

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**IN RE: EpiPen (Epinephrine
Injection, USP) Marketing,
Sales Practices and Antitrust
Litigation**

MDL No: 2785

Case No. 17-md-2785-DDC-TJJ

**(This Document Applies to
Consumer Class Cases)**

ORDER

Defendants have filed a “Motion and Memorandum in Support of Continuing Trial Currently Scheduled to Begin April 13, 2021 in Light of the Accelerating COVID-19 Pandemic.” Doc. 2244. Plaintiffs oppose the motion. Doc. 2248.

Defendants’ motion applies to the trial set for April 13, 2021 in the Consumer Class track of this MDL. Doc. 2169 at 59 (Pretrial Order ¶ 9.a.). The trial is anticipated to last five to seven weeks. *Id.* (Pretrial Order ¶ 9.c.). After reading the parties’ competing arguments in their thorough and well-researched briefs, the court, reluctantly, agrees that the trial date must move.

Given the scope and intensity of the COVID-19 pandemic in northeast Kansas, a trial with this many participants that is expected to consume the better part of two months in the spring of 2021 simply is not feasible. Nor is it prudent. Even if the trial is conducted in our courthouse’s largest courtroom, it is unlikely it could comply with the current restrictions limiting the size of gatherings and requiring social distancing measures. The court remains hopeful that conditions will improve and that those restrictions may change by April 2021. But, by now, the court is familiar with the scale of the rosters both sides will deploy for this trial.

Also, the court is well informed about the public health conditions in Kansas City, Kansas. The court finds it is unlikely the court could convene a trial of this size safely by April 13, 2021.

Moreover, Chief Judge Julie A. Robinson just recently issued Administrative Order 2020-13 which, among other things, continued “all in-person civil and criminal jury trials and all in-person hearings or bench trials scheduled to commence now *through February 15, 2021*” in the District of Kansas. *In re: Proceedings During the Coronavirus (COVID-19) Pandemic*; Administrative Order 2020-13 (D. Kan. Dec. 8, 2020), <http://ksd.uscourts.gov/wp-content/uploads/2020/12/12-8-2020-Administrative-Order-2020-13-Proceedings-During-the-COVID-19-Pandemic.pdf> (emphasis added). After continuing all in-person proceedings—*civil and criminal*—through mid-February, the court is facing significant scheduling challenges independent of this case. These challenges—particularly in criminal matters—likely will affect the court’s ability to devote five to seven consecutive weeks to a civil trial in April 2021 (even assuming that the court can resume in-person hearings safely by then).

For these reasons, the court continues the April 13, 2021 trial date. Also, the court suspends the current pretrial deadlines established by the Pretrial Order (Doc. 2169). The court directs the parties to meet and confer about rescheduling the trial to a date in late summer or fall of 2021. It also directs the parties to meet and confer about resetting the remaining pretrial deadlines to correspond with such a trial date. The court orders the parties to file *one* joint status report by **January 15, 2021**, with their proposal for rescheduling the pretrial deadlines and resetting the trial date in late summer or fall of 2021. The court purposely uses the word “proposal.” Just as the court is hopeful about the future of our public health, the court is hopeful that the parties won’t succumb to the temptation to pluralize that operative noun.

Also, the court sets this matter for a video status conference on **January 27, 2021 at 1:30 p.m.**, to discuss rescheduling the trial date and other pretrial deadlines, as well as any other related matters.¹

IT IS THEREFORE ORDERED BY THE COURT THAT defendants’ “Motion and Memorandum in Support of Continuing Trial Currently Scheduled to Begin April 13, 2021 in Light of the Accelerating COVID-19 Pandemic” (Doc. 2244) is granted.

IT IS FURTHER ORDERED THAT the court will hold a video status conference with the parties on **January 27, 2021 at 1:30 p.m.**

IT IS SO ORDERED.

Dated this 16th day of December, 2020, at Kansas City, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge

¹ The court will issue a separate notice of hearing that will provide instructions for participating in that video conference.