



November 15, 2019

Hon. Claire C. Cecchi, U.S.D.J.
United States District Court for the District of New Jersey
Martin Luther King, Jr. Bldg. & U.S. Courthouse, Courtroom MLK 5B
50 Walnut Street
Newark, New Jersey 07101

**Re: Proton-Pump Inhibitor Products Liability Litigation (No. II)
2:17-md-2789 (CCC)(MF) (MDL 2789)**

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Dear Judge Cecchi:

After meeting and conferring, the parties were unable to reach agreement on a proposed scheduling order. Accordingly, Defendants submit the attached proposed schedule for the Court's consideration.

Defendants' proposed schedule closely tracks the previous scheduling order, Case Management Order No. 21 ("CMO 21"). In fact, there are only two significant differences between Defendants' proposed schedule and CMO 21. First, Defendants' proposal builds in adequate time for the parties to analyze and select the bellwether discovery cases. To select their picks and strikes, the parties must first analyze more than 1,000 eligible cases, which will take several months at the very least. Realistically, the parties will not be able to finalize the bellwether pool and begin Core Discovery until the spring of next year. Given that Core Discovery was scheduled to begin last February under CMO 21, the previous schedule will need to be extended by more than a year to account for this delay.

Second, Defendants' proposed schedule builds in additional time to conduct Core Discovery. Under CMO 21, the parties agreed to a Core Discovery period of four months, which was based on the assumption that there would be a total of 10 bellwether cases. The parties have since agreed to work up twice as many cases, which requires a commensurate extension of Core Discovery. Accordingly, the previous schedule will need to be extended by an additional four months. If the remainder of the previous schedule is kept largely intact, then the new trial date would become April 2022. That is precisely Defendants' proposal, and it is the earliest date on which a trial could reasonably take place.

In contrast, the PSC's proposal is both unreasonable and inconsistent with the previous scheduling order. Under CMO 21, the first trial was scheduled to take place 26 months after entry of the order. Under the PSC's proposal, the new

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Hon. Claire C. Cecchi, U.S.D.J.
November 15, 2019
Page 2

schedule would be 10 months shorter. To achieve that result, the PSC proposes changes as drastic as (1) eliminating more than half of the additional fact discovery (beyond Core Discovery) that would take place in the six bellwether trial cases, and (2) requiring the Court to decide dispositive, *Daubert* and pre-trial motions in approximately one quarter of the time allocated under CMO 21. The PSC's proposed schedule is unreasonable on its face and would rush the parties to an untenable degree.

For the reasons set forth above, Defendants request that the Court adopt Defendants' proposed schedule. Further, given how significantly the bellwether plan impacts the length of the schedule, Defendants request that the scheduling order and bellwether plan be considered together.

Respectfully submitted,

Dated: November 15, 2019

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Hon. Claire C. Cecchi, U.S.D.J.
November 15, 2019
Page 3

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Hon. Claire C. Cecchi, U.S.D.J.
November 15, 2019
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Hon. Claire C. Cecchi, U.S.D.J.
November 15, 2019
Page 5

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Hon. Claire C. Cecchi, U.S.D.J.
November 15, 2019
Page 6

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Activity	Previous Deadline	Defendants' Proposed Deadline	Notes
Defendants provide a list of cases that are SC/S1 as to all Defendants as of May 31, 2019	N/A	Nov. 15, 2019	
Plaintiffs confirm Defendants' list or identify disputed cases	N/A	Dec. 10, 2019	
Random pool of 200 cases generated and each side makes 5 additional selections from the Eligible List, resulting in 210 cases	N/A	Jan. 13, 2020	This provides adequate time for the parties to analyze the eligible cases and make their selections and strikes.
Parties select 16 cases each from those 210 cases	N/A	Mar. 13, 2020	
Striking complete; Bellwether Core Discovery begins	Feb. 28, 2019	Apr. 20, 2020	
Generic discovery closes	Nov. 22, 2019	Feb. 28, 2020	
Core Discovery closes in Bellwether Discovery Cases	June 28, 2019	Dec. 22, 2020	The original schedule provided 4 months of Core Discovery, which was based on the parties' assumption that there would be 8-10 bellwether cases. The parties have since agreed to 20 bellwether cases, which will require twice as much time for Core Discovery.
Each side selects 3 cases for the Bellwether Trial Pool and additional fact discovery begins in those cases (or the parties submit joint Bellwether Trial Pool CMO or competing proposals)	July 19, 2019	Jan. 11, 2021	If the Court is to choose the 6 Trial Cases, additional time will need to be built into the schedule for the parties to brief the Court on the 20 eligible cases and to give the Court sufficient time to rule. Defendants submit that having the parties select the trial cases would be more efficient and appropriate and then the Court would determine the order in which those cases would be tried.

Fact discovery closes in Bellwether Trial Cases	Oct. 4, 2019	Apr. 30, 2021	If the Bellwether Trial Cases are not selected on Jan. 11, 2021, then the fact discovery cutoff would need to be extended to provide for a minimum of 3 months of additional fact discovery in those cases. All subsequent deadlines would need to be extended accordingly.
Plaintiffs' expert reports in Bellwether Trial Cases due	Dec. 9, 2019	June 25, 2021	
Defendants' expert reports in Bellwether Trial Cases due	Jan. 15, 2020	Aug. 20, 2021	
Expert depositions are completed	Mar. 12, 2020	Oct. 22, 2021	
Dispositive/Daubert motions due	Apr. 2, 2020	Dec 15, 2021	
Dispositive motion opposition briefs due	May 5, 2020	Jan. 17, 2022	
Daubert motion opposition briefs due	May 14, 2020	Jan. 26, 2022	
Dispositive motion reply briefs due	May 19, 2020	Feb. 9, 2022	
Daubert motion reply briefs due	May 28, 2020	Feb. 16, 2022	
Daubert hearing & argument on MSJs	TBD	TBD	
First trial begins	Sept. 21, 2020	Apr. 19, 2022 (or 30 days after the Court decides dispositive and Daubert motions, whichever is later)	