

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**IN RE: EpiPen (Epinephrine
Injection, USP) Marketing,
Sales Practices and Antitrust
Litigation**

MDL No: 2785

Case No. 17-md-2785-DDC-TJJ

(This Document Relates to All Cases),

**PRELIMINARY PRACTICE AND PROCEDURE ORDER
UPON TRANSFER UNDER 28 U.S.C. § 1407(a)**

It appearing that civil actions transferred to this court and listed on Schedule A merit special attention as complex litigation, it is hereby ORDERED that:

1. Until the initial scheduling conference and entry of a comprehensive order governing all further proceedings in this case, the provisions of this Order shall govern the practice and procedure in those actions that are transferred to this court by the Judicial Panel on Multidistrict Litigation under its order dated August 3, 2017 and filed in this court on August 4, 2017. Those cases are listed on the Schedule A attached to this Order. Also, this Order will apply to any tag-a-long actions filed in, removed to, or transferred to this court.
2. The civil actions listed on Schedule A are consolidated for pretrial purposes. This consolidation does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which that party has not been named, served, or added in accordance with the Federal Rules of Civil Procedure.

3. No later than **August 25, 2017**, each party must update its corporate disclosure statements as Fed. R. Civ. P. 7.1 requires.
4. The court will address pretrial and discovery proceedings in this case at an initial scheduling conference on **Thursday, September 7, 2017, at 1:00 p.m.** in the Special Proceedings Courtroom, Room #655, Robert J. Dole United States Courthouse, 500 State Avenue, Kansas City, Kansas. Counsel must familiarize themselves with the *Manual for Complex Litigation Fourth (Fed. Judicial Center 2004)* (“MCL 4th”) and be prepared to suggest procedures that will secure the just, speedy, and inexpensive determination of this proceeding. To the extent they apply, the items listed in MCL 4th Sections 11.21, 11.211, 11.212, 11.213, and 11.214 shall constitute a tentative agenda for the conference. Counsel must confer and seek consensus about items on the agenda, including a proposed discovery plan, amendment of pleadings, and consideration of procedures for resolving class action allegations and motions. The parties must submit any proposals for agenda items or proposed case management orders by **August 25, 2017** to ksd_crabtree_chambers@ksd.uscourts.gov and ksd_james_chambers@ksd.uscourts.gov.
5. At the initial scheduling conference, the court will discuss an organizational structure for counsel. Any counsel interested in seeking a leadership role in the organizational structure must appear at the initial scheduling conference and also must submit, **no later than August 25, 2017**, a proposal by email at ksd_crabtree_chambers@ksd.uscourts.gov and ksd_james_chambers@ksd.uscourts.gov. These proposals must describe counsel’s qualifications for selection, including the factors set out in MCL 4th Section 10.224,

- and any case specific issues that might inform the appropriate structure. (The parties must **NOT** file submissions proposing organizational structures but instead must email them to the chambers' email accounts listed above, with copies provided to other counsel.) Firm resumes are welcome and joint submissions are permitted. The page limitations set forth in D. Kan. Rule 7.1(e) do not apply to these submissions.
6. As part of the organizational structure, the court will appoint liaison counsel who essentially will handle administrative matters. For example, liaison counsel will have authority to receive orders and notices from the court on behalf of all parties within their liaison groups. To the extent such orders and notices are not available electronically to all parties, liaison counsel then shall prepare and transmit copies of them to the parties in their liaison groups. Liaison counsel shall maintain complete files with copies of all documents served upon them and make such files available to parties within their liaison groups upon request. Also, Rule 4.1(d) of the Panel's Rules of Procedure authorize liaison counsel to receive orders and notices from the Judicial Panel on Multidistrict Litigation on behalf of all parties within their liaison groups and thus they must prepare and transmit copies of such orders and notices to the parties in their liaison groups. Expenses incurred performing the services of liaison counsel will be shared equally by all members of the liaison group in a manner agreeable to the parties or, failing such agreement, as determined by the court. The court welcomes any suggestions for appointment of liaison counsel.
 7. Plaintiffs and defendants must submit to the chambers of Judge Daniel D. Crabtree and the chambers of Magistrate Judge Teresa J. James, by email at ksd_crabtree_chambers@ksd.uscourts.gov and

ksd_james_chambers@ksd.uscourts.gov **no later than August 30, 2017**, a brief written statement which states their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. These statements will not be filed with the Clerk, will not be binding, will not waive claims or defenses, and may not be offered in evidence against a party at later proceedings. To the extent known, the statements must list all pending motions and all related cases pending in state or federal court, together with their current status, including discovery taken to date. The court limits the parties to one submission *for all plaintiffs* and one submission *for all defendants*.

8. Each party represented by counsel must appear at the initial scheduling conference through an attorney who will bear primary responsibility for the party's interest in this litigation. Attendance at the conference will not waive objections to jurisdiction, venue, or service.
9. At the initial scheduling conference, the parties must submit a list of attorneys and their addresses, email addresses, telephone numbers, and facsimile numbers. These submissions must list only one attorney for each party separately represented.
10. The defendants are granted an extension of time for responding by motion or answer to the Complaint until a date to be set by the court. Pending the initial scheduling conference and future orders by this court, all outstanding discovery proceedings are stayed, no further discovery shall be initiated, and the time requirements to perform any acts or file any papers due under Rule 26 through 37 of the Federal Rules of Civil Procedure are tolled.

11. The Clerk of the Court will maintain a master docket case file under the style “**In re: EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices and Antitrust Litigation**” District of Kansas case number **17-md-2785** and the Multidistrict Litigation case number **MDL 2785**. When the filer intends a pleading (or other filing) to apply to all actions, the filer must disclose this intention in the caption by using these words: “**This Document Relates to All Cases.**” When the filer intends for a pleading (or other filing) to apply to fewer than all cases, the filer must identify this court’s document number for each individual case to which the document applies immediately after the words “**This Document Relates to . . .**”.
12. The parties must file any document submitted in any of these actions with the Clerk of this Court and not with the transferor district. The District Court of Kansas is an electronic court and the parties must submit all filings electronically unless otherwise ordered by the court. Counsel are required to register for electronic filing through their individual PACER account. The court directs counsel to its website (www.ksd.uscourts.gov) for more information and instructions for registering and electronic filing. For any questions about electronic filing and CM/ECF, please contact **Marla Gonzales at (913) 735-2208** or marla_gonzales@ksd.uscourts.gov.
13. The court directs the parties to make all entries on the master docket sheet (17-md-2785) with a notation listing the cases to which the document applies; except that a document closing a case also will be entered on the individual docket sheet for the case to which it applies. All documents must be filed in the master file. Unless specifically ordered otherwise, no chambers copies may be provided.

14. Any document filed in any of these actions which is substantially identical to any other document filed in another of these actions shall be sufficient if it incorporates by reference the document to which it is substantially identical. When counsel for more than one party plan to file substantially identical documents, they must submit such documents jointly and file only one document on behalf of all parties so joined.
15. Any order including protective orders previously entered by this court or any transferor district court will remain in full force and effect unless modified by this court on motion.
16. Counsel must familiarize themselves with this court's Local Rules and Guidelines. Except as provided to the contrary in this Order, the parties must comply with all such rules and bear in mind the guidelines. The court directs the parties' attention especially to the requirements of D. Kan. Rules 5.1 and 7.1 governing the form and procedures for filing pleadings and motions, as well as the court's ESI Guidelines and Deposition Guidelines. Moreover, this court, like the Kansas Supreme Court, has formally adopted the Kansas Bar Association's *Pillars of Professionalism* (2012) as aspirational goals to guide lawyers in their pursuit of civility, professionalism, and service to the public. Counsel are expected to familiarize themselves with the *Pillars of Professionalism* and to conduct themselves accordingly when litigating cases in this court. The court's Local Rules, Guidelines, and the *Pillars of Professionalism* are available on this court's website, <http://www.ksd.uscourts.gov>.
17. When an action that properly belongs as part of *In re: EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices and Antitrust Litigation* is filed in the District of

- Kansas or removed or transferred here from another court, the Clerk of the Court shall:
- a. File a copy of this Order in the separate file for such action;
 - b. Make an appropriate entry on the master docket sheet;
 - c. Mail to the attorneys for the plaintiff in the newly filed or transferred case a copy of this Order; and
 - d. Upon the first appearance of any new defendant, mail to the attorneys for the defendant in such newly filed or transferred cases a copy of this Order.
18. In the event a case is remanded from this court, the parties must furnish to the Clerk of the Court a stipulation or designation of the contents of the record and furnish all necessary copies of any pleadings filed so as to enable the Clerk of the Court where it is remanded to comply with the order of remand.
19. Each party must take reasonable steps to preserve documents and other records containing information potentially relevant to the subject matter of this litigation.
20. In accordance with Fed. R. Civ. P. 5(d), parties must not file discovery requests and responses with the Clerk or send them to chambers except when specifically ordered by the court in connection with a motion.
21. Unless otherwise ordered by this court, all substantive communications with the court must be in writing, with copies to opposing counsel. Counsel may direct inquiries about matters assigned to the Magistrate Judge to **Carol Kuhl**, Courtroom Deputy for Magistrate Judge James at (913)735-2265, or to the chambers email account, which is ksd_james_chambers@ksd.uscourts.gov. Counsel may direct inquiries to the court about scheduling and related matters to **Megan Garrett**, Courtroom Deputy for Judge

Daniel D. Crabtree at (785) 338-5345, or to the chambers email account, which is ksd_crabtree_chambers@ksd.uscourts.gov. The court does not permit communication with law clerks.

22. The court recognizes that cooperation among counsel is essential to resolving this litigation in an orderly and expeditious fashion. The communication of information among counsel shall not constitute a waiver of attorney-client privilege or the protection afforded attorney work product. Cooperative efforts contemplated in this Order shall not be used against any party in any fashion. Nothing contained in this provision shall limit the rights of any party or counsel to assert the attorney-client privilege or attorney work product doctrine.

IT IS SO ORDERED.

Dated this 8th day of August, 2017, at Topeka, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge