

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 09-2051-MD-ALTONAGA/Brown

In RE

DENTURE CREAM PRODUCTS
LIABILITY LITIGATION

_____ /

This Document Relates to All Actions

CASE MANAGEMENT AND SCHEDULING ORDER NO. 1

The Court having considered the Motion for entry of CMO 1, it is

ORDERED AND ADJUDGED that:

I. PRETRIAL CONSOLIDATION.

Any other actions filed, whether filed directly in the United States District Court for the Southern District of Florida or in any other United States District Court (whether by original filing or removal), that are related to this litigation (that is, civil actions seeking damages arising from the use of Denture Cream products) are hereby consolidated into one action (the “Consolidated Action”) for all pre-trial purposes pursuant to Rule 42 of the Federal Rules of Civil Procedure. Counsel shall familiarize themselves with the District’s Local Rules. The provisions of this Order supersede any inconsistent provisions of the District’s Local Rules.

This Order shall govern all cases (1) transferred to this Court by the Judicial Panel on Multidistrict Litigation, pursuant to its Order of June 9, 2009; (2) any tag-along actions subsequently transferred to this Court by the Judicial Panel on Multidistrict Litigation; and (3) all related cases originally filed in this Court or transferred or removed to this Court. This Order applies to all Plaintiffs in federal actions, and to Defendants Aaron Mosley, SmithKline Beecham Corporation, GlaxoSmithKline Consumer Healthcare L.L.C., Glaxosmithkline Consumer Healthcare, L.P., Block Drug Company, Inc., The Procter & Gamble Company, The Procter & Gamble Manufacturing Co.,

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The Procter and Gamble Manufacturing Company, Procter and Gamble Distributing Company, the Procter & Gamble Distributing LLC (hereinafter “Defendants”) in the federal actions in which each such defendant was properly served. This Order shall also apply to related cases later filed in, removed to, or transferred to this Court.

All subsequent Orders of this Court with the designation “All Actions” entered in MDL-2051 shall likewise apply to all cases that are or become part of this MDL, regardless of whether that case was part of MDL-2051 when the Order was entered.

II. CASE IDENTIFICATION.

The purpose of the following instructions is to reduce the time and expense of duplicate filings of documents through the use of a master case, while at the same time not congesting the master case with miscellaneous papers and orders that are of interest only to the parties directly affected by them.

A. Master Docket and Record

For the convenience of the parties and the Court, the Clerk will maintain a master docket with a single docket number and master record under the style: “In re Denture Cream Products Liability Litigation,” Master Case No. 09-2051-MD-ALTONAGA/Brown. When a document is filed and docketed in the master case, it shall be deemed filed and docketed in each individual case to the extent applicable and will not ordinarily be separately docketed or physically filed in any individual cases. However, the caption may also contain a notation indicating whether the document relates to all cases or only to specified cases, as described below.

B. Caption

All Orders, papers, motions and other documents served or filed in this Consolidated Action shall bear the same caption as this Order.

If the document(s) is generally applicable to all consolidated actions, the caption shall include the notation: “This Document Relates to All Actions,” and the Clerk will file and docket the document(s) only in the master record. However, if a document is intended to apply only to a

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particular case, the caption shall include the notation "This Document Relates to [case number of the case(s) to which it applies]," and extra copies shall be provided to the Clerk to facilitate filing and docketing both in the master record and the specified individual case records.

The original of this Order shall be filed by the Clerk in each of the Denture Cream Products Liability actions pending in this Court and a copy thereof shall be filed in each subsequently filed or transferred action, which is related to and consolidated with this action for pretrial purposes. The Clerk of Court will maintain docket and case files under this caption.

III. STATUS CONFERENCES.

The next Status Conference shall take place on **August 17, 2009 at 11:00 a.m.** Further Status Conferences shall be held as directed by the Court. On or before **August 14, 2009**, the parties shall provide the Court with a proposed set of dates for future Status Conferences.

To minimize costs and facilitate manageable conferences, all Parties are not required to attend but shall be represented at status conferences by Lead and/or Liaison Counsel. A Party will not, by designating an attorney to represent its interests at a status conference, be precluded from other representation during the litigation and attendance at the conference will not waive objections to jurisdiction, venue or service. Those parties who choose to appear at the Status Conference via telephone shall be permitted to listen but will not be allowed to speak during the conference.

To aid the Court and the Parties in preparing for future conferences, Lead and/or Liaison Counsel for the Parties shall meet and confer at least ten (10) days prior to each future status conference to attempt to agree upon a proposed agenda for the conference. Not less than three (3) business days prior to the conference, the Parties shall submit a joint agenda that reports on the number of cases in the MDL and the number tagged for transfer, that lists all motions that have been fully briefed, and that identifies any issue that either or both Parties wish to raise with the Court. The Parties may submit at the same time separate statements of their positions on said issues. If the Parties agree that they would like the Court to take any action, the joint agenda shall so state. The agenda is intended to inform the Court of matters that the Parties desire to raise at the status

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conference, and the Court may amend or augment the agenda as it deems appropriate.

IV. ADMISSION AND ORGANIZATION OF COUNSEL.

A. Admission of Counsel

Attorneys admitted to practice and in good standing of the bar of any United States District Court will be admitted to practice in this litigation upon the filing of a Notice of Appearance in (1) the Master File and (2) the particular action(s) in which they seek to appear. The requirements of Rule 4 of the Special Rules Governing the Admission and Practice of Attorneys (contained in the Local Rules of the United States District Court for the Southern District of Florida) are waived. Attorneys, upon filing of a Notice of Appearance, will be permitted to electronically receive Notices of Electronic Filing provided the Notice of Appearance includes a request to receive such Notices and provides an e-mail address for the Attorney. Attorneys admitted to practice in this litigation pursuant to this Section are authorized to file documents conventionally as this District does not currently have any mechanism allowing for electronic filing by attorneys located outside of the Southern District of Florida. The Court waives any *pro hac vice* admission fees associated with this action.

B. Appointment of Plaintiffs' Steering Committee/Lead/Liaison Counsel

Plaintiffs' counsel have met and discussed their organizational structure and functions. All have agreed to serve in the following manner.

1. Co-Lead Counsel

The Court hereby appoints as Plaintiffs' Co-Lead Counsel:

Andy Alonso, Esq.
Parker Waichman Alonso LLP
111 Great Neck Road
Great Neck, New York 11021-5402

Scott Weinstein, Esq.
Morgan & Morgan P.A.
One University Park Drive, Suite 600
Fort Myers, Florida 33907

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Plaintiffs' Co-Lead Counsel shall be generally responsible for coordinating the activities of plaintiffs during pretrial proceedings and control, administer, and supervise the litigation. The Court may designate such additional or substitute members as may be necessary. Plaintiffs' Co-Lead Counsel shall:

- (a) determine (after consultation with other members of the Plaintiffs' Steering Committee and other co-counsel as may be appropriate) and present (in briefs, oral argument or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of the plaintiffs on all matters arising during pre-trial proceedings;
- (b) delegate specific tasks to other counsel in a manner to assure that pretrial preparation for the plaintiffs is conducted effectively, efficiently, and economically;
- (c) enter into stipulations with opposing counsel necessary for the conduct of the litigation;
- (d) prepare and distribute to the parties periodic status reports;
- (e) maintain adequate time and expense records covering services of Plaintiffs' Legal Committee;
- (f) monitor the activities of co-counsel to assure that schedules are met and unnecessary expenditures of time and funds are avoided;
- (g) perform such other duties as may be incidental to proper coordination of plaintiffs' pre-trial activities or authorized by further order of the Court;
- (h) coordinate the initiation and conduct of discovery on behalf of plaintiffs consistent with the requirements of Federal Rule of Civil Procedure 26(b)(1) and (2) and (g), including the preparation of

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joint interrogatories and requests for production of documents and the examination of witnesses in depositions; and

- (i) conduct settlement negotiations on behalf of plaintiffs, but not enter binding agreements except to the extent expressly authorized.

Counsel for plaintiffs who disagree with Lead Counsel (or those acting on behalf of Lead Counsel) or who have individual or divergent positions, may present written and oral arguments, provided that in doing so they do not repeat arguments or actions of Lead Counsel.

2. Plaintiffs' Liaison Counsel

The Court hereby designates as Plaintiffs' Liaison Counsel:

Scott Weinstein, Esq.
Morgan & Morgan P.A.
One University Park Drive, Suite 600
Fort Myers, Florida 33907

Plaintiffs' Liaison Counsel shall:

- (a) serve as the contact for the Court for all Court orders;
- (b) coordinate service and filings;
- (c) maintain and distribute to co-counsel and to Defendants' Lead and Liaison Counsel an up-to-date service list;
- (d) receive and distribute pleadings, orders, and motions by email within three (3) days after receipt;
- (e) maintain and make available to co-counsel at reasonable hours a complete file of all documents served by or upon each party [except such documents as may be available at a document depository]; and
- (f) establish and maintain a document depository.

Plaintiffs' Liaison Counsel may provide copies of documents produced by a defendant only to any plaintiff in these consolidated proceedings (i) who has filed an individual action against the specific defendant by which the document production is made and who has served such defendant,

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or defendant's counsel if service is waived, in the individual action; and (ii) who is subject to the Protective Order for confidential information to be developed by the parties and entered by the Court.

3. Plaintiffs' State Court/Federal Court Liaison

As Plaintiffs' liaison between these proceedings and the MTP proceedings pending before Judge Moss in Philadelphia PA, the Court appoints:

Eric Chaffin, Esq.
Bernstein Liebhard LLP
10 East 40th Street
29th Floor
New York, New York 10016

4. Plaintiffs' Steering Committee ("PSC")

The Court hereby appoints the following members to the PSC:

Andy Alonso, Esq.
Parker Waichman Alonso LLP
111 Great Neck Road
Great Neck, New York 11021-5402

Michael London, Esq.
Douglas & London, P.C.
111 John Street
New York, New York 10038

Alex Alvarez, Esq.
The Alvarez Law Firm
355 Palermo Avenue
Coral Gables, Florida 33134

David Shiner, Esq.
Shiner and Sosin, PA
95 South Federal Highway, 1st Floor
Boca Raton, Florida 33432

Daniel Becnel, Esq.
Becnel Law Firm, L.L.C.
P.O. Drawer H
106 W. 7th Street
Reserva, LA 70084

John Walsh, Esq.
Hill & Robbins, P.C.
100 Black Street Building
1441 Eighteenth Street
Denver, Colorado 80202-5932

Eric Chaffin, Esq.
Bernstein Liebhard LLP
10 East 40th Street, 29th Floor
New York, New York 10016

Scott Weinstein, Esq.
Morgan & Morgan P.A.
One University Park Drive, Suite
600
Ft. Myers, Florida 33907

Berry Cooper
Deal, Cooper & Holton, PLLC
296 Washington Avenue
Memphis, Tennessee 38103

Kirk Wolden
Arnold Law Firm
865 Howe Avenue, Suite 300
Sacramento, California 95825

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The PSC will have the following responsibilities:

(a) Discovery

- (i) initiate, coordinate and conduct all pretrial discovery on behalf of all plaintiffs who file civil actions which are consolidated with the instant multidistrict litigation known as “MDL-2051, In re: Denture Cream Products Liability Litigation.”
- (ii) develop and propose to the Court schedules for the commencement, execution and completion of all discovery on behalf of all plaintiffs.
- (iii) cause to be issued in the name of all plaintiffs the necessary discovery requests, motions, and subpoenas pertaining to any witnesses and documents needed to properly prepare for the pretrial of relevant issues found in the pleadings of this litigation. Similar requests, notices and subpoenas may be caused to be issued by the Steering Committee upon written request by an individual attorney in order to assist that attorney in the preparation of the pretrial stages of the particular claims asserted by their clients.
- (iv) conduct all discovery in a coordinated and consolidated manner on behalf of and for the benefit of all plaintiffs.

(b) Miscellaneous

- (i) call meetings of counsel for plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or the Court.
- (ii) distribute copies of periodic status reports prepared by the PSC Chairperson to all plaintiffs’ attorneys. The reports shall

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be submitted by the PSC Chairperson to the Plaintiffs' Liaison Counsel who will promptly distribute copies. The periodic status and progress reports must be forwarded to all plaintiffs' counsel at intervals of no more than sixty (60) days commencing from the date of this Order, and more frequently in the event of significant matters appropriate for communication.

- (iii) perform any tasks necessary and proper for the Steering Committee to accomplish its responsibilities as defined by the Court's orders.

Reimbursement for costs and fees for services of the Steering Committee will be set at a time and in a manner established by the Court after due notice to all counsel and after a hearing.

The appointment of the PSC is of a personal nature. Accordingly, the above appointees cannot be substituted by other attorneys, including members of the appointee's law firm, to perform the PSC's exclusive functions, such as committee meetings and court appearances, except with prior approval of the Court.

C. Appointment of Defendants' Steering Committee/Lead/Liaison Counsel

Defendants' counsel have met and discussed their organizational structure and functions.

All have agreed to serve in the following manner.

1. Defendants Lead and Liaison Counsel

As Lead Counsel and Federal/State Liaison Counsel for Defendants Smithkline Beecham Corporation D/B/A Glaxosmithkline, Glaxosmithkline Consumer Healthcare, L.P., Glaxosmithkline Consumer Healthcare, L.L.C., and Block Drug Company, Inc., the Court now designates:

Stephanie A. Smith, Esq.
Stacey A. Martinez, Esq.
Fulbright & Jaworski L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701

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As Lead Counsel and Federal/State Liaison Counsel for Defendants The Procter & Gamble Manufacturing Company and The Procter & Gamble Distributing LLC, the Court now designates:

Frank C. Woodside, III, Esq.
Dinsmore & Shohl LLP
1900 Chemed Center
255 E. Fifth St.
Cincinnati, OH 45202

As Liaison Counsel for Defendants Smithkline Beecham Corporation D/B/A Glaxosmithkline, Glaxosmithkline Consumer Healthcare, L.P., Glaxosmithkline Consumer Healthcare, L.L.C., and Block Drug Company, Inc.; and for Defendants The Procter & Gamble Manufacturing Company and The Procter & Gamble Distributing LLC, the Court now designates:

Edward W. Gerecke, Esq.
Carlton Fields, P.A.
4221 W. Boy Scout Boulevard
Suite 1000
Tampa, Florida 33607-5780

D. Privileges Preserved

No communications among Plaintiffs' Counsel or among Defendants' Counsel shall be taken as a waiver of any privilege or protection to which the parties would otherwise be entitled. This provision, however, does not in any way expand or create a protection or privilege that counsel do not otherwise already enjoy.

V. SERVICE OF PROCESS.

A. Orders

A copy of each Order designated in the caption as related to All Actions shall be provided to Plaintiffs' Liaison Counsel and Defendants' Lead and Liaison Counsel for distribution as appropriate to counsel and parties.

B. Pleadings, Motions, and Other Documents

A party filing a pleading, motion, or other document shall immediately email copies to Plaintiffs' Liaison Counsel and Defendants' Lead and Liaison Counsel for distribution. Service on

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Plaintiffs' Liaison Counsel or on Defendants' Lead and Liaison Counsel constitutes service on other attorneys and parties for whom Lead or Liaison Counsel is acting, such service being deemed effective three (3) business days after service on Lead or Liaison Counsel. Service and distribution by Lead or Liaison Counsel to other attorneys of record shall be by email. The foregoing procedure shall apply to Denture Cream products liability cases filed in or removed to federal court only and not to any other litigation.

VI. STAY OF PROCEEDINGS.

All Denture Cream actions are stayed in all respects pending entry of further orders of this Court. To the extent there are deadlines that would otherwise exist for objections, responses, replies, answers, affirmative defenses or other responsive pleadings to complaints, motions, discovery or other pleadings, such deadlines for responsive pleadings are stayed until further Order of this Court or unless otherwise previously agreed to among Lead/Liaison Counsel.

VII. PENDING MOTIONS DENIED WITHOUT PREJUDICE

All motions pending at the time of transfer to this Court are **DENIED WITHOUT PREJUDICE**. With respect to the *Mourning, Peterson, Bates* and *Bond* class action cases, Plaintiffs shall have 45 days from the date of this Order in which to determine whether they wish to prosecute these cases as class actions.

VIII. CONFIDENTIALITY


An order preserving the confidentiality of documents shall be confected jointly by the parties and filed with the Court after the initial conference.

IX. PROPOSED CASE MANAGEMENT ORDER NO. 2 - INITIAL SCHEDULING ORDER

The parties shall jointly submit a proposed Case Management Order No. 2 - Initial Scheduling Order (CMO 2) on or before **August 14, 2009**, which shall incorporate to the extent possible direction provided by the Court and agreements of counsel announced at the July 8, 2009 Status Conference.

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DONE AND ORDERED in Chambers, at Miami, Florida, this 13th day of July, 2009.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record