

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

)	
)	Master File No. 2: 11-md-2226-DCR
)	MDL Docket No. 2226
IN RE: DARVOCET, DARVON AND)	
PROPOXYPHENE PRODUCTS)	This Document Applies To:
LIABILITY LITIGATION)	
)	All Actions
)	

**AGREED ORDER REGARDING ELI LILLY AND COMPANY’S
DISPOSITIVE MOTIONS IN CASES IN WHICH PLAINTIFFS
HAVE NOT AMENDED THEIR PLEADINGS**

On November 22, 2011, Eli Lilly and Company (“Lilly”) filed its first Master Motion to Dismiss [MDL Record No. 416], and requested that this motion be converted to a Motion for Judgment on the Pleadings on December 19, 2011 [MDL Record No. 643] (collectively, “Lilly’s First Master Motion”). On March 7, 2012, the Court issued its Memorandum Opinion and Order [MDL Record No. 1402] granting Lilly’s First Master Motion and dismissing the subject cases with prejudice (“Order on Lilly’s Motion”).

The Court finds that a procedure is needed to apply the above-referenced Order on Lilly’s Motion [MDL Record No. 1402], as appropriate, to other cases existing and to be filed in this litigation, to streamline the procedure for dispositive motions, and to obviate the need for the parties to file duplicative motions and briefs. Accordingly, being sufficiently advised, it is hereby

ORDERED as follows:

CASES CURRENTLY PENDING IN THE MDL

1. Any Plaintiff with a case pending in MDL 2226 who has not already filed *or* been denied leave to file an Amended Complaint, may file an Amended Complaint within twenty-one (21) calendar days of this Order. A Plaintiff who has already filed an Amended Complaint, *or* who has been denied leave to file an Amended Complaint, must request and obtain leave of Court before filing an amended or subsequent complaint. A Plaintiff whose action against Lilly has been dismissed with prejudice may not file an Amended Complaint against Lilly.

2. Nothing in Paragraph 1 is intended to, or shall, toll, revive, alter, amend or otherwise affect any statute of limitations or repose, or any other time-bar, regarding a cause of action.

3. Upon the filing of an Amended Complaint, or upon expiration of the time for filing Amended Complaints, Lilly may request that its Second Master Motion for Judgment on the Pleadings [MDL Record No. 1537], or its Motion for Judgment on the Pleadings for Maryland Cases [MDL Record No. 1536], if previously withdrawn and denied without prejudice as to that Plaintiff, be revived without re-filing. Unless otherwise ordered by the Court, Plaintiff's response will be due within seven (7) days of the motion being revived as to Plaintiff.

4. Upon the filing of an Amended Complaint pursuant to Paragraph 1 of this Order, or upon expiration of the time for filing an Amended Complaint, and if the Plaintiff in the Amended Complaint is from a State that has been the subject of a previous Order to Dismiss claims against Lilly, Lilly may request that the Court issue an order directing Plaintiff(s) to show cause why the Order on Lilly's First Master Motion ("Lilly's Motion")

[MDL Record No. 1402] should not apply to the newly-filed Amended Complaint, or – if no Amended Complaint was filed – to the original complaint. If the plaintiff is from a State that has not been subject to a prior Order for Dismissal of claims against Lilly, Lilly must affirmatively file a Motion to Dismiss or a Motion for Judgment on the Pleadings.

5. In responding to a dispositive motion by Lilly or Order to Show Cause pertaining to Lilly, it is not necessary for Plaintiffs subject to this Order to submit papers addressing the arguments raised in Plaintiffs' oppositions to the motions to dismiss and motions for judgment on the pleadings of Eli Lilly and Company [MDL Record Nos. 635, 1692, 1696] and of Xanodyne Pharmaceuticals, Inc. [MDL Record Nos. 908, 909, 914, 1553, 1707], or to address any arguments raised in any future consolidated oppositions that Plaintiffs may file in response to motion to dismiss or motions for judgment on the pleadings by Lilly. Those memoranda shall be deemed to be incorporated by reference for all Plaintiffs subject to this Order.

6. If, upon receiving a response to a show-cause order issued pursuant to Paragraph 4 of this Order, the Court requires a response from Lilly, the Court will so direct by separate order.

7. Nothing in this Order shall prevent Lilly from answering or otherwise responding to a complaint or amended complaint as contemplated by the Federal Rules of Civil Procedure.

FUTURE CASES TRANSFERRED TO MDL 2226

8. Within twenty-one (21) calendar days of a new complaint being opened in the MDL or upon leave of Court, the Plaintiff(s) may file an Amended Complaint .

9. Nothing in Paragraph 8 is intended to, or shall, toll, revive, alter, amend, or otherwise affect any statute of limitations or repose, or any other time-bar, regarding a cause of action.

10. Upon the filing of an Amended Complaint, or upon the passing of twenty-one (21) calendar days of a new complaint being opened in the MDL, and if the Plaintiff is from a State that has been the subject of a previous Order to Dismiss claims against Lilly, Lilly may request that the Court issue an order directing Plaintiff(s) to show cause why the Order on Lilly's Motion [MDL Record No. 1402] should not apply to the newly-filed Amended Complaint, or, if no Amended Complaint is filed, to the original complaint. If a Plaintiff is from a State that has not been subject to a prior Order for Dismissal of claims against Lilly, Lilly must affirmatively file a Motion to Dismiss or a Motion for Judgment on the Pleadings.

11. In responding to a dispositive motion by Lilly or Order to Show Cause pertaining to Lilly, it is not necessary for Plaintiffs subject to this Order to submit papers addressing the arguments raised in Plaintiffs' oppositions to the motions to dismiss and motions for judgment on the pleadings of Eli Lilly and Company [MDL Record Nos. 635, 1692, 1696] and of Xanodyne Pharmaceuticals, Inc. [MDL Record Nos. 908, 909, 914, 1553, 1707], or to address any arguments raised in any future consolidated oppositions that Plaintiffs may file in response to motion to dismiss or motions for judgment on the pleadings of Lilly. Those memoranda shall be deemed to be incorporated by reference for all Plaintiffs subject to this Order.

12. If, upon receiving a response to a show-cause order issued pursuant to Paragraph 10 of this Order, the Court requires a response from Lilly, the Court will so direct by separate order.

13. Nothing in this Order shall prevent Lilly from answering or otherwise responding to a complaint or amended complaint as contemplated by the Federal Rules of Civil Procedure.

This 4th day of May, 2012.



Signed By:

Danny C. Reeves DCR

United States District Judge

Distribution:

Counsel of Record via: ECF