFS, along with another 35 that arrived before they were due, for a grand total of 279, or in other words, PFS for 39 percent of the total cases against AbbVie, as shown below:

[2] The 244 number excludes the 8 cases that have been subsequently dismissed by Plaintiffs voluntarily.

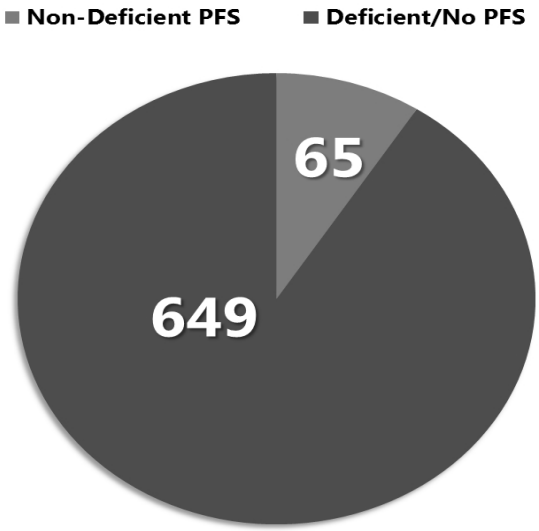


The other PFS have no due date at present, because the master pleadings CMO is still being negotiated, the master complaint has not yet been filed, and so no answers are due. Under the PFS Order, those PFS are due in each case 45 days after the last Defendant in that case answers.

Of the 279 PFS AbbVie has received, over 75 percent (214 of 279) have a record authorization that is deficient for the collection of medical records. Examples of deficiencies in the authorizations include failing to identify a specific healthcare provider, failing to date the authorization, failing to sign the authorization, failing to fully complete the Medicare authorization (e.g., not indicating whether Plaintiff is authorizing the release of all information or just limited information) and so on, as shown below:



These deficiencies prevent AbbVie from collecting complete records for those Plaintiffs. And these are only the deficiencies in record authorizations; the PFS themselves contain other deficiencies not related to records. In sum, at the time of this writing, AbbVie has complete PFS and authorizations for just a small fraction of the Plaintiffs who have cases in this MDL—less than 10 percent, as shown below:



AbbVie brought to the attention of Plaintiffs' Lead Counsel the vast number of PFS with incomplete authorizations that prevent AbbVie from gathering complete records. Lead Counsel stated they would send out communication to their constituents on the matter but that they "could not grant permission" on behalf of Plaintiffs to fill out their authorizations. Defendants did not hear from a single Plaintiffs' attorney granting such permission, despite repeated follow-up with Lead Counsel.

Furthermore, the PFS contains 19 separate requests for documents and records in Plaintiffs' possession, which are treated as document requests under Fed. R. Civ. P. 34 pursuant to the PFS Order. (CMO 9 at II.C.2.) To date, AbbVie has received ***no records from 140 of the 279 Plaintiffs who have submitted PFS***. While AbbVie does not have authoritative numbers on

precisely what has been produced at this time, AbbVie estimates that it has received approximately 62,000 total pages of records thus far, and that the most common type of records produced has been pharmacy records. The individual productions vary in size, with some of the plaintiffs who have technically produced records producing as little as three pages.

E. An increasing number of complaints filed are not served on AbbVie.

Even if the parties come to an agreement on a procedure that sets dates for answers to all complaints, and even if Plaintiffs were to provide complete and non-deficient PFS (including appropriate authorizations and responses to document requests) within 45 days of the last answer to each complaint, AbbVie would still be unable to obtain the necessary information regarding plaintiffs whose cases were filed but not yet served, as the dates for answering the complaints would not yet have begun to run. Plaintiffs have no reasonable basis to unduly delay the service of complaints, particularly because, pursuant to CMO 18, AbbVie has provided an email address through which Plaintiffs may request a waiver of service of process by sending a copy of the summons, complaint, and waiver form. (CMO 18 at II.) Nevertheless, thus far ***Plaintiffs have failed to serve AbbVie in over a hundred of the cases filed since the entry of the PFS Order*** on October 6, 2014. Below are AbbVie's totals for the number of complaints received and served in currently-active cases as of Friday, February 13.[3]

Date of Complaints	Complaints Filed	Complaints Served on AbbVie
October 7-31, 2014	74	67
November 2014	95	84
December 2014	96	75
January 2015	177	78
February 2015 (to date)	28	9

[3] Again, these numbers exclude cases that were subsequently dismissed by Plaintiffs voluntarily.

LEGAL STANDARD

Case management is an area in which the district court has "considerable discretion." *E.g., Geremia v. First Nat'l Bank,* 653 F.2d 1, 5 (1st Cir. 1981). A case management order "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). **"**The use of the good-cause standard, rather than allowing modification only in cases of manifest injustice as is done for other pretrial orders, indicates that there may be more flexibility in allowing some relief." 6A Charles A. Wright et al., *Federal Practice and Procedure* § 1522.2. Moreover, as noted by the Advisory Committee, "this more liberal standard was included in recognition that the scheduling order is entered early in the litigation and that if a stricter approach to modification were adopted, counsel might be encouraged to request the longest possible time for completing pleading, joinder, and discovery because of a fear that an extension would be impossible." *Id.*

The hallmark consideration for Rule 16's good-cause standard is "the diligence of the party seeking the amendment." *United States v. Alacran Contracting, LLC*, No. 10 CV 50067, 2014 WL 5461391, at *2 (N.D. Ill. Oct. 27, 2014); *see also Inge v. Rock Fin. Corp.*, 281 F.3d 613, 625-26 (6th Cir. 2002); *Bradford v. DANA Corp.*, 249 F.3d 807, 809 (8th Cir. 2001); *Parker v. Columbia Pictures Indus.*, 204 F.3d 326, 340 (2d Cir. 2000); Fed. R. Civ. P. 16, 1983 advisory committee note. Nevertheless, "[w]hat constitutes good cause sufficient to justify the modification of a scheduling order necessarily varies with the circumstances of each case." 6A Charles A. Wright et al., *Federal Practice and Procedure* § 1522.2. "'[T]he existence or degree of prejudice to the party opposing the modification' and other factors may also affect the decision." *Bradford*, 249 F.3d at 809 (quoting *Johnson*, 975 F.2d at 609). Courts have found good cause to modify scheduling orders where the requested modification arises from new

circumstances that developed during litigation, *see, e.g., Safeway, Inc. v. Sugarloaf Partnership, LLC.*, 423 F. Supp. 2d 531, 539–40 (D. Md. 2006) (allowing belated amendment to complaint), or where delay results from the actions of the opposing party, *see, e.g., Stewart v. Coyne Textile Services,* 212 F.R.D. 494, 496–97 (S.D. W. Va. 2003) (finding "good cause" where delay in filing motion to amend complaint was due to defendant's late responses to discovery requests). Furthermore, this Court and the Seventh Circuit have made it clear that a core purpose of Rule 16 is to advance litigation through the creation and maintenance of meaningful case deadlines. *See, e.g., Spears v. City of Indianapolis,* 74 F.3d 153, 157-58 (7th Cir.1996); *Johnson v. Methodist Med. Ctr. of Ill.,* 10 F.3d 1300, 1304 (7th Cir.1993); *United States v. Alacran Contracting, LLC,* No. 10 CV 50067, 2014 WL 5461391, at *2–*3 (N.D. Ill. Oct. 27, 2014).

ARGUMENT

This motion presents a clear-cut example of good cause to modify a case management order due to intervening circumstances that will prejudice both the parties' and this Court's consideration of an important—potentially paramount—procedural issue. Due to the change in status quo described above, AbbVie now is concerned that the PFS Order is not providing the intended result of completed PFS on a rolling basis for complaints filed in the MDL. Rather, the parties will have insufficient information to make a meaningful recommendation regarding the bellwether selection process unless the PFS Order is modified.

I. The PFS Order must be modified because insufficient time remains to collect completed PFS, authorizations, and medical records prior to the parties' joint submission on the bellwether selection process.

The events described in this motion have combined to deprive AbbVie of the ability to collect completed PFS and adequate medical records in time to inform the parties, or the Court, of the proper bellwether selection process. In order to have time to negotiate a recommendation

on the process for bellwether selection with Plaintiffs, and to analyze the underlying data and determine a sensible process, by July 11, AbbVie must receive completed PFS and records by June 11, 2015—less than four months away. Given that records typically take three months to collect after a non-deficient PFS is received, AbbVie must receive completed PFS and authorizations by March 11. Under the PFS Order, that is simply not possible, because it is less than one month from today, and no answers are yet due.

A. PFS deadlines should be based on the date the complaint is filed.

AbbVie and the other Defendants consented to the initial PFS Order at a time when: (i) AbbVie reasonably expected that it would receive a significant number of complete PFS, for all previously-filed cases, by the end of 2014; (ii) AbbVie reasonably expected that any ruling denying Defendants' motion to dismiss would soon trigger responses to additional complaints, thus in turn triggering new and rolling deadlines for PFS in later-filed cases; and (iii) AbbVie was advocating that the parties be given until July ***2016*** to submit a proposed CMO on the bellwether selection process. And even after the PFS Order was entered, Plaintiffs themselves recommended to this Court that the parties be given "the opportunity to receive completed Plaintiff Fact Sheets and accompanying medical records before making a recommendation to the Court on what factors are relevant for selection of bellwether cases." (Dkt. 428 at 6 n.8.)

If this Court does not amend the PFS Order, it is likely that (i) answers to Plaintiffs' complaints will not be due for months, thus pushing the deadlines for PFS back to the point that they will be of no use for the bellwether selection process; and (ii) a number of Plaintiffs will continue not to serve their complaints on AbbVie after filing (despite the fact that AbbVie has agreed that waiver of service may be obtained by email), thus skewing bellwether selection and further delaying AbbVie's answers even if a process for answering the complaints were in place.

When the parties agreed to the PFS Order, they certainly did not intend to shut down the PFS submission process and to deprive the parties of the ability to have a meaningful review of PFS and medical records before engaging in the bellwether selection process. Thus, to make the bellwether selection process fair and workable, AbbVie respectfully submits that the timing of PFS be tied to the date of the filing of the complaint itself.

B. 60 days is reasonable and adequate for Plaintiffs to submit PFS.

The current deadlines under the PFS Order have been rendered nearly meaningless and conflict with the intention of the parties to move forward toward the process of bellwether selection. Indeed, even though AbbVie had received all required PFS filings (and 35 that were not yet required) by mid-February, that still amounts to PFS in only 279 of the 714 cases against AbbVie, or 39 percent. And while the complaint filings continue to pile up, there is currently no deadline requiring additional PFS to be submitted.

Sixty days from the filing of the complaint (and far more for complaints already filed) is more than reasonable time for submission of the PFS. Any Plaintiff filing a complaint in the MDL should have access to the types of basic information about the claims asserted that are necessary for a complete PFS. Indeed, numerous other litigations have required PFS submission within 45 or 60 days of the filing of a complaint.[4] Therefore, good cause exists for the Court to modify the PFS Order to require the service of the complaint and the submission of complete and non-deficient PFS (i) within 60 days after the entry of the order granting this motion, for all cases filed before that date, and (ii) within 60 days of the filing of all complaints thereafter.

[4] *See, e.g.*, PTO 16, *In re: Zoloft Prods. Liab. Litig.*, MDL No. 2342, Oct. 15, 2012 (E.D. Pa.) ¶ 7 (45 days) (attached as Ex. 1); PTO 4, *In re: Chantix Prods. Liab. Litig.*, MDL No. 2092, Feb. 24, 2010 (N.D. Ala.) at III.A.2 (60 days) (attached as Ex. 2); PTO 6, *In re: Bextra and Celebrex Marketing Sales Practices and Prod. Liab. Litig.*, MDL No. 1699, Feb. 13. 2006 (N.D. Ca.) ¶ 5 (60 days) (attached as Ex. 3).

C. For deadlines to be meaningful, Plaintiffs must submit a completed PFS, proper authorizations, and full responses to Defendants' document requests.

Furthermore, Plaintiffs' submissions of PFS to date, as detailed above, have been characterized by incomplete or defective record authorizations in the vast majority of cases, and by a scarcity of documents produced by Plaintiffs themselves. Indeed, as of mid-February, 214 of the 279 PFS received by AbbVie have some defect in record authorizations, and AbbVie has received no records whatsoever from 140 of the 279 Plaintiffs who have submitted PFS.

Under the current PFS Order, deficiencies in PFS, records authorizations, or document productions that are submitted are subject to a deficiency letter procedure and potentially a motion to compel if deficiencies are not cured. (CMO 9 at II.D.) Under the timing of the deficiency letter process, it is likely that AbbVie will be unable to obtain complete PFS and other required documents from any deficient Plaintiffs in time to consider those Plaintiffs before the July submission on the bellwether selection process.

Without action by this Court, it is very likely that, despite the mounting number of cases against AbbVie, a very small percentage of cases will have sufficient records to be considered in advance of the first submission on the bellwether process. Therefore, this Court should not only modify the PFS Order as stated above, but must also be clear that Plaintiffs must submit a PFS that includes all of the necessary information, including the proper authorizations and responses to Defendants' requests for document production. If Plaintiffs cannot provide ***complete*** responses within a timeframe that comports with their own desire to begin the bellwether selection process quickly, then the schedule previously advocated by Plaintiffs must be modified.

II. AbbVie's requested modification represents a reasonable compromise to maintain the July deadline.

As stated above, in order for AbbVie to have three months to collect and review medical records, and to have one month to negotiate a bellwether process CMO with Plaintiffs by July

11, AbbVie would need to have complete PFS, including proper authorizations, by March 11. This is exceedingly unlikely under any scenario. Nevertheless, in the interest of compromise AbbVie suggests that Plaintiffs in already-filed cases submit PFS within 60 days of the entry of an order granting this motion. This represents a reasonable compromise should the Court wish to maintain the July 11 deadline.

Entry of this modification will not prejudice Plaintiffs or any party. Indeed, Plaintiffs themselves have agreed that the parties will benefit from having access to complete PFS and collected medical records before making a recommendation to the Court regarding the bellwether selection process. On the other hand, prejudice certainly would result from forcing both AbbVie and Plaintiffs to move forward into the bellwether selection process with a very small number of cases out of what may by then be more than a thousand cases filed against AbbVie in the MDL.

If Plaintiffs cannot substantially comply with the modified CMO, then at a minimum the bellwether schedule should be modified to allow additional time for AbbVie to receive PFS and collect medical records.

CONCLUSION

For the above-stated reasons, AbbVie respectfully request that this Court enter an order modifying Sections V.A-B of Case Management Order 9 to provide that:

A. Each Plaintiff in a Member Action that is pending as of the date of the entry of the Amended Order shall have 60 days from this date to serve and produce to Defendant the complaint, a completed PFS, signed and dated authorizations, and all responsive, non-privileged documents requested in the PFS that are in his or her possession or custody; and that

B. Each Plaintiff in a Member Action that is not pending as of the entry of the Amended Order shall have until 60 days from the date of the filing of his or her complaint to serve and produce to Defendant the complaint, a completed PFS, signed and dated authorizations, and all responsive, non-privileged documents requested in the PFS that are in his or her possession or custody.

Dated: February 18, 2015

Respectfully submitted,

DECHERT LLP

By: */s/ David M. Bernick*

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CERTIFICATE OF SERVICE

I, Nathan Hoffman, hereby certify that on February 18, 2015, the foregoing document was filed via the Court's CM/ECF system, which will automatically serve and send email notification of such filing to all registered attorneys of record.

/s/ Nathan E. Hoffman

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ZOLOFT (SERTRALINE HYDROCHLORIDE) PRODUCTS LIABILITY LITIGATION	:	**MDL NO. 2342** **12-MD-2342**
	:	**HON. CYNTHIA M. RUFE**
THIS DOCUMENT RELATES TO: **ALL ACTIONS**	:	

JOINT PRETRIAL ORDER NO. 13:
PRELIMINARY DISCOVERY PLAN AND PROCEDURES

1. **SCOPE AND APPLICABILITY OF PLAN.** This Preliminary Discovery Plan and Procedures (the "Plan") is intended to conserve judicial and party resources, eliminate duplicative discovery, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation. The Plan shall apply to all cases transferred to this Court by the Judicial Panel on Multidistrict Litigation ("Panel"), pursuant to its Order of April 17, 2012, any tag-along actions transferred to this Court by the Panel, and any related actions that have been or will be originally filed in, transferred to, or removed to this Court and assigned thereto as part of this MDL proceeding.

2. **DISCOVERY UNDER THE PLAN.** No party may conduct any initial discovery of another party not expressly authorized by the Plan absent further Order of this Court or express agreement of the parties. This provision and this Order shall not preclude or govern third-party discovery.

3. **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' Liaison and Lead Counsel and Defendants' Liaison and Lead 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' Liaison Counsel shall electronically serve such paper on the counsel of record for the individual Plaintiff(s) in that case as well as Plaintiffs' Liaison and Lead 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' Liaison Counsel shall electronically serve such paper on the counsel of record for the individual Defendant(s) as well as Defendants' Liaison and Lead Counsel.

4. 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 Pretrial Order No. 8 (Protective Order) [Doc. 215].

5. RECORDS COLLECTION. Upon consideration of the PSC and Defendants' joint request to designate one company to manage the collection, production and organization of medical records in the Zoloft cases, the Court finds that such an appointment will aid in the efficient management of this litigation.

It is ordered that Medical Research Consultants ("MRC"), headquartered in Houston, Texas is designated the medical record management company for the Zoloft MDL. All Counsel

shall use MRC for the collection, production and organization of medical records, whenever feasible, provided that where a medical records management company has previously been used to collect records in cases involving products other than Zoloft, the parties may continue to use that company. The following protocol shall be used:

a. Within 14 days of a record request from Pfizer, a Plaintiff shall provide Pfizer with an appropriate authorization or object to such request.

b. Upon receipt of a record collected pursuant to an authorization provided by a Plaintiff, MRC shall simultaneously notify counsel for Plaintiff and Defendant.

c. MRC shall not release the records to Pfizer until the earlier of: (1) 20 days after notice of receipt or (2) notification from Plaintiff's counsel to release the records. Plaintiff's counsel has 20 days to review the records and file a Motion objecting to the release of the records or to make appropriate redactions to the records. If a Motion is filed, the records shall not be released until MRC is notified by Plaintiff's counsel that the Motion has been resolved.

d. Records will be accessible through the records collection agent, and Defendants will not be required or expected to provide separate or additional copies thereof to Plaintiffs.

6. 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). Any request for discovery or notice of deposition served in a case before it was transferred to the MDL proceedings is deemed withdrawn.

7. PROVISION OF FACT SHEET AND OTHER DOCUMENTS. The parties will submit, concurrently with this Proposed Discovery Plan and Procedures, a proposed Initial and Abbreviated Plaintiff's Fact Sheet ("Initial PFS"). The parties will continue to meet and

confer regarding the form and timing of any abbreviated Defendant Fact Sheet ("DFS") to be provided by Pfizer. Within 60 days of entry of this Order, for each Party whose case has already been filed in or transferred to the MDL proceedings at that time, and, for all other cases, within 45 days of the transfer of the case to the MDL proceedings[1] or of the direct filing of a complaint in the MDL proceedings, a Plaintiff shall provide the following materials (hereinafter, "disclosures") to the Defendants: (1) a completed Initial PFS, in the form attached as Exhibit A; (2) executed copies of authorizations for medical providers and other third-party custodians identified in the Initial PFS (Plaintiffs will not be required to sign blank authorizations); (3) copies of any of the Plaintiffs' and/or Plaintiffs' decedent's medical records within their possession. If a Defendant wishes to obtain records from a custodian of records who will not accept the authorizations a Plaintiff has submitted, that Plaintiff will cooperate with the defendants and provide the necessary authorization(s) within 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. Plaintiffs' Liaison Counsel will notify each new Plaintiff of his/her obligations under this paragraph. All responses in an Initial PFS or an amendment thereto are binding on the Plaintiff as if they were contained in answers to interrogatories. Each Initial PFS and amendment thereto shall be signed and dated by the Plaintiff or the proper Plaintiff representative under penalty of perjury.

[1] A case shall be deemed transferred to the MDL proceedings either: (a) on the date that the certified copy of the Conditional Transfer Order issued by the JPML is entered in the docket of this Court; or (b) where transfer is contested, the date of transfer in any subsequent order from the JPML.

Procedures for Plaintiffs who do not timely serve required disclosures and for more in-depth discovery in certain select cases will be addressed by subsequent Order of the Court.

8. INITIAL MASTER WRITTEN DISCOVERY BY PLAINTIFFS.[2] Plaintiffs have served Initial Master Requests for Production on Pfizer. Defendants commenced production of responses to said 45 requests for production on August 13, 2012, and provided written responses and objections on September 21, 2012. Unless otherwise agreed by the parties or ordered by this Court, after the entry of this Order, the Plaintiffs may serve Master Interrogatories, and Master Requests for Admission on Pfizer and Initial Master Requests for Production, Master Interrogatories, and Master Requests for Admission on any other Defendant. These initial requests are not to exceed: 50 requests for production, 50 interrogatories, and 50 requests for admission, including all discrete subparts, except by leave of this Court upon good cause shown. Defendants' responses and objections shall be served within 60 days of service of the requests.

9. COURT REPORTER FOR DEPOSITIONS. Unless otherwise agreed to by the parties, Golkow Technologies will be used for court reporter and videographer services at depositions in the MDL proceedings. Golkow Technologies may also provide additional services to aid in the scheduling of and payment related to depositions on a case-by-case basis as agreed to in advance by the parties.

10. PRODUCTION AND DISCOVERABILITY OF EXPERT MATERIALS. Each expert will produce his or her final report and a copy of all documents that the expert has

[2] Documents shall be produced pursuant to a Document Production Protocol agreed to by the parties or as Ordered by the Court. However, the fact that such a Protocol is not yet agreed to, filed or entered shall not delay the production of the above-described documents nor shall the production format of documents produced in accordance with this Order act as a waiver or be binding regarding any party's positions with regard to an appropriate Protocol.

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. No party will seek discovery of any experts' notes, drafts of expert reports, or communications with counsel, provided, however, that counsel may 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. DISCOVERY DISPUTES. Unless the Court requests formal briefing, any discovery dispute – other than a dispute arising in the course of a deposition or involving invocation of a privilege or work product protection – 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 not more than 7 doubled-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 7 doubled-spaced pages within 10 business days with a copy to opposing counsel; and (3) The movant may submit a reply of no more than 5 double-spaced pages within 7 business days of the responding letter.

IT IS SO ORDERED.

Dated: October 17th, 2012

HON. CYNTHIA M. RUFE

Through the undersigned counsel, the parties consent to entry of this Order:

Dated: October 15, 2012

/s/ Dianne M. Nast
Dianne M. Nast, Esquire
RodaNast, P.C.
801 Estelle Drive
Lancaster, PA 17601
Tel.: (717) 892-3000
Plaintiffs' Co-Lead Counsel

/s/ Mark P. Robinson
Mark P. Robinson, Jr., Esquire
Robinson Calcagnie Robinson
Shapiro Davis, Inc.
19 Corporate Plaza Drive
Newport Beach, CA 92660
Tel.: (949) 720-1288
Plaintiffs' Co-Lead Counsel

Dated: October 15, 2012

/s/ Mark S. Cheffo
Mark S. Cheffo, Esquire
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036
Tel.: (212) 735-3000
Defendants' Lead Counsel

EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE: CHANTIX (VARENICLINE) PRODUCTS LIABILITY LITIGATION

Master File No.: 2:09-CV-2039-IPJ
MDL No. 2092

This Order Relates To:

ALL CASES

PRETRIAL ORDER NO. 4: DISCOVERY PLAN

I. SCOPE AND APPLICABILITY.

A. **Scope of Plan**. This Joint Coordinated Plan of Discovery ("Plan") 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. This Plan shall apply to all cases transferred to this Court by the Judicial Panel on Multidistrict Litigation ("Panel") pursuant to its order of October 1, 2009, any tag-along actions transferred to this Court by the Panel, and any related actions that have been or will be originally filed in, transferred to, or removed to this Court and assigned thereto as part of In re: Chantix (Varenicline) Products Liability Litigation, MDL No. 2092. This Plan may also apply to state court actions provided that the parties thereto so agree or the applicable court so

orders. Plaintiffs' State/Federal Liaison Counsel agree that they will support this Plan being entered as an order in any coordinated proceeding involving Chantix in New York state court. This Plan shall not be construed to affect the governing law or choice of law rules in any case subject to the Plan.

B. Discovery Under the Plan. No party to the Plan may conduct any discovery not expressly authorized by the 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.

C. Use of Discovery in Federal and State Courts. Discovery conducted pursuant to this Plan may be utilized in state or federal court, in accordance with the applicable laws and rules of discovery and evidence. This provision shall not preclude any party from asserting in any action that any document, testimony, or other discovery produced pursuant to this Plan is inadmissible at trial.

II. WRITTEN DISCOVERY

A. Waiver of Initial Disclosures. For all cases subject to this Plan, the parties are relieved from complying with the requirements of Federal Rule of Civil Procedure 26(a) or any similar state court rule.

B. Master Written Discovery by Plaintiffs. Plaintiffs may serve Master Set(s) of Requests for Production, Master Set(s) of Interrogatories (not to exceed fifty interrogatories, including all discrete subparts, except by leave of this Court upon good cause shown), and Set(s) of Requests for Admission on Pfizer. Absent leave of Court, other than these Master Sets of Production, Master Sets of Interrogatories, and Sets of Requests for Admission, no other requests for production, interrogatories, or requests for admission may be propounded on Pfizer.

C. Master Written Discovery by Pfizer. In addition to the Plaintiff Fact Sheets, authorizations, and documents that are the subject of this Plan, for cases selected for trial or included in a discovery or trial pool, Pfizer may serve Requests for Production, Set(s) of Interrogatories (not to exceed twenty-five interrogatories, including all discrete subparts, except by leave of this Court upon good cause shown), and Set(s) of Requests for Admission.

III. PRODUCTION OF DOCUMENTS

A. Plaintiffs' Production of Fact Sheets, HIPAA Authorizations, and Documents. Plaintiffs shall produce to Defendant a "Plaintiff's Fact Sheet" for each Plaintiff, in the form attached hereto as Exhibit 1, the documents requested at the end of the Plaintiff's Fact Sheet ("the responsive documents"), and the authorizations described herein. Plaintiff's Fact Sheets, the responsive documents, and the authorizations shall be mailed to Defendant's Counsel at the following address:

F.M. ("Tripp") Haston, III
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35206
Phone: (205) 521-8303
Fax: (205) 488-6303

1. Content of Fact Sheet and Authorizations.

a. Signature of Fact Sheet and Amendments by Plaintiff. All responses in a Plaintiff's Fact Sheet or an amendment thereto are binding on the Plaintiff as if they were contained in responses to interrogatories. Each Plaintiff's Fact Sheet and amendment thereto shall be signed and dated by the Plaintiff or the proper Plaintiff representative under penalty of perjury.

b. Five Blank Medical Authorizations Served with

Fact Sheet. Each individual Plaintiff shall serve along with his or her Plaintiff's Fact Sheet five originals of the "Authorization for the Release of Medical Records" of all health care providers and other sources of information and records (including but not limited to pharmacies, insurance companies, and/or any applicable state or federal government agencies) (collectively, "custodian of records"), in the form attached hereto as Exhibit 2. The authorizations shall be dated and signed without setting forth the identity of the custodian of the records or provider of care. Pfizer may use the blank authorizations to obtain records from any custodian of record listed in the Plaintiff's Fact Sheet and may use the blank authorizations to obtain records from other custodians by providing Plaintiffs' counsel notice of its intent to do so.

c. Three Blank Employment Authorizations Served with Fact Sheet. Each individual Plaintiff shall serve along with his or her Plaintiff's Fact Sheet three originals of the "Authorization for the Release of Employment Records" of all employers, in the form attached hereto as Exhibit 3.

d. Medicare Authorizations. Pursuant to the reporting and other requirements of Medicare, Medicaid, and SCHIP Extension Act of 2007, each individual Plaintiff shall complete the Medicare Request for Information Form attached hereto as Exhibit 4.

e. Obligation to Cooperate by Providing Additional Authorizations. If Pfizer wishes to obtain records from a custodian of records who will not accept the authorizations Plaintiff has submitted, Plaintiff will cooperate with Pfizer and provide the necessary authorization(s).

2. Schedule for Production of Plaintiff's Fact Sheets.

a. For all cases filed on or before the date on which this Order is entered ("the entry date"), Plaintiffs shall produce the Plaintiff's Fact Sheet, HIPAA authorizations, and related documents within sixty (60) days from the entry date.

b. For any case filed after the entry date, Plaintiffs shall produce the Plaintiff's Fact Sheet, HIPAA authorizations, and related documents for such case within sixty (60) days of docketing of the case in the MDL. If a complaint is filed directly in the MDL, "docketing" will mean the day the complaint is filed; if a complaint is not filed directly in the MDL, "docketing" will mean the date that the Panel issues a Conditional Transfer Order transferring the case to this MDL.

B. Defendant's Production of Fact Sheets. Within 60 days of receipt of a substantially complete Plaintiff's Fact Sheet and substantially complete authorizations in a particular case, Defendant shall serve on Plaintiff's counsel of

record a Defendant's Fact Sheet in the form attached hereto as Exhibit 5. Because Defendant is providing a Defendant's Fact Sheet, absent leave of Court, the Plaintiff in that case may not serve on Defendant any case-specific interrogatories or requests for production.

C. Defendant's Production of Documents. Defendant shall produce (or where the parties agree it is appropriate, make available for review and/or inspection) a common set of documents to Plaintiffs as follows:

1. On or before March 5, 2010, Defendant shall produce the regulatory file regarding Chantix.

2. On or before April 1, 2010, Defendant shall produce the adverse events database regarding Chantix and the medical inquiry database regarding Chantix.

3. On or before May 17, 2010, Defendant shall produce the SAS datasets, study protocols, and final study reports for agreed-upon studies regarding Chantix. The parties shall meet and confer regarding the list of studies for which Defendant shall produce such documents and data, and Plaintiffs shall identify those studies for which Defendant shall produce documents and data by March 15, 2010.

4. The terminal date for documents subject to production under

the immediately preceding subparagraphs (1)-(3) shall be July 31, 2008. Defendant shall make a supplemental production of these documents with a terminal date for supplementation of July 31, 2009, on the following dates: (a) regulatory file – May 1, 2010; (b) adverse events database and medical inquiry database – June 1, 2010; (c) clinical study documents – July 1, 2010. The parties will meet and confer regarding any further supplemental production of these documents.

5. On or before August 1, 2010, Defendant shall produce the custodial files regarding Chantix for the 30 individuals who were identified in the list of thirty witnesses previously provided by Pfizer to Plaintiffs' Lead Counsel.

6. On or before August 1, 2010, Defendant shall produce all remaining documents responsive to Plaintiffs' Master Written Discovery.

7. Defendant's initial production of documents shall include documents generated on or before July 31, 2009 ("black box" label change).

8. The parties agree to meet and confer concerning a supplemental production of Defendant's documents generated on or after August 1, 2009 and on or before December 31, 2009, and are hereby **ORDERED** to do so. The production of these documents will not interfere with the deadline dates

as outlined below.

9. Defendant shall have an ongoing duty to supplement its production in a timely manner pursuant to Fed.R.Civ.P. 26(e)(1), including all data from ongoing safety and surveillance studies.

D. **Preservation**. The parties shall maintain and preserve documents produced pursuant to this Plan 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.

E. **Duplicates**. Where a single document custodian has more than one identical copy of a document (i.e., the documents are the same and neither contain different marginalia), Defendant need only produce a single copy of that document. Where multiple document custodians each possess their own copies of an identical document, the document may be produced once for each custodian in possession of the document.

F. **Original Documents**. The parties shall, upon reasonable request, make originals of any produced document available for inspection and copying by the requesting party. If either party requests production of an electronic document in native format, the parties shall meet and confer regarding the

request.

G. Format of Production. The protocol for and format of production of documents shall be in accordance with the Document Production Protocol, attached hereto as Exhibit 6.

H. Bates Numbering.

1. Bates Numbering Generally. All documents produced during discovery shall have their pages numbered sequentially by the party producing the documents. Each page of a produced document shall have a legible, unique page identifier ("Bates Number") electronically "burned" onto the image at a location that does not obliterate, conceal, or interfere with any information from the source document. No other legend or stamp will be placed on the document image other than a confidentiality legend (where applicable), redactions (consistent with applicable law or Court order), and the Bates Number identified above.

2. Defendant's Bates Numbers to Reflect Source of Documents. Defendant's documents shall bear bates numbers that identify the individual from whom the document was collected, or, where the document was collected from files maintained other than by an individual, with some other bates number that identifies the file from which the document was collected.

3. **Production of Documents by Non-Parties**. The parties shall meet and confer regarding the production of any documents by non-parties in response to subpoenas or authorizations to identify an appropriate page numbering system prior to the production of any such documents.

I. **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, and within sixty (60) days after the production absent agreement of the parties. In the case of production by Pfizer of custodial or departmental files, however, Defendant shall produce the Privilege Log within sixty (60) days after the production of custodian or departmental files is fully complete. The parties

shall not be required to log communications with outside counsel that occurred after the first Chantix lawsuit was filed.

IV. DEPOSITIONS.

A. Commencement of Depositions.

1. Depositions of common fact witnesses currently or formerly employed by Pfizer, including any depositions conducted pursuant to Federal Rule of Civil Procedure 30(b)(6) (collectively "common Pfizer witnesses"), shall commence on September 1, 2010, but may commence earlier if the parties so desire.

2. Depositions of plaintiffs; plaintiffs' physicians; family members of plaintiffs; sales representatives and other relevant third party witnesses may commence on December 1, 2010.

B. Number of Depositions. No more than twenty-five depositions of common Pfizer witnesses shall be taken in total, and no more than five such depositions per month, absent agreement of the parties or good cause shown by Plaintiffs. This limitation includes any depositions conducted pursuant to Federal Rule of Civil Procedure 30(b)(6) or any comparable state rule of civil procedure.

C. Deposition Notices. A single deposition notice shall apply in all

cases governed by this Plan. Additional notices or cross-notices shall not be required. For cases pending in state court, the parties will consent to out-of-state commissions for the depositions of non-party witnesses (including physicians, family members, and others), subject to an expedited procedure to be negotiated by the parties.

D. **Deposition Scheduling**. Depositions must be noticed pursuant to Federal Rule of Civil Procedure 30 at least thirty (30) calendar days in advance, with notice served upon counsel. Absent extraordinary circumstances, counsel shall consult with opposing counsel and proposed deponents in advance in an effort to schedule depositions at mutually convenient times and places. Depositions should be scheduled by agreement of the parties based upon the availability of documents relevant to the specific witness and the availability of the witness and counsel. No more than one (1) deposition may be scheduled on the same day. Absent leave of court, no witness currently or formerly employed by Pfizer may be deposed more than once.

E. **Deposition Week**. In any week in which depositions will be taken, such depositions shall commence no earlier than 9:30 a.m. on Monday and end no later than 3:00 p.m. on Friday of that week, unless by agreement of the parties or court order.

F. **Deposition Day**. Except as stated above, the deposition day shall commence at 9:30 a.m. and terminate no later than 5:30 p.m., unless by agreement of the parties or court order.

G. **Locations for Taking Depositions**. Unless otherwise agreed by counsel for Plaintiffs, depositions of Plaintiffs will take place in each plaintiff's home district or jurisdiction. Unless otherwise agreed by counsel for Pfizer, depositions of Pfizer employees (past and current) will take place in one of the following locations, as designated by Pfizer: DLA Piper's offices in New York, NY, Williams & Connolly LLP's or DLA Piper's officer in Washington, D.C., and other locations as designated by Williams & Connolly LLP and/or DLA Piper. Unless otherwise agreed by the parties and the witness, depositions of prescribing physicians, treating physicians, family members, and other relevant third party witnesses shall take place in the district or jurisdiction in which those witnesses reside.

H. **Attendance at Depositions**. Unless otherwise agreed by the parties, depositions may be attended only by the parties, the deponent, the deponent's attorney, attorneys representing any party in any action governed by this Plan (including any employee or retained consultant of such attorney who is assisting in the litigation and whose presence is reasonably required by the

attorney), in-house counsel for Pfizer, the court reporter, and the videographer.

I. Sequence of Examination. Questioning at the depositions will be conducted in the following sequence: (1) the examiner designated by counsel noticing the deposition, (2) any physician or healthcare provider's counsel, (3) the examiner designated by the opposing counsel; (4) individual counsel for the deponent, if any, other than counsel above; and (5) any re-cross and/or redirect by such counsel, in the above order.

J. Use of Confidential Documents. While a deponent is being examined about any document that is confidential (or highly confidential, or otherwise subject to designation under the terms of the Protective Order entered in this litigation) because (i) the parties have so agreed, (ii) a party has designated the document confidential (or highly confidential, or otherwise designated the document) under the terms of the Protective Order, or (iii) a Court has so ordered, attendance at that deposition by persons to whom disclosure is not authorized by agreement of the parties, the terms of the Protective Order, or by court order shall be prohibited. Any portion of the deposition transcript containing confidential information (or highly confidential information or information otherwise subject to the Protective Order) shall be sealed as set forth in the Protective Order. Sealed portions of deposition transcripts may be opened,

read, and utilized for all purposes as permitted by the terms of the Protective Order entered in this litigation.

K. Objections at Depositions. All objections as to relevance and admissibility (i.e., objections other than to the form of the question) shall be preserved for later ruling by the court in which the action is pending. As soon as any one attorney representing a party to this litigation states the word "objection," all parties shall be deemed to have preserved all possible objections to the form of the question or the responsiveness of the answer. Counsel for other parties shall not repeat the objection.

L. Deposition Exhibits.

1. Provision of Hard Copies. Extra hard copies of documents about which counsel expect to examine the deponent should be provided to the reporter, the deponent, deponent's counsel, and a reasonable number of copies for counsel for the other party participants during the deposition.

2. Use of Bates Numbers. To the extent possible, all exhibits shall have printed bates numbers affixed. Documents that have not been previously produced shall be assigned a Bates number from a range of numbers reserved for this purpose. The first time a document is marked as a deposition exhibit, it shall be referred to by the Bates number appearing on the document.

3. **Marking of Deposition Exhibits**. All documents marked as exhibits shall be attached to the original transcript and retained with the original transcript. Copies of exhibits may be attached to copies of the transcript where the party ordering the transcript pays for the costs of copying those exhibits.

M. **Videotaped Depositions**. The provisions of this Plan regarding examination of deponents apply to videotaped depositions. Any deposition may be videotaped at the request of a party pursuant to the following terms and conditions:

1. **Stenographic Recording**. A certified court reporter shall simultaneously record stenographically all deposition proceedings and testimony. The court reporter shall administer the oath or affirmation to the deponent on camera. The written transcript by the court reporter shall constitute the official record of the deposition for purposes of Federal Rule of Civil Procedure 30(e) (submission to the witness) and 30(f) (filing; exhibits).

2. **Cost of Deposition**. The noticing party shall bear the expense of videotaping and stenographic recording. Motions to recover these costs and expenses may be made at the conclusion of the litigation in accordance with applicable law.

3. **Videotape Operator**. The video camera shall be operated by

an experienced video camera operator ("videotape operator"). In all cases subject to this Plan, including those cases pending in state court, the operator shall be subject to the provisions of Federal Rule of Civil Procedure 28(c). The videotape operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

4. **Interruptions**. The video camera operation will be suspended during the deposition only by agreement of counsel examining and defending the deposition, and "off the record" discussions shall not be videotape recorded. The video camera operator shall record on camera the time of suspension and any subsequent reconvening of the deposition.

5. **Index**. The videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to counter numbers, that identifies the positions on the tape at which examination by different counsel begins and ends, at which objections are made and examination resumes, at which exhibits are identified, and at which any interruption of continuous tape recording occurs, whether for recesses, "off the record" discussion, mechanical failure, or otherwise.

6. **Certification**. After the deposition is completed, the video

operator shall certify on camera the correctness, completeness, and accuracy of the videotape recording in the same manner as a stenographic court reporter.

7. **Technical Data**. Technical data, such as recording speeds and other information needed to replay or copy the tape, shall be included with copies of the videotapes.

8. **Exhibits**. If examining counsel uses an Elmo or other device to capture document images during a videotaped deposition and incorporate the image into the videotape, such counsel may highlight or underline portions of the document but may not otherwise manipulate the document, such as by writing on or otherwise altering the document.

9. **No Distortion**. The camera operators shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

N. **Services of Deposition Officer**. Services and products offered or provided by a deposition officer (i.e., a court reporter or videotape operator) or the entity providing the services of a deposition officer to any party or to any party's attorney or non-party who is financing all or part of the deposition shall be offered or provided to all parties or their attorneys attending the deposition.

O. **Real-Time Transcription**. Any party may arrange for "real-time"

transcription of a deposition at its cost.

P. Correction and Signing of Deposition. The transcript of a deposition shall be submitted to the deponent for correction and signature within sixty (60) days after receipt of the transcript from the court reporter. The deposition may be signed by the deponent before any notary or pursuant to 28 U.S.C. § 1746. If no corrections are made within sixty (60) days after completion of the deposition, the transcript will be deemed accurate and the parties shall have the right to use a copy of the transcript in any further proceedings as though the copy were the original transcript. In the event the original transcript is unsigned, lost, stolen, or inadvertently destroyed, a certified copy reflecting any changes made to the original transcript may be used in place of the original.

V. EXPERT WITNESSES.

A. Expert Reports and Depositions. 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. The parties will meet and confer at an appropriate time concerning the number of experts to be designated by each side.

B. Production and Discoverability of Expert Materials. Each expert will produce his or her final report and 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. No party will seek discovery of any experts' notes, drafts of expert reports, or communications with counsel, provided, however, that counsel may inquire at deposition about any facts provided to the expert by counsel and upon which such expert is relying in expressing the expert's opinions.

C. Plaintiffs' Designation of General Causation and Liability Experts. Plaintiffs shall designate general causation and liability experts on or before April 1, 2011.

D. Defendant's Designation of General Causation and Liability Experts. Defendant shall designate general causation and liability experts on or before May 2, 2011.

E. Plaintiffs' Designation of Rebuttal Experts. Plaintiffs shall

designate rebuttal experts on or before June 1, 2011.

F. Depositions of General Causation and Liability Experts. Depositions of Plaintiffs' general causation and liability experts may commence on July 2, 2011. Depositions of Defendant's general causation and liability experts may commence fifteen days after the completion of depositions of Plaintiffs' general causation and liability experts. All depositions of general causation and liability experts shall be completed by October 3, 2011.

G. Motions Relating to General Causation and Liability. Any *Daubert* or other motion directed to causation issues of general applicability, or any other dispositive motions must be filed by October 31, 2011. Oppositions to such motions must be filed by November 30, 2011, and any reply briefs must be filed by December 15, 2011.

H. "General Causation and Liability Experts." The term "General Causation and Liability Experts" refers to those experts who will testify on causation and liability issues of general or widespread applicability (i.e., issues that are not specific to an individual plaintiff).

I. Coordinated Discovery and Hearings Regarding General Causation Experts. Where the parties engage in generally applicable expert discovery and/or hearings (e.g., relating to issues of general or widespread

applicability), the parties consent to coordinate such discovery and hearings for all Plaintiffs subject to this Plan.

J. **Case-Specific Experts**. Case-specific expert discovery will occur after the Court decides motions relating to causation issues of general applicability.

VI. CASE-SPECIFIC DISCOVERY.

This Plan sets forth a schedule for common discovery and for certain case-specific discovery, as described herein. The Parties shall meet and confer at a later date, once discovery that is the subject of this Plan is substantially complete, to discuss a schedule for further case-specific discovery. Until that time, absent court order, no discovery other than that permitted by this Plan may be conducted.

DONE and **ORDERED** this 24th day of February, 2010.

INGE PRYTZ JOHNSON
U.S. DISTRICT JUDGE

EXHIBIT 3

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: BEXTRA AND CELEBREX MARKETING SALES PRACTICES AND PRODUCT LIABILITY LITIGATION	CASE NO. M:05-CV-01699-CRB MDL No. 1699
This Order Relates to: ALL CASES.	**PRETRIAL ORDER NO. 6: PLAINTIFF FACT SHEETS AND DEFENDANT FACT SHEETS**

I. SCOPE OF ORDER

1. Order Applicable to All Product Liability Plaintiffs in MDL Proceedings.

This Order shall apply to all Plaintiffs who allegedly suffered personal injury from taking Bextra® and/or Celebrex® in cases currently pending in MDL No. 1699 ("the product liability actions") and to all related product liability actions that have been or will be originally filed in, transferred to, or removed to this Court and assigned thereto (collectively, "the MDL proceedings"). This Order is binding on all parties and their counsel in all product liability cases currently pending or subsequently made part of these proceedings. This Order shall not apply to those plaintiffs who are asserting exclusively purchase claims in these proceedings.

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II. PLAINTIFF FACT SHEETS, DOCUMENTS, AND AUTHORIZATIONS

2. Plaintiffs' Obligation to Serve Plaintiff Fact Sheet and Responsive Documents.

a. Applicable Plaintiff Fact Sheet. Each individual Plaintiff bound by this Order shall serve upon Defendants' counsel a complete and signed Plaintiff Fact Sheet ("PFS") in the forms set forth in Attachments A (Bextra® only Plaintiffs), B (Celebrex® only Plaintiffs), or C (Plaintiffs who allege taking both Bextra® and Celebrex®) pursuant to the schedule ordered in paragraph 5 herein. If a Plaintiff initially completes Attachment A or B hereto and medical records or other information subsequently reveal that Plaintiff took both Bextra® and Celebrex®, such Plaintiff shall provide the additional information contained in Attachment C within sixty (60) days upon request by any defendant. Each PFS shall be mailed to Defendants' counsel as follows:

Stuart M. Gordon, Esq.
Attn: Bextra/Celebrex MDL PFS
GORDON & REES LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

b. Responsive Documents. The Plaintiff shall also produce with his or her PFS all documents responsive to the document requests contained therein ("responsive documents"). If neither Plaintiff nor Plaintiff's counsel possess responsive documents, Plaintiff's counsel must inform Defendants' counsel of such in writing concurrently with serving the PFS.

c. Answers Binding as if Interrogatory Responses and Signed Under Penalty of Perjury. All responses in a PFS are binding on the Plaintiff as if they were contained in responses to interrogatories. Each PFS shall be signed and dated by the Plaintiff or the proper Plaintiff representative under penalty of perjury.

d. Plaintiffs Suing in Representative or Derivative Capacity. If the Plaintiff is suing in a representative or derivative capacity (e.g., on behalf of an estate, as a survivor, and/or as an assignee or subrogee), the completed PFS and produced responsive documents must provide information about the individual who allegedly took Celebrex® and/or Bextra®.

3. Plaintiffs' Obligation to Serve HIPAA-Compliant Authorizations.

a. Five Blank Medical Authorizations Served with PFS. Each individual Plaintiff subject to this Order shall serve upon Defendants' counsel designated above along with his or her PFS and responsive documents five originals of the "Authorization for the Release of Medical Records" of all health care providers and other sources of information and records (including but not limited to pharmacies, insurance companies, and/or any applicable state or federal government agencies) (collectively, "custodian of records") in forms to be agreed upon by Liaison Counsel for plaintiffs asserting no psychological injury and plaintiffs asserting psychological injury. The authorizations shall be dated and signed without setting forth the identity of the custodian of the records or provider of care.

b. Three Blank Employment Authorizations Served with PFS. Each individual Plaintiff subject to this Order shall serve upon Defendants' counsel designated above along with his or her PFS and responsive documents three originals of the "Authorization for the Release of Employment Records" of all employers in forms to be agreed upon by Liaison Counsel for plaintiffs asserting no wage loss claim and plaintiffs asserting a wage loss claim. The authorizations shall be dated and signed without setting forth the identity of the employer.

c. Custodian-Specific, Updated, or Additional Original Authorizations. If a health care provider, employer, or other custodian of records: (i) has a specific authorization form it requires its patients to use, (ii) requires a more recent authorization than the authorizations initially provided by Plaintiff, (iii) requires a notarized authorization, or (iv) requires an original signature and the record collection company or companies jointly retained by the parties have already used all original authorizations provided by Plaintiff, then the record collection company or companies retained by the parties shall so notify Plaintiff's counsel and provide such specific authorization(s) and/or new blank authorization(s) to Plaintiff's counsel. Plaintiff shall execute such specific, updated, and/or original authorization(s) within thirty (30) days, pursuant to paragraph d herein. Where Plaintiff identifies one of the custodians of record listed in Attachment D hereto in his or her Plaintiff Fact Sheet, such Plaintiff shall execute the applicable custodian-specific authorization for that custodian and provide such

authorization along with his or her Plaintiff Fact Sheet, blank authorizations, and responsive documents. Plaintiffs' Liaison Counsel shall make the custodian-specific authorizations for the custodians listed in Attachment D available to Plaintiffs' counsel.

d. Plaintiffs Suing in Representative or Derivative Capacity. If the Plaintiff is suing in a representative or derivative capacity, the authorizations must be signed and produced along with documentation, if any exists, establishing that the signatory is a duly appointed representative or is otherwise permitted to execute authorizations on behalf of the person who allegedly took Celebrex® and/or Bextra®.

4. Use of Authorizations.

a. Custodians Listed in PFS. Any record collection company or companies jointly retained by the parties may use the authorizations (including copies of the original blank authorizations) for any health care provider, employer, or other custodian of records identified in the PFS without further notice to Plaintiff's counsel. Any Plaintiff who has an objection to the collection of records from any health care provider, employer, or other custodian of records identified in the PFS shall make such objection to Pfizer at the time the PFS is provided, or else any such objection to the use of the authorization is waived. This provision shall not waive any right that an individual may have to request the return of the records, to challenge the admissibility of the records, or to otherwise move the Court for appropriate relief.

b. Custodians Not Listed in PFS. If the Pfizer Entities wish to use an authorization to obtain records from a custodian that is not identified in the PFS, the record collection company or companies jointly retained by the parties shall provide the Plaintiff's counsel for that particular case with seven days' written notice (by facsimile) of the intent to use an authorization to obtain records from that custodian. If Plaintiff's counsel fails to object to the request within seven days (by facsimile), the retained record collection company or companies may use the authorization to request the records from the custodian identified in the notice. If Plaintiff's counsel objects to the use of the authorization to obtain records from the custodian identified in the notice within said seven day period, such objection must be served on Defendants' counsel designated above in writing by facsimile and must identify the legal basis for

the objection and describe the nature of the documents to which the objection is asserted in a manner that, without revealing the information allegedly protected, will enable the Pfizer Entities to assess the applicability of the asserted protection.

5. Schedule for Serving Plaintiff Fact Sheets, Responsive Documents and Authorizations. Each Plaintiff bound by this Order whose case has been transferred to the MDL proceedings as of the date of this Order shall have sixty (60) days from entry of this Order to serve upon Defendants' counsel designated above a complete and signed PFS, all responsive documents (or a written notice that none are in the possession of Plaintiff or Plaintiff's counsel), and properly executed authorizations. Each Plaintiff in cases that are filed in or transferred to this MDL proceeding after the entry of this Order shall serve upon Defendants' counsel designated above a complete and signed PFS, all responsive documents (or a written notice that none are in the possession of Plaintiff or Plaintiff's counsel), and properly executed authorizations within sixty (60) days from the date of transfer of such case. For purposes of this paragraph, the "date of transfer" is defined as follows: (1) for any case transferred pursuant to a Conditional Transfer Order ("CTO") issued by the Judicial Panel on Multidistrict Litigation ("JPML"), the date that the applicable final CTO is entered on the docket in these MDL proceedings; (2) for any case where transfer by CTO is opposed, the date that any subsequent Order from the JPML transferring the case is entered on the docket in these MDL proceedings; or (3) for any case filed directly in the Northern District of California, the date that the case was filed.

6. Provision of Medical Records to Parties. Plaintiffs' and Defendants' Liaison Counsel shall make available, through an outside vendor(s) jointly selected and hired by Liaison Counsel, all records obtained from any health care provider(s) or other custodian(s) of records through an authorization or subpoena on a secure web site maintained by the outside vendor(s). Such records shall be bates stamped by the vendor. Plaintiff's counsel in a specific case and Plaintiffs' Liaison Counsel may access that web site to obtain copies of their clients' records. For each set of records Plaintiffs' counsel (or counsel for any other party) wishes to obtain from the vendor(s), Plaintiffs or the other party may be charged any one-time "viewing fees" established by the vendor(s) and agreed to by the parties, plus half of any fee charged by the

records custodian, which shall be payable directly to the vendor(s). If a third party (for example, a treating physician defendant or other third party or, as the case may be, a plaintiff) also wishes to obtain the records, that party shall be charged one-third of the fee charged by the record custodian, and one-third of the fee paid by each earlier party who obtained the records shall be refunded by the vendor(s). Plaintiffs (or counsel for any other party) will be able to download and copy any and all viewed records for their use at no additional expense. The Pfizer Entities shall have no other obligation to provide medical or other records obtained pursuant to the authorization(s) to Plaintiffs, including prior to the deposition of any Plaintiff.

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

7. 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 may be subject to having his or her claims, as well as any derivative claim(s), dismissed if good cause for such dismissal is shown. Good cause shall exist where there is a material deficiency in responding to required discovery, i.e., one that prejudices Defendants through a failure to provide necessary information, thereby impeding Defendants' access to material and relevant evidence. Any dismissal may be with or without prejudice as the Court may determine in an individual case. Defendants have informed the Court that they intend to move to dismiss with prejudice those cases in which there is a material deficiency in responding to required discovery. The procedure for such motions shall be governed by paragraphs 9 and 10 herein.

8. Initial Notice of Discovery Obligations.

a. Notice by Court to be Jointly Drafted by Parties. Plaintiffs' and Defendants' Liaison Counsel shall meet and confer to draft a notice from the Court to plaintiffs' counsel regarding the MDL proceedings, which such notice shall describe the status of the litigation, the plaintiffs' discovery obligations, and any other duties imposed by the Court's various pretrial orders and which shall enclose copies of the pretrial orders applicable to all cases ("the Initial Notice"). Liaison Counsel shall update the Initial Notice from time to time as they

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see fit or as ordered by the Court. Plaintiffs' Liaison Counsel shall be responsible for transmitting the Initial Notice to plaintiffs' counsel.

b. Cases Presently Pending in MDL Proceedings. The Initial Notice provided to plaintiffs' counsel in all cases transferred to the MDL proceedings as of the date of this Order shall inform Plaintiffs' counsel in the subject cases that, pursuant to this Pretrial Order, Plaintiffs have sixty (60) days to serve upon Defendants' counsel designated above a complete and signed PFS, all responsive documents (or a written notice that none are in the possession of Plaintiff or Plaintiff's counsel), and properly executed authorizations.

c. Cases Subsequently Transferred to or Filed in MDL Proceedings. The Initial Notice provided to plaintiffs' counsel in all cases transferred to the MDL proceedings or directly filed in the Northern District of California after the date of this Order shall inform Plaintiffs' counsel that, pursuant to this Pretrial Order, Plaintiffs have sixty (60) days from the date of entry of the JPML Transfer Order on the docket in these MDL proceedings to serve upon Defendants' counsel designated above a complete and signed PFS, all responsive documents (or a written notice that none are in the possession of Plaintiff or Plaintiff's counsel), and properly executed authorizations.

9. Notice of Overdue or Deficient Discovery. When any Plaintiff has failed to materially comply with their obligations under this Order within the timelines established herein, Defendants' Liaison Counsel or her designee 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 with particularity the alleged material deficiency, state that the Plaintiff will have thirty (30) 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), Defendants may move for dismissal of Plaintiff's claims, including dismissal with prejudice upon an appropriate showing. Plaintiff's Liaison Counsel or her designee shall be electronically copied with the deficiency letter. This provision shall not be construed to prevent Defendants' Liaison Counsel or her designee from meeting and conferring with Plaintiffs' Counsel regarding any other deficiencies.

10. Procedure for Dismissal of Cases with Material Deficiency. The procedure for the motions referenced in paragraphs 7 and 9 shall be as follows:

a. If Plaintiff's individual counsel responds to the deficiency letter, Defendants' Liaison Counsel or her designee shall meet and confer with such counsel with respect to the purported deficiency.

b. If the parties' meet and confer is unsuccessful, or if Plaintiff's individual counsel does not respond to the deficiency letter and a subsequent meet and confer effort under Federal Rule of Civil Procedure 37(a)(2)(B), Defendants' Liaison Counsel or her designee may file a motion (a "compliance motion") with the Court (or any U.S. Magistrate Judge or Special Master appointed by the Court to hear such disputes) seeking an order requiring Plaintiff to comply with this Order within twenty-one (21) days or face a dismissal motion, including dismissal with prejudice, or other sanctions.

c. Such compliance motion shall be heard on an expedited basis. A compliance motion may be noticed twenty-one (21) calendar days before the hearing date, with any opposition to be filed ten (10) calendar days before the hearing and any reply to be filed five (5) calendar days before the hearing.

d. If the Court (or any U.S. Magistrate Judge or Special Master appointed by the Court to hear such disputes) determines that Plaintiff's discovery is materially deficient, it shall order Plaintiff to comply with this Order within twenty-one (21) days ("the compliance order") or face dismissal or other appropriate sanctions as determined by the Court.

e. If Plaintiff does not comply with the compliance order within twenty-one (21) days, Defendants' Liaison Counsel or her designee may file a motion with the Court to dismiss Plaintiff's claims with prejudice or for other appropriate sanctions (a "dismissal/sanctions motion").

f. Such dismissal/sanctions motion shall be heard on an expedited basis. A dismissal motion may be noticed twenty-one (21) calendar days before the hearing date, with any opposition to be filed ten (10) calendar days before the hearing and any reply to be filed five (5) calendar days before the hearing.

g. If the Court determines that Plaintiff has not complied with the compliance order, it may dismiss Plaintiff's claims with or without prejudice, or impose other sanctions, as it deems appropriate.

11. Extension of Discovery Deadlines; Victims of Hurricanes Katrina and Rita. Nothing in this Order shall be interpreted to restrict the ability of: (a) the parties to stipulate to an extension of discovery deadlines in a particular case; or (b) the Plaintiff to move for an extension of discovery deadlines in a particular case based on a showing of good cause. In particular, the parties shall provide reasonable extensions required in cases where the parties are seeking discovery from residents of areas affected by Hurricanes Katrina and Rita.

IV. DEFENDANT FACT SHEET

12. Pfizer Entities' Obligation to Serve Defendant Fact Sheet. Defendants Pfizer Inc., Pharmacia & Upjohn Co., Pharmacia & Upjohn LLC, Pharmacia Corporation, and G.D. Searle LLC (formerly known as G.D. Searle & Co.) (collectively, "the Pfizer Entities"), shall collectively serve upon each Plaintiff's counsel of record (as identified in the PFS) a hard copy of a complete and verified Defendant Fact Sheet in the form set forth in Attachment E. An electronic copy of the Defendant Fact Sheets shall also be served on Plaintiffs' Liaison Counsel's designee and individual counsel for each plaintiff for whom an email address has been provided in the Plaintiff Fact Sheet.

13. Schedule for Serving Defendant Fact Sheet. The Pfizer Entities shall provide a complete and verified Defendant Fact Sheet within sixty (60) days after receipt of a substantially complete and verified PFS and substantially complete authorizations. If the Pfizer Entities fail to provide a completed and verified Defendant Fact Sheet within that time, Plaintiffs' Liaison Counsel shall provide notice to Defendants' Liaison Counsel by facsimile as provided in paragraph 14 herein. The Pfizer Entities shall have an additional thirty (30) days to cure the deficiency. No other extensions will be granted, absent good cause.

14. Notice of Overdue or Deficient Discovery. When the Pfizer Entities have failed to materially comply with their obligations under this Order within the timelines established herein, Plaintiffs' Liaison Counsel shall send a notice of the material deficiency to the

Defendants' Liaison Counsel. The notice shall identify with particularity the alleged material deficiency, state that the Pfizer Entities will have thirty (30) 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), Plaintiffs' Liaison Counsel may, after meeting and conferring with Defendants' Liaison Counsel, move the Court (or any U.S. Magistrate Judge or special master appointed by the Court to hear such disputes) for evidentiary or other sanctions. This provision shall not be construed to prevent Plaintiffs' Liaison Counsel or her designee from meeting and conferring with Defendants' Liaison Counsel regarding any other deficiencies.

15. Notice that Court May Impose Sanctions. If the Pfizer Entities fail to comply with any discovery obligations imposed by this Order within the time periods set forth herein, Pfizer may be subject to such evidentiary or other sanctions as this Court (or any U.S. Magistrate Judge or special master appointed by the Court to hear such disputes) may see fit to impose, upon motion by Plaintiffs' Liaison Counsel, after meeting and conferring with Defendants' Liaison Counsel, if good cause for such sanctions is shown. Good cause shall exist where there is a material deficiency in responding to required discovery, i.e., one that prejudices Plaintiff through a failure to provide necessary information, thereby impeding Plaintiff's access to material and relevant evidence.

V. OTHER DISCOVERY

16. Case-Specific Discovery. The parties shall meet and confer regarding a further schedule for discovery, a protocol for the selection of certain cases for an initial trial pool of cases to be initially addressed by this Court, and case-specific depositions as to those cases.

17. Generic Experts. The parties shall meet and confer regarding the subject of generic expert discovery. The term "generic experts" refers to experts who will testify on issues of general or widespread applicability, including but not limited to those who will testify on general causation. The parties shall meet and confer to agree upon timing for the identification of

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generic experts, the number of generic experts, the contents of generic experts' reports, and the schedule for generic expert discovery and *Daubert* motions.

IT IS SO ORDERED.

Dated: February 13, 2006

/s/
HONORABLE CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE