

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

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

:
: **MDL NO. 2750**
:
: Case No. 3:16-md-2750
:
: **JUDGE BRIAN R. MARTINOTTI**
: **JUDGE LOIS H. GOODMAN**
:

THIS DOCUMENT RELATES TO: ALL CASES

CASE MANAGEMENT ORDER #19

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 July 19, 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 July 12, 2017, 632 cases have been filed in this District with 491 complaints being served.
- B. Cases removed to the Southern District of California have been tagged for MDL transfer pending a July 27, 2017 JPML hearing.
- C. Cases filed in New Jersey state court are pending in Essex County subject to a motion to transfer venue.

II. ORDERS ENTERED SINCE CASE MANAGEMENT ORDER #15

- A. Case Management Order #16 [ECF No. 172] regarding Electronically Stored Information, entered June 7, 2017;
- B. Case Management Order #17 [ECF No. 173], Protective Order, entered June 7, 2017; and
- C. Case Management Order #18 [ECF No. 198] regarding Plaintiff and Defense Fact Sheets and Implementing Order, entered June 16, 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. Science Day was held today in accordance with CMO #5 [ECF No. 57].
- C. 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. Maddox, 16-9382 (Herman, Herman & Katz, LLC)
 - 3. Robinson-Adams, 17-804 (Milstein Adelman Jackson Fairchild & Wade, LLP)
 - 4. Williams, 17-1288 (Latham, Wagner, Steele & Lehman)
 - 5. Roberge, 17-1619 (Milstein Adelman Jackson Fairchild & Wade, LLP)
 - 6. Ritenour, 17-2276 (Lopez McHugh, LLP)
- D. At the last case management conference, counsel were instructed to meet and

confer regarding the issues/orders listed below and have submitted the following status updates:

1. Production timeline – The parties have agreed upon a timeline for waves of custodial production to be produced on a rolling basis by November 30, 2017. Counsel shall continue to meet and confer regarding supplementing previously provided non-custodial production, which will be produced on a separate timeline. In the interim, Plaintiff shall forward a list of prioritized non-custodial files for production.
2. Proposed Case Management Orders governing *ex parte* contact with current and former company employees - The parties decided not to submit a case management order regarding *ex parte* communications with current and former employees and instead will rely on compliance with the applicable ethical rules.
3. Plaintiff and Defense Fact Sheets and Implementing Order – Per CMO #18, entered June 16, 2017:
 - a. For cases assigned to MDL as of May 3, 2017: Plaintiff Fact Sheets were due July 7, 2017, and Defendants only received 231 of the approximately 335 applicable cases. Plaintiff Steering Committee is instructed to remind Plaintiffs’ counsel to supply its Plaintiff Fact Sheets to the defense.
 - b. 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.

- E. Counsel shall meet and confer regarding the filing of Defendants' Corporate Disclosure Statement and file a proposed order with the Court.
- F. 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.
- G. Any counsel filing an appearance in this MDL shall forward his or her contact information to liaison counsel.
- H. 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.

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. *See* Section III above.
 - 2. Depositions – Counsel shall meet and confer tomorrow, July 20, 2017, regarding 30(b)(6) depositions and shall advise the Court within seven days if they cannot come to an agreement.

V. GENERAL/SCHEDULING

- A. The next case management conference is scheduled for September 7, 2017 at 11:00 a.m. Lead counsel and liaison counsel shall appear for the case management conference at 10:00 a.m.
- B. 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.

- C. Counsel may contact *ex parte*, for the purpose of settlement discussions only, Judge Martinotti via email at brian_martinotti@njd.uscourts.gov or Judge Goodman via 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: July 19, 2017

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