

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

IN RE: DARVOCET, DARVON AND	)	Master File No. 2: 11-md-2226-DCR
PROPOXYPHENE PRODUCTS	)	MDL Docket No. 2226
LIABILITY LITIGATION	)	
	)	ALL CASES
	)	
	)	
	)	

\*\*\* \*\*

**ORDER DIRECTING PLAINTIFFS TO SHOW CAUSE  
 WHY CLAIMS AS TO GENERIC DEFENDANTS SHOULD NOT BE DISMISSED**

On November 15, 2011, certain Generic Defendants filed a Motion to Dismiss in various cases, arguing, *inter alia*, that the plaintiffs’ claims against them were preempted by federal law based upon the Supreme Court’s recent decision in *PLIVA v. Mensing*, 131 S. Ct. 2567 (2011). [Record No. 383] On November 30, 2011, certain Generic Defendants filed a supplemental Motion to Dismiss on identical grounds on behalf of additional Generic Defendants who were served subsequent to the filing of the November 15 motion. [Record No. 458] The plaintiffs opposed both motions. [Record No. 568] On March 5, 2012, the Court issued a Memorandum Opinion and Order Regarding Generic Defendants’ Motions to Dismiss granting the Generic Defendants’ Motion and Supplemental Motion and dismissing with prejudice all claims against the Generic Defendants in those cases. [Record No. 1305]

The Court finds that a procedure is needed to apply the above-referenced Memorandum Opinion and Order to any case in this litigation, as well as to obviate the need for the parties to submit duplicative motions and briefs. Accordingly, it is hereby

**ORDERED** as follows:

1. On or before April 24, 2012, plaintiffs in each case with any remaining claims pending against any Generic Defendant are directed to **SHOW CAUSE** why the Court's Memorandum Opinion and Order Regarding Generic Defendants' Motions to Dismiss [Record No. 1305] is not applicable to their claims against the Generic Defendant(s) and why any and all claims pending against the Generic Defendants as of the date of this Order should not be dismissed, with prejudice, in their entirety. For purposes of this Order, the term "Generic Defendants include Brenn Distribution, Inc.; Brenn Manufacturing, Inc.; Covidien Inc.; Covidien plc; Generics Bidco I, LLC; Generics Bidco II, LLC; Generics International (US Parent), Inc.; Generics International (US), Inc.; Endo Pharmaceuticals Inc.; Endo Pharmaceuticals Holdings Inc.; Vintage Pharmaceuticals, LLC; Mallinckrodt Holdings, LLC; Mallinckrodt Inc.; Mallinckrodt LLC; Mylan Pharmaceuticals, Inc.; Mylan, Inc.; Propst Distribution, Inc.; Qualitest Pharmaceuticals, Inc.; Teva Biopharmaceuticals USA, Inc.; Teva Pharmaceuticals USA, Inc.; Vintage Pharmaceuticals, Inc.; Watson Pharmaceuticals (New Jersey), Inc.; Watson Pharmaceuticals, Inc.; Ivax Pharmaceuticals, Inc.; Cornerstone BioPharma, Inc.; Cornerstone BioPharma Holdings, Inc.; Aristos Pharmaceuticals, Inc.; Sun Pharmaceutical Industries, Inc. incorrectly named as Able Laboratories, Inc. n/k/a Sun Pharmaceuticals Industries, Inc. (Sun

denies ever manufacturing propoxyphene); and any other named defendant alleged to have produced or sold generic propoxyphene.

2. For any new action docketed in this MDL on or after the date of this Order which purports to assert a claim against a Generic Defendant, the Clerk of the Court shall immediately provide a copy of this Order to the plaintiffs in said action, and the plaintiffs shall comply with the above **SHOW CAUSE** Order within fourteen (14) days after the date on which this Order is served.

3. It is not necessary for plaintiffs subject to this Order to submit papers addressing the arguments raised in Plaintiffs' Consolidated Memorandum in Opposition to Generic Defendants' Motion to Dismiss. [Record No. 568] That Memorandum shall be deemed to be incorporated by reference for all plaintiffs subject to this Order.

4. If the Court determines that a reply is needed from any of the Generic Defendants to the plaintiffs' response to this Show Cause Order, it will be directed by separate Order.

5. The Generic Defendants need not move, answer, or otherwise respond to Complaints or Amended Complaints until further Order of the Court. Nothing in this Order is intended to preclude any Defendant from answering any Complaint or Amended Complaint prior to a new deadline being established by Order; however, the Generic Defendants shall not, without leave of Court, file motions to dismiss or motions for judgment on the pleadings based on *Mensing* as such motions would be duplicative of the Show Cause process set forth herein.

6. This Order shall not apply to cases with pending Motions for Remand, or to cases that have been removed from state court, until all Motions for Remand in those cases are resolved.

This 10<sup>th</sup> day of April, 2012.



**Signed By:**

**Danny C. Reeves** DCR

**United States District Judge**