COSAL
COMMITTEE TO SUPPORT THE ANTITRUST LAWS

April 4, 2024

Via Email Transmission

Honorable Robin L. Rosenberg
United States District Court
Southern District of Florida
Paul G. Rogers Federal Building and Courthouse
701 Clematis Street
West Palm Beach, FL 33401

Dear Judge Rosenberg:

We write on behalf of the members of the Committee to Support the Antitrust Laws ("COSAL") regarding the Advisory Committee's recently revised proposed Rule 16.1. Importantly, COSAL's members are class action plaintiffs' firms that bring a wide range of class actions across all practice areas not limited to antitrust, including consumer class actions, non-personal-injury products liability class actions, data breach and privacy class actions, human rights class actions, and many more.

We sincerely appreciate the Subcommittee's years of tireless work in the development of the proposed Rule and the Subcommittee's efforts to address concerns of the class action bar that Rule 16.1(b)(1) would conflict with Rule 23(g) as applied to Class Action MDLs.[1] We also recognize that we are sending these comments after the public comment period has ended.

We are submitting these supplemental comments because our bar remains extremely concerned that, even with the revisions, the Proposed Rule does not adequately address the distinctive nature of class actions or the breadth of the class action bar's concerns, which go well beyond Rule 23(g). We are concerned that the Rule upends decades of well-established Class Action MDL management procedures and threatens a result for Class Action MDLs that is the opposite of the one envisioned by its drafters: create confusion where clarity is intended and encourage inefficiencies and delay where timely and streamlined management is sought.

Fortunately, these concerns can be resolved with only modest changes to the Proposed Rule itself and to the Committee Note. Our proposed revisions are attached as **Appendix A**, shown in redline. While all the proposed changes might not be possible, at a minimum, there must be a recognition in the Rule and the Note that Class Action MDLs (i.e., those without a mass tort component) should be treated differently.

[1] We refer to Class Action MDLs as those MDLs made up of class actions without mass tort claims.

Our concerns arise because the proposed Rule is designed to address management complexities unique to Mass Tort MDLs, as the years-long deliberations of the MDL subcommittee,[2] the text of the Rule itself, and the Committee Note make clear. And although the vast majority of MDLs[3] *do not* involve any mass torts at all—that is, most do not involve any individual personal injury torts (much less hundreds or thousands)—the Rule treats all MDLs as though they all *do* involve mass torts. The MDL Subcommittee's deliberations have not identified any problems in the management of *Class Action MDLs* that the Rule is intended to correct.

We recognize that the Committee Note explains that "[n]ot all MDL proceedings present the management challenges this rule addresses," and that MDLs should be managed flexibly. However, we are concerned that the Note neither clarifies the types of MDLs that present such challenges nor which of the Rule's provisions apply to only certain types of MDLs. This leaves MDL judges (new MDL judges, in particular, who are among the targets of the Rule) without meaningful guidance.

Our proposed revision would alert MDL judges in the opening paragraphs of the Committee Note and, ideally, in the Rule itself, that the Rule applies differently to Class Action MDLs that lack a mass tort component and will help avoid confusion.

That clarity is necessary because Class Action MDLs are, by nature, far less complex than the Mass Tort MDLs that have animated the development of Rule 16.1. They ultimately involve a small number of distinct class actions (usually one or two, sometimes a few more) and, in some cases, a handful of large corporate opt-outs with economic damages high enough that they wish to prosecute their own economic claims.[4] Importantly, the practices used to manage Class Action MDLs are generally quite streamlined and efficient because of that lack of complexity.

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[2] *See, e.g.*, Apr. 23, 2021 Agenda Book at 33-34 (discussing the role of a "census" which is inapplicable in class actions; distinguishing "non-mass-tort MDLs"; distinguishing MDLs from class actions, noting courts must approve class action settlements but not MDL settlements; discussing aggregation of clients; distinguishing class counsel appointment in class actions and MDLs; discussing common benefit funds, which are not used in class actions); Oct. 12, 2022 Agenda book at 114, 116 (noting the "pressure is generated by the big MDLs that include thousands of cases" and considering whether a rule could be developed for MDLs that is akin to Rule 23 for class actions); Oct. 23, 2023 Agenda Book at 39 (noting Rule 23 addresses class actions "but we have nothing for MDLs").

[3] Mass Tort MDLs may each involve hundreds or thousands of individual complaints dwarfing the number of individual actions compared to the number of actions in Class Action MDLs. But by *number* of MDLs created (to which the Rule will apply), by our estimate, 70% of MDLs do not involve mass torts at all.

[4] For example, at the recent March 28, 2024 JPML hearing, the Panel considered creation of an MDL for *In re Concrete Admixtures Antitrust Litigation*, which involves 14 class actions filed in different jurisdictions, with 7 complaints filed on behalf of the same class of direct purchasers of the product and 7 complaints filed on behalf of the same class of indirect purchasers of the product. The MDL will thus involve only two class actions when the consolidated complaints are filed, superseding all filed class actions. This pattern is common in most Class Action MDLs, such as data breach class action MDLs where

That is because of the unique nature of Class Action MDLs. When myriad class actions are filed around the country on behalf of the same class bringing the same claims for the same injury, upon creation of an MDL, unlike individual PI complaints in a mass tort, those actions do not and cannot proceed individually. Instead, they must proceed as a single consolidated class action complaint (in contrast to the thousands of actions as in a mass tort) that supersedes all prior class action complaints and that is prosecuted solely by court-appointed interim class counsel under Rule 23(g). Otherwise, defendants would be defending against the same claims brought by the same class but represented by different counsel for each action, with potentially differing outcomes and the views of the *same* plaintiff class would be represented by different counsel expressing potentially contradictory views about the needs of the class. (This would be akin to multiple counsel in a Mass Tort MDL attempting to represent the views of the same individual PI plaintiff though the plaintiff had not retained them). Thus, interim class counsel must be appointed to represent the class and a consolidated class action complaint must be filed so that one set of counsel represents the positions of the class to which that class is bound. The result is a relatively simple Class Action MDL.

Accordingly, management of a Class Action MDL ordinarily proceeds in streamlined fashion: (1) upon transfer, the MDL court issues an initial case management order addressing administrative issues, entertains motions for appointment of interim class counsel (sometimes seeking input of the parties regarding the process but often not), (2) following appointment of interim class counsel, class counsel (and no other counsel) and defendants confer on matters pertinent to the initial case management schedule and prepare a report; (3) the initial case management conference is held; and (4) the court issues a scheduling order pertaining to the schedule for filing of the consolidated class action, answers and motions to dismiss, and discovery. Thereafter, the matter proceeds as any other action. Class Action MDL judges do not seek the input of counsel on the enumerated items under Rule 16.1(b)(2) and (3) until after appointment of interim class counsel, and then only from court-appointed interim class counsel (together with defense counsel).

Rule 16.1 upends that process by requiring, prior to interim class counsel appointment, that all parties and their counsel (which may number in the hundreds) prepare a joint report on a range of discovery, scheduling and administrative issues and the court to convene a conference with *all* parties, including those that will not be appointed interim class counsel and thus will not have any authority to speak for any class in the action. In a Mass Tort MDL, it may be appropriate for the court to hear from all parties in an initial management conference before appointment of leadership since their individual PI actions proceed individually after appointment of leadership and their counsel continue to prosecute their individual claims. But in a Class Action MDL, the court gains no value from a report of all plaintiffs and their counsel who do not then have and will never have the authority to speak for any class. Worse, that process threatens to delay for weeks or months (as those massive coordination efforts take

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complaints are commonly filed on behalf of one or two classes, such as a consumer class and a financial institution class.

place) what *must* be the first step in an efficient Class Action MDL—appointment of interim class counsel to speak for the class. All without any concomitant benefit for the Court.

Additionally, the failure to distinguish between Class Action MDLs and Mass Tort MDLs in the Rule and the Committee Note will result in substantial confusion among MDL judges where clear guidance is intended. For example, the tools applicable to Mass Tort MDLs recommended throughout the Committee Note (bellwether trials, fact sheets, censuses, etc.) have no applicability to Class Action MDLs, leaving judges wondering how and when they apply in a Class Action MDL. Similarly, the Committee Note's statement that MDLs lack the commonality requirements of class actions is puzzling guidance to a judge presiding over an MDL that involves only class actions that by definition have commonality requirements. And the reference to the tension between the "approach [of] . . . leadership counsel and individual parties and non-leadership counsel" describes a circumstance of mass torts but not class actions where counsel who have not been appointed as interim class counsel do not have authority to prosecute any aspect of the litigation, leaving Class Action MDL judges questioning the role of class counsel.

Additional concerns with the proposed Rule absent revision are:

- Items in Rule 16.1(b)(1) (A), (B), and (D) are matters ordinarily ordered by the Court *upon* or in conjunction with an order regarding appointment of interim class without input from counsel and consistent with Rule 23(g)(4) duties. *See* **Appendix B** (exemplar Initial Practice And Procedure Order Upon Transfer Pursuant To 28 U.S.C. § 1407, *In re Domestic Air Travel Antitrust Litig.*, MDL No. 2656, setting a process for appointment of interim class counsel, and directing a case management conference and filing of a consolidated amended class action complaint after appointment of class counsel and exemplar CMO No. 1, *In re Processed Egg Products Antitrust Litig.*, MDL No. 2002, setting forth administrative matters; appointing interim class counsel for one class, setting their responsibilities, and setting schedule for a consolidated class action complaint; and inviting applications for appointment of interim class counsel in a second class); **Appendix C** (exemplar Order for applications for and responsibilities of interim class counsel following transfer, *In re Domestic Air Travel Antitrust Litig.*, MDL No. 2656).

- The initial question of 16.1(b)(1) asks *whether* leadership counsel should be appointed. As discussed above, in Class Action MDLs (which by definition include multiple complaints brought on behalf of the same class for the same claims based on the same conduct), appointment of interim class counsel is essential. Suggesting otherwise may create confusion and upend the long-standing practice of Class Action MDL judges to appoint interim class counsel as its first organizing action.

- Questions posed in Rule 16.1(b)(1)(C), (E), and (F) simply do not apply to class actions or Class Action MDLs because: (1) *only* appointed class counsel can resolve claims on a class-wide basis, subject to approval by the Court (non-class counsel have no role in class settlement, unlike in Mass Tort MDLs where individual plaintiffs may separately resolve

their claims); (2) non-class counsel have no authority in the action at all following appointment of interim class counsel (*see* **Appendix C** at 2-3) so defining their activities is unnecessary; and (3) class counsel are compensated from settlement or judgment proceeds under Rule 23(h) and based on well-established law, not from any "common benefit funds" referenced in the Committee Note, which is exclusively a mass torts device.

- Most of the ministerial items in 16.1(b)(2) are ordinarily addressed by the Court in its initial Case Management Order issued after receipt of the JPML transfer order, without consultation of counsel (i.e., docketing procedures, filing procedures, pro hac vice admission, pre-consolidation orders in transferor courts, the marking of any subsequently transferred case as related and consolidated, and similar administrative measures). *See* **Appendix B** (exemplar order setting administrative procedures immediately following creation of the MDL). In some cases, courts will address these issues after appointment of interim class counsel.

- 16.1(b)(2)(E) suggests that the filing of consolidated pleadings is optional. But as discussed above, a consolidated class action complaint that supersedes all prior class action complaints is essential in a Class Action MDL because multiple class actions filed on behalf of the same class for the same claims by different counsel cannot be prosecuted simultaneously.

  Rule 16.1(b)(2)(E) and the accompanying Committee Note appear to refer to administrative "master" complaints commonly (but not always) ordered in Mass Tort MDLs that do not supersede individual PI complaints. Given confusion among the courts about the difference between a consolidated class action complaint, which *supplants* prior complaints and must be filed in a Class Action MDL, and an administrative master complaint, which is optional and does not supplant individual claims, it is important that the Rule not sow confusion by suggesting consolidated pleadings in Class Action MDLs are optional.[5]

- In Class Action MDLs, pre-trial management issues identified in 16.1(b)(3)(C)-(F) are ordinarily addressed in party proposals and a case management conference *after* appointment of interim class counsel—the only counsel that have a duty to represent and the authority to speak for the class. *See* **Appendix D** (exemplar Order Regarding Initial Scheduling and Case Management Conference, *In re Domestic Air Travel Antitrust Litig.*, MDL No. 2656, directing joint report regarding special master, discovery issues, pre-trial plan, potential dispositive motions, among other matters).

[5] Rule 23(g) does present interim appointment as optional. That is because in a case involving only a single class action complaint, there is no need to appoint interim class counsel because there is only one set of lawyers seeking to represent the class. But where multiple class action complaints are brought against the same defendants for the same claims by different sets of counsel, without appointment of interim class counsel, defendants must negotiate with and litigate against all those counsel, who may have differing views, priorities, and discovery strategies.

- 16.1(b)(3)(A) and (B) are simply inapplicable to Class Action MDLs because the factual bases for the claims and the principle factual and legal issues are apparent in the consolidated class action complaint, answers thereto, and motions to dismiss. This is because the claims of every class member are the same (unlike Mass Torts MDLs where individual plaintiffs' claims are not uniform).

We understand that the MDL Subcommittee's reluctance to distinguish between Class Action MDLs and Mass Tort MDLs may be founded on the impression that class action MDLs are often or always pending alongside mass torts. But that is not the case. That circumstance occurs predominantly, if not entirely, in MDLs that are overwhelmingly mass torts, with ancillary medical monitoring or economic loss class actions proceeding alongside hundreds or tens of thousands of individual personal injury actions.

While our concerns are significant, we think they can be resolved relatively easily with small changes to the Rule and the Note, as outlined in **Appendix A**.

We very much appreciate your consideration of our views. We are available to answer any questions you or the Subcommittee may have.

Thank you.

Sincerely,

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Attachments

APPENDIX A

Revised Proposed New Rule 16.1 and Note

Rule 16.1. Multidistrict Litigation

(a) Initial Management Conference. After the Judicial Panel on Multidistrict Litigation transfers actions, the transferee court should schedule an initial management conference to develop an initial management plan for orderly pretrial activity in the MDL proceedings.

(b) Preparing a Report for the Initial Management Conference. The transferee court should order the parties to meet, prepare and submit a report to the court before the conference. Except as indicated herein or ~~Unless~~ otherwise ordered by the court, the report must address the matters identified in Rule 16.1(b)(1)-(3) and any other matter designated by the court, which may include any matter in Rule 16. If an MDL is comprised of class actions without a mass tort component, the report need only address the items identified in Rule 16.1(b)(1)(A), (B) and (D), to the extent not addressed in a prior court order, with the relevant items identified in Rule 16.1(b)(2)-(3) to be addressed by interim class counsel following appointment pursuant to Rule 23(g). The report also may address any other matter the parties wish to bring to the court's attention.

(1) The report must address whether leadership counsel should be appointed and, if so, it should also address the timing of the appointment and:

(A) the procedure for selecting leadership counsel and whether the appointment should be reviewed periodically during the MDLproceeding;

(B) the structure of leadership counsel, including their responsibilities and authority conducting pretrial activities;

(C) the role of leadership counsel in any resolution of the MDL proceedings;

(D) the proposed methods for leadership counsel to regularly communicate with and report to the court and nonleadership counsel;

(E) any limits on activity by nonleadership counsel; and

(F) whether and, if so, when to establish a means for compensating leadership counsel.

(2) The report also must address:

(A) any previously entered scheduling or other orders that should be vacated or modified;

(B) a schedule for additional management conferences with the court;

(C) how to manage the filing of new actions in the MDL proceedings;

(D) whether related actions have been filed or are expected to be filed in other courts, and whether to consider possible methods for coordinating with them; and

(E) whether consolidated pleadings should be prepared.

(3) The report also must address the parties' initial views on:

(A) the principal factual and legal issues likely to be presented in the MDL proceedings;

(B) how and when the parties will exchange information about the factual bases for their claims and defenses;

(C) anticipated discovery in the MDL proceedings, including any difficult

issues that may be presented;

(D) any likely pretrial motions;

(E) whether the court should consider measures to facilitate resolution of some or all actions before the court; and

(F) whether matters should be referred to a magistrate judge or a master.

(c) Initial Management Order. After the initial management conference, the court should enter an initial management order addressing whether and how leadership counsel will be appointed and an initial management plan for the matters designated under Rule 16.1(b) - and any other matters in the court's discretion. This order controls the MDL proceedings until the court modifies it.

Committee Note

The Multidistrict Litigation Act, 28 U.S.C. § 1407, was adopted in 1968. It empowers the Judicial Panel on Multidistrict Litigation to transfer one or more actions for coordinated or consolidated pretrial proceedings, to promote the just and efficient conduct of such actions. The number of civil actions subject to transfer orders from the Panel has increased significantly since the statute was enacted. In recent years, these actions have accounted for a substantial portion of the federal civil docket. There has been no reference to multidistrict litigation in the Civil Rules and, thus, the addition of Rule 16.1 is designed to provide a framework for the initial management of MDL proceedings.

Not all MDL proceedings present the management challenges this rule addresses, and, thus, it is important to maintain flexibility in managing MDL proceedings. On the other hand, other multiparty litigation that did not result from a Judicial Panel transfer order may present similar management challenges. For example, multiple actions in a single district (sometimes called related cases and assigned by local rule to a single judge) may exhibit characteristics similar to MDL proceedings. In such situations, courts may find it useful to employ procedures similar to those Rule 16.1 identifies for MDL proceedings in their handling of those multiparty proceedings. In both MDL proceedings and other multiparty litigation, the Manual for Complex Litigation also may be a source of guidance.

Specifically as to an MDL comprised of class actions without a mass tort

component, Rule 16.1 is not intended to supplant or alter Rule 23, the body of statutes and caselaw governing class actions, or long-standing best practices used by courts in organizing and managing such MDLs. In particular, the appointment of interim class counsel under Rule 23(g) and the consolidation and/or coordination of actions under Rule 42 should occur at the outset of the litigation, either before the Initial Status Conference or soon thereafter, and interim class counsel should be appointed prior to any report to the court addressing the items identified in Rule 16.1(b)(2)-(3).

Rule 16.l(a). Rule 16.l(a) recognizes that the transferee judge regularly schedules an initial management conference soon after the Judicial Panel transfer occurs. One purpose of the initial management conference is to begin to develop a management plan for the MDL proceedings and, thus, this initial conference may only address some but not all of the matters referenced in Rule 16.1(b). That initial MDL management conference ordinarily would not be the only management conference held during the MDL proceedings. Although holding an initial management conference in MDL proceedings is not mandatory under Rule 16.l(a), early attention to the matters identified in Rule 16.1(b) should be of great value to the transferee judge and the parties.

Rule 16.l(b). The court ordinarily should order the parties to meet to provide a report to the court about some or all of the matters designated in Rule 16.1(b) prior to the initial management conference. This should be a single report, but it may reflect the parties' divergent views on these matters, as they may affect parties -differently. Unless otherwise ordered by the court, the report must address all the matters identified in Rule 16.1(b)(1)-(3). The court also may include any other matter, whether or not listed in Rule 16.1(b) or in Rule 16. Rules 16.1(b) and 16 provide a series of prompts for the court and do not constitute a mandatory checklist for the transferee judge to follow.

Regarding some of the matters designated by the court, the parties may report that it would be premature to attempt to resolve them during the initial management conference, particularly if leadership counsel has not yet been appointed. Rule 16.1(b)(2)(B) directs the parties to suggest a schedule for additional management conferences during which such matters may be addressed, and the Rule 16.1(c) initial management order controls only "until the court modifies it." The goal of the initial management conference is to begin to develop an initial management plan, not necessarily to adopt a final plan for the entirety of the MDL proceedings. Experience has shown, however, that the matters identified in Rule 16.l(b)(l)-(3) are often important to the management of MDL proceedings.

In addition to the matters the court has directed counsel to address, the parties may choose to discuss and report about other matters that they believe the transferee judge should address at the initial management conference.

Counsel often are able to coordinate in early stages of an MDL

proceeding and, thus, will be able to prepare the report without any assistance. However, the parties or the court may deem it practicable to designate counsel to ensure effective and coordinated discussion in the preparation of the report for the court to use during the initial management conference. This is not a leadership position under Rule 16.1(b)(1) but instead a method for coordinating the preparation of the report required under Rule 16.1(b). Cf. Manual for Complex Litigation (Fourth) § 10.221 (liaison counsel are "[c]harged with essentially administrative matters, such as communications between the court and counsel * * * and otherwise assisting in the coordination of activities and positions").

Rule 16.l(b)(l). Appointment of leadership counsel is not universally needed in MDL proceedings, and the timing of appointment may vary. But, to manage the MDL proceedings, the court may decide to appoint leadership counsel. The rule distinguishes between whether leadership counsel should be appointed and the other matters identified in Rule 16.1(b)(2) and (3) because appointment of leadership counsel often occurs early in the MDL proceedings, while court action on some of the other matters identified in Rule 16.l(b)(2) or (3) may be premature until leadership counsel is appointed if that is to occur. Rule 16.1(b)(1) calls attention to several topics the court should consider if appointment of leadership counsel seems warranted.

If proposed class actions are included within an MDL proceeding with mass tort components, Rule 23(g) applies to appointment of class counsel should the court eventually certify a class, and the court may also choose to appoint interim class counsel before resolving the certification question. In such MDL proceedings, the court must be alert to the relative responsibilities of leadership counsel under Rule 16.1 and class counsel under Rule 23(g). Rule 16.1 does not displace Rule 23(g).

If the MDL proceeding is comprised of class actions with no mass tort component, then it is necessary to appoint interim class counsel pursuant to Rule 23(g) at the outset of the litigation, consistent with the body of statutes and caselaw governing class actions, or long-standing best practices used by courts in organizing and managing such MDLs.

The first is the procedure for selecting such leadership counsel, addressed in subparagraph (A). There is no single method that is best for all MDL proceedings. The transferee judge has a responsibility in the selection process to ensure that the lawyers appointed to leadership positions are capable and experienced and that they will responsibly and fairly discharge their leadership obligations, keeping in mind the benefits of different experiences, skill, knowledge, geographical distributions, and backgrounds. Courts have considered the nature of the actions and parties, the qualifications of each individual applicant, litigation needs, access to resources, the different skills and experience each lawyer will bring to the role, and how the lawyers will complement one another and work collectively.

MDL proceedings consisting of mass tort claims do not have the same commonality requirements as MDL proceeding involving class actions, so substantially different categories of claims or parties may be included in the same MDL proceeding and leadership may be comprised of attorneys who represent parties asserting a range of claims in the MDL proceeding. For example, in some MDL proceedings there may be claims by individuals who suffered injuries and also claims by third-party payors who paid for medical treatment. The court may sometimes need to take these differences into account in making leadership appointments.

Courts have selected leadership proceedings involving mass tort claims Counsel in MDL through combinations of formal applications, interviews, and recommendations from other counsel and judges who have experience with MDL proceedings.

The rule also calls for advising the court whether appointment to leadership should be reviewed periodically. Periodic review can be an important method for the court to manage the MDL proceedings. Transferee courts have found that appointment for a term is useful as a management tool for the court to monitor progress in the MDL proceedings.

In some MDL proceedings it may be important that leadership counsel be organized into committees with specific duties and responsibilities. Subparagraph (B) of the rule therefore prompts counsel to provide the court with specific suggestions on the leadership structure that should be employed.

Subparagraph (C) recognizes that another important role for leadership counsel in some MDL proceedings is to facilitate resolution of claims. Resolution may be achieved by such means as early exchange of information, expedited discovery, pretrial motions, bellwether trials, and settlement negotiations.

One of the important tasks of leadership counsel is to communicate with the court and with nonleadership counsel as proceedings unfold. Subparagraph (D) directs the parties to report how leadership counsel will communicate with the court and nonleadership counsel. In some instances, the court or leadership counsel have created websites that permit nonleadership counsel to monitor the MDL proceedings, and sometimes online access to court hearings provides a method for monitoring the proceedings.

Another responsibility of leadership counsel is to organize the MDL proceedings in accordance with the court's initial management order under Rule 16.1(c). In some MDL proceedings involving mass tort claims, there may be tension between the approach that leadership counsel takes in handling pretrial matters and the preferences of individual parties and nonleadership counsel. As subparagraph (E) recognizes, it may be necessary for the court to give

priority to leadership counsel's pretrial plans when they conflict with initiatives sought by nonleadership counsel. The court should, however, ensure that nonleadership counsel have suitable opportunities to express their views to the court, and take care not to interfere with the responsibilities nonleadership counsel owe their clients.

Finally, subparagraph (F) addresses whether and when to establish a means to compensate leadership counsel for their added responsibilities. Courts have entered orders pursuant to the common benefit doctrine establishing specific protocols for common benefit work and expenses. But it may be best to defer entering a specific order until well into the proceedings, when the court is more familiar with the proceedings.

~~If proposed class actions are included within the MDL proceeding, Rule 23(g) applies to appointment of class counsel should the court eventually certify a class, and the court may also choose to appoint interim class counsel before resolving the certification question. In such MDL proceedings, the court must be alert to the relative responsibilities of leadership counsel under Rule 16.1 and class counsel under Rule 23(g). Rule 16.1 does not displace Rule 23(g).~~

Rule 16.l(b)(2) and (3). Rule 16.l(b)(2) and (3) identify a number of matters that are frequently important in the management of MDL proceedings. Unless otherwise ordered by the court, the parties must address each issue in their report. The matters identified in Rule 16.l(b)(2) often call for early action by the court. The matters identified by Rule 16(b)(3) are in a separate section of the rule because, in the absence of appointment of leadership counsel should appointment be recommended, the parties may be able to provide only their initial views on these matters.

Rule 16.l(b)(2)(A). When multiple actions are transferred to a single district pursuant to 28 U.S.C. § 1407, those actions may have reached different procedural stages in the district courts from which cases were transferred. In some, Rule 26(f) conferences may have occurred and Rule 16(b) scheduling orders may have been entered. Those scheduling orders are likely to vary. Managing the centralized MDL proceedings in a consistent manner may warrant vacating or modifying scheduling orders or other orders entered in the transferor district courts, as well as any scheduling orders previously entered by the transferee judge. Unless otherwise ordered by the court, the scheduling provisions of Rules (f) and 16(b) ordinarily do not apply during the centralized proceedings, which would be governed by the management order under Rule 16.l(c).

Rule 16.l(b)(2)(B). The Rule 16.l(a) conference is the initial management conference. Although there is no requirement that there be further management conferences, courts generally conduct management

conferences throughout the duration of the MDL proceedings to effectively manage the litigation and promote clear, orderly, and open channels of communication between the parties and the court on a regular basis.

Rule 16.l(b)(2)(C). Actions that are filed in or removed to federal court after the Judicial Panel has created the MDL proceedings are treated as "tagalong" actions and transferred from the district where they were filed to the transferee court.

When large numbers of tagalong actions are anticipated, some parties have stipulated to "direct filing" orders entered by the court to provide a method to avoid the transferee judge receiving numerous cases through transfer rather than direct filing. If a direct filing order is entered, it is important to address other matters that can arise, such as properly handling any jurisdictional or venue issues that might be presented, identifying the appropriate district court for transfer at the end of the pretrial phase, how time limits such as statutes of limitations should be handled, and how choice of law issues should be addressed. Sometimes liaison counsel may be appointed specifically to report on developments in related state court litigation at the case management conferences.

Rule 16.l(b)(2)(D). On occasion there are actions in other courts that are related to the MDL proceedings. Indeed, a number of state court systems have mechanisms like § 1407 to aggregate separate actions in their courts. In addition, it may sometimes happen that a party to an MDL proceeding becomes a party to another action that presents issues related to or bearing on issues in the MDL proceeding.

The existence of such actions can have important consequences for the management of the MDL proceedings. For example, the coordination of overlapping discovery is often important. If the court is considering adopting a common benefit fund order, consideration of the relative importance of the various proceedings may be important to ensure a fair arrangement. It is important that the MDL transferee judge be aware of whether such proceedings in other courts have been filed or are anticipated.

Rule 16.l(b)(2)(E). For case management purposes, some courts have required consolidated pleadings, such as master complaints and answers in addition to short form complaints. Such consolidated pleadings may be useful for determining the scope of discovery and may also be employed in connection with pretrial motions, such as motions under Rule 12 or Rule 56. The Rules of Civil Procedure, including the pleading rules, continue to apply in MDL proceedings. The relationship between the consolidated pleadings and individual pleadings filed in or transferred to the MDL proceedings depends on the purpose of the consolidated pleadings in the MDL proceedings. Decisions regarding whether to use master pleadings can have significant implications in MDL proceedings, as the Supreme Court noted in

Gelboim v. Bank of America Corp., 574 U.S. 405,413 n.3 (2015). In MDL proceedings made up of class actions (i.e., multiple class actions brought on behalf of the same class), interim class counsel typically prepare a consolidated class action pleading that serves as the operative complaint in pre-trial proceedings, superseding all previously filed complaints (in contrast to pleadings filed only for administrative purposes as in common in mass torts MDLs).

Rule 16.l(b)(3). Rule 16.l(b)(3) addresses matters that are frequently more substantive in shaping the litigation than those in Rule 16.1(b)(2). As to these matters, it may be premature to address some in more than a preliminary way before leadership counsel is appointed, if such appointment is recommended and ordered in the MDL proceedings.

Rule 16.l(b)(3)(A). Orderly and efficient pretrial activity in MDL proceedings can be facilitated by early identification of the principal factual and legal issues likely to be presented. Depending on the issues presented, the court may conclude that certain factual issues should be pursued through early discovery, and certain legal issues should be addressed through early motion practice.

Rule 16.l(b)(3)(B). In some MDL proceedings involving mass tort claims, concerns have been raised on both the plaintiff side and the defense side that some claims and defenses have been asserted without the inquiry called for by Rule 11(b). Experience has shown that an early exchange of information about the factual bases for claims and defenses can facilitate efficient management. Some courts have utilized "fact sheets" or a "census" as methods to take a survey of the claims and defenses presented, largely as a management method for planning and organizing the proceedings. Such methods can be used early on when information is being exchanged between the parties or during the discovery process addressed in Rule 16.1(b)(3)(C).

The level of detail called for by such methods should be carefully considered to meet the purpose to be served and avoid undue burdens. Early exchanges may depend on a number of factors, including the types of cases before the court. And the timing of these exchanges may depend on other factors, such as motions to dismiss or other early matters and their impact on the early exchange of information. Other factors might include whether there are legal issues that should be addressed (e.g., general causation or preemption) and the number of plaintiffs in the MDL proceedings.

This court-ordered exchange of information is not discovery, which 1s addressed in Rule 16.l(c)(3)(C). Under some circumstances - after taking account of whether the party whose claim or defense is involved has reasonable access to needed information - the court may find it appropriate to employ expedited methods to resolve claims or defenses not supported after the required information exchange.

Rule 16.l(b)(3)(C). A major task for the MDL transferee judge is to supervise discovery in an efficient manner. The principal issues in the MDL proceedings may help guide the discovery plan and avoid inefficiencies and unnecessary duplication.

Rule 16.l(b)(3)(D). Early attention to likely pretrial motions can be important to facilitate progress and efficiently manage the MDL proceedings. The manner and timing in which certain legal and factual issues are to be addressed by the court can be important in determining the most efficient method for discovery.

Rule 16.l(b)(3)(E). Whether or not the court has appointed leadership counsel, it may be that judicial assistance could facilitate the resolution of some or all actions before the transferee judge. Ultimately, the question whether parties reach a settlement is just that - a decision to be made by the parties. But the court may assist the parties in efforts at resolution. In MDL proceedings, in addition to mediation and other dispute resolution alternatives, the court's use of a magistrate judge or a master, focused discovery orders, timely adjudication of principal legal issues, selection of representative bellwether trials, and coordination with state courts may facilitate resolution.

Rule 16.l(b)(3)(F). MDL transferee judges may refer matters to a magistrate judge or a master to expedite the pretrial process or to play a part in facilitating communication between the parties, including but not limited to settlement negotiations. It can be valuable for the court to know the parties' positions about the possible appointment of a master before considering whether such an appointment should be made. Rule 53 prescribes procedures for appointment of a master.

Rule 16.l(c). Effective and efficient management of MDL proceedings benefits from a comprehensive management order. A management order need not address all matters designated under Rule 16.1(c) if the court determines the matters are not significant to the MDL proceedings or would better be addressed at a subsequent conference. There is no requirement under Rule 16.1 that the court set specific time limits or other scheduling provisions as in ordinary litigation under Rule 16(b)(3)(A). Because active judicial management of MDL proceedings must be flexible, the court should be open to modifying its initial management order in light of subsequent developments in the MDL proceedings. Such modification may be particularly appropriate if leadership counsel is appointed after the initial management conference under Rule 16.l(a).

Appendix B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE DOMESTIC AIRLINE TRAVEL ANTITRUST LITIGATION
This Document Relates To:
ALL CASES

MDL Docket No. 2656
Misc. No. 15-1404 (CKK)

INITIAL PRACTICE AND PROCEDURE ORDER UPON TRANSFER PURSUANT TO 28 U.S.C. § 1407

This Order shall, unless superseded or modified by subsequent Order, govern the practice and procedure in all actions transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to its Order of October 13, 2015, as well as all related actions originally filed in this Court or transferred or removed to this Court. This Order shall also govern the practice and procedure in any "tag-along" actions transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to Rules 7.1 and 7.2 of the Rules of Procedures of that Panel and any related actions subsequently filed in this Court or otherwise transferred or removed to this Court. *See* Conditional Transfer Order (Oct. 23, 2015), ECF No. [2]; Conditional Transfer Order (Oct. 28, 2015), ECF No. [3].

It is this 30th day of October, 2015, hereby **ORDERED** that

1. All such actions described in the first paragraph of this Order – including actions filed, transferred, or removed after the issuance of this Order – are consolidated for pretrial purposes. Any objections to consolidation must be made by motion for relief from this Order within ten (10) days of either counsel's first appearance herein or the entry of a consolidation order in such case, whichever is earlier.

2. All papers in these actions shall be filed by electronic means, through the Case Management/Electronic Case Filings system ("CM/ECF"), as required by (and subject to the exceptions contained in) Local Civil Rule 5.4.

3. All counsel who have not yet done so shall promptly obtain a CM/ECF password from the Clerk of the Court, pursuant to the requirements of Local Civil Rule 5.4(b).

4. As provided by Local Civil Rule 5.4(d), electronic filing of any document operates to effect service of the document on all parties whose counsel have obtained CM/ECF passwords. Counsel who have not yet obtained CM/ECF passwords must serve and be served as otherwise provided in Rule 5(b) of the Federal Rules of Civil Procedure. *See also* Fed. R. Civ. P. 5.2 ("Privacy Protection for Filings Made with the Court"). The Clerk of the Court is not required to provide hard copies of any papers filed electronically in these consolidated cases to attorneys who have not entered their appearances on the CM/ECF system and registered for a password granting them access to the electronic dockets.

5. The Clerk of the Court shall maintain a Master Docket and electronic case file under the caption "In re Domestic Airline Travel Antitrust Litigation" and the case number Misc. No. 15-1404 (CKK). Every document filed in this action shall bear the caption:

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE DOMESTIC AIRLINE TRAVEL ANTITRUST LITIGATION
This Document Relates To:

MDL Docket No. 2656
Misc. No. 15-1404 (CKK)

When a document is applicable to all actions, the caption of the document shall include the notation "ALL CASES" below the phrase "This Document Relates To." Such documents shall be filed only in the Master Docket.

When a document is applicable only to a specific action or actions, the caption of the document shall include the individual docket number(s) of the action(s) to which the document applies below the phrase "This Document Relates To." In such cases, counsel shall file the document in the Master Docket *and* in the docket of each individual action or actions. Counsel shall not "spread" such filings to the other consolidated cases when presented with that option during the electronic case filing process.

6. ***No more than one attorney for each Plaintiff*** may enter an appearance on the Master Docket. If more than one attorney for a Plaintiff is currently designated on the Master Docket as an "attorney to be noticed," that Plaintiff shall provide the Clerk of the Court with the name of one counsel to be the attorney of record, and the Clerk shall remove all other listed attorneys for that Plaintiff from the Master Docket. More than one attorney for each Plaintiff may enter an appearance in the docket of each individual action or actions.

7. Defendants shall file a Notice of Related Case in the Master Docket whenever a new case is filed in this Court that Defendants believe should be consolidated into this action, unless the action already has been assigned to the undersigned judge.

8. To facilitate the efficient consolidation of cases in this matter, all parties to this action shall notify the Judicial Panel on Multidistrict Litigation of other potential related or "tag-along" actions of which they are aware or become aware.

9. No parties to any of these actions shall be required to obtain local counsel in this district, and the requirements of Local Civil Rule 83.2 are waived as to any attorney appearing in these actions who is duly admitted to practice before any United States Court.

10. Any paper filed in any of these actions which is substantially identical to any other paper filed in another of these actions shall be sufficient if it incorporates by reference the paper to which it is substantially identical. Where counsel for more than one party plan to file substantially identical papers they shall join in the submission of such papers and shall file only one paper on behalf of all so joined.

11. All motions heretofore filed and docketed in any of the individual actions shall be administratively terminated, without prejudice to refiling, if appropriate, in the Master Docket. Motions may be refiled pursuant to provisions of a further Order of this Court. Any time-sensitive threshold filings or motions may be refiled, if appropriate, with the proper caption and designation, with a specific affirmation as to why the filing is time sensitive and threshold in nature and, need not await the issuance of the further order of this Court. Only time-sensitive threshold issue may be filed before the further order of this Court is entered regarding motions practice.

12. Any orders, including protective orders, previously entered by any transferor district court shall remain in full force and effect unless modified by this Court upon application.

13. Hearings shall not be held on any motions, except by order of the Court upon such notice as the Court may direct. Parties may request a hearing by motion when necessary. *See* LCvR 7(f).

14. Counsel shall familiarize themselves with the Local Civil Rules of this Court.

Except as provided herein to the contrary, the parties shall comply with all such Rules. The parties are directed especially to the requirements of Local Civil Rule 5.1, regarding written correspondence with the Court (which shall be by motion, opposition, and reply, rather than by letter); Local Civil Rule 7(m), regarding the duty of counsel to confer in advance of filing nondispositive motions (including those for enlargements of time); and Local Civil Rule 7(c), regarding the submission of proposed orders with all motions and oppositions.

15. The requirements of Local Civil Rule 23.1(b) are waived. Any motion(s) for class certification or appointment of class counsel shall be filed pursuant to this Order or a further order of this Court.

16. The Court will be guided by the *Manual for Complex Litigation Fourth* (2004), approved by the Judicial Conference of the United States. Counsel are directed to familiarize themselves with that publication.

17. The terms of this Order shall not have the effect of making any person, corporation, or entity a party to any action in which he, she, or it has not been named, served, or added as such, in accordance with the Federal Rules of Civil Procedure.

18. The Court shall set an initial schedule by further order upon completion of the transfer of cases to this District. However, the Court hereby informs the parties that it intends to proceed in the following manner:

a. Interim Class Counsel:

i. The Court strongly encourages the parties and counsel to seek a consensus as to the appointment of Interim Class Counsel which will facilitate the orderly progression of the case. Unless the

parties can otherwise agree, Plaintiffs' counsel seeking appointment as Interim Class Counsel on behalf of the proposed class in this action shall file affidavits and memoranda of law in support of their appointment by a date set by further order of this Court.

ii. Any responses to such affidavits and memoranda of law shall be filed by a date set by further order of this Court.

iii. Once Interim Class Counsel is appointed, other Plaintiffs' counsel need not attend future conferences and hearings before the Court, but they may ***monitor (without participating in)*** such conferences and hearings, provided that they jointly make arrangements for a dial-in telephone-conferencing service and contact chambers of the undersigned judge at least two business days in advance of the conference or hearing to provide any necessary telephone number and access code.

b. Briefing Schedule:

i. Upon appointment of Interim Class Counsel by this Court, Plaintiffs (through Court-appointed Interim Class Counsel) shall file a consolidated amended complaint by a date set by further order of this Court.

ii. Upon filing of Plaintiffs' consolidated amended complaint, Defendants shall file answer(s) and/or other responsive motion(s)

by a date(s) set by further order of this Court.

iii. Scheduling Order and Case Management. Upon the resolution of Defendants' responsive motion(s), if any, and upon receipt of Defendants' answer(s) to Plaintiffs' remaining claims, if any, the Court shall set this matter for an Initial Scheduling and Case Management Conference. In lieu of complying with the specific requirements of Local Civil Rule 16.3, the Court shall require the parties to meet, confer, and seek consensus regarding a proposed Scheduling Order and Case Management Plan that will facilitate the just, speedy, and inexpensive determination of all pretrial matters. Counsel shall discuss all matters that are likely to be addressed at the Initial Scheduling and Case Management Conference, generally including (but not limited to): settlement, discovery, class certification, dispositive motions, and other matters that the parties believe may be appropriate for inclusion in the Scheduling Order and Case Management Plan. The Court shall issue a more detailed order in advance of the Initial Scheduling and Case Management Conference.

c. Discovery: All discovery proceedings in these actions are stayed until further order of the Court, and the time requirements to perform any acts or file any papers pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure are tolled until such time as a discovery schedule is

established by order of the Court.

SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE

Appendix C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE DOMESTIC AIRLINE TRAVEL ANTITRUST LITIGATION
This Document Relates To:
ALL CASES

MDL Docket No. 2656
Misc. No. 15-1404 (CKK)

ORDER APPOINTING PLAINTIFFS' INTERIM CLASS COUNSEL
(February 4, 2016)

On December 7, 2015, this Court issued an [38] Order setting forth the process for the Court's consideration of those seeking appointment as Plaintiffs' Interim Class Counsel. In response to its Order, the Court received four motions from counsel seeking to be appointed as either Plaintiffs' Interim Class Counsel or Co-Counsel: the [57] Application to Appoint Joseph M. Alioto Plaintiffs' Interim Class Counsel and Memorandum in Support ("Alioto proposal"); the [58] Plaintiffs' Lavin, Yeninas, King and Jung's Motion for Appointment of Hausfeld LLP and Cotchett, Pitre & McCarthy, LLP as Interim Co-Lead Counsel and request for Executive Committee ("Hausfeld/Cotchett proposal"); the [59] Motion to Appoint Robbins Geller Rudman & Dowd LLP and Labaton Sucharow LLP as Interim Class Counsel ("Robbins/Labaton proposal"); and the [60] Notice of Application to Appoint Stephen R. Neuwirth of Quinn Emanuel Urquhart & Sullivan, LLP as Interim Lead Class Counsel and to Appoint Executive Committee ("Quinn Emanuel proposal"). The four motions proposed different structures for leadership among Plaintiffs' counsel, including recommendations for Lead or Co-Lead counsel and, in some instances, for the establishment of an Executive Committee. Each of the applicants for Plaintiffs' Interim Class Counsel also filed a response, distinguishing their proposed leadership structure from

those advanced by the other applicants. Additionally, one group of Plaintiffs not seeking appointment as Plaintiffs' Interim Class Counsel filed a response in support of the Hausfeld/Cotchett proposal. Corr. Resp. to Pls. Boston Amateur Basketball Club III, Ltd., et al in Supp. of Appt. of Hausfeld, LLP & Cotchett, Pitre & McCarthy, LLP as Interim Co-Lead Counsel, ECF No. [70]. It should be noted that in the pleadings supplied by Quinn Emanuel, Plaintiffs' law firms were identified that supported that proposal.

In the applicants' written pleadings, each addressed the nine criteria that the Court indicated it would consider in selecting Plaintiffs' Interim Class Counsel: the work counsel has done in identifying or investigating potential claims in the action; counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; counsel's knowledge of the applicable law; the resources that counsel will commit to representing the class; counsel's ability to fund the litigation; the absence of conflicts with different interests on Plaintiffs' side; counsel's ability to command the confidence of his or her colleagues; counsel's ability to work cooperatively with the Court and opposing counsel; and the need for people with diverse skill sets and viewpoints who can add to the value of the overall representation.

After reviewing the written pleadings, the Court held a 3-hour hearing on February 3, 2016, to discuss general questions, focusing primarily on management style, structure, and finances, which the Court had with respect to each of the proposals. At the hearing, Michael Hausfeld and Steven Williams of the Hausfeld/Cotchett proposal, Stephen Neuwirth of the Quinn Emanuel proposal, Patrick Coughlin and Jay Himes of the Robbins/Labaton proposal, and Joseph Alioto of the Alioto proposal responded to the Court's questions regarding their proposals. Defense counsel indicated that they had experience working well with the applicants for Plaintiffs' Interim Class

Counsel, and expressed their need for a clear line of communication with Plaintiffs' Interim Class Counsel. At the end of the hearing, Lesley Weaver of Block & Leviton LLP addressed the Court in support of the Hausfeld/Cotchett proposal and John Malkinson of Malkinson & Halpern, P.C. addressed the Court in support of the Quinn Emanuel proposal.

All the applicants have a wealth of experience and are highly qualified representatives of the national antitrust bar. The Court appreciates the time each applicant put in to providing a thoughtful proposal as to how to manage the leadership of this case from the Plaintiffs' perspective. Indeed, each applicant demonstrated civility, professionalism, and collegiality and, importantly, expressed a desire to accommodate differing points of view and approaches as this matter proceeds. As such, the Court is confident that all of the lawyers presented as possible Plaintiffs' Interim Class Counsel as well as the lawyers identified as proposed Executive Committee members will be able to make important contributions to this case.

After careful consideration of the pleadings and the responses and information provided during the hearing, the Court appoints Michael Hausfeld of Hausfeld, LLP and Steven Williams of Cotchett, Pitre & McCarthy, LLP as Plaintiffs' Co-Lead Interim Class Counsel to perform the duties as described in the Court's [38] Order of December 7, 2015. As set forth in the Hausfeld/Cotchett proposal, the Court appoints Elizabeth Cabraser of Lieff, Cabraser, Heimann & Bernstein, LLP, Robert Kaplan of Kaplan, Fox & Kilsheimer LLP, and Warren Burns of Burns Charest LLP to Plaintiffs' Executive Committee.

These designations shall remain for a period of one year until February 7, 2017, or until certification of the class in the instant action, whichever is sooner. In the event that the class has not been certified by February 7, 2017, and this litigation remains ongoing, the Court shall either

reappoint or select new Plaintiffs' Interim Class Counsel to act on Plaintiffs' behalf. The Court notes that the considerable talent of the applicants who were not selected should be considered and tapped given that each has provided thoughtful and carefully developed strategy suggestions. At a future time, the Court may suggest that other applicants who were not selected be placed in managerial positions.

IT IS SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE

Appendix D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE DOMESTIC AIRLINE TRAVEL ANTITRUST LITIGATION
This Document Relates To:
ALL CASES

MDL Docket No. 2656
Misc. No. 15-1404 (CKK)

ORDER REGARDING INITIAL SCHEDULING AND CASE MANAGEMENT CONFERENCE
(November 15, 2016)

On October 28, 2016, this Court issued an [123] Order and accompanying [124] Memorandum Opinion denying Defendants' [106] Motion to Dismiss Plaintiffs' Consolidated Amended Complaint and directing Defendants to respond to the Complaint by no later than November 28, 2016. As set forth in this Court's [4] Initial Practice and Procedure Order Upon Transfer Pursuant to 28 U.S.C. § 1407, the Court now issues this Order regarding the Initial Scheduling and Case Management Conference.

In lieu of complying with the specific requirements of Local Civil Rule 16.3, the Court shall require the parties to meet, confer, and seek consensus regarding a proposed Scheduling Order and Case Management Plan that will facilitate the just, speedy, and inexpensive determination of all pretrial matters. Counsel shall discuss all matters that are likely to be addressed at the Initial Scheduling and Case Management Conference, generally including (but not limited to):

(1) Whether there is a realistic possibility of settling this matter without further judicial action.

(2) Whether the case could benefit from the Court's Mediation Program or some other

form of alternative dispute resolution ("ADR"), such as referral to a magistrate judge, a Court-appointed mediator, a private mediator, or a special master/settlement master for purposes of facilitating settlement discussions. In assessing the above, counsel shall consider:

a. The client's goals in bringing or defending this litigation;

b. Whether settlement talks have already occurred and, if so, why they did not produce an agreement;

c. The point during the litigation when ADR would be most appropriate, with special consideration given to:

i. Whether ADR should take place after the informal exchange or production through discovery of specific items of information; and

ii. Whether ADR should take place before or after the judicial resolution of key legal issues;

d. Whether the parties would benefit from a neutral evaluation of the case by a magistrate judge, Court-appointed mediator, a private mediator, or special master/settlement master, which could include suggestions regarding the focus of discovery, the legal merits of the claim, an assessment of damages, and/or the potential settlement value of this case; and

e. Whether cost savings or any other practical advantages would flow from a stay of discovery or of other pretrial proceedings while the ADR process is pending.

(3) Whether the parties believe it would be useful to appoint a special master or a magistrate judge to address any or all of the following matters (or any others):

discovery and discovery disputes; the preparation of reports and recommendations to the Court concerning dispositive motions, non-dispositive motions, or both; the determination of privilege questions, if any; and issues relating to experts and expert reports and information.

(4) Appropriate procedures for dealing with Rule 23 proceedings, including: the need for discovery and the timing thereof; dates for filing a Rule 23 motion and oppositions and replies thereto; possible dates for oral argument and/or an evidentiary hearing on the motion; and, in the event that a class is certified, procedures for considering appointment of class counsel.

(5) Whether some or all of the factual or legal issues can be agreed upon or narrowed.

(6) Whether the parties should stipulate to dispense with the initial disclosures required by Rule 26(a)(1) of the Federal Rule of Civil Procedure, and, if not, what if any changes should be made in the scope, form, or timing of those disclosures.

(7) Whether discovery should be bifurcated or managed in phases, and a specific proposal for such bifurcation.

(8) The anticipated extent of discovery; how long discovery should take; what limits should be placed in discovery; whether a protective order is appropriate; and a date for the completion of all discovery, including answers to interrogatories, document production, requests for admissions, and depositions.

(9) Whether the requirements of exchange of expert witness reports and information pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure should be modified, and whether and when depositions of experts, if any, should occur.

(10) Whether parties are likely to file further dispositive motions and, if so, dates for filing such motions and/or cross-motions, oppositions, and replies.

(11) Such other matters that the parties believe may be appropriate for inclusion in the Scheduling Order and Case Management Plan.

(12) Suggestions for additional items to be included on the agenda for the Initial Scheduling and Case Management Conference.

By no later than **January 4, 2017**, the parties shall jointly submit to the Court a written report that outlines the proposed Case Management Plan, including a succinct statement of all agreements reached with respect to any of the above issues, a description of the positions of each party on any matters as to which they disagree, and a proposed Scheduling Order.

These matters shall be discussed at the Initial Scheduling and Case Management Conference, which is hereby set for **January 19, 2017, at 1:00 p.m. in Courtroom 28A**. Plaintiffs' Interim Class Counsel and Defense counsel shall appear in person. Other counsel and parties may participate in the conference telephonically, provided that they jointly make arrangements for a dial-in telephone-conferencing service (i.e., a single telephone number that can be used to connect all telephonic participants). In the event that any counsel or party wishes to participate telephonically, a designee of all such counsel and parties shall contact chambers by no later than two business days in advance of the conference to provide a telephone number and, if necessary, a participant access code for the telephone-conferencing service.

IT IS SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE