

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

In Re: TAXOTERE (DOCETAXEL)
PRODUCTS LIABILITY LITIGATION

MDL NO. 2740

SECTION "H"(5)

THIS DOCUMENT RELATES TO
ALL CASES

PRETRIAL ORDER NO. 85
(PROTOCOL FOR PTO 71A AND PRIVILEGE LOG DEFICIENCIES OF NON-BELLWETHER
PLAINTIFFS BEFORE THE MAGISTRATE JUDGE)

This Order governs the protocol for determination of deficiencies by the Magistrate Judge on issues related to non-bellwether Plaintiffs' obligations under Pretrial Order No. 71A (rec. doc. 1531) ("PTO 71A") and the Federal Rules of Civil Procedure. Pretrial Order 71A, and the Federal Rules of Civil Procedure govern ESI responsibilities of the Plaintiffs.

1. This Order only applies to PTO 71A and privilege log deficiencies alleged by the Defendants and is separate and apart from the Show Cause Order Process set forth in PTO 22A (Rec. Doc. 3493).¹ Defendants must follow the below enumerated steps before seeking determination of said deficiencies by the Magistrate Judge.

2. In such instance where thirty (30) days have passed since a Plaintiff's deadline to comply with PTO 71A, or to provide a privilege log in connection with PTO 71A

¹ Under PTO No. 22A (rec. doc. 3493), defendants may notice to the District Court for dismissal any Plaintiff who fails to submit a PFS, fails to verify her PFS, fails to submit a substantially complete PFS, fails to respond to a deficiency notice after 30 days, or fails to provide requested authorizations, which is governed by Pretrial Order No. 22A (Jul. 24, 2018). (Rec. doc. 3493). Defendants may notice to the District Court for dismissal any Plaintiff who fails to comply with the requirements of PTO 71A, Paragraph 6—namely, by failing to provide a written statement signed by the Plaintiff and her attorney, along with the responsive documents—within the time periods set forth therein, which is likewise governed by Pretrial Order No. 22A. Defendants may notice to the District Court for Dismissal any Plaintiff who fails to take the steps on product identification required by CMO No. 12A. (Rec. Doc. 1506).

document production, and the Defendant(s) believe Plaintiff has not complied with PTO 71A, Defendants may serve a Notice of Deficiency Determination upon Plaintiffs' Liaison Counsel. The Notice of Deficiency Determination shall be in spreadsheet format and shall include columns for the last name of the Plaintiff, the first name of the Plaintiff, the case number, the date the complaint was filed, the name and contact information of the Plaintiff's counsel, the Plaintiff's MDL Centrality number, and a detailed description of the alleged discovery deficiency. Plaintiffs' Liaison Counsel shall inform individual counsel of any Plaintiff listed on the Notice of Deficiency Determination.

3. Within thirty (30) days of being identified on a Notice of Deficiency Determination, each Plaintiff must either:

a. cure the deficiency described in the Notice of Deficiency Determination and serve Defendants with documents evidencing the cure by uploading such evidence to the applicable document-type field on MDL Centrality; or

b. respond by uploading a written response to the applicable document-type field on MDL Centrality, describing the reason why Plaintiff is unable to comply with the discovery, believes there is no deficiency, or ought not be required to do so.

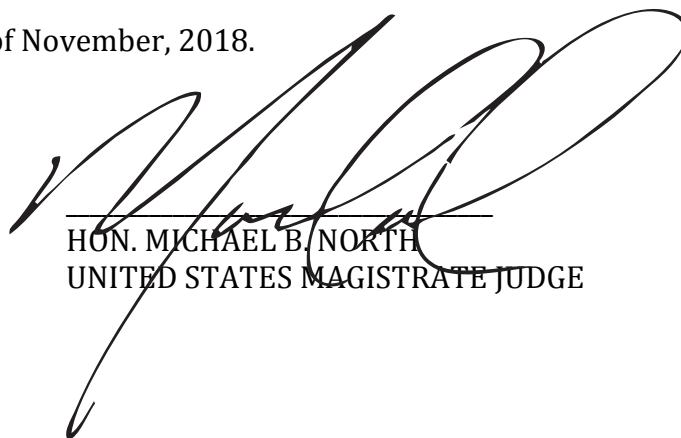
At the same time, each Plaintiff shall confirm compliance by email to the counsel identified in attached Exhibit A and to Plaintiffs' Liaison Counsel at Taxotere@bkc-law.com. During this thirty (30) day period, the Defendants and individual Plaintiff's counsel shall make a good faith, documented effort to continue to meet and confer regarding the alleged deficiency.

4. Any Plaintiff who thereafter remains deficient may be listed by the Defendants by employing the rules set forth by Magistrate Judge North for submissions of

issues to him for a Discovery Conference; in other words, by including the issues in the same spreadsheet format as the Notice of Deficiency Determination as an attachment to the Defendants' letter brief for the Discovery Conference, the date of which will be noticed via ECF and MDL Centrality. Plaintiffs will appear on a Deficiency Determination list attached to the Defendants' submission. The call docket will be taken up approximately every sixty (60) days on a schedule to be set by Magistrate Judge North. At the call docket hearing, each party will have the opportunity to address the Court, in person or via telephone, or through Liaison Counsel or its designee, regarding the matter. There shall be no briefing by any party. At least twenty-four (24) hours in advance of the call docket hearing, Liaison Counsel or their designees shall advise the Court of any cases that may be removed from the list by agreement.

5. In the event a Plaintiff fails to comply with a ruling issued by Magistrate Judge North under this Order, Defendants may move the Magistrate Judge or District Judge, seeking any remedies or relief deemed appropriate under the Federal Rules of Civil Procedure for failure to comply with Magistrate Judge North's ruling.

New Orleans, Louisiana this 13th day of November, 2018.



HON. MICHAEL B. NORTH
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

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| <p>Julie A. Callsen Brandon D. Cox TUCKER ELLIS LLP 950 Main Avenue, Suite 1100 Cleveland, OH 44113-7213 Telephone: 216-592-5000 Facsimile: 216-592-5000 noproductid@tuckerellis.com</p> | <p>Counsel for Defendant Accord Healthcare Inc.</p> |
| <p>R. Clifton Merrell Evan Holden GREENBERG TRAUIG, LLP Terminus 200 3333 Piedmont Road NE, Suite 2500 Atlanta, GA 30305 Telephone: 678-553-2100 Facsimile: 678-553-2100 Sandoz-Taxotere-ProdID@gtlaw.com insognan@gtlaw.com higginsa@gtlaw.com</p> | <p>Counsel for Defendant Sandoz, Inc.</p> |
| <p>Mara Cusker Gonzalez Sara Roitman DECHERT LLP Three Bryant Park 1095 Avenue of the Americas New York, NY 10036 Telephone: 212-698-3500 Facsimile: 212-698-3599 DocetaxelProductID@dechert.com</p> | <p>Counsel for Defendants Hospira, Inc., Hospira Worldwide, LLC, formerly doing business as Hospira Worldwide, Inc. and Pfizer Inc.</p> |
| <p>Chris Kaufman SHOOK, HARDY & BACON L.L.P. 2555 Grand Boulevard Kansas City, MO 64108 Telephone: 816-474-6440 Facsimile: 816-421-5547 noproductid@shb.com</p> | <p>Counsel for Defendants Sanofi-Aventis U.S. LLC and Sanofi U.S. Services Inc.</p> |

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| <p>Erin M. Bosman Julie Y. Park MORRISON & FOERSTER LLP 12531 High Bluff Dr. San Diego, CA 92130-2040 Telephone: 858-720-5100 Facsimile: 858-720-5125 noproductid@mofocom</p> | <p>Counsel for Defendant McKesson Corporation d/b/a McKesson Packaging Service</p> |
| <p>Geoffrey M. Coan Kathleen E. Kelly HINSHAW & CULBERTSON LLP 53 State Street, 27th Floor Boston, MA 02109 Telephone: 617-213-7000 Facsimile: 617-213-7001 docenoprodid@hinshawlaw.com</p> | <p>Counsel for Defendant Sun Pharmaceutical Industries, Inc. f/k/a Caraco Pharmaceutical Laboratories, Ltd.</p> |
| <p>Michael J. Suffern Kimberly L. Beck ULMER & BERNE LLP 600 Vine Street, Suite 2800 Cincinnati, OH 45202 Telephone: 513-698-5064 Facsimile: 513-698-5065 cmo12@ulmer.com</p> | <p>Counsel for Defendant Actavis Pharma, Inc.</p> |