

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

**IN RE: GENERIC PHARMACEUTICALS
PRICING ANTITRUST LITIGATION**

**MDL 2724
16-MD-2724**

THIS DOCUMENT RELATES TO:

HON. CYNTHIA M. RUFÉ

ALL ACTIONS

**PRETRIAL ORDER NO. 79
(AMENDED COMPLAINTS, ANSWERS, AND MOTIONS TO DISMISS)**

AND NOW, this 8th day of March 2019, after a Leadership Status Conference held this date, it is hereby **ORDERED** that the schedule for the following pleadings and motions is set as follows:

I. SCHEDULE FOR AMENDMENTS TO EPP, IRP, HUMANA AND MARION DIAGNOSTIC COMPLAINTS

1. On or before **April 1, 2019**, End-Payer Plaintiffs (“EPPs”), Indirect-Reseller Plaintiffs (“IRPs”), Humana Inc. (“Humana”) and Marion Diagnostic Center, LLC and Marion Healthcare, LLC (collectively “Marion Diagnostic”) shall amend their individual drug complaints in Groups 1, 2 and 3 and their Multi-Drug Complaints to reflect the rulings set forth in the Court’s Opinion (ECF No. 857) and Order (ECF No. 858), dated February 15, 2019, as well as to add claims under the laws of Maryland and Connecticut. EPPs, IRPs, Humana and Marion Diagnostic shall not make any other substantive amendments to their complaints at this time.

II. SCHEDULE FOR MOTIONS TO DISMISS STATE LAW CLAIMS

2. The parties currently anticipate that resolution of Defendants' pending joint and individual Motions to Dismiss filed on February 21, 2019,¹ which seek dismissal of the Sherman Act claims against all Defendants in the Multi-Drug Complaints,² the Sherman Act claims against Teligent Inc. in the *In re Econazole* action, and against Breckenridge Pharmaceutical, Inc. in the *In re Propranolol* action (the "Dismissal Motions"),³ are likely to inform any further briefing on the state law claims asserted in the EPP, IRP, Humana and Marion Diagnostic complaints. The Court therefore grants the parties' request to defer briefing on these issues until after the Dismissal Motions are decided.

3. With the exception of the Plaintiff States' Consolidated Amended Complaint (*see infra*), within 14 days of the resolution of Defendants' Dismissal Motions, and to the extent necessary, the parties shall agree to and submit a proposed schedule for the filing of amended complaints (if leave is granted) and a briefing schedule for any renewed motions to dismiss such amended complaints. The parties shall also submit (a) proposed briefing schedules (including page limitations) on any motions seeking to dismiss the state law claims alleged in the Groups 1, 2 and 3 individual drug complaints and the Multi-Drug Complaints, or (b) schedules for answers,

¹ *State of Conn. et al., v. Aurobindo Pharma USA, Inc. et al.*, 17-cv-3768, ECF Nos. 65-70, 73; *1199SEIU Nat. Benefit Fund et al., v. Actavis Holdco U.S., Inc. et al.*, 18-cv-2401, ECF Nos. 111-16, 119-20; *West Val Pharm. et al., v. Actavis Holdco U.S., Inc. et al.*, 18-cv-2533, ECF Nos. 32-37, 40-41; *Ahold USA, Inc. et al., v. Actavis Holdco U.S., Inc. et al.*, 18-cv-2641, ECF Nos. 33, 35-39, 42, 44-45; *The Kroger Co. et al., v. Actavis Holdco U.S., Inc. et al.*, 18-cv-284, ECF Nos. 74-79, 81-83, 86-87, 90-92; *Humana Inc. v. Actavis Elizabeth, LLC et al.*, 18-cv-3299, ECF Nos. 66-70, 72-73, 76-77, 80-82; *Marion Diagnostic Center, LLC at al. v. McKesson Corp. et al.*, 18-cv-4137, ECF Nos. 40-46, 49.

² The "Multi-Drug Complaints" include: the Direct Purchaser Class Action Complaint (Civil Action No. 18-2641), the End-Payer Class Action Complaint (Civil Action No. 18-2401), the Indirect Reseller Plaintiffs' Class Action Complaint (Civil Action No. 18-2533), Marion Diagnostic Center LLC's Class Action Complaint (Civil Action No. 18-4137), the Kroger Complaint (Civil Action No. 18-284), and the Humana Complaint (Civil Action No. 18-3299).

³ Defendants Emcure Pharmaceuticals Ltd. and Satish Mehta, who only recently were served with the Plaintiff States' Consolidated Amended Complaint and have not yet been served with the Marion Diagnostic complaint, did not join in the Dismissal Motions.

if no motions to dismiss are filed.⁴ Motions to dismiss the state law claims in any Group 1 complaints shall be limited to those claims added by amendment under paragraph 1 of this Order. Defendants expressly reserve the right to seek dismissal of the state law claims on any ground, including (but not limited to) that leave to amend should not be granted because Plaintiffs delayed in asserting new claims.

III. SCHEDULE FOR MOTIONS TO DISMISS PLAINTIFF STATES' CONSOLIDATED AMENDED COMPLAINT

4. With respect to the state law claims alleged in Count 19 of Plaintiff States' Consolidated Amended Complaint (Civil Action No. 17-3768), briefing on any motions to dismiss shall proceed as follows:

a. Defendants may jointly file a motion to dismiss (the "Joint Motion") the state law claims alleged in Count 19 of Plaintiff States' Consolidated Amended Complaint on or before **May 31, 2019**. Defendants' memorandum of law in support of their Joint Motion shall be limited to 40 pages.⁵

b. Each Defendant may file a motion addressing distinct reasons for dismissal (the "Individual Motion") of the state law claims alleged in Count 19 of Plaintiff States' Consolidated Amended Complaint. Defendants electing to file Individual Motions shall make a good faith effort to limit repetition of any arguments, background, or legal standards contained in the Joint Motion to the extent practicable. The Individual Motions may be filed on or before **May 31, 2019**. The memorandum of law in support of a Defendant's Individual Motion shall be limited to 11 pages.

⁴ No answers to these complaints shall be due until further proposal of the parties and order of the Court.

⁵ The page limits are exclusive of any caption, table of contents, table of authorities, signature pages, exhibits, and appended charts.

c. Plaintiff States' opposition to Defendants' Joint and Individual Motions shall be filed on or before **July 26, 2019**. Plaintiff States' memorandum of law in opposition to Defendants' Joint Motion shall be limited to 40 pages, and Plaintiff States' memorandum of law in opposition to any Defendant's Individual Motion shall be limited to 11 pages. Additionally, an individual state may file a separate memorandum of law in opposition limited to 5 pages to address that specific state's state law.

d. Defendants' reply to Plaintiff States' opposition(s) shall be filed on or before **September 6, 2019**. Defendants' reply memorandum of law in further support of their Joint Motion shall be limited to 25 pages, reply memoranda of law addressing any separate state oppositions shall be limited to 5 pages each, and any individual Defendant's reply memorandum of law in further support of its Individual Motion shall be limited to 6 pages.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.