

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

<hr/>	:	<b>MDL NO. 2342</b>
<b>IN RE: ZOLOFT (SERTRALINE</b>	:	<b>12-MD-2342</b>
<b>HYDROCHLORIDE) PRODUCTS</b>	:	
<b>LIABILITY LITIGATION</b>	:	
<hr/>	:	<b>HON. CYNTHIA M. RUFÉ</b>
	:	
<b>THIS DOCUMENT APPLIES TO:</b>	:	
<b>ALL ACTIONS</b>	:	
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**PRETRIAL ORDER NO. 11**

**AND NOW**, this 17th day of October 2012, the Court hereby enters the following Case Management Order to govern further proceedings in this litigation.

1. **APPLICABILITY OF ORDER.** Consistent with this Court’s Pretrial Order No. 1, dated May 4, 2012 (“PTO 1”), this Order and, unless otherwise specified, any subsequent pretrial or case management order issued in this MDL, shall govern the practice and procedure in those actions transferred to this Court by the Judicial Panel on Multidistrict Litigation (“JPML”) pursuant to its order of April 17, 2012, all related actions originally filed in this Court or transferred or removed to this Court, and any “tag-along” actions transferred to this Court by the JPML pursuant to Rules 7.1 and 7.2 of the Rules of Procedure of the Panel, after the filing of the final transfer order by the Clerk of the Court. Henceforth, these cases, which have been consolidated by the Court pursuant to PTO 1, will be referred to as the “MDL proceedings.” The provisions of this Order, and any subsequent pretrial order or case management order issued in the MDL proceedings, shall supersede any inconsistent provisions of the Court’s Local Rules. The consolidation of these cases, including certain of these cases that have been or may be directly filed into this MDL, does not constitute a waiver of any party’s rights under Lexecon v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26 (1998).

2. **APPLICATION TO ALL PARTIES AND COUNSEL.** This Order and all subsequent pretrial or case management orders shall be binding on all parties and their counsel in all cases currently pending, or subsequently transferred to, removed to, or pending in the MDL proceedings and shall govern each case in the MDL proceedings unless the order explicitly states that it relates only to specific cases.

3. **TRANSFEROR CASE MANAGEMENT ORDERS SUPERSEDED.** Any order entered in a transferor court or by this Court in any action consolidated in this MDL proceeding before the action became part of the MDL proceeding is vacated to the extent it relates to scheduling or discovery, and scheduling and discovery shall be governed by this and subsequent orders entered in this proceeding. This provision is not intended to affect PTO 1.

4. **COORDINATION WITH STATE COURT PROCEEDINGS.** In the interests of efficiency and conservation of resources, the parties will endeavor to coordinate discovery and other appropriate pretrial proceedings with any related state court litigations to the greatest extent possible. Defendants' Liaison Counsel shall maintain a list of all state court actions and all presiding state court judges ("the state court case list") and provide a copy of the current state court case list to the Court, to Plaintiffs' Co-Lead and Liaison Counsel, and to the Multi-District Coordinator at each MDL status conference. The parties will confer and submit more detailed provisions in joint proposed discovery plans, but agree that, all attorneys will seek to coordinate discovery activities and avoid unnecessary duplication and inconsistency by, at a minimum: (1) conferring with state court attorneys in an effort to submit consistent proposed protective orders and discovery plans and protocols, including as to electronic discovery, the form of production, and the number and scope of custodial searches; (2) providing access to a common document

repository for discovery from common defendants to state court attorneys who agree to be bound by the protective orders entered by this Court and pay any assessments approved by this Court; (3) Defendants will cross-notice depositions of defense witnesses at least fifteen (15) days prior to the depositions in order to provide for participation of counsel in state court actions; (4) using their best efforts so that no witness will have to give more than a single deposition;<sup>1</sup> (5) timely communicating to Plaintiffs' State/Federal Liaison Counsel or Defendants' Liaison Counsel relevant developments in, and opportunities for coordinating with, any related state court proceedings; and (6) keeping the Court informed of such activities through regular joint reports by Plaintiffs' State/Federal Liaison Counsel and Defendants' Liaison Counsel. The parties will also confer and submit proposals as to appropriate coordination of expert depositions and hearings.

**5. DIRECT FILING; NO DETERMINATION REGARDING JURISDICTION OR VENUE.** In order to eliminate delays associated with transfer to this Court of cases filed in or removed to other federal district courts, any plaintiff whose case would be subject to transfer to the MDL proceedings may file his or her case directly in the Eastern District of Pennsylvania, as specified below:

(a) Any complaint that is directly filed in the MDL proceedings must be a "Single-Plaintiff Complaint." A "Single-Plaintiff Complaint" is a complaint filed: (1) by an individual plaintiff; (2) by a plaintiff and family member plaintiffs; or (3) on behalf of the estate of a deceased individual, together with any family members and/or beneficiaries of such estate.

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<sup>1</sup> Lead Counsel have reported to the Court that some exceptions to this guideline may be needed for witnesses who are deposed early in the litigation pursuant to Federal Rules of Civil Procedure 30(b)(6) and that the parties have agreed that such depositions will be limited to the topics identified pursuant to Rule 30(b)(6).

“Multi-Plaintiff” complaints, or complaints joining two or more plaintiffs other than as expressly provided above, may not be directly filed into the MDL proceedings without court approval.

(b) Each complaint filed directly in the MDL proceedings must comply with the Federal Rules of Civil Procedure and allege the current state of residence of the plaintiff(s).

(c) Each complaint filed directly in the MDL proceedings also should, to the extent possible at the time of filing,<sup>2</sup> include allegations identifying: (1) the specific defendant(s) being sued in the case; (2) for each defendant, the specific product(s) the plaintiff is alleged to have ingested and on which plaintiff(s) base their claims against each defendant; (3) the date the minor plaintiff or decedent was born; and (4) if applicable, the date when the decedent died.

**(d) Motions to Transfer:**

(i) No reference in this Order to actions filed originally or directly in the United States District Court for the Eastern District of Pennsylvania shall constitute a waiver of any defendant’s contention that jurisdiction or venue is improper or that the action should be dismissed or transferred or any plaintiff’s contention that jurisdiction or venue is proper.

(ii) Defendants will not challenge the venue of any action filed directly in the MDL proceedings in the Eastern District of Pennsylvania pursuant to each of the provisions set forth above for purposes of pretrial proceedings, without prejudice to their right to seek transfer pursuant to 28 U.S.C. §§ 1404 and 1406 for trial.

(iii) Should the parties agree both that a case should be transferred and on the district to which it should be transferred, the parties will jointly advise the Court of the district to

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<sup>2</sup> Nothing in this paragraph is intended to preclude a plaintiff from moving to amend her or his complaint, pursuant to Federal Rule of Civil Procedure 15, as additional facts become known or to preclude a plaintiff faced with a potential statute of limitations bar from filing suit based on available information.

which the case should be transferred at the appropriate time. Should the parties disagree as to the district to which a case should be transferred, nothing in this Order precludes any party from filing a motion to transfer pursuant to 28 U.S.C. § 1404(a) or § 1406 at the conclusion of pretrial proceedings.

6. **STATUS CONFERENCES.** Status Conferences will be scheduled by the Court. To aid the Court and the parties in preparing for future conferences, Lead Counsel for the parties shall confer before each status conference and attempt to agree upon a proposed agenda for the conference. Lead Counsel shall submit a joint proposed agenda no later than two weeks before each conference. Any requests to participate in a conference by telephone or video conference must be submitted no later than one week before the conference; counsel are advised that the ability to accommodate such requests is limited.

7. **MOTION HEARINGS.** To be heard at a regularly-scheduled status conference, a non-dispositive motion<sup>3</sup> must be submitted or filed and served at least 21 days before that status conference. Any such motion filed and served less than 21 days before a status conference shall not be heard at the upcoming status conference, absent order of the Court. Nothing in this paragraph is intended to preclude any party from raising discovery issues not yet the subject of a motion by placing those issues on the agenda for a status conference and discussing such issues with the Court during a regularly scheduled status conference. Briefing schedules for dispositive motions shall be established separately.

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<sup>3</sup> For purposes of this order, motions to exclude testimony of experts pursuant to Federal Rule of Evidence 702, as interpreted by the Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) (“Daubert motions”), are excluded from this provision.

8. **ACTIONS ON BEHALF OF ALL PLAINTIFFS.** No pleadings or other papers concerning liability shall be filed or discovery conducted on behalf of all plaintiffs except as prepared on behalf of the PSC and signed by Lead Counsel.

9. **AMENDMENT; EXCEPTIONS.** This Order may be amended by the Court on its own motion, and any party may apply at any time to this Court for a modification or exception to this Order.

It is so **ORDERED.**

**BY THE COURT:**

**/s/ Cynthia M. Rufe**

**CYNTHIA M. RUFÉ, J.**