

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
NORTHERN DIVISION  
(at Covington)

	)	
	)	MDL No. 2226
	)	(ALL CASES)
	)	
	)	
IN RE: DARVOCET, DARVON AND	)	
PROPOXYPHENE PRODUCTS	)	<b>CASE MANAGEMENT AND</b>
LIABILITY LITIGATION	)	<b>SCHEDULING ORDER NO. 3</b>
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**ORDER REGARDING MOTIONS TO DISMISS,  
MOTIONS FOR JUDGMENT ON THE PLEADINGS,  
RESPONSIVE PLEADINGS, DISMISSALS AND SERVICE**

Having reviewed the parties' stipulation tendered on December 21, 2011, it is hereby

**ORDERED** as follows:

1. The deadline for the plaintiffs to file responses in opposition to any motions to dismiss or motions for judgment on the pleadings that are currently due before January 17, 2012, shall be extended to and including January 17, 2012.
2. The deadline for defendants to file replies in support of any motions to dismiss or motions for judgment on the pleadings that are currently due before February 10, 2012, shall be extended to and including February 10, 2012.

3. With respect to motions to dismiss filed by Defendant Eli Lilly and Company (“Lilly”) and/or Xanodyne Pharmaceuticals, Inc. (“Xanodyne”) after December 20, 2011, Lilly and Xanodyne have agreed that the plaintiffs’ time to respond will be extended to 30 days after the Court first rules on any of the respective defendants’ motions to dismiss, and the defendants’ reply time will be calculated pursuant to the local rules (e.g., 14 days).

4. The following named defendants agree to accept and return a waiver of service of summons in accordance with the procedures outlined in Rule 4(d) of the Federal Rules of Civil Procedure, provided that such service is accomplished within the time limit set forth in Rule 4(m) of the Federal Rules of Civil Procedure. To expedite this process, defendants hereby identify the following individuals on their behalf who are designated to receive the Rule 4(d) request for waiver via certified mail:

a. Brenn Distribution, Inc. f/k/a Qualitest Pharmaceuticals, Inc.; Brenn Manufacturing, Inc. f/k/a Vintage Pharmaceuticals, Inc.; Propst Distribution, Inc. f/k/a Qualitest Pharmaceuticals, Inc.; Qualitest Pharmaceuticals, Inc.; and Vintage Pharmaceuticals, Inc.: William S. Propst, Sr., 301 Meridian Street, Suite 101, Huntsville, Alabama 35801.

b. Endo Pharmaceuticals Holdings Inc.; Endo Pharmaceuticals, Inc.; Generics Bidco I, LLC; Generics Bidco II, LLC; Generics International (US Parent), Inc.; Generics International (US), Inc.; and Vintage Pharmaceuticals, LLC: Margaret Richardson, Esq., 4940 Research Drive, Huntsville, Alabama 35805.

c. Teva Pharmaceuticals USA, Inc.: Teva Pharmaceuticals USA, Inc., c/o Jennifer L. Fuller-Ricciardi, 425 Privet Rd., Horsham, Pennsylvania 19044.

d. Covidien Inc.; Covidien plc; Mallinckrodt Inc.; Mallinckrodt LLC; and Mallinckrodt Holdings, LLC: Brian Pratt, Shook, Hardy & Bacon L.L.P., 2555 Grand Boulevard, Kansas City, Missouri 64108.

e. Mylan Pharmaceuticals Inc.; and Mylan Inc.: Clem C. Trischler, Esq. at Pietragallo Gordon Alfano Bosick & Raspanti, LLP, One Oxford Center, 38th Floor, Pittsburgh, Pennsylvania 15219.

f. Watson Pharmaceuticals (New Jersey), Inc.; and Watson Pharmaceuticals, Inc.: CT Corporate System, 818 West 7th Street, Los Angeles, California 90017.

g. Xanodyne Pharmaceuticals, Inc.: One Riverfront Place, Newport, Kentucky 41071-4563; Attention: Kevin Anderson, Esq.

h. Eli Lilly and Company: Robert Armitage, Lilly Corporate Center, Indianapolis, Indiana 46285.

5. The deadline for Generic Defendants to move, answer, or otherwise respond to Complaints that would otherwise be due for response on or after December 20, 2011, shall be extended to and including thirty days after the Court enters an Order ruling on the Generic Defendants' Motions to Dismiss [MDL Record No. 383]. The Generic Defendants include: Brenn Distribution Inc. f/k/a Qualitest Pharmaceuticals, Inc.; Brenn Manufacturing, Inc. f/k/a Vintage Pharmaceuticals, Inc.; Propst Distribution, Inc. f/k/a Qualitest Pharmaceuticals, Inc.; Qualitest Pharmaceuticals, Inc.; Vintage Pharmaceuticals, Inc.; Endo Pharmaceuticals Holdings, Inc.; Endo Pharmaceuticals Inc.; Generics Bidco I, LLC; Generics Bidco II, LLC; Generics International (US Parent), Inc.; Generics International (US), Inc.; Teva Pharmaceuticals, LLC;

Teva Biopharmaceuticals USA, Inc.; Teva Pharmaceuticals USA, Inc.; Covidien Inc.; Covidien plc; Mallinckrodt Inc.; Mallinckrodt LLC; Mallinckrodt Holdings, LLC; Mylan Pharmaceuticals Inc.; Mylan Inc.; Watson Pharmaceuticals (New Jersey), Inc.; Watson Pharmaceuticals, Inc, and any other defendant alleged to have manufactured, distributed or sold generic propoxyphene who is presently or subsequently named in any case pending or transferred to MDL No. 2226 (“MDL”).

6. The deadline for Defendant Lilly to move, answer, or otherwise respond to Complaints that would otherwise be due for response on or after December 20, 2011, shall be extended to and including thirty days after the Court enters a ruling on Lilly’s Master Motion to Dismiss [MDL Record No. 416].

7. The deadline for Defendant Xanodyne to move, answer, or otherwise respond to Complaints that would otherwise be due for response on or after December 20, 2011, shall be extended to and including thirty days after the Court enters a ruling on Xanodyne’s Motions to Dismiss [MDL Record Nos. 444 and 666].

8. In all actions in which Co-Lead Counsel, a member of the Plaintiffs’ Executive Committee, or a member of the Plaintiffs’ Steering Committee is listed as counsel of record, and which have been filed in or tagged for transfer to the MDL on or before February 27, 2012, voluntary dismissals without prejudice may be accomplished only by: (i) stipulation of the national counsel for the defendants (listed in the parties’ stipulation) and/or defendant(s) that the plaintiff(s) seek to dismiss; or (ii) by Court Order on terms that the Court considers appropriate under Rule 41(a)(2) of the Federal Rules of Civil Procedure.

9. The terms of paragraph 8 of this Case Management and Scheduling Order No.3 do not apply to cases in which the Court has listed Co-Lead Counsel as counsel of record for administrative purposes, and in which Co-Lead Counsel have not actually been retained as counsel. The terms “Co-Lead Counsel,” “Plaintiffs’ Executive Committee,” and “Plaintiffs’ Steering Committee” have the same meaning as defined in the Court’s leadership structure order dated October 4, 2011.

10. No defendant shall be deemed to have waived the defense of lack of personal jurisdiction by entering into the Stipulation leading to entry of this Case Management and Scheduling Order No. 3.

This 22<sup>nd</sup> day of December, 2011.



**Signed By:**

**Danny C. Reeves** DCR

**United States District Judge**