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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

In re:

VIAGRA (SILDENAFIL CITRATE)
PRODUCTS LIABILITY LITIGATION

Master File No.: 3:16-md-02691-RS

~~PROPOSED~~ MDL ORDER NO: 2
(ORDER APPOINTING LEADERSHIP
STRUCTURE)

This Document Relates to: ALL ACTIONS

This Order is intended to create a leadership structure for plaintiffs' counsel in order to organize, simplify, and streamline the handling of these matters on behalf of all plaintiffs, consistent with the fair administration of justice.

1. Lead Counsel

The Court hereby appoints the following individual as Lead Counsel:

Ernest Cory
CORY WATSON, P.C.
2131 Magnolia Avenue South
Birmingham, AL 35205
Telephone: (205) 328-2200
Facsimile: (205) 324-7896
Email: ecory@corywatson.com

The responsibilities of Lead Counsel are set forth in section 8 of this Order.

2. Liaison Counsel

The Court hereby appoints the following individual as Liaison Counsel:

Rachel Abrams
LEVIN SIMES, LLP
44 Montgomery Street, 32nd Floor
San Francisco, CA, 94104
Telephone: (415) 426-3000
Facsimile: (415) 426-3001
Email: rabrams@levinsimes.com

1 The responsibilities of Liaison Counsel are set forth in section 9 of this Order.

2 **3. Plaintiff's Executive Committee**

3 The Court hereby appoints the following individuals to the Plaintiffs' Executive
4 Committee ("PEC"):

5 Ernest Cory
6 CORY WATSON, P.C.
7 2131 Magnolia Avenue South
8 Birmingham, AL 35205
9 Telephone: (205) 328-2200
10 Facsimile: (205) 324-7896
11 Email: ecory@corywatson.com

12 Kimberly Barone Baden
13 MOTLEY RICE LLC
14 28 Bridgestone Boulevard
15 Mount Pleasant, SC 29464
16 Telephone: (843) 216-9265
17 Facsimile: (843) 216-9450
18 Email: kbarone@motleyrice.com

19 Martin D. Crump
20 DAVIS & CRUMP, P.C.
21 2601 14th Street
22 Gulfport, MS 39501
23 Telephone: (228) 863-6000
24 Facsimile: (228) 864-0907
25 Email: martincrump@daviscrump.com

26 Munir R. Meghjee
27 ROBINS KAPLAN LLP
28 800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402
Telephone: (612) 349-8500
Facsimile: (612) 339-4181
Email: mmeghjee@robinskaplan.com

Kristian Rasmussen
CORY WATSON, P.C.
2131 Magnolia Avenue South
Birmingham, AL 35205
Telephone: (205) 328-2200
Facsimile: (205) 324-7896
Email: krasmussen@corywatson.com

The responsibilities of the PSC are set forth in Section 10 of this Order.

4. Plaintiffs' Steering Committee

1 The Court hereby appoints the following individuals to the Plaintiffs' Steering
2 Committee ("PSC"):

3 Kelly A. Fitzpatrick
4 VENTURA RIBEIRO & SMITH
5 280 Park Avenue S, Suite 13A
6 New York, NY 10010
7 Telephone: (212) 673-6669
8 Facsimile: (203) 791-9264
9 Email: kfitzpatrick@vrslaw.com

10 Yvonne M. Flaherty
11 LOCKRIDGE GRINDAL NAUEN PLLP
12 100 Washington Avenue S, Suite 2200
13 Minneapolis, MN 55401
14 Telephone: (612) 339-6900
15 Facsimile: (612) 339-0981
16 Email: ymflaherty@locklaw.com

17 Lisa A. Gorshe
18 JOHNSON BECKER, PLLC
19 33 South Sixth Street, Suite 4530
20 Minneapolis, MN 55402
21 Telephone: (612) 436-1800
22 Facsimile: (612) 436-1801
23 Email: lgorshe@johnsonbecker.com

24 Jennifer R. Liakos
25 Napoli Shkolnik PLLC
26 525 South Douglas Street, Suite 260
27 El Segundo, CA 90245
28 Telephone: (310) 331-8224
Facsimile: (310) 736-2877
Email: jliakos@napolilaw.com

Michael B. Lynch
THE MICHAEL BRADY LYNCH FIRM
127 West Fairbanks Ave. #528
Winter Park, Florida 32789
Telephone: (877) 513-9517
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Email: michael@mblynchfirm.com

Scott A. Morgan
MORGAN LAW FIRM, LTD.
55 West Wacker Drive, Suite 900
Chicago, IL 60601
Telephone: (312) 327-3386

1 Facsimile: (888) 396-2478
2 Email: smorgan@smorgan-law.com

3 J. Gordon Rudd, Jr.
4 Minnesota Bar No.: 222082
5 ZIMMERMAN REED, PLLP
6 1100 IDS Center
7 80 South Eighth Street
8 Minneapolis, MN 55402
9 Telephone: (612) 341-0400
10 Facsimile: (612) 341-0844
11 Email: gordon.rudd@zimmreed.com

12 The responsibilities of the PSC are set forth in Section 11 of this Order.

13 **5. State Liaison Counsel**

14 The Court hereby appoints the following individual as State Liaison Counsel:

15 John J. Driscoll
16 THE DRISCOLL FIRM, P.C.
17 One Metropolitan Square
18 211 N. Broadway, 40th Floor
19 St. Louis, MO 63102
20 Telephone: (314) 932-3232
21 Facsimile: (314) 932-3233
22 Email: john@thedriscollfirm.com

23 **6. Changes in Membership**

24 These appointments are personal in nature, and may not be changed without court order.
25 Accordingly, this Court looks to these counsel to undertake personal responsibility to perform
26 the designated functions and reserves the discretion to replace them, on their own request, or of
27 this Court’s own motion, should they become unable to do so.

28 **7. Designated Counsel**

The PSC may appoint other qualified counsel to perform legal services for the common benefit of plaintiffs (“Designated Counsel”).

8. Responsibilities of Lead Counsel

Lead Counsel shall have the following responsibilities:

- 1. any and all responsibilities as designated by the Court;
- 2. to chair the PEC, which shall be generally responsible for coordinating the activities of plaintiffs’ counsel during pretrial proceedings;

- 1 3. to present, after consultation with the PEC, PSC, and other counsel as may be
2 appropriate, personally or by designee, the position of the plaintiffs on any
3 matter arising during pretrial proceedings;
- 4 4. to delegate specific tasks to other counsel to ensure that pretrial preparation
5 for the plaintiffs is conducted effectively, efficiently, and economically,
6 including the creation of subject matter-specific or other working groups;
- 7 5. to prepare and distribute to the parties periodic status reports, as appropriate;
- 8 6. to prepare and to ensure the preparation by others of adequate and reasonable
9 time and disbursement records where appropriate;
- 10 7. to coordinate and lead discussions with the Court, other plaintiffs' counsel,
11 defense counsel, and non-parties to ensure that court orders are followed,
12 schedules are met, discovery is conducted and provided consistent with the
13 requirements of Fed. R. Civ. P. 26, unnecessary expenditures of time and
14 funds are avoided, and any negotiations are reasonably efficient and
15 productive;
- 16 8. to establish and maintain, in conjunction with the PSC and to the extent
17 deemed desirable by the PSC, a physical or virtual depository of documents
18 located within the Court's jurisdiction, or otherwise accessible to all
19 plaintiffs' counsel;
- 20 9. to coordinate, with the assistance of Liaison Counsel and State Liaison
21 Counsel, with counsel in related state-court litigation, in order to avoid
22 duplicative discovery, including minimizing the number of depositions taken
23 of each witness, minimizing the number of lawyers who question witnesses
24 at depositions, and reducing duplicative questioning;
- 25 10. to assist in providing access to participating state-court counsel to any
26 common-benefit document depository and common-benefit work-product, in
27 accordance with the terms of any common-benefit orders entered by the
28 Court;

11. to establish and maintain an comprehensive service list of counsel of record and promptly advise the Court of any changes; and
12. to participate in any class or group settlement discussions.

9. Responsibilities of Liaison Counsel

Liaison Counsel shall have the following responsibilities:

1. any and all responsibilities as designated by the Court;
2. to receive, on behalf of the attorneys for all plaintiffs, orders, notices, and correspondence from this Court and acting as the primary contact between the Court and plaintiffs' counsel;
3. where practicable, to communicate with State Liaison Counsel to ascertain status of related state-court actions;
4. to provide information about related state-court proceedings to the Court and counsel; and
5. to assist lead counsel in coordinating the efforts of all counsel in all pending cases, whether part of this MDL proceeding or not.

10. Responsibilities of PEC

The PEC shall have the following responsibilities:

1. to perform necessary administrative and logistic functions of the PEC and carry out any and all responsibilities as designated by the Court;
2. to coordinate and oversee the responsibilities of the PSC set forth below;
3. to schedule PSC meetings and keep minutes or transcripts of these meetings;
4. to appear at periodic court noticed status conferences and hearings;
5. to sign and file pleadings relating to all actions;
6. to bind the PSC in scheduling depositions, setting agendas, entering into stipulations, and in other necessary interactions with defense counsel;
7. to create such committees and subcommittees of the PSC as are necessary to efficiently carry out its responsibilities, to designate members thereof, and to delegate common benefit work responsibilities to selected counsel (including

1 non-members of the PSC), as may be required for the common benefit of
2 plaintiffs; and

3 8. the PEC will share in the responsibilities of the PSC as outlined below.

4 **11. Responsibilities of PSC**

5 The PSC shall have the following responsibilities:

6 **A. Discovery**

- 7 1. to initiate, coordinate, and conduct all pretrial discovery on behalf of
8 plaintiffs in all actions subject to this Order;
- 9 2. to develop and propose to the Court schedules for the commencement,
10 execution, and completion of all discovery on behalf of all plaintiffs;
- 11 3. to cause to be issued in the name of all plaintiffs the necessary discovery
12 requests, motions, and subpoenas concerning any witnesses and documents
13 needed to prepare for the trial of this litigation (similar requests, motions, and
14 subpoenas may be caused to be issued by the PSC upon written request by an
15 individual attorney in order to assist him or her in the preparation of the
16 pretrial stages of his or her client's particular claims); and
- 17 4. to conduct all discovery, by members or their designees approved by Lead
18 Counsel, in a coordinated and consolidated manner on behalf and for the
19 benefit of all plaintiffs.

20 **B. Hearings and Meetings**

- 21 1. to call meetings of counsel for plaintiffs for any appropriate purpose,
22 including coordinating responses to questions of other parties or of the Court;
- 23 2. to initiate proposals, suggestions, schedules, or joint briefs, and any other
24 appropriate matters concerning pretrial proceedings;
- 25 3. to examine witnesses and introduce evidence at hearings on behalf of
26 plaintiffs; and
- 27 4. to speak for all plaintiffs at pretrial proceedings and in response to any
28 inquiries by the Court, subject to the right of any plaintiff's counsel to

1 present non-repetitive individual or different positions.

2 **C. Trial**

- 3 1. to coordinate the selection, management, and presentation of any common
4 issue, “bellwether,” and/or “test” case trials.

5 **D. Settlement and Miscellaneous**

- 6 1. any and all responsibilities as designated by the Court;
- 7 2. to negotiate and propose settlement of cases on behalf of plaintiffs or plaintiff
8 groups, including exploring and, where appropriate, pursuing all settlement
9 options concerning any claim or portion of any case filed in this litigation;
- 10 3. to litigate any motions presented to the Court that involve matters within the
11 responsibilities of the PSC;
- 12 4. to negotiate and enter into stipulations with defendants concerning this
13 litigation, subject where appropriate to the objections of individual counsel
14 and/or the approval of the Court;
- 15 5. to maintain adequate files of all discovery and pretrial matters, including
16 establishing and maintaining a document or exhibit depository, in either real
17 or virtual format, and having those documents available, under reasonable
18 terms and conditions, for examination by all plaintiffs’ counsel; and
- 19 6. to perform any task necessary and proper for the PSC to accomplish its
20 responsibilities, including organizing subcommittees or workgroups
21 comprised of plaintiffs’ attorneys not on the PSC and assigning them tasks
22 consistent with the duties of the PSC.

23 **12. Privileged Communications**

24 Because cooperation among counsel and the parties is essential for the orderly and
25 expeditious resolution of the litigation, the communication, transmission, or dissemination of
26 information among plaintiffs’ counsel shall be subject to the joint attorney-client privilege and
27 the protections afforded by the attorney work-product doctrine; provided, however, that the
28 conditions necessary to create such a privilege or protection have been satisfied and the

1 privilege or protection has not been waived.

2 **IT IS SO ORDERED.**

3 Dated: 6/15/16

A handwritten signature in blue ink, appearing to read "Richard Seeborg", is written over a horizontal line.

RICHARD SEEBORG
United States District Judge

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