

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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<b>IN RE: ZOFRAN (ONDANSETRON)</b>	)	
<b>PRODUCTS LIABILITY LITIGATION</b>	)	<b>MDL No. 1:15-md-2657-FDS</b>
	)	
<b>This Document Relates to:</b>	)	
	)	
<b>All Cases</b>	)	
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**MDL Order No. 14**  
**May 18, 2016**

**ORDER CONCERNING MASTER PLEADINGS**

The following Order will govern the sequence and effect of master pleadings in this matter.

**1. Sequence of Master Complaints and Short Form Complaints**

- A. Plaintiffs shall file and serve their Master Complaint regarding brand-name Zofran (“Brand Master Complaint”) by May 31, 2016.
- B. Plaintiffs shall file and serve their Master Complaint regarding generic ondansetron (“Generic Ondansetron Master Complaint”) by May 31, 2016.
- C. Plaintiffs shall serve on any named defendants, but not file, their proposed Short Form Complaints regarding brand-name Zofran and generic ondansetron by May 31, 2016. Plaintiffs and defendants will confer on the form of the Short Form Complaints. Absent agreement, by June 10, 2016, the parties will submit their respective proposed Short Form Complaints for the Court’s determination.
- D. Within 30 days after the Court approves the form of the Short Form Complaints, each current plaintiff shall file a Short Form Complaint. Any plaintiff whose case is subsequently transferred to this MDL shall file a Short Form Complaint within 30 days of transfer. Any plaintiff who subsequently files a new case directly in this MDL shall do so by filing a Short Form Complaint.

**2. Sequence of Master Answers and Responses to Short Form Complaints**

- A. Each defendant named in and served with a Master Complaint shall file a Master Answer that responds to that Master Complaint. Each defendant shall file and serve its Master Answer(s) to Plaintiffs’ Master Complaint(s) by June 21, 2016.
- B. Within 30 days of the filing of a Short Form Complaint, a defendant may file any appropriate motion to dismiss. If a plaintiff has previously produced discovery, including a Product Identification Fact Sheet or a Plaintiff Fact Sheet, a defendant

may not cite the discovery as the basis for the Rule 12 motion to dismiss. The filing of a defendant's Master Answer(s) does not waive that defendant's right to file a Rule 12 motion to dismiss within 30 days of the filing of an individual Short Form Complaint in which the defendant is named. Rule 12 motions to dismiss may be filed on a consolidated basis, as appropriate.

- C. If a named defendant does not file a motion to dismiss within 30 days of the filing of a Short Form Complaint, its Master Answer shall be deemed its answer to the individual Short Form Complaint. Nothing in this Order shall be construed to limit a defendant's right to file motions for judgment on the pleadings under Fed. R. Civ. P. 12(c).
- D. Before filing any motion to dismiss, including any Rule 12 motions, with the Court, a defendant shall meet and confer with counsel for plaintiff(s), as required under Local Rule 7.1(a)(2), and shall include Plaintiffs' Co-Lead Counsel. Plaintiffs shall have up to 30 days to file an opposition to any motion to dismiss.

**3. Effect of Master Pleadings**

- A. The Master Complaints and Master Answers will have legal effect in a particular matter only when an individual plaintiff files a Short Form Complaint adopting by reference all or part of the applicable Master Complaint.
- B. Once an individual plaintiff files a Short Form Complaint, the Short Form Complaint, together with the applicable Master Complaint, will be legally operative and binding as to that plaintiff as if that plaintiff filed an individual complaint, or amended complaint if a complaint is already on file. To the extent that a named defendant does not file a Rule 12 motion to dismiss, the Master Answer(s) will be legally operative and binding as to individual plaintiffs who file Short Form Complaints.
- C. Nothing in this Order shall be construed to address the appropriate venue for any given plaintiff for purposes of substantive motions or trial under *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), or construed as a ruling on whether venue properly exists for a particular plaintiff.
- D. If a plaintiff's initial complaint or amended complaint names a defendant that is not named in the applicable Master Complaint and Short Form Complaint, the unnamed defendant shall no longer be deemed a party to that individual plaintiff's action.
- E. This procedure does not limit or alter the rights or obligations of either party, except as specified above.

**So Ordered.**

/s/ F. Dennis Saylor  
F. Dennis Saylor IV  
United States District Judge

Dated: May 18, 2016