

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

IN RE: ABILIFY (ARIPIRAZOLE)  
PRODUCTS LIABILITY  
LITIGATION

Case No. 3:16-md-2734

Chief Judge M. Casey Rodgers  
Magistrate Judge Gary Jones

This Document Relates to All Cases

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**CASE MANAGEMENT ORDER NO. 12**

The Court held the Twelfth Case Management Conference in this matter on February 14, 2018. This Order serves as a non-exhaustive recitation of the key points of discussion between the Court and counsel at the conference.

**I. Plaintiff Marshall**

This Court recently granted Yvonne M. Flaherty and Elizabeth A. Peterson's Motion for Leave to Withdraw as Counsel for Plaintiff Bryan Marshall, Case No. 3:17-cv-172. *See* ECF No 722. As a result, scheduled depositions were cancelled and Mr. Marshall is now proceeding *pro se*. Given the posture of his case, the Court finds it appropriate to remove Mr. Marshall's case from the current trial pool.

**II. Remaining Trial Pool Plaintiffs**

As of the date this Order was entered, the remaining trial pool consists of Plaintiffs *Lilly*, *Lyons*, and *Viechec*. Defendants notified the Court that one of Plaintiff *Lyons*' prescribers, Dr. Laura D'Angelo, may be resisting a deposition despite an outstanding subpoena. The Court directed Plaintiff's counsel, Gary

Wilson, to notify Dr. D'Angelo that she must either file a Motion to Quash immediately or appear for her deposition. Mr. Wilson should report back to the Court as to the status of Dr. D'Angelo's deposition by February 22, 2018.

With respect to Plaintiff *Lilly*, Defendants may re-depose both Ms. Lilly and her prescriber, Dr. Jeffrey Deitz on March 14, 2018 due to additional discovery produced pursuant to a forensic examination of Ms. Lilly's electronic devices. Counsel also represented that they intend to complete their production of screenshots of Ms. Lilly's online gambling accounts by Friday, February 16, 2018.

Counsel withdrew the pending document requests for Plaintiffs *Viechec* and *Lilly*.

Finally, Defendants represented that document production was complete for sales representatives' call notes with regard to treating physicians or prescribers during the time that the trial pool plaintiffs were being treated with Abilify.

### **III. Fact Discovery Deadline**

In light of the Court's order denying Defendants' Motion for Protective Order as to Plaintiffs' request for Rule 30(b)(6) depositions, the Court acknowledged that scheduling and taking 10 depositions in addition to the 22 depositions already scheduled before the current fact discovery deadline would be difficult, if not impossible. Therefore, the Court ordered the parties to file a joint proposal by

Friday, February 16, 2018, for an extension of the fact discovery deadline, which they have done.<sup>1</sup>

#### **IV. Second Discovery Pool / Bellwether Trial Pool**

The parties were directed to meet and confer on a protocol for selecting cases for the second discovery pool as well as the scope of Settlement Master Cathy Yanni's validation of the plaintiff profile forms on MDL centrality by March 8, 2018. The parties must file a joint proposal, preferably, or separate proposals by March 15, 2018 regarding a protocol for selecting the cases for the second discovery pool and bellwether trial pool.

#### **V. Independent Medical Examinations**

Defendants request for independent medical examinations of the trial pool plaintiffs, which Plaintiffs do not object to, was granted subject to the caveat that no further discovery will be permitted as a result of such examinations, and the examinations themselves are not an opportunity to re-depose the Plaintiffs.

#### **VI. Amended Certifications as to Document Production**

Defendants represented to the Court that they would review hard copy records stored at Iron Mountain to determine if there are any documents responsive to Plaintiffs' document requests and will amend their certifications as to production for each custodian to reflect the results of this search.

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<sup>1</sup> Defendants should include in their proposal a date for completion of document production for Rocky Mountain Poison and Drug Center.

**VII. Deposition of Kevin Trapp**

Although the Court is sympathetic regarding the loss of Kevin Trapp's mother, Ms. Colton and Mr. Agneshwar were directed to confer with Mr. Trapp by February 21, 2018 regarding his availability to be deposed. If Defendants are unable to coordinate a date for his deposition, Plaintiffs should subpoena Mr. Trapp.

**VIII. Privilege Review**

OAPI recently informed Plaintiffs that it intended to withdraw its privilege claims to at least 27/80 of the documents plaintiffs had designated for Judge Jones's review, which Plaintiffs argue will skew the Court's review of OAPI's privilege claims. To address this concern, Plaintiffs will be permitted to select an additional 27 documents for an *in camera* inspection, which they should identify as soon as possible.

**DONE** and **ORDERED** on this 21st day of February, 2018.

*M. Casey Rodgers*

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**M. CASEY RODGERS**  
**CHIEF UNITED STATES DISTRICT JUDGE**