

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: FLUOROQUINOLONE PRODUCTS
LIABILITY LITIGATION

MDL No. 15-2642 (JRT)

This Document Relates to All Actions.

**ORDER ON DISCOVERY DISPUTE
REGARDING DEFENDANT
FACT SHEETS**

Following a meet-and-confer process, several disputes remain regarding the proposed pretrial order addressing the Defendant Fact Sheet (“DFS”) in the Fluoroquinolone MDL. On July 7, 2016, the parties submitted briefing on the disputes, and they were discussed at the July 13, 2016, status conference. The Court now considers the disagreements.

First, the primary disagreement between the parties is whether Defendants must search custodial files for each DFS, or whether they can limit their search to existing databases and central repositories. Federal Rule of Civil Procedure 26(b)(1) provides that discovery should be “proportional to the needs of the case, considering the importance of the issues at stake in the action, . . . the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Due to the significant burden the proposed custodial-file searches would impose on Defendants, and the less-than-certain benefits of such searches, the Court finds Defendants need not engage in them at this time. Defendants acknowledge that custodial-file searches likely will be warranted for a narrower group of cases at a later

stage, such as during bellwether selection; however, Plaintiffs have not provided sufficient reason to impose such a burden for all cases at the DFS stage. That being said, Plaintiffs are free to seek permission from the Court to engage in further discovery if the information available in these structured databases turns out to be insufficient. Thus, the Court rejects all portions of Plaintiffs' requested DFS language that would require Defendants to search custodial files.

Second, the parties disagree over whether Defendants must provide the information requested by the DFS in chart form or whether they can simply provide and refer to documents containing the information. Because the Plaintiff Fact Sheet required Plaintiffs to complete charts rather than merely relying on attached documents, the Court finds that Defendants must do the same. Accordingly, the Court rejects Defendants' proposed language suggesting that they could avoid completing the DFS charts by attaching the documents and providing bates numbers.

Third, the parties also dispute whether Defendants must provide data pertaining to physician prescribing practices for antibiotics generally, rather than just for specific fluoroquinolones. The Court finds that Defendants need not provide the prescribing practices beyond their particular fluoroquinolones along with the DFS. Though further information about prescribing practices may be relevant in selecting bellwether cases, the benefit is not entirely clear at this stage, particularly when weighed against the burden on Defendants. Thus, the Court rejects Plaintiffs' proposed language that would require Defendants to provide prescribing data for all antibiotics.

Finally, the parties propose differing deadlines to complete the DFS. Plaintiffs propose a 60-day deadline, and Defendants propose 90 days. Because the Court adopts Defendants' narrower DFS scope, it will impose Plaintiffs' proposed deadline of 60 days, which should still provide Defendants sufficient time to comply with the limited demands of the DFS.

The Court orders that the parties submit an updated version of the Pretrial Order on Defendant Fact Sheets, which will be Pretrial Order No. 10, incorporating the Court's decision, within seven days of the issuance of this Order.

DATED: July 20, 2016
at Minneapolis, Minnesota.

s/John R. Tunheim
JOHN R. TUNHEIM
Chief Judge
United States District Court