

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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In re: FLUOROQUINOLONE PRODUCTS  
LIABILITY LITIGATION

MDL No. 15-2642 (JRT)

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This Document Relates to All Actions

**PRETRIAL ORDER NO. 3 ON  
MASTER PLEADINGS**

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The Court finds that the Parties have conferred regarding a Case Management Order addressing master pleadings in these MDL proceedings. The Parties having stipulated thereto, the Court hereby orders as follows:

**I. GENERAL PROVISIONS**

**A. Scope of Order**

This Order shall apply to all product liability cases currently pending in MDL No. 2642 and to all related actions that have been or will in the future be originally filed in, transferred to, or removed to this Court and assigned thereto (collectively, “these MDL proceedings”). This Order is binding on all Parties and their counsel in all such cases.

**B. Purpose of Order**

In light of the number of product liability complaints filed to date and likely to be filed in the future in the MDL proceedings, and the inefficiencies of drafting those

complaints and individual answers to those complaints, and also in order to streamline the process for the Court's consideration of dispositive motions, the Parties have agreed to the following procedures for the use of master pleadings. This Order is not intended to alter the applicable provisions of the Federal Rules of Civil Procedure or the Local Rules of this Court, except as otherwise provided herein or in any subsequent Pretrial Order.

## **II. MASTER COMPLAINT AND SHORT FORM COMPLAINTS**

### **A. Deadline for Filing Master Complaint**

The Court hereby amends the deadline previously set forth in Pretrial Order No. 1 ("PTO 1"), Paragraph 12, A, dated February 12, 2016. By April 14, 2016, the Plaintiffs' Steering Committee ("PSC") shall file a Master Complaint on behalf of all Plaintiffs asserting product liability claims in these MDL proceedings, as set forth in PTO 1, Paragraph 12, A.

### **B. Content of Short Form Complaints<sup>1</sup>**

As set forth in PTO 1, Paragraph 12, B, dated February 12, 2016, at the time the PSC files the Master Complaint, the PSC also shall file as Exhibit "A" thereto a Short Form Complaint, which shall be an abbreviated form that Plaintiffs will complete in lieu of filing standalone complaints, but the assertions therein shall be in accordance with the

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<sup>1</sup> The form and subject matter of the Short Form Complaint, as set forth in this Pretrial Order, is without prejudice to the parties' positions with respect to the characterization, scope and nature of the alleged injuries, and/or their relevance to statute of limitations issues.

requirements of Rule 11. The Short Form Complaint will adopt the Master Complaint by reference and shall contain, at a minimum:

1. The name of the Plaintiff(s) and, if different, the name of the FLQ user;
2. The city and state in which Plaintiff(s) and/or FLQ user currently resides and, if different, the city and state in which the FLQ user resided at the time of use;
3. The approximate dates that the FLQ user used any FLQ;
4. Which FLQ(s) the FLQ user used (setting forth “check boxes” identifying all products Plaintiff used that are included in the Master Complaint) and :
  - a. If alleging use of: (1) branded Cipro after June 9, 2004; and/or (2) branded Levaquin after June 30, 2011; and/or (3) branded Avelox after February 18, 2014, Plaintiff must identify which of these are alleged (setting forth “check boxes”);
  - b. If alleging use of a generic FLQ and liability of the Branded Manufacturer(s) for that generic use, Plaintiff must adopt that cause of action from the Master Complaint and identify the state law that Plaintiff alleges provides Plaintiff with a basis for such a claim;
5. The Defendants against whom Plaintiff asserts claims (setting forth “check boxes” identifying all Defendants included in the Master Complaint);
6. Date Plaintiff first experienced peripheral neuropathy (“PN”) symptoms:
  - a. State of residence at time Plaintiff first experienced PN symptoms;
7. Date Plaintiff was first diagnosed with PN if applicable:

- a. State of residence at time Plaintiff was first diagnosed with PN if applicable;
8. Whether any Plaintiff is asserting a claim for loss of consortium, survival or wrongful death;
9. An adoption of all preliminary allegations in the Master Complaint;
10. Which causes of action in the Master Complaint Plaintiff(s) adopts (setting forth “check boxes” identifying all causes of action include in the Master Complaint); and
11. Whether Plaintiff(s) demands a jury.

**C. Deadlines for Short Form Complaints**

The Court hereby amends the deadlines previously set forth in PTO 1, Paragraph 12, C, dated February 12, 2016. Any Plaintiff with a case currently pending in these MDL proceedings as of the date of the filing of the Master Complaint must file a Short Form Complaint on or before May 14, 2016. After the filing of the Master Complaint, any Plaintiff whose case becomes part of these MDL proceedings either by a direct filing and assignment to this Court (if permitted by subsequent order of the Court) or by transfer from another district or from another judge in this district must file a Short Form Complaint within 30 days after the date of transfer or, if originally filed in this district, assignment to this Court. For the purposes of the application of the statutes of limitation and/or repose, any Plaintiffs mentioned in this paragraph shall be deemed to have filed

his or her complaint as of the date of filing of that Plaintiff's original complaint, not the date of filing of the Master Complaint.

There shall be a separate short form complaint filed for each individual plaintiff. No plaintiff shall file a non-short form complaint in this MDL. In the event that any plaintiff was a member of a multi-plaintiff complaint prior to transfer this MDL, each plaintiff shall file a separate short form complaint under a separate docket number.

### **III. Rule 12 Motions Based on Statute of Limitations**

There Court hereby extends the filing deadlines found in paragraph 12, D, of PTO 1, dated February 12, 2016. Defendants must file any Rule 12 motion based on the statute of limitations on or before July 16, 2016. The PSC's Opposition to any such motion shall now be due on or before August 16, 2016, and Defendants' Reply shall be due on or before August 31, 2016.

### **IV. Master Answers**

#### **A. Deadline for Filing Master Answers**

Within 45 days after a ruling by the Court on any Rule 12 motion filed by the Defendants pursuant to paragraph 12, D, of PTO 1, each Defendant named in the Master Complaint shall file a separate Master Answer. Defendants who previously filed a Master Answer will not answer any Amended Master Complaint absent agreement of the parties or a Court order requiring them to answer.

**B. Impact of Master Answers**

As of the date on which each Defendant's Master Answer is filed, it will be deemed to have been filed in every current or future case against that Defendant in the MDL proceedings, without any further action required by that Defendant. Because the Master Answer shall be deemed filed in all cases that become part of these MDL proceedings without any further action by the Defendants, any Plaintiff who wishes to dismiss his or her case must comply with Federal Rule of Civil Procedure 41(a)(1)(A)(ii), or a future order of the Court, except that a Plaintiff may dismiss his or her complaint without prejudice and without the consent of the Defendant(s) prior to the date on which Plaintiff's individual Short Form Complaint shall be due.

**C. Notice of Appearances as Adoption of Master Answer In Place of Short Form Answers**

By filing a Notice of Appearance in each individual action, the relevant Defendant shall be deemed to have adopted and incorporated its Master Answer, incorporating all applicable affirmative defenses pled in the Master Answer. The Notice of Appearance and its incorporation of the Master Answer shall be the only responsive pleading required of a Defendant, and shall satisfy of any obligation to answer a Short Form Complaint.

Each Defendant must serve a Notice of Appearance by the later of: (1) 30 days after a Defendant files its Master Answer, for complaints filed and served (or where service was waived) before the Defendant filed its Master Answer, or (2) 30 days after service of a complaint and summons (or after the Plaintiff files an executed waiver of

service pursuant to this Court's Pretrial Order #2 addressing service of process, which Plaintiffs shall file in the case-specific docket only, and not in the general docket) for complaints served (or where service is waived) after the Defendant filed its Master Answer.

Defendants shall file their Notices of Appearance only in the individual docket for each case.

## **V. PRODUCT IDENTIFICATION DISCOVERY**

### **A. Purpose of Order**

Defendants contend that they may have been named in lawsuits by plaintiffs who did not actually ingest a product that the defendants manufactured, sold, or distributed. Defendants further contend that if they did not manufacture, sell, or distribute the particular product(s) the plaintiff ingested, the claims against them should be dismissed with prejudice. Defendants contend they are entitled to early evidence regarding the issue of product identification for any plaintiff alleging use of: (1) branded Cipro after June 9, 2004; and/or (2) branded Levaquin after June 30, 2011; and/or (3) branded Avelox after February 18, 2014. As set forth below, plaintiffs shall produce evidence for such usage that identifies the manufacturer, seller, or distributor of the product(s) that the plaintiff(s) ingested.

### **B. Deadlines for Plaintiff's Product Identification**

Within thirty (30) days of the filing of a Short Form Complaint pursuant to the deadlines in Paragraph II.C. in this Order by any plaintiff alleging use of: (1) branded Cipro after June 9, 2004; and/or (2) branded Levaquin after June 30, 2011; and/or (3) branded Avelox after February 18, 2014, such plaintiff must produce evidence to the named Defendant(s) in that case sufficient to show (A) the identity of the particular product allegedly used by Plaintiff(s) or the FLQ User; (B) the manufacturer, seller or distributor of the product allegedly used by Plaintiff(s) or the FLQ user; and (C) the pharmacy, retailer or medical facility at which the product allegedly used by Plaintiff(s) or the FLQ user was purchased or prescribed, including but not limited to, one or more of the following:

(i) Pharmacy, hospital dispensary or medical records that contain the National Drug Code (“NDC”) and/or the manufacturer, seller, or distributor’s name for the product;

(ii) an original or photocopy of the pill bottle or IV label that contains the FLQ user(s) name **and** the NDC and/or the manufacturer, seller, or distributor’s name for the product; and/or

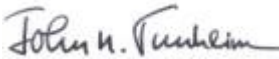
(iii) an affidavit or declaration from an authorized representative of the pharmacy or pharmacies, or hospital dispensary or dispensaries, at which the FLQ user filled his or her prescriptions, which sets forth the NDC and/or manufacturer, seller, or distributor’s name for the product(s) dispensed to the FLQ user.

## **VI. Dispositive Motions.**



If the ground for a dispositive motion is ordinarily required to be pled as an affirmative defense, it must be pled in the relevant Defendant's Master Answer in order to be raised later in the case; provided, however, that this Order shall not be construed to amend Rule 12(h). If the ground for such a motion is the Plaintiff's failure to serve the relevant Defendant(s) within 120 days, the Plaintiff shall have an additional 30 days after a Defendant's notice that it has not been properly served to effect service before the Defendant may move to dismiss for failure to serve. If any party wishes to file a dispositive motion in the MDL proceedings, other than the dispositive motion set forth in PTO 1, counsel shall follow the requirements of Local Rule 7.1(a) (meet and confer requirement).

DATED: March 1, 2016  
at Minneapolis, Minnesota.

  
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JOHN R. TUNHEIM  
Chief Judge  
United States District Court