

**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 Applies to All Cases)**

**SCHEDULING ORDER NO. 1**

On October 3, 2017, in accordance with [Fed. R. Civ. P. 16](#), U.S. District Judge Daniel D. Crabtree and U.S. Magistrate Judge Teresa J. James conducted a scheduling conference in this case. Consistent with the court's September 12, 2017 order appointing counsel in this multidistrict litigation ("MDL"), Plaintiffs appeared through liaison counsel Ryan C. Hudson. Class Plaintiffs also appeared through counsel Warren T. Burns, Gretchen Freeman Cappio, Spencer Cox, Stuart A. Davidson, Paul Jeffry Geller, Damien J. Marshall, Lynn Lincoln Sarko, and Rex A. Sharp. Plaintiff Sanofi-Aventis US, LLC also appeared through counsel Yehudah L. Buchweitz and Eric Shaun Hochstadt. Defendants appeared through liaison counsel Brian C. Fries. The Mylan Defendants also appeared through counsel Adam K. Levin, James Moloney, Jeffrey S. Soos, and Mitchell E. Zamoff. The Pfizer Defendants also appeared through counsel Raj Gandesha and Joseph M. Rebein.

After considering the parties' pre-conference submissions and the statements of counsel during the conference, the court enters this Scheduling Order No. 1, summarized in the table that follows:

17-MD-2785-DDC-TJJ IN RE: EIPEN SUMMARY OF DEADLINES AND SETTINGS	
Event	Deadline/Setting
Consolidated amended complaint filed	<b>October 17, 2017</b>
Jointly proposed protective order or redline versions submitted to court	<b>October 31, 2017</b>
Jointly proposed ESI protocol or redline versions submitted to court	<b>November 7, 2017</b>
Jointly proposed document preservation order or redline versions submitted to court	<b>November 7, 2017</b>
Telephone conference before Judge James re: protective order, ESI protocol, document preservation order <b>Dial 888-363-4749 and enter Access Code 4901386</b>	<b>November 15, 2017</b> <b>1:00 PM</b>
Rule 26(a)(1) Initial Disclosures	<b>November 21, 2017</b>

**1) Pleadings.**

a) Class plaintiffs, through Co-Lead Counsel, shall file their consolidated amended complaint by **October 17, 2017**.

**2) Case Management Orders.**

a) If the parties agree concerning the scope and form of a protective order governing the use of any confidential information, they shall submit a jointly proposed protective order by **October 31, 2017**. If the parties disagree concerning the scope or form of a protective order, counsel shall submit their respective proposed orders, indicating areas of disagreement by redline and accompanied by separate supporting briefs limited to five (5) pages setting forth their respective positions, by **October 31, 2017**. The submissions shall be made via email to [ksd\\_james\\_chambers@ksd.uscourts.gov](mailto:ksd_james_chambers@ksd.uscourts.gov). Any proposed protective order should be drafted in compliance with the guidelines available on the court's website:

<http://www.ksd.uscourts.gov/guidelines-for-agreed-protective-orders-district-of-kansas/>

At a minimum, such proposed orders must include a concise but sufficiently specific recitation of the particular facts in this case that would provide the court with an adequate basis upon which to make the required finding of good cause pursuant to [Fed. R. Civ. P. 26\(c\)](#). A pre-approved form of protective order is available on the court's website:

<http://www.ksd.uscourts.gov/flex/?fc=9&term=5062>

b) If the parties agree concerning the scope and form of a protocol for discovery of electronically stored information ("ESI"), they shall submit a jointly proposed ESI protocol order by **November 7, 2017**. If the parties disagree concerning the scope or terms of the ESI protocol order, counsel shall submit their respective proposed orders, indicating areas of disagreement by

redline and accompanied by separate supporting briefs limited to five (5) pages setting forth their respective positions, by **November 7, 2017**. The submissions shall be made via email to [ksd\\_james\\_chambers@ksd.uscourts.gov](mailto:ksd_james_chambers@ksd.uscourts.gov). The court directs the parties to review the ESI guidelines posted on the court's website: [www.ksd.uscourts.gov/guidelines-for-esi/](http://www.ksd.uscourts.gov/guidelines-for-esi/).

c) If the parties agree concerning the scope and form of a document preservation order, they shall submit a jointly proposed order by **November 7, 2017**. If the parties disagree concerning the scope or terms of a document preservation order, counsel shall submit their respective proposed orders, indicating areas of disagreement by redline and accompanied by separate supporting briefs limited to five (5) pages setting forth their respective positions, by **November 7, 2017**. The submissions shall be made via email to [ksd\\_james\\_chambers@ksd.uscourts.gov](mailto:ksd_james_chambers@ksd.uscourts.gov).

### **3) Rule 26(a)(1) disclosures**

By **November 21, 2017**, the parties shall exchange the information required by [Fed. R. Civ. P. 26\(a\)\(1\)](#). The parties are reminded that, although Rule 26(a)(1) is keyed to disclosure of information that the disclosing party “may use to support its claims or defenses, unless solely for impeachment,” the advisory committee notes to the 2000 amendments to that rule make it clear that this also requires a party to disclose information it may use to support its denial or rebuttal of the allegations, claim, or defense of another party. In addition to other sanctions that may be applicable, a party who without substantial justification fails to disclose information required by [Fed. R. Civ. P. 26\(a\)](#) or [Fed. R. Civ. P. 26\(e\)\(1\)](#) is not, unless such failure is harmless, permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not so disclosed. *See* [Fed. R. Civ. P. 37\(c\)\(1\)](#).

a) 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 conduct themselves accordingly when litigating cases in this court. The *Pillars of Professionalism* are available on this court's website:

<http://www.ksd.uscourts.gov/pillars-of-professionalism/>

This Scheduling Order No. 1 will not be modified except by leave of court upon a showing of good cause.

IT IS SO ORDERED.

Dated the 5th day of October, 2017 at Kansas City, Kansas.

s/ Daniel D. Crabtree  
Daniel D. Crabtree  
U.S. District Judge

s/ Teresa J. James  
Teresa J. James  
U.S. Magistrate Judge