UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: FRESENIUS GRANUFLO/NATURALYTE DIALYSATE PRODUCTS LIABILITY LITIGATION **This Document Relates to:** ***All Cases***	**MDL No. 1:13-md-02428-DPW**

DPW

~~[PROPOSED]~~ CASE MANAGEMENT ORDER NO. 1

APPOINTMENT OF PEC, PSC, PLAINTIFFS' LIAISON COUNSEL AND FEDERAL-STATE LIAISON COUNSEL

AND NOW, this 16th day of July 2013, the Court having carefully reviewed the applications for positions on the Plaintiffs' leadership structure, it is hereby **ORDERED** that the following attorneys are appointed to the Plaintiffs' Executive Committee ("PEC"), Liaison Counsel, Plaintiffs' Steering Committee ("PSC") and the Federal-State Liaison Counsel to carry out their respective functions:

1. **Plaintiffs' Executive Committee.** The Court hereby appoints to the Plaintiffs' Executive Committee ("PEC") the following counsel: Anthony Tarricone (Kreindler & Kreindler LLP); Chris Seeger (Seeger Weiss LLP); James C. Klick (Herman Herman & Katz LLC); Arnold Levin (Levin Fishbein Sedran & Berman); Michelle Parfitt (Ashcraft & Gerel LLP); and Steve W. Berman (Hagens Berman Sobol Shapiro LLP). Anthony Tarricone will serve as Chair and Plaintiffs' Liaison Counsel.

2. **Plaintiffs' Steering Committee.** The Court appoints to the Plaintiffs' Steering Committee ("PSC"), in addition to the PEC, the following counsel: Richard Golomb (Golomb &

Honik, PC); Bruce Steckler (The Steckler Law Firm); R. Clay Milling (Henry Spiegel Milling LLP); Randi Kassan (Sanders Viener Grossman LLP); Ellen Presby (Nemeroff Law Firm); Jim Dugan (The Dugan Law Firm, LLC); Troy Rafferty (Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A.); Richard "Flip" Phillips (Smith Phillips Mitchell Scott & Nowak, LLP); Kristian Rasmussen (Cory Watson Crowder & DeGaris, P.C.); Frank Woodson (Beasley Allen Crow Methvin Portis & Miles, P.C.) and J. Burton LeBlanc (Baron & Budd, P.C.).

3. **Responsibilities of the PEC and PSC.** The Plaintiffs' Executive Committee shall serve as Lead Counsel and will be responsible for overall coordination and management of all pretrial proceedings and case preparation on behalf of the PSC and all Plaintiffs, including authority to organize, staff and direct committees to carry out various functions necessary for case preparation and prosecution. The PEC/PSC shall be responsible for:

A. Discovery

i. Initiate, coordinate, and conduct all pretrial discovery on behalf of plaintiffs in all actions that are consolidated with the instant multidistrict 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 discovery of relevant issues found in the pleadings of this litigation. Similar requests, notices, and subpoenas may be caused

to be issued by the PEC and PSC upon written request by an individual attorney in order to assist him/her in the preparation of the pretrial stages of his/her client's particular claims.

iv. Conduct all discovery in a coordinated and consolidated manner on behalf and for the benefit of all plaintiffs.

B. Hearings and Meetings

i. Call meetings of counsel for plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or of the Court.

ii. Initiate proposals, suggestions, schedules, or joint briefs, and any other appropriate matter(s) pertaining to pretrial proceedings.

iii. Examine witnesses and introduce evidence at hearings on behalf of plaintiffs.

iv. Act as spokesperson for all plaintiffs at pretrial proceedings and in response to any inquiries by the Court, subject, of course, to the right of any plaintiff's counsel to present non-repetitive individual or different positions.

C. Trial

i. Coordinate trial team(s)'s selection, management and presentation of any common issue, "bellwether" and/or "test" case trial(s).

D. Other

i. Submit and argue any verbal or written motions presented to the Court or Magistrate on behalf of the PEC and PSC, as well as

oppose, when necessary, any motions submitted by the defendant or other parties which involve matters within the sphere of the responsibilities of the PEC and PSC.

ii. Negotiate and enter into stipulations with defendants regarding this litigation.

iii. Explore, develop, and pursue all settlement options pertaining to any claim or portion thereof of any case filed in this litigation.

iv. Maintain adequate files of all pretrial matters and have them available, under reasonable terms and conditions, for examination by plaintiffs or their attorneys.

v. Prepare periodic status reports summarizing the PEC's and PSC's work and progress.

vi. Perform any task necessary and proper for the PEC and PSC to accomplish their responsibilities as defined by the Court's Orders.

vii. Perform such other functions as may be expressly authorized by further Orders of this Court.

viii. Serve as the recipient for all Court orders on behalf of all of the Plaintiffs.

ix. Coordinate service and filings for all Plaintiffs whether presently included or subsequently added.

x. Maintain and distribute to co-counsel and to Defendants' Counsel an up-to-date service list;

xi. Coordinate and maintain the establishment of a document depository, real or virtual, to be available to all participating Plaintiffs' counsel.

xii. Prepare agendas for court conferences and periodically report regarding the status of the case.

xiii. Explore, develop and pursue all settlement options pertaining to a claim or portion thereof of any case filed in this litigation.

E. No motion, request for discovery, or other pretrial proceeding shall be initiated or filed by any plaintiff except through the PEC without prior order of this Court.

4. Plaintiffs' Liaison Counsel

The Court appoints Anthony Tarricone as Plaintiffs' Liaison Counsel. The Plaintiffs' Liaison Counsel shall be responsible for providing communications between the court and other counsel (including receiving and distributing notices, orders, motions, and briefs on behalf of the group), convening meetings of counsel, advising parties of developments, and otherwise assisting in the coordination of activities and positions. Liaison counsel may act for the group in managing document depositories and in resolving scheduling conflicts.

5. Plaintiffs' Federal-State Liaison Counsel for Massachusetts and California Litigations.

The Court appoints Lauren Barnes (Hagens Berman Sobol Shapiro LLP) as Plaintiffs' Federal-State Liaison Counsel for Massachusetts and Gretchen M. Nelson (Kreindler & Kreindler LLP) as Plaintiffs' Federal-State Liaison Counsel for California. The Federal-State

Liaison Counsel are to provide reports to the Court on the status of the state litigation and coordination with the MDL.

6. To the extent feasible, the PEC and PSC are expected to work jointly with leadership in the pending state actions to coordinate pretrial proceedings and case management.

7. Compensation for work performed and the approved costs incurred by the PEC, PSC, Plaintiffs' Liaison Counsel, Plaintiffs' Federal-State Liaison Counsel, any subcommittee approved by the PEC and PSC or any attorney appointed by this Court, will be paid by the common benefit funds which shall be covered in a separate Case Management Order.

It is so **ORDERED.**

Dated: July 18, 2013

BY THE COURT:

Douglas P. Woodlock

Douglas P. Woodlock
United States District Judge