

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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**IN RE: INVOKANA (CANAGLIFLOZIN)  
PRODUCTS LIABILITY LITIGATION**

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: **MDL NO. 2750**  
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: Case No. 3:16-md-2750  
:  
: **JUDGE BRIAN R. MARTINOTTI**  
: **JUDGE LOIS H. GOODMAN**  
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**THIS DOCUMENT RELATES TO: ALL CASES**

**CASE MANAGEMENT ORDER #23**

These matters, having been transferred to this Court by order of the Judicial Panel on Multidistrict Litigation pursuant to its order of December 7, 2016, merit special attention as complex litigation, the Court having entered an Initial Case Management Order [ECF No. 8] on December 21, 2016, setting forth the Court's parameters and expectations of counsel during the course of this litigation and having scheduled this initial case management conference, the Court having held a case management conference on October 12, 2017, with the Honorable Lois H. Goodman, U.S.M.J., also presiding, for good cause shown and for the reasons set forth on the record, the Court enters the following Order:

**I. STATUS OF LITIGATION**

A. As of October 5, 2017, 865 cases have been filed in this District with 728 complaints being served.

**II. ORDERS ENTERED SINCE CASE MANAGEMENT ORDER #22**

A. Severance Order [ECF No. 230] regarding *Aguirre*, et al., 17-5940, entered September 7, 2017

### III. CASE MANAGEMENT

- A. Court Appointment – It is the Court’s continued intention to appoint a special master. Counsel shall continue to meet and confer regarding this appointment and shall report as to the status of same at the next case management conference.
- B. Mitsubishi Defendants – To date, the Mitsubishi Defendants have not been dismissed from the following member cases, and Plaintiffs are again reminded to dismiss the Mitsubishi Defendants pursuant to Case Management Order #7:
  1. *Lessard*, 16-9381 (Michael Hingle & Assocs.)
  2. *Sanford*, 17-1288 (Latham, Wagner, Steele & Lehman)
- C. Plaintiff and Defense Fact Sheets and Implementing Order – Per CMO #18, entered June 16, 2017:
  1. For cases assigned to MDL as of May 3, 2017: Plaintiff Fact Sheets were due July 7, 2017. Plaintiff Steering Committee is instructed to remind Plaintiffs’ counsel to supply its Plaintiff Fact Sheets to the defense.
  2. For cases assigned to the MDL after May 3, 2017: Plaintiff Fact Sheets are due within forty-five days of Defendants’ Notice of Answer and Affirmative Defenses pursuant to CMO #14.
- D. Counsel shall meet and confer regarding the status of the McKesson Defendants in the cases listed below and, before the next CMO, shall submit a stipulation extending Defendants’ time to answer.
  1. *Aguirre*, 17-5940 (Milstein, Adelman, Jackson, Fairchild & Wade LLP)
  2. *Ritenour*, 17-2276 (Lopez McHugh LLP & Excolo Law, PLLC)
  3. *Roberge*, 17-1619 (Milstein, Adelman, Jackson, Fairchild & Wade LLP)

4. *Robinson-Adams*, 17-804 (Milstein, Adelman, Jackson, Fairchild & Wade LLP)

5. *Williams*, 17-0805 (Milstein, Adelman, Jackson, Fairchild & Wade LLP)

E. The Court maintains its expectation to have the first trial scheduled for September 2018. The parties are ordered to use this proposed trial date when scheduling discovery and pre-trial orders.

#### **IV. DISCOVERY AND PRE-TRIAL**

A. Judge Goodman shall preside over all discovery matters. Pursuant to Local Civil Rule 5.3, all motions to seal shall be filed as omnibus motions.

##### **B. Status of Discovery**

###### **1. Company witnesses and depositions –**

a. PSC notification to Plaintiffs' counsel – Plaintiffs' liaison counsel shall post on the docket a notification of all depositions within the fourteen (14) days prior to the scheduled date.

b. Production of personnel files for company witnesses in advance of depositions – Parties shall submit a joint letter by October 20, 2017, of not more than 20 pages, addressing production of personnel files for the seven (7) individuals presently scheduled for depositions.

c. Parties shall continue to meet and confer regarding the certification of full custodial file productions in advance of depositions of company witnesses.

2. Production timeline – The parties previously agreed upon a timeline for waves of custodial production to be produced on a rolling basis by November 30, 2017.

C. Bellwether discovery: Counsel shall confer as to a scheduling order for bellwether cases, reach agreement regarding any changes to the current bellwether order (CMO Nos. 10 & 20), and submit a separate proposed form of order.

## V. GENERAL/SCHEDULING

A. The next case management conference is scheduled for November 16, 2017, at 11:00 a.m. Lead counsel and liaison counsel shall appear for the case management conference at 10:00 a.m.

1. Telephonic Appearances – Counsel shall provide the court with a call-in number which the Court will activate prior to the conference. Counsel shall call in 10 minutes prior to the conference and keep their phone on mute.

2. Submissions – Counsel is required to submit via email a joint agenda five (5) days prior to the next scheduled conference, which shall include an up to date list of Invokana cases pending in this Court. If there are any disagreements as to the agenda, counsel shall set forth each party's position

B. Any counsel filing an appearance in this MDL shall forward his or her contact information to liaison counsel.

- C. Counsel may contact *ex parte*, for the purpose of settlement discussions only, Judge Martinotti via email at [brian\\_martinotti@njd.uscourts.gov](mailto:brian_martinotti@njd.uscourts.gov) or Judge Goodman via [lhg\\_orders@njd.uscourts.gov](mailto:lhg_orders@njd.uscourts.gov).
- D. Counsel shall abide by Judge Martinotti's and Judge Goodman's submission and communication procedures, respectively, unless and until the Court so orders superseding rules for this litigation.

Dated: October 12, 2017

*/s/Brian R. Martinotti*  
**BRIAN R. MARTINOTTI**  
**UNITED STATES DISTRICT JUDGE**