No. 19A-___

In the Supreme Court of the United States

ACTAVIS HOLDCO US, INC. ET AL., APPLICANTS

v.

STATE OF CONNECTICUT, ET AL.

ON APPLICATION TO JUSTICE ALITO FOR PARTIAL STAY OF INTERLOCUTORY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA PENDING FURTHER PROCEEDINGS IN THIS COURT

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TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE THIRD CIRCUIT:

Pursuant to Supreme Court Rule 23 and 28 U.S.C. 2101(f), Applicants (Defendants-Petitioners below) respectfully apply to stay enforcement of Paragraph 3(b) of an October 24, 2019, Case Management Order ("CMO") entered by the district court, Dkt. No. 1135, in *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, No. 2:16-md-2724-CMR (E.D. Pa. Oct. 24, 2019), pending resolution of their petition for certiorari, which is being filed simultaneously.[1] The CMO required Applicants to produce millions of documents containing any of a host of search terms. App. A at 2. A split Third Circuit panel denied mandamus review, stating that the CMO allowed Applicants to seek to "claw back" irrelevant documents *after* they were produced. Judge Phipps dissented, noting that the order "constitutes a serious and exceptional error that should be corrected through a writ of mandamus." App. D at 3 n.1. "[T]he rules of civil procedure allow for a review for responsiveness and relevance *before* production," and "a court does not spontaneously gain authority to compel production of non-responsive, irrelevant documents simply by establishing a period of time afterwards for the review and potential return of the documents." *Ibid.* As explained below, the CMO flouts the Rules, breaks from precedent, and threatens irreparable harm that cannot be fully remedied absent a stay.

[1] All "Dkt." citations herein are to the docket in *In re Generic Pharm. Pricing Antitrust Litig.*, No. 2:16-md-2724-CMR (E.D. Pa.).

To ensure that there are no undue delays, Applicants are filing their petition today. In light of the March 9, 2020, compliance deadline and the efforts necessary to prepare large-scale productions, Applicants respectfully request that, if possible, this Court act on this Application on or before March 2, 2020.

The CMO is attached hereto as Appendix A. The district court's Memorandum Opinion & Order denying Applicants' motion to stay the disputed CMO provision pending disposition of their mandamus petition is attached as Appendix B. The Third Circuit's Order directing Respondents (Plaintiffs-Respondents below) to answer the mandamus petition and address "(1) What reasons were given to direct the production of potentially responsive discovery from the custodians without permitting the responding party to review the material for relevance?" and "(2) What is the legal authority to require a party to produce discovery without permitting the producing party to review whether the potentially responsive information is relevant when there is no evidence of a past failure to produce responsive discovery?" is attached as Appendix C. The Third Circuit's divided Order denying mandamus, and Appellants' stay application, is attached as Appendix D. The Third Circuit's Order denying Applicants' petition for rehearing en banc and concomitant stay request is attached as Appendix E. The Third Circuit's Order denying Applicants' motion for a stay pending certiorari is attached as Appendix F. All of the opinions and orders are unreported.

Additional record materials appended to this Application include excerpts from the transcript of the district court's hearing on the CMO (Appendix G), correspondence describing proposed search terms (Appendix H), the Special Master's Report &

Recommendation on the CMO (Appendix I), the Special Master's "Supplemental Summary" concerning his Report & Recommendation (Appendix J), and the district court's order setting the currently applicable discovery deadlines (Appendix K).

PARTIES TO THE PROCEEDING

Applicants, Defendants-Petitioners below, are Actavis Holdco U.S., Inc.; Actavis Pharma, Inc.; Akorn, Inc.; Akorn Sales Inc.; Amneal Pharmaceuticals, Inc.; Apotex Corporation; Ascend Laboratories, LLC; Aurobindo Pharma USA, Inc.; Citron Pharma, LLC; DAVA Pharmaceuticals, LLC; Dr. Reddy's Laboratories, Inc.; Epic Pharma, LLC; Fougera Pharmaceuticals Inc.; G&W Laboratories, Inc.; Generics Bidco I, LLC; Hi-Tech Pharmacal Co., Inc.; Impax Laboratories, Inc.; Lannett Company, Inc.; Mayne Pharma Inc.; Morton Grove Pharmaceuticals, Inc.; Mylan Inc.; Mylan N.V.; Mylan Pharmaceuticals Inc.; Oceanside Pharmaceuticals, Inc.; Par Pharmaceutical Companies, Inc.; Par Pharmaceutical, Inc.; Perrigo New York, Inc.; Sandoz Inc.; Sun Pharmaceuticals Industries, Inc.; Taro Pharmaceuticals USA, Inc.; Teva Pharmaceuticals USA, Inc.; UDL Laboratories, Inc.; Upsher-Smith Laboratories, LLC; Valeant Pharmaceuticals International; Valeant Pharmaceuticals North America, LLC; Wockhardt USA LLC; Zydus Pharmaceuticals (USA) Inc.

Respondents, Plaintiffs-Respondents below, are **State Attorney General Respondents:** State of Connecticut; State of Alabama; State of Alaska; Territory of American Samoa; State of Arizona; State of Arkansas; State of California; State of Colorado; State of Delaware; District of Columbia; State of Florida; State of Georgia; Territory of Guam; State of Hawaii; State of Idaho; State of Illinois; State of Indiana; State of Iowa; State of Kansas; Commonwealth of Kentucky; State of Louisiana; State of Maine; State of Maryland; Commonwealth of Massachusetts; State of Michigan; State of Minnesota; State of Mississippi; State of Missouri; State of Montana; State of Nebraska; State of Nevada; State of New Hampshire; State of New Jersey; State

of New Mexico; State of New York; State of North Carolina; State of North Dakota; Commonwealth of the Northern Mariana Islands; State of Ohio; State of Oklahoma; State of Oregon; Commonwealth of Pennsylvania; Commonwealth of Puerto Rico; State of Rhode Island; State of South Carolina; State of South Dakota; State of Tennessee; State of Utah; State of Vermont; Commonwealth of Virginia; State of Washington; State of West Virginia; State of Wisconsin; and State of Wyoming; **Direct Purchaser Respondents:** KPH Healthcare Services, Inc., a/k/a Kinney Drugs, Inc.; FWK Holdings, LLC; Rochester Drug Co-Operative, Inc.; César Castillo, Inc.; and Ahold USA, Inc.; **End-Payor Respondents:** 1199SEIU Greater New York Benefit Fund; 1199SEIU Licensed Practical Nurses Welfare Fund; 1199SEIU National Benefit Fund; 1199SEIU National Benefit Fund for Home Care Workers; American Federation of State, County and Municipal Employees District Council 37 Health & Security Plan; American Federation of State, County and Municipal Employees District Council 47 Health & Welfare Fund; City of Providence, Rhode Island; Detectives Endowment Association of the City of New York; Nina Diamond; Hennepin County International Union of Operating Engineers Local 30 Benefits Fund; Robby Johnson; Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana; Ottis McCrary; Philadelphia Federation of Teachers Health and Welfare Fund; Self-Insured Schools of California; Sergeants Benevolent Association of the Police Department of the City of New York Health and Welfare Fund; David Sherman; UFCW Local 1500 Welfare Fund; Uniformed Fire Officers Association Family Production Plan Local 854; Unite Here Health; United Food & Commercial Workers and

Employers Arizona Health & Welfare Trust; and Valerie Velardi; **Indirect-Reseller Respondents:** Mr. Russell's Discount Drugs, Inc.; Falconer Pharmacy, Inc.; Reliable Pharmacy, Inc.; Chet Johnson Drug, Inc.; and Halliday's and Koivisto's Pharmacy; and **Direct Action Respondents:** The Kroger Co.; Albertsons Companies, LLC; H.E. Butt Grocery Company L.P.; Humana, Inc.; and United Healthcare Services, Inc.

Additional Defendants below who are not signatories to this Application are Breckenridge Pharmaceutical, Inc.; Camber Pharmaceuticals, Inc.; Endo International plc; Glenmark Pharmaceuticals Inc., USA; Greenstone LLC; Heritage Pharmaceuticals, Inc.; Lupin Pharmaceuticals, Inc.; McKesson Corporation; McKesson Medical-Surgical Inc.; Pfizer, Inc.; Teligent, Inc.; Versapharm, Inc.; West-Ward Pharmaceuticals Corp.; Ara Aprahamian; David Berthold; James Brown; Maureen Cavanaugh; Tracy DiValerio; Mark Falkin; James Grauso; Kevin Green; Armando Kellum; Rajiv Malik; Satish Mehta; Jill Nailor; James Nesta; Konstantin Ostaficiuk; Nisha Patel; David Rekenthaler; and Richard Rogerson.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Actavis Pharma, Inc. ("Actavis Pharma") is an indirect wholly owned subsidiary of Teva Ltd., a publicly traded company. No other publicly traded company owns more than 10% of Actavis Pharma's stock.

Actavis Holdco U.S., Inc. ("Actavis U.S.") is an indirect wholly owned subsidiary of Teva Ltd., a publicly traded company. No other publicly traded company owns more than 10% of Actavis U.S.'s stock.

Actavis Elizabeth, LLC ("Actavis Elizabeth") is an indirect wholly owned subsidiary of Teva Ltd., a publicly traded company. No other publicly traded company owns more than 10% of Actavis Elizabeth's stock.

Akorn, Inc. is a publicly traded company, it has no parent company, and no publicly traded company owns 10% or more of Akorn, Inc.'s stock.

Akorn Sales, Inc. is a wholly-owned subsidiary of Akorn, Inc., a publicly traded company. No publicly traded company owns 10% or more of Akorn Inc.'s stock.

Amneal Pharmaceuticals, Inc., a publicly traded company, owns 10% or more of Amneal Pharmaceuticals LLC. T. Rowe Price Associates, Inc. and Fosun International Limited (which is traded on the Hong Kong Stock Exchange and holds shares through one or more affiliates) each own 10% or more of Amneal Pharmaceuticals, Inc.'s Class A stock (but less than 10% of its total stock). No other publicly held entities own 10% or more of Amneal Pharmaceuticals, Inc.'s stock.

Apotex Corp. is a direct wholly-owned subsidiary of Aposherm Delaware Holding Corporation, which is an indirect wholly-owned subsidiary of Apotex Holdings,

Inc. Apotex Holdings, Inc. is a privately owned company, and no publicly traded company owns more than ten percent of the stock of Apotex Holdings, Inc.

Ascend Laboratories, LLC is not a publicly traded company. Ascend Laboratories, LLC's parent company is Alkem Laboratories Ltd., which is a publicly traded company that owns more than 10% of Ascend Laboratories, LLC's stock.

Aurobindo Pharma USA, Inc. ("Aurobindo") is a direct, wholly-owned subsidiary of Aurobindo Pharma Limited, an Indian corporation. Aurobindo is not a publicly-traded entity, and Aurobindo Pharma Limited is the only publicly-traded entity that owns 10% or more of the stock of Aurobindo.

Citron Pharma LLC is a privately held company. Its parent entities are privately held and no publicly traded company owns more than 10% of Citron Pharma LLC's stock.

DAVA Pharmaceuticals, LLC is an indirectly wholly owned subsidiary of Endo International plc, a publicly traded company. No other publicly traded company owns more than 10% of DAVA Pharmaceuticals, LLC's stock.

Dr. Reddy's Laboratories, Inc., is a wholly owned subsidiary of Dr. Reddy's Laboratories, S.A. Dr. Reddy's Laboratories, S.A. is a wholly owned subsidiary of Dr. Reddy's Laboratories Ltd. Dr. Reddy's Laboratories Ltd. is a publicly held corporation, and no publicly held corporation owns 10% or more of the stock of Dr. Reddy's Laboratories Ltd.

Epic Pharma, LLC, is not a publicly traded company. Epic Pharma, LLC, is wholly owned by Humanwell Healthcare USA LLC. Humanwell Healthcare USA

LLC is wholly owned by Humanwell Healthcare International Ltd. (an Ireland Corporation), which is wholly owned by Humanwell Healthcare Group Co., Ltd (a Chinese corporation), which is a publicly traded company on the Shanghai Stock Exchange in China.

Fougera Pharmaceuticals Inc. ("Fougera") is an indirect, wholly owned subsidiary of Novartis AG, a publicly held company, the shares of which are traded on the SIX Swiss Exchange under the ticker symbol NOVN and whose American Depository Shares are publicly traded on the New York Stock Exchange under the ticker symbol NVS. There are no publicly traded companies between Fougera and Novartis AG.

Generics Bidco I, LLC is an indirectly wholly owned subsidiary of Endo International plc, a publicly traded company. No other publicly traded company owns more than 10% of Generics Bidco I, LLC's stock.

G&W Laboratories, Inc. is a privately held corporation. It has no parent company, and no publicly traded corporation own 10% or more of its stock.

Hi-Tech Pharmacal Co., Inc. is a wholly-owned subsidiary of Akorn, Inc., a publicly traded company. No publicly traded company owns 10% or more of Akorn Inc.'s stock.

Impax Laboratories, Inc. (n/k/a Impax Laboratories, LLC), a Delaware limited liability company, is a wholly owned subsidiary of Amneal Pharmaceuticals LLC, a Delaware limited liability company.

Lannett Company, Inc. is a publicly traded company. Lannett Company, Inc. has no parent company, and no publicly traded company owns more than 10% of Lannett Company, Inc.'s stock.

Mayne Pharma Inc. is a directly wholly owned subsidiary of Mayne Pharma Group Ltd., a publicly traded company. No other publicly traded company owns more than 10% of Mayne Pharma Inc.'s stock.

Mylan N.V. is a publicly traded company. Mylan N.V. has no parent company, and no publicly traded company owns more than 10% of Mylan N.V.'s stock.

Mylan Inc. is an indirectly wholly owned subsidiary of Mylan N.V., a publicly traded company. No other publicly traded company owns more than 10% of Mylan Inc.'s stock.

Mylan Pharmaceuticals Inc. is an indirectly wholly owned subsidiary of Mylan N.V., a publicly traded company. No other publicly traded company owns more than 10% of Mylan Pharmaceuticals Inc.'s stock.

Par Pharmaceutical, Inc. is an indirectly wholly owned subsidiary of Endo International plc, a publicly traded company. No other publicly traded company owns more than 10% of Par Pharmaceutical, Inc.'s stock.

Par Pharmaceutical Companies, Inc. is an indirectly wholly owned subsidiary of Endo International plc, a publicly traded company. No other publicly traded company owns more than 10% of Par Pharmaceutical Companies, Inc.'s stock.

Oceanside Pharmaceuticals, Inc. is an indirectly wholly owned subsidiary of Bausch Health Companies Inc., a publicly traded company. No other publicly traded

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Perrigo New York, Inc. is an indirectly wholly owned subsidiary of Perrigo Company plc, a publicly traded company. T. Rowe Price Associates, Inc., a publicly traded company, owns 13.9% of Perrigo Company plc's stock. No other publicly traded company owns more than 10% of Perrigo Company plc's stock.

Sandoz Inc. ("Sandoz") is an indirect, wholly owned subsidiary of Novartis AG, a publicly held company, the shares of which are traded on the SIX Swiss Exchange under the ticker symbol NOVN and whose American Depository Shares are publicly traded on the New York Stock Exchange under the ticker symbol NVS. There are no publicly traded companies between Sandoz and Novartis AG.

Sun Pharmaceutical Industries, Inc. is a majority-owned subsidiary of Sun Pharmaceutical Holdings USA, Inc. and a minority-owned subsidiary of Sun Pharmaceutical Industries, Ltd. No publicly traded company owns 10% or more of Sun Pharmaceutical Industries, Inc.'s stock.

Taro Pharmaceuticals U.S.A., Inc. is a wholly-owned subsidiary of Taro Pharmaceutical Industries Ltd., which is a publicly traded company. Sun Pharmaceutical Industries, Ltd., a publicly traded company, is a majority owner of Taro Pharmaceutical Industries, Ltd. No other company owns 10% or more of Taro Pharmaceuticals U.S.A., Inc.'s stock.

Teva Pharmaceuticals USA, Inc. ("Teva USA") is directly owned by: (i) Orvey UK Unlimited (Majority Shareholder), which is directly owned by Teva Pharmaceuticals Europe B.V., which is directly owned by Teva Ltd.; and (ii) Teva Pharmaceutical Holdings Coöperatieve U.A. (Minority Shareholder), which is directly owned by IVAX LLC, a direct subsidiary of Teva USA.

Teva Ltd. is a publicly traded company. Teva Ltd. has no parent company, and no publicly traded company owns more than 10% of Teva Ltd.'s stock.

UDL Laboratories, Inc. is an indirectly wholly owned subsidiary of Mylan N.V., a publicly traded company. No other publicly traded company owns more than 10% of UDL Laboratories, Inc.'s stock.

Upsher-Smith Laboratories, L.L.C., is a privately-owned company. Upsher-Smith Laboratories, L.L.C. is wholly owned by Sawai America, L.L.C. No publicly held corporation which is not a party to this proceeding has a financial interest in the outcome of this proceeding.

Valeant Pharmaceuticals North America, LLC, now known as Bausch Health US, LLC, is an indirectly wholly owned subsidiary of Bausch Health Companies Inc., a publicly traded company. No other publicly traded company owns, directly or indirectly, more than 10% of the stock of Valeant Pharmaceuticals North America, LLC.

Valeant Pharmaceuticals International, now known as Bausch Health Americas, Inc., is an indirectly wholly owned subsidiary of Bausch Health Companies Inc., a publicly traded company. No other publicly traded company owns, directly or indirectly, more than 10% of the stock of Valeant Pharmaceuticals International.

Wockhardt USA LLC is ultimately 100% owned by Wockhardt Bio AG, a publicly held company. Wockhardt Bio AG is 100% owned by Wockhardt Limited, a publicly held company.

Morton Grove Pharmaceuticals is ultimately 100% owned by Wockhardt Bio AG, a publicly held company. Wockhardt Bio AG is 100% owned by Wockhardt Limited, a publicly held company.

Zydus Pharmaceuticals (USA) Inc. ("Zydus") is an indirect wholly owned subsidiary of Cadila Healthcare Limited, a publicly traded company. No other publicly traded company owns more than 10% of Zydus.

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INTRODUCTION

This case presents a question of exceptional importance to federal civil procedure law. In this sweeping multi-district antitrust litigation, the district court entered a case management order ("CMO") that flouts Rule 26's text, structure, and history: The district court's order requires Applicants to produce millions of documents containing any of a broad list of keywords; Applicants can protect sensitive, irrelevant documents only *after* production, via a "claw back" process. App. A at 2. In support, the court cited a discovery standard that this Court, seeking to tighten Rule 26's relevance requirement, deleted from the rule in 2015. If allowed to stand, that extraordinary order will have severe consequences, as many of the documents contain competitively sensitive or private personal information. And those consequences cannot be fully remedied unless the Court enters a stay now.

The Third Circuit's split decision upholding the CMO violates the most fundamental norms of civil discovery. The panel majority denied mandamus review based on its view that district courts generally have latitude in controlling discovery and in crafting provisions that enable parties to "claw back" produced documents. But as Judge Phipps explained in dissent, the order "constitutes a serious and exceptional error that should be corrected through a writ of mandamus." App. D at 3 n.1. "[T]he rules of civil procedure allow for a review for responsiveness and relevance *before* production," and "a court does not spontaneously gain authority to compel production of non-responsive, irrelevant documents simply by establishing a period of time afterwards for the review and potential return of the documents produced." *Ibid.* Indeed, both this Court and many lower courts have rejected the Third Circuit's logic,

which inverts the usual rule that, absent findings of misconduct, parties have a right to decide in the first instance what is relevant and responsive to discovery requests.

The extraordinary legal error below, coupled with the severe irreparable harm that it would cause, warrants a stay pending certiorari. First, there is at least a reasonable probability that this Court will review the ruling below, and a significant prospect of reversal. The majority's decision flouts Rule 26's text, which permits only discovery that is "relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1); see C. Wright & A. Miller, 8 Federal Practice & Procedure § 2008 (3d ed. 2019) ("Perhaps the single most important word in Rule 26(b)(1) is 'relevant,' for it is only relevant matter that may be the subject of discovery."). Further, the decision breaks from this Court's admonition that Rule 26(b)(1)'s requirement "that the material sought in discovery be 'relevant' should be firmly applied," *Herbert* v. *Lando*, 441 U.S. 153, 177 (1979) (citation omitted), and from the decisions of five circuits that have granted mandamus to rein in discovery orders requiring production of irrelevant material. See *infra* at 19-20.

In addition, the decision ignores the 2000 and 2015 amendments to Rule 26, which narrowed what is "relevant" in civil litigation. It also sanctions an unprecedented use of "clawback" orders, which had been used to remedy parties' inadvertent disclosures of privileged materials, not court-ordered disclosures of irrelevant materials. And it invites parties to abuse discovery by seeking material—including commercially sensitive information—unrelated to any claim or defense, and then to use the specter of having to produce that material as a cudgel to coerce unreasonable

settlements. In fact, the record reflects that the CMO was adopted in part because it was deemed "essential" to induce a "meaningful settlement." App. H at 3. The ruling's implications thus extend far beyond this case—a point underscored by amicus briefs below from the Chamber of Commerce and Lawyers for Civil Justice.

Second, if allowed to stand, the CMO will cause immediate irreparable harm. Because the district court set a March 9, 2020, production deadline (App. K at 3), that harm would be unleashed before the Court has a full opportunity to consider Applicants' certiorari petition—which, to avoid delay, Applicants filed today. Meanwhile, a stay is essential to avoid the irreparable harm to Applicants that would result from compelled disclosure of highly confidential but indisputably irrelevant material.

Indeed, the divided ruling below compels Applicants to divulge *to their competitors* trade secrets and other sensitive information, and then to fight to "claw back" every irrelevant document that never should have been produced in the first place—with no guarantee of success, let alone any prospect of recovering the substantial expenses of doing so. That process not only risks the unjustified exposure of Applicants' sensitive business information, but also imposes undue pressure on Applicants to settle. Leaks have already occurred in this case, despite a protective order containing an "Outside Counsel Eyes Only" provision. The case involves more than 50 complaints and dozens of competing pharmaceutical manufacturers, wholesalers, pharmacies, and third-party payors, any of which could gain an unfair competitive advantage from an accidental or purposeful misuse of such competitively sensitive materials. See *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 1011–1012 (1984) ("The

economic value of [trade secrets] lies in the competitive advantage over others that [their owner] enjoys by virtue of its exclusive access to the data, and disclosure or use by others of the data would destroy that competitive edge."). And Applicants will be further harmed by the immense costs of production and unnecessary clawback fights, which cannot be recovered—textbook irreparable harm.

Finally, the balance of equities clearly favors relief. No harm will come to Respondents from a reasonable stay pending certiorari, as other complaints continue to be filed and the balance of discovery is proceeding apace. Respondents already have millions of documents previously produced to state attorneys general in response to investigative subpoenas. And the public has a strong interest in proper enforcement of Rule 26(b)(1)'s relevance requirement, given its central role in determining the scope of civil discovery in federal courts. Thus, the application should be granted.

STATEMENT

A. Federal Rule of Civil Procedure 26 and the relevance limits on document discovery

Federal Rule of Civil Procedure 26(b), entitled "Discovery Scope and Limits," provides in relevant part:

> (1) Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1). Rule 26(b)(1) thus contains two independent requirements—a "relevan[ce]" requirement and a "proportional[ity]" requirement—that work together to delimit "the scope of discovery." That scope may be further "limited by court order," but not expanded. In a similar vein, Rule 26(b)(2) provides that "the court must limit the frequency or extent of discovery" where "the proposed discovery is outside the scope permitted by Rule 26(b)(1)." Fed. R. Civ. P. 26(b)(2)(iii).

Rule 34 incorporates these requirements as limits on document discovery, providing that "[a] party may serve on any other party a request *within the scope of Rule 26(b)*" to produce "any designated documents or electronically stored information." Fed. R. Civ. P. 34(a) (emphasis added). The responding party may then object in writing and withhold documents based on its objections, such as the objection that the documents are not relevant. See Fed. R. Civ. P. 34(b)(2)(B) & (C). The requesting party must then enforce its request through a motion to compel production of the withheld documents. See Fed. R. Civ. P. 37(a)(3)(B)(iv).

District courts have sometimes failed to heed this Court's teaching that "the requirement of Rule 26(b)(1) that the material sought in discovery be 'relevant' should be firmly applied" (*Lando*, 441 U.S. at 177), prompting this Court to make the requirement harder to circumvent. In 2000, for example, due to "[c]oncerns about costs and delay" (Fed. R. Civ. P. 26 Advis. Comm. Notes (2000)), the Court changed the scope of discovery that is allowed absent a separate "good cause" showing from discovery "'relevant to the subject matter involved in the pending action'" to discovery "'relevant to any party's claim or defense.'" Wright & Miller, 8 Fed. Practice & Proc.

§ 2008. Then, in 2015, the Court further narrowed the rule by eliminating the provision for discovery concerning "the subject matter involved" entirely, so the current version of the Rule permits only discovery "relevant to any party's claim or defense." *Ibid*. Also in 2015, the Court removed language permitting discovery "reasonably calculated to lead to the discovery of admissible evidence," still further narrowing the lawful scope of discovery. As the Advisory Committee noted, "[t]he 'reasonably calculated' phrase" was removed because it "ha[d] continued to create problems." Fed. R. Civ. P. 26 Advis. Comm. Notes (2015).

The Chief Justice noted that these changes were designed to "eliminate unnecessary or wasteful discovery":

> The amended rule states, as a fundamental principle, that lawyers must size and shape their discovery requests to the requisites of a case. Specifically, the pretrial process must provide parties with efficient access to what is needed to prove a claim or defense, but eliminate unnecessary or wasteful discovery. The key here is careful and realistic assessment of actual need.

John G. Roberts, Jr., *2015 Year-End Report on the Federal Judiciary*, 7 (2015).

B. Respondents' complaints and this multi-district litigation

This multi-district litigation involves over 50 complaints filed by multiple types of Respondents, including state attorneys general, direct and indirect customers of Applicants, and third-party payors. Although the details vary, each complaint alleges that some combination of generic pharmaceutical companies conspired to fix prices or allocate customers for various generic pharmaceutical products, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, or analogous state laws. Applicants vigorously deny those allegations.

The Judicial Panel on Multidistrict Litigation consolidated the cases for coordinated pre-trial proceedings before the U.S. District Court for the Eastern District of Pennsylvania (Hon. Cynthia M. Rufe) in August 2016. Several dozen more suits have been consolidated in the MDL, with new suits being filed this month.

C. Respondents' proposed document discovery procedures

By June 2019, the parties had negotiated a discovery protocol that would have followed settled discovery practices, including application of search terms followed by review for relevance *before* document production—as is standard, and as the Rules require. App. G at 39:15-21. But Respondents abruptly abandoned their discovery requests and moved to compel all Applicants to produce individual employees' full electronic files—i.e., all email or documents created over a seven-year period—*regardless* of responsiveness or relevance.

Respondents alternatively proposed that Applicants run extremely broad searches, including for terms likely to be found in a wide array of business, strategic, and personal communications. These terms included: ""coffee"; "call me"; "offer"; "heads up"; "speak"; "spoke"" and "in person." App. H (proposed search terms). Here again, Respondents proposed that Applicants produce all documents that hit on the terms, regardless of their relevance.

Both of Respondents' proposals were untethered from the scope of their discovery requests served on Applicants, the parties' previously negotiated agreements as to scope, or the parties' claims and defenses. For example, among other things, Respondents' proposed terms would result in production of such documents as:

- A recap from an employee who "spoke" to a Food and Drug Administration official about confidential regulatory matters unrelated to any product at issue in this litigation;
- Plans for "in person" discussions of confidential merger and acquisitions activity not relevant to any issue in this litigation; and
- Any employee's invitation to discuss anything, including the most confidential and sensitive personal matters, over "coffee."

The list could go on for pages. While these terms were part of an initial proposal that could be narrowed going forward, the District Court and Special Master have made clear that they expect the terms to be "broad" (App. 28a), meaning the final list will inevitably capture large troves of irrelevant but confidential documents. None of this commercially sensitive material would facilitate investigation or resolution of Respondents' claims.

D. The Special Master's recommendation that the district court forbid relevance review before production

The parties briefed the dispute before court-appointed Special Master David Marion. Notably, Respondents openly acknowledged that their proposed procedures would result in production of irrelevant documents. *E.g.*, App. G at 66:6-10 (Respondents' counsel: the procedures "may involve the production [of] a large set of documents where some documents are irrelevant"). This includes competitively sensitive documents that would be available to each Applicant's competitors that are parties.

In addition to the plain text of Rule 26, Applicants cited numerous authorities holding that, absent discovery misconduct, courts must permit the producing party

to determine the relevance and responsiveness of its own documents in the first instance. Dkt. No. 1091 at 4-9. Nevertheless, the Special Master recommended adoption of Respondents' proposal, stating in Paragraph 3(b) of the CMO:

> Defendants shall apply the agreed search terms to the agreed custodial files and may review the identified documents for privilege, but *may not withhold prior to production any documents based on relevance or responsiveness*.

App. I Ex. A at 2 (emphasis added). The Special Master also recommended a "Confidentiality" provision directing that confidential documents be marked for "Outside Counsel Eyes Only," providing a "Clawback" deadline of "120 days from production," and stating: "Clawback disputes to be resolved promptly with assistance from Special Discovery Master Merenstein and Special Master Marion, as necessary." *Id*. at 3. But that provision did not permit Applicants to withhold from production even documents that had already been identified as irrelevant or nonresponsive.

In support of its decision to bar Applicants from withholding documents on relevance grounds, the Special Master pointed to the "extraordinarily high stakes involved" and the prospect that "extensive and broad-ranging discovery" was "essential for any meaningful settlement":

> Given the nature of the allegations of both overarching and specific price-fixing and market allocation antitrust conspiracies, and the extraordinarily high stakes involved, extensive and broad-ranging discovery is both necessary and appropriate for these cases to be fairly adjudicated; and is also essential for any meaningful settlement since cases like this are usually ultimately settled, and reasonable settlements are beneficial to the Court and the parties.

App. at 3-4. Neither the Special Master's Report & Recommendation, nor his later "Supplemental Summary" to the district court (App. J) in advance of the hearing on

his recommendation, cited any rule, case law, or other authority suggesting that this procedure was lawful.

E. The district court's adoption of the Special Master's recommendation and denial of a stay

Applicants again objected before the district court, citing their right under Rule 26 to review their documents and produce only those that are relevant and responsive to appropriate discovery requests. Dkt. No. 1091 at 4-12. Applicants also explained that the "nature of the allegations" in the MDL does not mean that every document that includes given search terms will be relevant and responsive. *Id.* at 16-17. Applicants committed to produce responsive, non-privileged information in response to Respondents' requests, subject to appropriate objections and any agreements reached as to the scope of discovery—a process that would not cause any undue delay.

The district court adopted the Report & Recommendation. Its lone comment was a short footnote, stating in conclusory terms: "the Recommended Order sufficiently balances the interests of the parties and, most importantly, provides a road map to move the litigation forward at this time." App. A at 1 n.1.

Applicants later asked the district court for a stay of Paragraph 3(b) of the CMO pending resolution of their mandamus petition (discussed below). The district court denied the stay request, citing the parties' search term and custodian negotiations and the provision whereby Applicants can "claw back" certain documents *after* production. App. B at 4-6. In support, the court invoked the obsolete discovery standard abrogated by the 2015 amendments to Rule 26, writing that "[a]s discovery expands, the Court will continue to ensure that the discovery process proceeds in an

orderly, proportional fashion that is reasonably calculated to lead to the discovery of relevant information." *Id.* at 7.

F. The Third Circuit's divided mandamus ruling and stay denial

Meanwhile, Applicants sought mandamus relief in the Third Circuit. Two *amici*, the U.S. Chamber of Commerce and Lawyers for Civil Justice, supported their petition. App. D at 1. After the district court denied the stay request, Applicants filed a motion to stay in that court as well, seeking "a stay pending appellate review." *E.g.*, Motion for Stay—Expedited Treatment 11.

Initially, the panel entered an order directing Respondents to respond to Applicants' mandamus petition and address the following questions:

1. What reasons were given to direct the production of potentially responsive discovery from the custodians without permitting the responding party to review the material for relevance?

2. What is the legal authority for a court to require a party to produce discovery without permitting the producing party to review whether the potentially responsive information is relevant when there is no evidence of a past failure to produce responsive discovery?

App. C at 1 (Schwartz, Restrepo, and Phipps. JJ). Respondents' response cited manufactured reasons not mentioned by the trial court and unreported *district court* decisions that were clearly distinguishable. Ultimately, however, a split panel denied both mandamus review and also the stay motion, which it called moot. App. D at 1-3.

The majority acknowledged that the district court had "ordered the production of documents without a manual relevance review." App. D at 2. Nevertheless, citing district courts' "wide latitude in controlling discovery" and "broad parameters" to

"compel the production of documents," the majority reasoned that the clawback period would adequately protect irrelevant but competitively sensitive material. *Ibid.*

As Judge Phipps recognized in dissent, however, "[e]ven with that clawback provision, the order constitutes a serious and exceptional error." *Ibid.* at 3 n.1. As he noted, "[t]here is no dispute that the order compels the production of a volume of nonresponsive and irrelevant documents," and "the rules of civil procedure allow for a review for responsiveness and relevance *before* production." *Ibid.* (citing Fed. R. Civ. P. 26(b)(1), 34(b)(2)(C)). He then explained why a clawback period does not allow courts to order parties to produce irrelevant documents:

> [N]othing in the civil rules permits a court to compel production of non-responsive and irrelevant documents at any time, much less before the producing party has had an opportunity to screen those documents. But that is exactly what the discovery order in this case does. The clawback provision does not ameliorate that defect: a court does not spontaneously gain authority to compel production of non-responsive, irrelevant documents simply by establishing a period of time afterwards for the review and potential return of the documents produced.

Ibid.

Applicants sought en banc review, again seeking a stay "to ensure time for review before enforcement of the disputed provision." Pet. for Reh'g En Banc—Expedited Treatment & Stay Requested 14. The U.S. Chamber of Commerce and Lawyers for Civil Justice again filed supportive *amicus* briefs, noting the district court's "troubling inversion of the discovery rules" (Chamber Br. 1) and its "judicial usurpation" of the limits on the power conferred by the rules (LCJ Br. 8). On January 6, the petition and stay were denied in an order noting that only six of fourteen active circuit

judges, half of whom were on the panel, were eligible to hear the case. App. E. The court later denied Applicants' separate motion for a stay pending certiorari. App. F.

Applicants have sought certiorari in this Court. Given the March 9, 2020, deadline for compliance, Applicants request that the Court stay enforcement of Paragraph 3(b) of the CMO pending resolution of their certiorari petition. App. K (order reflecting current discovery deadlines).

REASONS FOR GRANTING THE STAY

This Court should stay enforcement of Paragraph 3(b) of the CMO, pending disposition of Applicants' petition for certiorari. Under 28 U.S.C. 2101(f), the Court may stay any "decree of any court" that "is subject to review * * * on writ of certiorari." See also *Hollingsworth* v. *Perry*, 558 U.S. 183, 189-90 (2010) (per curiam) (staying district court order pending petition for certiorari). A stay applicant "must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Id*. at 190. "In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Ibid*. (citation omitted). These standards are amply satisfied here.

I. There is more than a reasonable probability that the Court will grant certiorari.

As to the first factor, Applicants' petition for certiorari will satisfy several of the Rule 10 certiorari criteria. The Third Circuit's divided decision addresses an important question in a manner that conflicts with the decisions this Court. See S. Ct.

R. 10(c). Further, that decision sanctions such an extraordinary "depart[ure] from the accepted and usual course of judicial proceedings," "as to call for an exercise of this Court's supervisory power." See S. Ct. R. 10(a). Finally, the decision below conflicts with the decisions of five other circuits that have correctly used mandamus to enforce the relevance requirement where district courts claimed authority to force production of irrelevant materials.

A. The decision below conflicts with this Court's holdings that Rule 26(b)(1)'s relevance requirement must be applied rigorously.

Review of the divided ruling below will be warranted because it conflicts with this Court's many decisions requiring rigorous enforcement of Rule 26's requirement that discovery be limited to what is "relevant."

In denying mandamus, the majority below relied on the notion that the district courts have "wide latitude in controlling discovery" and may "compel the production of documents within broad parameters." App. D at 2. But as this Court has held, "the requirement of Rule 26(b)(1) that the material sought in discovery be 'relevant' should be firmly applied, and the district courts should not neglect their power to restrict discovery where 'justice requires [protection for] a party or person from annoyance, embarrassment, oppression, or undue burden or expense.' Rule 26(c)." *Lando*, 441 U.S. at 177. The Court in *Lando*, a defamation case, declined to recognize a First Amendment restriction on taking discovery into editorial processes, explaining that "reliance must be had on what in fact and in law are ample powers of the district judge to prevent [discovery] abuse." *Ibid.* "[T]he discovery provisions, like all

of the Federal Rules of Civil Procedure," the Court noted, "are subject to the injunction of Rule 1 that they 'be construed to secure the just, speedy, and inexpensive determination of every action.'" *Ibid.* (Emphasis added.)

Lando reflects "[t]he general rule in the federal system * * * that, subject to the district court's discretion, '[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.'" *Republic of Argentina* v. *NML Capital Co., Ltd.*, 573 U.S. 134, 139 (2014) (quoting Fed. R. Civ. P. 26(b)(1)). While "[m]utual knowledge of all the relevant facts gathered by both parties is essential," this Court has long held that "as Rule 26 (b) provides, further limitations come into existence when the inquiry touches upon the irrelevant." *Hickman* v. *Taylor*, 329 U.S. 495, 507-508 (1947). Thus, whatever "discovery device[]" is involved—"depositions," "interrogatories," "production of documents," or "examinations of parties"—"[t]he scope of discovery in each instance is limited by Rule 26 (b)'s provision" limiting discovery to matter "'which is *relevant to the subject matter involved*.'" *Schlagenhauf* v. *Holder*, 379 U.S. 104, 117 (1964).

In *Oppenheimer Fund, Inc.* v. *Sanders*, 437 U.S. 340 (1978), for example, this Court held that certain plaintiffs could not propound discovery requests for the names and addresses of absent class members, so as to avoid paying for that information before sending class action notices. *Id.* at 347-354. Noting that "the key phrase in [Rule 26(b)'s] definition" of the scope of discovery was "relevant to the subject matter

involved in the pending action," the Court held that the requested information "cannot be forced into the concept of 'relevancy'" because "respondents do not seek this information for any bearing that it might have on issues in the case." *Id*. at 351-352.

These decisions apply even more forcefully now that this Court has tightened Rule 26's definition of the "scope of discovery" by replacing "'relevant to the subject matter involved in the pending action'" with "'relevant to any party's claim or defense.'" See 8 Fed. Practice & Proc. § 2008. But however "relevance" is defined, an order barring a party that has engaged in no discovery misconduct to "withhold prior to production any documents based on relevance or responsiveness" (App. I, Ex. A at 2) cannot possibly be viewed as "firmly applying" Rule 26(b). *Lando*, 441 U.S. at 177.

The Special Master's report, which the district court adopted, suggested that its supervision of an MDL with "extraordinarily high stakes" made "extensive and broad-ranging discovery * * * both necessary and appropriate for these cases to be fairly adjudicated" and "also essential for any meaningful settlement since cases like this are usually ultimately settled." App. I at 3. But proportionality is an independent requirement from relevance under Rule 26(b)(1), and the standards for discovery are no different in MDLs, which must be administered in a way "not inconsistent with Acts of Congress and the Federal Rules of Civil Procedure." 28 U.S.C. 1407(f). "[C]onsolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties." *Johnson* v. *Manhattan Ry. Co.*, 289 U.S. 479, 496-497 (1933).

Given the conflict between the divided ruling below and this Court's decisions, there is at least a reasonable probability that the Court will grant certiorari.

B. The decision below calls for the Court to exercise its supervisory authority to preclude district courts from ordering the production of documents without any relevance review.

Beyond the conflict with this Court's precedent, the ruling below and the order it upholds break sharply from settled law, warranting exercise of the Court's supervisory authority under Rule 10(a). As Judge Phipps put it, "nothing in the civil rules permits a court to compel production of non-responsive and irrelevant documents at any time, much less before the producing party has had an opportunity to screen those documents," and the order here is "a serious and exceptional error that should be corrected through a writ of mandamus." App. D at 3 n.1. Indeed, this Court has repeatedly amended Rule 26 to prevent such problems.

Since 2000, the Court has twice used its rule-making authority to make it clear that discovery of irrelevant material is prohibited by Rule 26(b)(1). In 2000, the Court narrowed the scope of discovery that is allowed absent a separate "good cause" showing from (1) discovery "'relevant to the subject matter involved in the pending action'" to (2) discovery "'relevant to any party's claim or defense.'" 8 Fed. Practice & Proc. § 2008. Then, in 2015, the Court deleted the "reasonably calculated to lead to the discovery of admissible evidence" phrase, requiring that all discovery be relevant to a "claim or defense." As the Advisory Committee noted, some had used the "reasonably calculated" phrase "incorrectly, to define the scope of discovery," and this "misuse" continued even after the 2000 revision:

> The former provision for discovery of relevant but inadmissible information that appears "reasonably calculated to lead to the discovery of admissible evidence" is also deleted. The phrase has been used by some, incorrectly, to define the scope of discovery. As the Committee Note to the 2000 amendments observed, use of the "reasonably calculated" phrase to define the scope of discovery "might swallow any other limitation on the scope of discovery." The 2000 amendments sought to prevent such misuse by adding the word "Relevant" at the beginning of the sentence, making clear that "'relevant' means within the scope of discovery as defined in this subdivision * * * ." The "reasonably calculated" phrase has continued to create problems, however, and is removed by these amendments. It is replaced by the direct statement that "Information within this scope of discovery need not be admissible in evidence to be discoverable." Discovery of nonprivileged information not admissible in evidence remains available so long as it is otherwise within the scope of discovery.

Fed. R. Civ. P. 26 Advisory Committee's Notes (2015); see also Fed. R. Civ. P. 26 Advisory Committee's Notes (2000) (citing "[c]oncerns about costs and delay"; stating "[t]he Committee intends that the parties and the court focus on the actual claims and defenses involved in the action.").

Remarkably, the district court's only defense of its order here relied on the abrogated *pre-2015* standard: "the Court will continue to ensure that the discovery process proceeds in an orderly, proportional fashion that is *reasonably calculated to lead to the discovery of relevant information*." App. B at 7 (emphasis added). Yet the majority below outright ignored this, asserting that the district court acted within its "wide latitude" in applying an abrogated rule to "order[] the production of documents without a manual relevance review[.]" App. D at 2. That was manifest error.

Indeed, every black-letter authority of which Applicants are aware confirms that the rulings below break sharply from settled law. As Wright & Miller state: "Perhaps the single most important word in Rule 26(b)(1) is 'relevant,' for it is only

relevant matter that may be the subject of discovery." 8 Fed. Practice & Proc. § 2008. Similarly, Moore's *Federal Practice* states that Rule 26's "limitation of the scope of discovery is designed to control sweeping or contentious discovery" by "[f]ocusing the attention of the parties and the court on the actual claims and defenses" at issue. 6 Moore's Fed. Practice § 26.41[2] (3d ed. 2019).

For this reason, too, at least four Justices are likely to vote to review this case.

C. The decision below conflicts with the decisions of five circuits that have granted mandamus relief to enforce Rule 26(b)(1)'s relevance requirement.

1. Review will also be warranted because the ruling below conflicts with five circuits' decisions that have granted mandamus review to reverse discovery orders that, without finding discovery misconduct, required producing irrelevant material.

In *In re: Ford Motor Co.*, 345 F.3d 1315, 1316-17 (11th Cir. 2003), for example, the Eleventh Circuit granted mandamus to vacate an order allowing the plaintiff "access to Ford's Master Owner Relations Systems I, II, and III ('MORS') and Common Quality Indicator System ('CQIS') databases" without conducting any relevance analysis. The court first observed that "the district court made no findings—express or implied—that Ford had failed to comply properly with discovery requests," "did not discuss its view of Ford's objections," and "provided no substantive explanation for [its] ruling." *Id.* at 1317. It then held that a party "is unentitled to this kind of discovery without—at the outset—a factual finding of some non-compliance with discovery rules by [the producing party]. By granting the sweeping order in this case, especially without such a finding, the district court clearly abused its discretion." *Ibid.*

The Fifth, Eighth, Ninth, and Tenth Circuits have all granted mandamus to vacate similar discovery orders that failed to comply with the relevance requirement. The Fifth Circuit vacated an order requiring discovery of "information which was completely irrelevant to the case," but risked "collateral wholly unrelated consequences" in the form of "embarrassment and inquiry into [the producing parties] private lives which was not justified" and "open[ing] litigation issues which were not present in the case." *In re Reyes*, 814 F.2d 168, 170-171 (5th Cir. 1987).

Similarly, the Tenth Circuit granted mandamus in an antitrust class action to vacate an order compelling discovery of a plaintiff's financial condition and fee arrangement, calling the information "irrelevant" to "the inquiry which was then being conducted." *Sanderson* v. *Winner*, 507 F.2d 477, 479-80 (10th Cir. 1974). Likewise, the Eighth Circuit vacated an order compelling a State to divulge confidential information about its capital punishment protocol, stating: "mandamus may issue in extraordinary circumstances to forbid discovery of irrelevant information, whether or not it is privileged, where discovery would be oppressive and interfere with important state interests." *In re Lombardi*, 741 F.3d 888, 895 (8th Cir. 2014).

Finally, the Ninth Circuit used its mandamus authority to vacate an order requiring disclosure of irrelevant but confidential trade secrets, holding that "the requirements of relevance and necessity must be established where disclosure of a trade secret is sought," and that "the burden rests upon the party seeking disclosure to establish that the trade secret sought is relevant and necessary to the prosecution or defense of the case." *Hartley Pen Co.* v. *United States Dist. Court for S. Dist. of Cal.*,

287 F.2d 324, 331 (9th Cir. 1961). In short, the courts of appeals have not hesitated to use mandamus to limit discovery to relevant matters, especially where sensitive confidential information is involved.

2. The order here is far more problematic. As in the foregoing cases, Applicants have not violated any discovery order or indicated any intention to withhold relevant discovery. Indeed, the parties had nearly agreed on a protocol to provide relevant documents when Respondents abandoned negotiations and demanded every document containing words such as "coffee" or "spoke" or "offer." *Supra* at 7-8. But in contrast to each of the foregoing cases, where the courts of appeals stepped in to prevent production of *one category* of irrelevant documents, the Third Circuit here failed to block the production of millions of irrelevant documents, across a host of categories. Indeed, the CMO declares *any* relevance inquiry off limits: Applicants "may not withhold prior to production any documents based on relevance or responsiveness." App. I, Ex. A at 2. As Judge Phipps noted in dissent (App. D at 3 n.1), there is no dispute that this will result in a massive production of irrelevant materials.

3. The majority below did not address the foregoing circuit decisions, instead citing *district court* decisions that "have, in some circumstances, ordered the production of documents without a manual relevance review." App. D at 2.[2] But the circumstances of those cases are markedly different from those here.[3] Further, to the extent that they involve analogous facts, they simply underscore the recurring nature of the issue—as do a host of district court decisions that *reject* requests to bar producing parties from conducting relevance review.[4] And in all events, the Third Circuit's

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[2] See *Consumer Fin. Prot. Bureau* v. *Navient Corp.*, 2018 WL 6729794, *2 (M.D. Pa. 2018); *UPMC* v. *Highmark Inc.*, 2013 WL 12141530, *1 (W.D. Pa. 2013); *Wingnut Films, Ltd.* v. *Katja Motion Pictures Corp.*, 2007 WL 2758571, *18 (C.D. Cal. 2007); *Carrillo* v. *Schneider Logistics, Inc.*, 2012 WL 4791614, *10 (C.D. Cal. 2012); *Tulip Computers Int'l B.V.* v. *Dell Computer Corp.*, 2002 WL 818061, *7 (D. Del. 2002); *Progressive Cas. Ins. Co.* v. *Delaney*, 2014 WL 3563467, *10-11 (D. Nev. 2014); *Littlefield* v. *NutriBullet, L.L.C.*, 2017 WL 10439692, *4 (C.D. Cal. 2017); and *Williams* v. *Taser Int'l, Inc.*, 2007 WL 1630875, *5-6 (N.D. Ga. 2007); see also *In re: Nat'l Prescription Opiate Litig.*, Case No. 1:17-MD-2804, Dkt. No. 3055, at 4-5 (N.D. Ohio Dec. 27, 2019) (ordering production of nationwide data without identifying relevance of national data to claims by two counties) (mandamus petition pending).

[3] For example, two of the cases involved just one investigative or custodial file that was relevant in its entirety, not wholesale production of millions of irrelevant documents across dozens of companies and custodians. *Navient Corp.*, 2018 WL 6729794, *2 (one government investigatory file); *Highmark*, 2013 WL 12141530, *1 (one custodian). Another adopted a drastic order "because the parties have been unable to cooperate in the discovery process," whereas the order here comes at the outset of document discovery. *Taser Int'l*, 2007 WL 1630875, *7.

[4] See *Bancpass, Inc.* v. *Highway Toll Admin., LLC*, 2016 WL 4031417, *3 (W.D. Tex. 2016) (party not required to produce all documents hitting on search terms where "there is no reason to believe that [the defendant] has withheld documents it was obligated to produce"); *Gardner* v. *Cont'l Cas. Co.*, 2016 WL 155002, *3 (D. Conn. 2016) ("As every law school student and law school graduate knows, when performing a computer search on WESTLAW and/or LEXIS, not every case responsive to a search command will prove to be relevant to the legal issues for which the research was performed. Searching tens of thousands, and hundreds of thousands, of electronic documents is no different."); *Chen-Oster* v. *Goldman, Sachs & Co.*, 2014 WL 716521,
(continued...)

approach of deferring to the district court's latitude as a basis to discard Rule 26's express limits conflicts with that of the five circuits that have properly exercised their mandamus authority to correct plain departures from the relevance requirement. For that reason too, there is at the very least a reasonable probability of review.

II. There is a significant prospect that this Court will reverse the decision below because Paragraph 3(b) of the CMO contravenes the plain text of the Rules and the Third Circuit offered no valid justification for allowing it to stand.

Many of the points raised above, including the conflicts with precedent and the "serious and exceptional" error below (App. D at 3 n.1 (Phipps, J., dissenting)), likewise show that there is more than a fair prospect of reversal if review is granted. See *TC Heartland LLC* v. *Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1517 (2017) (reversing denial of mandamus where reasoning supporting denial conflicted with prior Supreme Court precedent). Indeed, a straightforward reading of the text of the relevant Rules powerfully confirms that the Court would likely reverse.

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*1 (S.D.N.Y. 2014) (rejecting demand for production of all documents containing search terms); *Wilson* v. *Rockline Indus., Inc.*, 2009 WL 10707835, *1 (W.D. Ark. 2009) ("In our system of law, we allow the party responding to discovery to filter his own documents and produce only these which are relevant to the litigation. In the absence of some showing that relevant information is being withheld—and here there is none—there is no basis to make the responding party produce all information. Indeed, to do so would make a mockery of F.R.C.P. 26(b)(1)."); *Gen. Elec. Co.* v. *United States*, 119 F. Supp. 3d 17, 20 (D. Conn. 2015) (the right to conduct responsiveness review before production applies even in unconventional circumstances, and responsiveness review is a logical outgrowth of the right to review for privilege); *In re eBay Seller Antitrust Litig.*, 2010 WL 2836815, *3 (N.D. Cal. 2010) (Defendant was entitled to review for relevance even where it had already produced the documents in question in a related case; "it is the litigant responding to discovery requests, and that litigant's own lawyer, who searches for and identifies responsive documents that are relevant to the asserted claims or defenses. The opposing lawyer does not get that luxury.").

Neither court below analyzed the text of Rule 26(b)(1), much less "firmly applied" its relevance requirement. *Lando*, 441 U.S. at 177. The panel majority did not engage Judge Phipp's textual analysis of Rule 26 or Rule 34; it simply declared that "the Federal Rules of Civil Procedure permit a district court to compel the production of documents within broad parameters." App. D at 2. Likewise, the district court seemed to think it sufficient that Respondents' search terms would narrow what must be produced to some "proportional" level. App. B at 7. And both courts relied heavily on the "clawback" provision as the cure for any problems. App. D at 2; App. B at 4-6.

Rule 26(b)(1), however, states the relevance and proportionality requirements in the *conjunctive*, limiting the scope of discovery to "matter that is relevant to any party's claim or defense *and* proportional to the needs of the case." (Emphasis added.) That is, the proportionality requirement serves to *further* narrow discovery *after* the universe of potentially discoverable documents is limited to the relevant ones.

The majority below pointed to the custodial and search-term limitations in suggesting that CMO Paragraph 3(b) complies with Rule 26. App. D at 2. But the fact that the custodians "possess[] *potentially* relevant information," or that the search terms are "*aimed at* identifying relevant information" and "narrow[ing] the information produced," is not enough; discovery must still be *limited to what is actually relevant*. *Ibid*. (emphasis added). As lower courts have recognized, identifying relevant custodians and search terms is but a first step in limiting discovery to relevant documents. *E.g.*, *Victor Stanley, Inc.* v. *Creative Pipe, Inc.*, 250 F.R.D. 251, 260 (D.

Md. 2008) ("keyword searches" are "appropriate and helpful for ESI search and retrieval," but have "well-known limitations and risks"). That is because "[keywords] often are over-inclusive"—"they find responsive documents but also large numbers of irrelevant documents." *Moore* v. *Publicis Groupe*, 287 F.R.D. 182, 191 (S.D.N.Y. 2012), adopted, 2012 WL 1446534 (S.D.N.Y. 2012). Because the broad proposed search terms here will indisputably capture millions of irrelevant documents, review for relevance is critical to ensuring compliance with Rule 26(b)(1).

If any doubt remained, Rule 26(b)(1) also defines the outer "scope of discovery" "[u]nless otherwise *limited* by court order." (Emphasis added.) Nothing in the Rule, or the "wide latitude" that district courts enjoy on many discovery matters, permits such courts to *expand* the scope of the Rule to compel discovery of material that indisputably is not "relevant." Indeed, Rule 26(b)(2)(C)(iii) expressly imposes the opposite mandate on district courts: "the court must limit the frequency or extent of discovery" if "the proposed discovery is outside the scope permitted by Rule 26(b)(1)."

That is to say nothing of Rule 34(b)(2)(C)—which, as Judge Phipps noted (App. D at 3 n.1), states that the producing party's document review will serve, in the first instance, as the means for enforcing the relevance requirement. As that Rule states: "An objection must state whether any responsive materials are being withheld on the basis of that objection." In other words, parties have a right to "object" to discovery as non-responsive, and to "with[o]ld [documents] on th[at] basis." As Judge Phipps

correctly concluded, "a court does not spontaneously gain authority to compel production of non-responsive, irrelevant documents simply by establishing a period of time afterwards for the review and potential return of the documents produced." *Ibid*.

Although neither the district court nor Respondents cited Federal Rule of Evidence 502(d), the majority below asserted that "a similar approach is contemplated in [that rule], by which a court may order production without a privilege review." *Ibid*. at 2. Not so. Rule 502(a) states that the court may enter an order ensuring that "the privilege or protection is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other federal or state proceeding." The majority cited no authority for the statement that "a court may order production without a privilege review" under that rule. App. D at 2. And the only court to consider such a request rejected it, stating: "[T]he rule explicitly did not abrogate privilege law." *Winfield* v. *City of N.Y.*, 2018 WL 2148435, *8 (S.D.N.Y. 2018). As the Sedona Conference notes, "Rule 502(d) does not authorize a court to require parties to engage in 'quick peek' and 'make available' productions and should not be used directly or indirectly to do so." *The Sedona Conference Commentary on Protection of Privileged ESI*, 17 Sedona Conf. J. 1, 137 (2016).

The Sedona Conference's "best practices" materials further state that the producing party "is best situated to evaluate, select, and implement the procedures, methodologies, and technologies appropriate to meet its preservation and discovery obligations," such that "there should be no preemptive restraint placed on a responding party that chooses to proceed on its own with determining how best to fulfill its

preservation and discovery obligations." *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, 19 Sedona Conf. J. 1, 123 (2018). In short, "[p]roducing parties review documents or ESI for relevance and responsiveness *before* they are produced." *The Sedona Conference Commentary on Achieving Quality in the E-Discovery Process*, 15 Sedona Conf. J. 265, 290 (2014) (emphasis added).

In lieu of adhering to these basic rules, the district court and the Third Circuit relied heavily on the CMO's "clawback" provisions. But as Judge Phipps observed in dissent, "a court does not spontaneously gain authority to compel production of non-responsive, irrelevant documents simply by establishing a period of time afterwards for the review and potential return of the documents produced." App. D at 3 n.1.

By agreement of the parties, clawback provisions can facilitate discovery by providing a "procedure for the return of apparently privileged information within a reasonable time of its discovery." Ronald J. Hedges, *A View from the Bench and the Trenches: A Critical Appraisal of Some Proposed Amendments to the Federal Rules of Civil Procedure*, 227 F.R.D. 123, 123 (2005); see also Fed. R. Civ. P. 26, Advis. Comm. Notes (2006 amendment) (clawback agreements are a "protocol[]" available to "minimize the risk of waiver"); Fed. R. Evid. 502, Advis. Comm. Notes (2008 amendment) (clawbacks address "privilege review"). Here, however, the clawback procedure is being imposed as a means of depriving Applicants of their right under the Federal Rules to review their own documents in the first instance and withhold irrelevant or non-responsive documents. As Judge Phipps recognized, that "extraordinary" process

inverts the ordinary sequence of discovery into one where "production comes first, followed by objections." App. D at 3 n.1. Neither the Rules nor any other authority supports such an inversion, so the clawback procedure does not ameliorate the error below.

Because there is more than a "fair prospect" that this Court will reverse if certiorari is granted, the second factor favors a stay.

III. Absent a stay, Applicants will suffer irreparable harm from compelled disclosure of irrelevant but highly sensitive business documents.

The majority below asserted that "there is no showing that the ordered disclosure, when paired with the protections and limitations that the District Court imposed, will cause great injury." App. D at 2. That is patently incorrect. Applicants' interest in not being compelled to provide wide swaths of confidential and irrelevant materials to parties that are competitors, customers, and other participants in the same industry is precisely the type of confidentiality interest that warrants a stay. See generally *In re von Bulow*, 828 F.2d 94, 99 (2d Cir. 1987) ("[T]he concern that a remedy after final judgment cannot unsay the confidential information that has been revealed may account for the liberal use of mandamus in situations involving the production of documents or testimony claimed to be privileged or covered by other more general interests in secrecy."). If not stayed, the district court's discovery order will irreparably harm Applicants in several ways.

First, Applicants would be forced to divulge to their competitors highly sensitive competitive information having nothing to do with this case. Applicants' designated discovery custodians—to whom Respondents' search terms would apply—have

a wide array of duties and work on a host of issues and products entirely unconnected to Respondents' claims. For example, they seek regulatory approval for new products not relevant to this litigation, analyze technical trade secret issues for pipeline products, and work on branded products outside the scope of the claims here. Documents involving these and other highly sensitive matters should not be produced in a case involving two dozen of Applicants' competitors, dozens of law firms and their vendors, and over a dozen other industry participants who are named Respondents. See *Monsanto*, 467 U.S. at 1011–1012 ("The economic value of [trade secrets] lies in the competitive advantage over others that [their owner] enjoys by virtue of its exclusive access to the data, and disclosure or use by others of the data would destroy that competitive edge.").

It would be nice to think that the CMO's confidentiality provisions offered equivalent security for the confidentiality of sensitive documents—and that the irrelevant but sensitive information subject to the CMO here, after being disclosed to hundreds of opposing lawyers for 120 days, would be returned seamlessly to petitioners. But those provisions provide little comfort. Once the documents have been released, the horse will be out of the barn, and the odds of further dissemination, even in the face of a confidentiality order, are considerable. This case has already seen multiple leaks of sealed filings and confidential materials. Dkt. No. 805 at 4-5 (describing leak of sealed document). There can be no real assurance that irrelevant but confidential material produced under the extraordinarily overbroad standards of the district court's order will actually be kept confidential. And to the extent that this document

dump sets up a fishing expedition into matters not relevant to the claims that Respondents have already pleaded (new complaints continue to be filed), that inflicts further harm on Applicants that cannot be remedied after the fact.

Second, it is a reality of modern life that employees use their work emails to conduct sensitive personal business, such as arranging doctor's appointments, addressing their children's needs, or managing personal legal and financial matters. Disclosure of any such materials imposes a hardship on Applicants and their employees that is contrary to the Federal Rules of Civil Procedure and disproportionate to the needs of the case. The search terms that were proposed by Respondents are so broad that each and every time an employee invites a friend to "coffee," makes an "offer" to host a Super Bowl party or drive them to a doctor's appointment, or offers to "speak" to someone about a personal matter, the email will be released, burdening all parties with the need to sift through a huge volume of personal but commercially irrelevant material.

To be sure, the CMO contains a "clawback" provision. But that provision is not only legally but *practically* insufficient to prevent irreparable harm to Applicants' confidentiality interests. As a legal matter, requiring parties to claw back plainly irrelevant documents reverses the proper order of discovery and forces parties to assume a burden that the Rules by design do *not* place on them. *Supra* at 25-27. Just as a prudent farmer shuts the barn door to keep the horse in, prudent parties to litigation withhold irrelevant but competitively sensitive documents from production—a course the Federal Rules of Civil Procedure unambiguously permit. As a practical

matter, those clawbacks will result in extensive briefing before the special masters, rendering an already complex and costly case even more burdensome.

Moreover, the CMO requires Applicants to make all clawback requests within 120 days of production. Given that productions under the CMO will encompass millions of documents, it is inevitable that much of the information that Applicants would be entitled to claw back could not be identified in time. And even if it were, that would still mean confidential and proprietary materials, as well as sensitive personal information, would improperly be part of the discovery record for 120 days.

Third, denial of a stay would irreparably harm Applicants by subjecting them to the extraordinary expenses involved in not only producing documents under the CMO, but also reviewing massive amounts of irrelevant material and completing the clawback process. The cost of those tasks is much greater than that of a mere relevance review, and it cannot be recouped, even if this Court later reverses. See *Rimini Street, Inc.* v. *Oracle USA, Inc.*, 139 S. Ct. 873, 878 (2019) ("e-discovery expenses" not recoverable); *Race Tires Am., Inc.* v. *Hoosier Racing Tire Corp.*, 674 F.3d 158, 171 (3d Cir. 2012) ("the federal courts lack the authority to [award e-discovery costs], either generally or in particular cases, under the cost statute."). Improper expenses that are forever lost are a textbook form of irreparable harm. See *Ohio Oil Co.* v. *Conway*, 279 U.S. 813, 814 (1929) (finding irreparable harm from prepayment of taxes where law provided no means to obtain a refund); *Philip Morris USA Inc.* v. *Scott*, 561 U.S. 1301, 1304 (2010) (Scalia, J., in chambers) ("If expenditures cannot be recouped, the resulting loss may be irreparable.") (citing *Mori* v. *Boilermakers*, 454 U.S. 1301, 1303

(1981) (Rehnquist, J., in chambers) (granting a stay pending certiorari where $150,000 in escrow funds "would be very difficult to recover should applicants' stay not be granted")). *McDaniel* v. *Sanchez*, 448 U.S. 1318, 1322 (1980) (Powell, J., in chambers) (treating a requirement "immediately to expend substantial money on pre-clearance procedures" as irreparable harm where "this expenditure will be irretrievable"); *Ewing Indus. Co.* v. *Bob Wines Nursery, Inc.*, 2015 WL 12979096, *3 (M.D. Fla. 2015) ("wasteful, unrecoverable, and possibly duplicative costs" related to litigation "are proper considerations" in irreparable harm analysis); *Wilcox* v. *Lloyds TSB Bank, PLC*, 2016 WL 917893, *5-6 (D. Haw. 2016) (similar); *Citibank, N.A.* v. *Jackson*, 2017 WL 4511348, *2-3 (W.D.N.C. 2017) (similar).

In sum, if Applicants are required to produce documents that contain broad search terms with no review for relevance, the harms they seek to avoid by seeking appellate relief will be realized. No post-hoc relief could fully mitigate the harms that flow from being forced to release sensitive information from files of employees, including senior executives, that should never have left the company in the first place and are at substantial risk of being misused.

IV. The balance of equities favors a stay, which will not harm Respondents and will further the public interest in proper application of the Federal Rules of Civil Procedure.

A balancing of the equities further supports staying Paragraph 3(b) of the CMO. Respondents will suffer no harm at all from a stay, particularly given Applicants' concurrent filing of their petition. They continue to file new complaints and amend existing pleadings, including this month, so in many ways this case remains at the pleading stage. In fact, Respondents have indicated that further complaints

are forthcoming, confirming that the scope of the case is not yet defined.

Substantial discovery will continue during the stay, as the parties are producing documents and data covered by other provisions of the CMO, collecting other relevant electronically stored information, and resolving other case management issues. Further, Respondents already have millions of documents previously produced to the state attorneys general in response to investigative subpoenas. And Paragraph 4(a) of the CMO independently requires Applicants' to produce "targeted documents"—a production that is unaffected by this application. Any suggestion that discovery, or the MDL in general, would be at a standstill if a stay were granted would be false.

On the other hand, the public interest strongly favors preventing a serious misapplication of Rule 26. As the amicus briefs below confirm, whether district courts may order parties to produce material while prohibiting them from withholding irrelevant material strikes at the core of Rule 26(b). The public has a strong interest in the proper construction of that rule, and allowing this Court time to review the petition for certiorari before CMO Paragraph 3(b) is enforced will vindicate that interest. Further, with the massive discovery underway, entirely separate from the disputed CMO provision, any countervailing interest in the speedy resolution of this dispute can be accommodated by expedited briefing, particularly given Applicants' commitment to file early. Thus, the public interest and the equities both favor a stay.

CONCLUSION

For the foregoing reasons, the application for a stay should be granted and enforcement of Paragraph 3(b) of the District Court's CMO should be stayed pending the disposition of Applicants' petition for certiorari.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: GENERIC PHARMACEUTICALS PRICING ANTITRUST LITIGATION	**MDL 2724** **16-MD-2724**
THIS DOCUMENT RELATES TO: ***ALL ACTIONS***	**HON. CYNTHIA M. RUFE**

PRETRIAL ORDER NO. 105
(CASE MANAGEMENT ORDER AND DISCOVERY SCHEDULE)

AND NOW, this 24th day of October 2019, upon consideration of the Report and Recommended Order of David Marion and the Objections thereto, and after oral argument, it is hereby **ORDERED** that the Objections are **OVERRULED**, the Report and Recommended Order is **APPROVED** as follows, and the Case Management Order is **ENTERED** with regard to the management and schedule for discovery, class certification, summary judgment, and *Daubert* motions, applicable to all cases pending in the MDL as of September 1, 2019; subject to modifications that may be set forth in future Pretrial Orders.[1] When responding to discovery requests under this Case Management Order, a producing party shall adhere to paragraphs 6 and 7 of PTO 96 or substantially similar provisions contained in any future Pretrial Order.

1. With respect to any new complaint or amended complaint filed after September 1, 2019, responsive pleadings and/or motions shall be filed as normally required or agreed. Discovery from new defendants may be guided by but will not be governed by this CMO. Discovery with respect to those defendants shall be governed by separate agreement(s) to be negotiated by the parties or separate order(s), recommended by the Special Master and/or as decided by the Court. However, discovery involving pre-existing parties may be expanded as appropriate to include newly added defendants and/or drugs.

2. All parties are required to preserve any and all communications in any potentially relevant custodial file including, but not limited to, (i) communications pertaining to any

[1] The Court has considered the Objections carefully, and has determined that the Recommended Order sufficiently balances the interests of the parties and, most importantly, provides a road map to move the litigation forward at this time.

generic prescription drug with any other seller or manufacturer of any other generic prescription drug, or (ii) internal communications concerning (i).

3. **DISCOVERY OF DEFENDANTS' CUSTODIAL FILES**: Production from the files of all Defendants' Agreed Custodians (as defined in PTO 95, ¶ 1.5), or other Defendant custodian(s) as ordered, using search terms, established as follows:

    a. Search terms shall be established either by agreement reached among the parties in negotiations supervised by Special Master Marion and ESI Master Regard or as ordered by Special Master Marion or ESI Master Regard if not agreed to within 21 days from entry of this Order.

        i. Such terms shall include, but are not limited to, all drugs named in any complaint and all Defendants named in any complaint as of the date of September 1, 2019.

        ii. Any drug or drug manufacturer or seller defendant added hereafter in any new or amended complaint, shall be added to the search terms and searched on a reasonable schedule to be established by the parties with the assistance of Special Master Marion and ESI Master Regard, as necessary.

    b. Defendants shall apply the agreed search terms to the agreed custodial files and may review the identified documents for privilege, but may not withhold prior to production any documents based on relevance or responsiveness.

    c. The deadline for meeting and conferring on the proposed search terms is ten (10) days from entry of this Order.

        i. Any dispute arising out of the above provisions shall be brought to Special Master Marion and ESI Master Regard via simultaneous letter briefs within 30 days from the date of this Order, to be promptly resolved by them.

        ii. The briefs should include "hit" counts and suggested alternatives to the disputed search term(s).

        iii. Special Master Marion and/or ESI Master Regard will then meet and confer with the parties together or ex parte to discuss the proposals and will propose search terms to all parties for testing.

        iv. The parties shall have 14 days to test the search terms and submit objections to them.

        v. To the extent the parties do not reach agreement, any disputes shall be resolved pursuant to the Special Master Protocol, PTO 68.

    d. Production deadline: December 20, 2019; Privilege log deadline: January 15, 2020.

e. Confidentiality:

i. All documents shall be stamped "Outside Counsel Eyes Only" for 120 days (as set forth in PTO 70).

ii. Confidentiality re-designation deadline: 120 days after production (as set forth in PTO 70).

iii. Request for Clawback: 120 days from production (as guided by PTO 70).

iv. Clawback disputes to be resolved promptly with assistance from Special Discovery Master Merenstein and Special Master Marion, as necessary.

4. **DISCOVERY OF DEFENDANTS' TARGETED DOCUMENTS** relevant to the claims regarding all drugs and all Defendants in the MDL.

a. Targeted documents include, but are not limited to:

i. Defendants' documents responsive to Plaintiffs' document requests that are regularly maintained in a known location, or in a location that is knowable upon reasonable inquiry of those with knowledge about Defendants' document management systems, departmental practices with respect to filing documents, and similar information, such that they do not require search terms. Such documents, which have previously been referred to as "go get" documents, may be found in custodial or non-custodial sources and include but are not limited to: e.g. calendars, travel and expense records, telephone records, board of directors' materials, forecasts, strategic sales databases, financial statements, accounting documents.

ii. Defendants' documents relevant to class certification, experts, and other economic or data-related issues, which may or may not require targeted search terms; and

iii. Additional targeted search terms based on review of documents and samples.

b. Deadline to complete meet and confers with respect to such documents:

i. Paragraph 4(a)(i): November 8, 2019.

ii. Paragraph 4(a)(ii) and (iii): February 7, 2020.

c. Any dispute arising out of these meet and confers shall be brought to Special Master Marion via simultaneous letter briefs on or before November 22, 2019 (for ¶ 4(a)(i)), or February 17, 2020 (for ¶ 4(a)(ii) and (iii)).

d. Complete production of documents: December 1, 2019 (for ¶ 4(a)(i)) and March 13, 2020 (for ¶ 4(a)(ii) and (iii)); Privilege log deadline December 16, 2019 (for ¶ 4(a)(i)) and April 16, 2020 (for ¶ 4(a)(ii) and (iii)).

e. Confidentiality:

i. All documents stamped Outside Counsel Eyes Only for 120 days (as outlined in PTO 70).

ii. Confidentiality re-designation deadline 120 days after production (as outlined in PTO 70).

iii. Request for Clawback: January 16, 2020 (for ¶ 4(a)(i)), March 16, 2020 (for ¶ 4(a)(ii) and (iii)) (as guided by PTO 70).

iv. Clawback disputes to be resolved promptly with assistance from Special Discovery Master Merenstein and/or Special Master Marion, as necessary.

5. DEFENDANTS' TRANSACTIONAL DATA, COST INFORMATION, AND RELATED DOCUMENTS

a. No later than ten days after entry of this Order, samples of each Defendant's transaction-level sales data and cost information covering at least one year for one drug must be been produced. Disputes concerning these samples shall be brought to Special Master Marion promptly.

b. Meet and confers concerning transaction-level sales data, cost information, and related documents shall be completed within 45 days of the entry of this Order. Any dispute shall be brought to Special Master Marion via simultaneous letter briefs no later than December 13, 2019.

c. Deadline to produce Defendants' complete transaction-level sales data and cost information:

i. Drugs in the MDL as of September 1, 2019: January 16, 2020.

ii. For any new drugs involving an existing Defendant already in the MDL, added as of September 1, 2019: January 16, 2020 or within 60 days of a new or amended complaint, whichever is later.

6. **WRITTEN DISCOVERY**: On or before November 8, 2019, all outstanding signature(s) and/or verifications required by Rule 33 of the Federal Rules of Civil Procedure shall be produced by either party.

7. PLAINTIFFS' DOCUMENT PRODUCTIONS AND TRANSACTIONAL DATA

a. The parties shall meet and confer regarding Plaintiffs'[2] custodians, ESI sources, outstanding discovery requests, search terms and methodology for unstructured data, shall be completed no later than November 22, 2019 (for Private Plaintiffs) and January 15, 2020 (for the States).

b. Any dispute arising out of this provision shall be brought to Special Master Marion, Special Master Merenstein and/or ESI Master Regard via letter briefs within 14 days of the applicable meet and confer deadlines.

c. Production deadline: December 20, 2019 (for Private Plaintiffs); March 2, 2020 (for the States); Privilege log deadline: 30 days thereafter.

d. Plaintiffs' production in response to Defendants' discovery requests shall otherwise proceed simultaneously and under the same procedures applicable to Defendants' production as set forth above in paragraphs 4-6.

8. FACT DEPOSITIONS

a. Depositions in all cases shall begin March 16, 2020 and continue through September 16, 2021.

b. Witnesses associated with bellwether case(s) or claims are to take priority.

c. Starting February 6, 2020, the parties shall meet and confer regarding the scheduling of depositions. Any dispute arising out of these meet and confers shall be submitted promptly to Special Master Marion via simultaneous letter briefs.

9. BELLWETHER SELECTIONS

a. Within 45 days of the entry of this Order, the parties shall meet and confer with the assistance of Special Master Marion to identify criteria for selecting bellwether claims or case(s) for class certification, expert discovery, summary judgment, *Daubert* motions, and/or trial(s).

b. Upon identification of the bellwether criteria, bellwether claims or case(s) shall be established either by agreement reached among the parties in negotiations supervised by Special Master Marion or as ordered by Special Master Marion if not agreed to within 30 days after the meet and confer.

c. The paragraphs below apply only to such cases.

[2] "Plaintiffs" here refers to Plaintiffs in operative complaints and already served with discovery as of September 1, 2019.

10. MERITS EXPERT DEPOSITIONS[3]

a. Plaintiffs shall serve expert reports no later than April 30, 2021. Plaintiffs' experts shall be made available for depositions no later than June 14, 2021.

b. Defendants shall serve expert reports no later than July 30, 2021. Defendants' experts shall be made available for depositions no later than August 16, 2021.

c. Plaintiffs shall serve rebuttal expert reports no later than October 15, 2021.

d. Unless good cause can be shown, each expert providing a merits report is to be deposed only one time. Any dispute arising from the scheduling of expert depositions shall be brought to Special Master Marion via simultaneous letter briefs.

11. CLASS CERTIFICATION AND RELATED *DAUBERT* MOTIONS

a. Motions for class certification for the bellwether case(s) or claims, if required, shall be filed by October 7, 2020. Plaintiffs in such cases shall simultaneously serve expert reports on which they rely for class certification.

b. Depositions of Plaintiffs class certification experts shall be completed by November 6, 2020. Unless good cause can be shown, each of Plaintiffs' class certification expert is to be deposed only one time.

c. Opposition to class certification and related *Daubert* motions for the bellwether case(s) or claims shall be filed by December 18, 2020. Defendants in such cases shall simultaneously serve expert reports on which they rely in opposition.

d. Depositions of Defendants' class certification experts shall be completed by January 8, 2021. Unless good cause can be shown, each of Defendants' class certification expert is to be deposed only one time.

e. Replies in support of class certification and related *Daubert* motions for the bellwether case(s) or claims shall be filed, and supporting expert reports served, by January 18, 2021.

f. The hearing on class certification shall be set on a date to be determined by the Court.

[3] Dates hereafter may be modified either by agreement or by Order of the Court, dependent on the selection of bellwether criteria.

12. **SUMMARY JUDGMENT MOTIONS AND MERITS *DAUBERT* MOTIONS** shall proceed as follows:

    a. Motions and supporting briefs for bellwether case(s) or claims shall be filed no later than 60 days after the later of close of merits expert discovery and disposition of motions for class certification.

    b. Oppositions shall be filed 60 days thereafter.

    c. Replies shall be filed 45 days after the filing of oppositions.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFE, J.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: GENERIC PHARMACEUTICALS PRICING ANTITRUST LITIGATION	**MDL 2724** **16-MD-2724**
THIS DOCUMENT RELATES TO: ***ALL ACTIONS***	**HON. CYNTHIA M. RUFE**

MEMORANDUM OPINION

Rufe, J. **November 14, 2019**

On October 24, 2019, the Court entered a Case Management Order as Pretrial Order No. 105 ("PTO 105" or "CMO"), substantially approving the Report and Recommended Order of Special Master David Marion and setting an initial schedule for discovery, class certification, summary judgment, and *Daubert* motions applicable to all cases pending in the Multi-District Litigation as of September 1, 2019. Moving Defendants objected to certain provisions of the CMO and have filed a motion in this Court to stay discovery while they seek a writ of mandamus from the Court of Appeals to argue that the CMO does not comply with the Federal Rules of Civil Procedure. Plaintiffs oppose the stay. Because the provisions of the CMO are appropriate in the context of this exceedingly large and complex antitrust MDL, the motion for a stay will be denied.

I. Procedural Background of the MDL

This MDL concerns allegations that numerous pharmaceutical companies engaged in an unlawful scheme or schemes to fix, maintain, and stabilize prices, rig bids, and engage in market and customer allocations of certain generic pharmaceutical products. There are five distinct sets of Plaintiffs: The State Attorneys General, three proposed class-action Plaintiff groups (the Direct Purchaser Plaintiffs ("DPPs"), the End-Payer Plaintiffs ("EPPs"), and the Indirect Reseller

Plaintiffs ("IRPs")), and the Direct Action Plaintiffs, who have opted not to proceed as part of one of the class actions. More than two dozen corporations and individuals have been named as Defendants. The MDL initially involved allegations of individual conspiracies as to 18 separate generic drugs, but has expanded to encompass allegations of overarching conspiracies that include dozens of pharmaceuticals. The Court has ruled on numerous motions to dismiss, and has determined that federal and state claims can proceed both as to individual drugs[1] and as to the alleged existence of an overarching multi-drug conspiracy in separate complaints brought by the Plaintiff groups.[2]

A particular challenge in this MDL has been the need to balance the conduct of discovery in an orderly, proportional fashion in accordance with the Federal Rules of Civil Procedure with due regard for the investigations conducted by the State Attorneys General and the United States Department of Justice, which is an Intervenor in the MDL. Discovery thus has proceeded in gradual, targeted stages.[3]

In recognition of the scope of the MDL, the Court has appointed three highly-qualified Special Masters to assist the Court and to work with the parties to resolve disputes informally, where possible, and to provide the Court with recommendations when agreement cannot be reached. Special Master Marion, Special Discovery Master Bruce Merenstein, and a specialist in electronically stored information, Special Discovery Master for ESI Daniel Regard, have many years of experience in cases with complex discovery.

---

[1] Specifically, the Court denied motions to dismiss (except as to one Defendant), the Sherman Act claims asserted by the DPPs, EPPs, and IRPs and the state-law claims asserted by the EPPs and the IRPS as to six individual drugs, clobetasol, digoxin, divalproex ER, doxycycline, econazole, and pravastatin (the "Group One" drugs). *See* MDL Doc. Nos. 857, 858 (entered October 16, 2018) and MDL Doc. Nos. 721, 722 (entered February 15, 2019).

[2] MDL Doc. Nos. 1070, 1071 (entered August 19, 2019).

[3] *See* PTO 44 [MDL Doc. No. 560, entered February 9, 2018]; PTO 47 [MDL Doc. No. 582, entered April 19, 2018]; PTO 60 [MDL Doc. No. 774, entered November 20, 2018]; PTO 73 [MDL Doc. No. 853, entered February 14, 2019]; PTO 96 [MDL Doc. No. 1046, entered July 12, 2019]; PTO 108 [MDL Doc. No. 1151, entered November 8, 2019].

The Court has entered orders designed to protect the parties' interests with regard to sensitive information. PTO 45[4] set forth the procedure for designating information as confidential or highly confidential and also set forth a separate category of non-privileged material generated or disclosed in connection with investigations by State Attorneys General. As different needs for protecting information were identified, PTO 45 was modified by PTO 53, to permit highly competitive or highly sensitive information likely to have a significant effect on business strategies or decisions, product plans or development, or pricing to be designated for "outside counsel eyes only."[5]

Before and after filing suit, several State Attorneys General, and in particular the Connecticut State Attorney General, conducted investigations pursuant to state law. The other Plaintiff groups sought access to the material obtained through such investigations, and by Order dated November 14, 2018[6], the Court explained at length why such access was warranted as long as there were procedures to protect confidentiality and comply with Connecticut state law. As a result of this Order, and under the auspices of Special Master Marion, the parties agreed to a stipulated protocol implementing the Court's Order, which the Court entered as PTO 70.[7] PTO 70 provided for a "claw back" procedure, whereby:

> if Defendants believe the procedures outlined [in PTO 70 and protective orders] are insufficient to protect (a) competitively sensitive or trade secret information; (b) business information unrelated to allegations in any MDL pleading; or (c) personal or embarrassing information unrelated to any allegation in the MDL, Defendants can submit an objection to Plaintiffs seeking to "claw back" such documents. Absent good cause (including for such issues as document volume), objections will be made within 30 days after the provision of access to a Defendant's documents. Objections shall identify the documents at issue, together

[4] [MDL Doc. No. 561, entered February 13, 2018].

[5] [MDL Doc. No. 697, entered September 4, 2018], at ¶ 1.7.

[6] [MDL Doc. No. 758].

[7] [MDL Doc. No. 841, entered January 31, 2019]. PTO 70 has been modified with the agreement of the parties, but this provision was not affected. *See* PTO 106 [MDL Doc. No. 1142, entered October 25, 2019].

> with the grounds for objection. If Plaintiffs disagree with such an objection, it will be considered by the Special Master. Defendants may not seek to claw back documents based on grounds other than those described above or as set forth in PTO 53 pertaining to inadvertent production of privileged material.[8]

II. The CMO is Consistent with the Federal Rules of Civil Procedure and the Court's Earlier Orders

The protections established in PTO 70, as just explained, have been expressly incorporated into the CMO, including Paragraph 3, to which Defendants particularly object. Paragraph 3 of PTO 105 governs the production of custodial files, and provides that search terms for the files shall be established, after which

> Defendants shall apply the agreed search terms to the agreed custodial files and may review the identified documents for privilege, but may not withhold prior to production any documents based on relevance or responsiveness.[9]

Defendants contend that they should be permitted to withhold documents they determine to be irrelevant or nonresponsive before production.

The agreed custodial files are defined in the ESI Protocol as the files of "any individual of a Producing Party as identified and agreed by the parties during a meet and confer as having possession, custody, or control of potentially relevant information, Documents, or ESI."[10] Thus, there is no dispute that these custodial files are likely to contain relevant information. Importantly, the agreed custodial files are not produced wholesale; instead, the files are to be searched for specific terms. These search terms provide the initial screen for relevance. Once the information has been produced it is not irretrievable; the "claw back" procedures established in PTO 70 for confidential information are expressly incorporated into the CMO: documents are stamped "Outside Counsel Eyes Only" for 120 days, with requests to claw back made within 120 days of

[8] PTO 70, ¶¶6-7.

[9] CMO ¶ 3(b).

[10] PTO 95 at ¶ 1.5.

production.[11] Claw back disputes are to be "resolved promptly with assistance from Special Discovery Master Merenstein and Special Master Marion, as necessary."[12]

The procedures outlined above establish a path forward fully commensurate with Federal Rule of Civil Procedure 26, which provides that

> Parties may obtain discovery of nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.[13]

There is no question that the issues at stake in this action are of considerable importance to the parties, to the shareholders of those Defendants that are publicly-traded corporations, and to the public at large. The agreed custodial files are by their terms those likely to have relevant information, the files will be searched for specific relevant terms, and Defendants have the opportunity to claw back confidential information. In the context of this litigation, where the relevance of the documents must be determined in part by context, these procedures best serve the purpose of the Federal Rules to secure a just determination of the merits of the parties' claims and defenses.

The CMO also comports with the earlier rulings of the Court with regard to the search for and production of discovery material (the "ESI Protocol").[14] The parties thoroughly briefed and argued several disputed issues before the ESI Protocol was entered. The highly technical disputes were resolved with the benefit of a recommendation from Special Discovery Master for ESI Regard. The Court separately ruled on a disputed legal question, holding that a party may redact or

[11] CMO ¶ 3(e).

[12] CMO ¶ 3(e).

[13] Fed. R. Civ. P. 26(b).

[14] *See* PTO 95 [MDL Doc. No. 1045, entered July 12, 2019].

withhold responsive documents only when covered by attorney-client privilege or the work-product doctrine or when the documents contain sensitive personally identifying information.[15] As the Court explained, "the particular nature of the antitrust allegations in the MDL mean that an understanding of the context of particular documents may be critical, which could be impeded by the withholding or redaction of responsive documents or document families."[16] The CMO thus does not depart from, but instead forms the latest chapter in, the Court's comprehensive management of the MDL.

III. A Stay Is Not Warranted

> The factors in determining whether to grant a stay are:
>
> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.[17]

For the reasons discussed above, Moving Defendants have not made a strong showing of likelihood of success on the merits. The CMO was not issued in a vacuum. Instead, as the intricate procedural history of this complex MDL illustrates, the CMO is the latest in a series of rulings designed to advance discovery with due consideration of the ongoing federal and state investigations and the parties' legitimate interests. The Court understands the burdens that large volumes of discovery place on the parties, but Defendants have not shown that reviewing information for relevance before production, instead of through the claw back procedures established in PTO 70 and incorporated in the CMO, is appropriate in this litigation, where the

[15] Order on Proposed ESI Protocol [MDL Doc. No. 938, entered April 10, 2019].

[16] *Id.* at 1. The Court also cited the protective order, and the parties' ability to raise appropriate objections to discovery, which the Special Masters may assist the Court in resolving. *Id.* at 1-2.

[17] *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 658 (3d Cir. 1991) (citing *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987)).

determination of whether information is potentially relevant requires the context of the information within the files. Nor have Defendants shown that they would be irreparably injured in the absence of a stay. To the contrary, the complexity of the MDL, and the balancing of interests of all concerned, has resulted in a deliberate, gradual expansion of discovery, and now that the groundwork has been laid, a stay would work against the interests of the parties and run counter to the public interest.

Now the MDL has been brought to the stage where comprehensive discovery is proceeding, Moving Defendants attempt to halt the progress the Court has made and disrupt the pace and the content of the administration of the MDL, issues within the sound discretion of the Court, by invoking the extraordinary remedy of mandamus. There is no basis for such an action. The question of whether there has been a widespread conspiracy to artificially inflate the cost of many generic pharmaceuticals is an issue that directly affects many Americans, and it is time for discovery to show whether or not that has occurred. The Court determined that Plaintiffs have plausibly alleged an overarching antitrust conspiracy; now Plaintiffs must marshal evidence to prove their claims and Defendants must prepare their defenses, and the CMO provides a reasonable way forward for all parties.

During the past three years, the Court has entered orders that balance the competing interests at stake in an ever-evolving and complex MDL. The Court maintains a detailed awareness of these developments and acts with the benefit of input received through regular status conferences with counsel, through reports of the Special Masters, and through extensive motions practice, and makes rulings based upon all of this acquired knowledge. As discovery expands, the Court will continue to ensure that the discovery process proceeds in an orderly, proportional fashion that is reasonably calculated to lead to the discovery of relevant information. The Court therefore will not stay proceedings. An appropriate order will be entered.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

November 7, 2019
ECO-012

No. 19-3549

In re: ACTAVIS HOLDCO US, et al.,
Petitioners

(E.D. Pa. No. 2-16-md-02724)

Present: SHWARTZ, RESTREPO, and PHIPPS, Circuit Judges

1. Petition for Writ of Mandamus

Respectfully,
Clerk/CJG

_____ORDER_____

The Plaintiffs are directed to respond to the foregoing mandamus petition. See Fed. R. App. P. 21(b)(1). Within fourteen days of this order, the Plaintiffs shall provide a single joint response not to exceed 2500 words and the response shall be limited to addressing the following issues:

1. What reasons were given to direct the production of potentially responsive discovery from the custodians without permitting the responding party to review the material for relevance?
2. What is the legal authority for a court to require a party to produce discovery without permitting the producing party to review whether the potentially responsive information is relevant when there is no evidence of a past failure to produce responsive discovery?

By the Court,

s/ Patty Shwartz
Circuit Judge

Dated: November 7, 2019
CJG/cc: All Counsel
Honorable Cynthia M. Rufe

APPENDIX D

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

December 6, 2019

Kate Barkman
United States District Court for the Eastern District of Pennsylvania
Room 2609
James A. Byrne United States Courthouse
601 Market Street
Philadelphia, PA 19106

RE: In re: Actavis Holdco US, et al
Case Number: 19-3549
District Court Case Number: 2-16-md-02724

Dear Clerk:

Enclosed please find copies of the following filed today in the above-entitled case:

1. Certified copy of the Judgment denying the issuance of a writ of mandamus.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/Laurie
Case Manager
267-299-4936

cc: All Counsel of Record
Honorable Cynthia M. Rufe
.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

November 22, 2019
ECO-012

No. 19-3549

In re: ACTAVIS HOLDCO U.S., Inc., et al.,
Petitioners

(Related to E.D. Pa. No. 2-16-md-02724)

Present: SHWARTZ, RESTREPO and PHIPPS, Circuit Judges

1. Petition for Writ of Mandamus;
2. Motion by Respondent to Seal Response;
3. Response by Respondent to Petition for Writ of Mandamus;
4. Motion by Respondent Non-Petitioner Defendants MDL 2724 to Stay Discovery Pending Petition for Writ of Mandamus;
5. Response in opposition by Respondent Direct Purchaser Plaintiffs MDL 2724 to Motion to Stay Discovery;
6. Reply by Petitioners to Motion to Stay Discovery;
7. Motion with Expedited Treatment Requested by Petitioners to Stay the portion of the District Court Case Management Order that is the subject of the Petition for a Writ filed on October 31, 2019;
8. Motion by Petitioners for leave to file a Reply to Petition for a Writ of Mandamus with Reply attached;
9. Response in opposition by Respondent End Payer Plaintiffs MDL 2724 to motion for leave to file a Reply to Petition for Writ of Mandamus;
10. Amicus Brief by Chamber of Commerce of the United States of America in support of the Petition for Writ of Mandamus;
11. Amicus Brief by Lawyers for Civil Justice in support of the Petition for Writ of Mandamus.

Respectfully,
Clerk/lmr

ORDER

The foregoing petition for a writ of mandamus is denied because, among other reasons, (1) the ordered disclosure does not "amount[] to a judicial usurpation of power," Cheney v. U.S. Dist. Ct. for D.C., 542 U.S. 367, 380 (2004) (internal quotation marks omitted); (2) Petitioners have not established a "clear and indisputable" right to relief, id. at 381 (quoting Kerr v. U.S. Dist. Ct. for N. Dist. Of Cal., 426 U.S. 394, 403 (1976)); see also In re Diet Drugs Prods. Liab. Litig., 418 F.3d 372, 378-79 (3d Cir. 2005); (3) there is no showing that the order was the result of a "clear abuse of discretion," Cheney, 542 U.S. at 380, given that (i) the District Court has wide latitude in controlling discovery, (ii) the Federal Rules of Civil Procedure permit a district court to compel the production of documents within broad parameters, see, e.g., Fed. R. Civ. P. 16(b), 26(b)(1), (iii) the discovery is being produced from custodians identified as possessing potentially relevant information, and search terms aimed at identifying relevant information that will be applied are likely to narrow the information produced, (iv) district courts have, in some circumstances, ordered the production of documents without a manual relevance review, see, e.g., Consumer Fin. Prot. Bureau v. Navient Corp., No. 3:17-CV-101, 2018 WL 6729794, at *2 (M.D. Pa. Dec. 21, 2018); UPMC v. Highmark Inc., No. 2:12-CV-00692-JFC, 2013 WL 12141530, at *2 (W.D. Pa. Jan. 22, 2013); Williams v. Taser Int'l, Inc., No. CIVA 106CV-0051-RWS, 2007 WL 1630875, at *6 (N.D. Ga. June 4, 2007), and these orders are neither tantamount to "search warrants" nor clear outliers, as the dissent suggests, (v) a similar approach is contemplated in Federal Rule of Evidence 502(d), by which a court may order production without a privilege review, (vi) the District Court provided reasons for its approach in its orders, (vii) the District Court provided avenues: (a) to allow the Petitioners to review for privilege before production and (b) to protect the produced information by way of an "outside counsel eyes only designation" for a period of 120 days, during which Petitioners may claw back trade secrets, unrelated business information, and unrelated personal or embarrassing information; (viii) even if the District Court's order constituted an abuse of discretion (which we do not decide), such an error would not support mandamus relief, see Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3d Cir 1995) (noting that "[m]andamus is not available for [an] abuse of discretion" without a showing that "the district court committed a clear error of law"); Cipollone v. Liggett Grp., Inc., 822 F.2d 335, 339 (3d Cir. 1987) (similar); and (4) mandamus is not otherwise necessary "to prevent grave injustice," Bogosian v. Gulf Oil Corp., 738 F.2d 587, 591 (3d Cir. 1984), as there is no showing that the ordered disclosure, when paired with the protections and limitations that the District Court imposed, will cause great injury.

Because we have denied the mandamus petition, we deny as moot the motions to stay discovery pending resolution of the mandamus petition and to expedite consideration

of the petition. We grant the motion to seal and Petitioners' motion for leave to file a reply to the petition for a writ of mandamus.[1]

By the Court,

s/Patty Shwartz
Circuit Judge

Dated: December 6, 2019
Lmr/cc: All Counsel of Record

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[1] Judge Phipps would have granted the petition for a writ of mandamus based on the explanation below.

Under the discovery order in this case, documents from certain custodians containing certain broad search terms must be produced without the producing party having the ability beforehand to review the documents for responsiveness or relevance. There is no dispute that the order compels the production of a volume of non-responsive and irrelevant documents. But the discovery order contains a clawback provision that affords the parties producing documents 120 days to request return of non-responsive, irrelevant documents that meet at least one of three criteria. Even with that clawback provision, the order constitutes a serious and exceptional error that should be corrected through a writ of mandamus.

The sequence of events in discovery is important, and the rules of civil procedure allow for a review for responsiveness and relevance *before* production. *See* Fed. R. Civ. P. 26(b)(1), 34(b)(2)(C). While parties may agree to dispense with that sequence, nothing in the civil rules permits a court to compel production of non-responsive and irrelevant documents at any time, much less before the producing party has had an opportunity to screen those documents. But that is exactly what the discovery order in this case does. The clawback provision does not ameliorate that defect: a court does not spontaneously gain authority to compel production of non-responsive, irrelevant documents simply by establishing a period of time afterwards for the review and potential return of the documents produced.

There is, of course, another regime in which production comes first, followed by objections to the documents produced. That is the search warrant. While search warrants have other characteristics, such as a probable cause showing and the dispatching of law enforcement officers to enter private premises, civil discovery is distinct and does not incorporate those central features. By cloaking the document requests in this case with a core attribute of search warrants – production before review and objection – the discovery order is an extraordinary outlier.

In sum, sequence is important in civil discovery. A party has the option of objecting to the production of documents on responsiveness and relevance grounds *before* producing them. Because the discovery order here contravenes that fundamental principle and operates with enhanced potency, akin in one key respect to a search warrant, Judge Phipps dissents and would grant the writ of mandamus.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-3549

In re: ACTAVIS HOLDCO US, et al.,
Petitioners

(Related to E.D. Pa. No. 2-16-md-02724)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, CHAGARES, SHWARTZ, RESTREPO, BIBAS, and PHIPPS, Circuit Judges

The petition for rehearing filed by Petitioners in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Patty Shwartz
Circuit Judge

Dated: January 6, 2020
Lmr/cc: All Counsel of Record

APPENDIX F

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 19-3549

In Re: Actavis Holdco U.S., Inc., et al.,
Petitioners

(E.D. Pa. No. 2-16-md-02724)

Present: SHWARTZ, RESTREPO and PHIPPS, Circuit Judges

1. Motion Filed by Petitioners to Stay District Court Order Pending Disposition of a Petition for a Writ of Certiorari.

Respectfully,
Clerk/lmr

_____ORDER_____

The foregoing motion is denied.

By the Court,

s/ Patty Shwartz
Circuit Judge

Dated: January 30, 2020
Lmr/cc: All Counsel of Record

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE:	.	Case No. 2:16-MD-02724 (CMR)
	.	
GENERIC PHARMACEUTICALS	.	
PRICING ANTITRUST	.	U.S. Courthouse
LITIGATION	.	601 Market Street
	.	Philadelphia, PA 19106
	.	
	.	September 24, 2019
. . . . .		11:17 a.m.

TRANSCRIPT OF CIVIL HEARING
BEFORE HONORABLE CYNTHIA M. RUFE and JURY
UNITED STATES DISTRICT JUDGE

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I N D E X

COURTROOM DEPUTY: All rise. The Court is now in session for the United States District Court for the Eastern District of Pennsylvania. The Honorable Cynthia M. Rufe presiding.

THE COURT: Good morning, everyone.

THE COURTROOM: Good morning, Your Honor.

THE COURT: Please be seated. So, we started early this morning with a conference with liaison counsel and we're now ready to address remaining issues on the agenda and I would like to know who... since I have a sign-in sheet, I believe there's also counsel on the telephone? Do I have a list of them?

FEMALE VOICE 1: - - .

THE COURT: So, if you wish to speak and you're on the telephone, you must identify yourself, please, when that happens. I don't know which of these pages...

MR. WILLIAM STEWART: Hi, this is Bill Stewart from Schneider Wallace on the line.

THE COURT: Hello? Who else is on the phone? I believe we have our Special ESI Master--

MS. NIKOLE BROCK: [Interposing] - - Attorney General's Office on the line.

THE COURT: Would you repeat that, please?

MS. BROCK: Nikole Brock from the Pennsylvania Attorney General's Office.

THE COURT: Thank you. Who else?

MR. FRANK DELEON: Frank DeLeon [phonetic] from the Montana Attorney General's Office, Your Honor.

THE COURT: Thank you. Anyone else?

MS. LEEANNE APPLEGATE: LeeAnne Applegate, Kentucky Attorney General's Office.

THE COURT: Thank you. Who else, please?

MS. LAURA MARTELLA: Laura Martella from the Connecticut Attorney General's Office.

THE COURT: Thank you. Anyone else--?

MS. RACHEL DAVIS: [Interposing] Rachel Davis from the Connecticut Attorney General's Office. I do not intend to speak.

THE COURT: I did not hear that.

MALE VOICE: That was Rachel Davis from the Connecticut Attorney General's.

MR. TIMOTHY FRASER: Timothy Fraser, Florida AG's Office.

THE COURT: And who was that?

MALE VOICE: Tim Fraser from the Florida Attorney General's.

THE COURT: All right. Anyone else?

MR. DANIEL REGARD: This is Dan Regard, the Special Master for ESI discovery.

THE COURT: Thank you, Mr. Regard. I did try to

introduce you a moment ago and thank you for joining us this morning.

MR. REGARD: Yes, ma'am.

THE COURT: Anyone else on the phone?

MS. JUDITH ZAHID: Your Honor, it's Judith Zahid and Eric Buetzow for United HealthCare Services, Inc.

THE COURT: Thank you.

MS. ELIN ALM: Elin Alm from the North Dakota Attorney General's Office.

THE COURT: Thank you. Might that--

MS. HUGHES: [Interposing] - - Hughes on behalf of Nisha Patel.

THE COURT: Okay. Thank you.

MR. RYAN: - - Ryan on behalf of Jay Nesta [phonetic].

THE COURT: Thank you, sir.

MR. ROBERT CONLEY: Robert Conley [phonetic] on behalf of James Grosson [phonetic].

THE COURT: Thank you.

MR. JOHN SELDEN: John Selden, Alabama Attorney General's Office.

THE COURT: Thank you, sir.

MS. ELIZABETH HAAS: Elizabeth Haas with Foley and Lardner on behalf Apitex.

THE COURT: Thank you.

MS. TAMARA WEAVER: Tamara Weaver from the Indiana Attorney General's Office.

THE COURT: Thank you.

MR. MATTHEW MCKINLEY: Matthew McKinley from the Ohio Attorney General's Office.

THE COURT: Thank you.

MR. DAVID HASSELMAN: David Hasselman [phonetic] on behalf of Impax.

THE COURT: Thank you. I guess that's it. Thank you very much.

Let's address the joint proposed agenda. It has two items. Of course, there are other items that the Court could entertain, if there is time this morning. But I would like to address what counsel--liaison counsel believe should be addressed first. And I'm going to ask the Plaintiffs to proceed.

MR. JOSEPH NIELSEN: Good morning, Your Honor. Joe Nielsen from the State of Connecticut Attorney General's Office on behalf of the Plaintiff states.

THE COURT: Good morning.

MR. NIELSEN: I think number one on the agenda is we wanted to notify the Court that the Plaintiff states will be amending, as of right, the complaint that we filed on May 10th, 2019. We're planning to add several additional Plaintiff states and jurisdictions as well as, likely, an additional

Defendant and I just wanted to let the Court know that that is happening. We haven't done so yet because we have been reluctant to amend and include the email that is the subject of the pending heritage motion in an unsealed fashion, again. But we will be amending it as soon as we think it's appropriate to do that and avoid republishing the email.

THE COURT: Of course, the Court would always allow an amendment to add or drop parties and claims. One additional Defendant, does this also involve additional drugs then?

MR. NIELSEN: No. Substantively there will be no significant changes to the substance. It will be additional parties.

THE COURT: There have been no responsive motions to your complaint, your amended complaint.

MR. NIELSEN: That is correct.

THE COURT: And we need to draw up a schedule for such motions and briefing on such motions, if they are to occur. I would like to know if you perceive additional amendments, past one, that could be done within thirty days.

MR. NIELSEN: I don't. Sitting here today, I don't envision any future amendments, Your Honor.

THE COURT: All right. As you know, the work that goes into the initial motions to dismiss has been pervasive and energetic. And, at the same time, we've no desire to repeat it on the same issues. So, we're looking forward to deciding new

issues but not repeat ones. So, that's just a clue to everybody. When you start filing your motions, I think you should be trying to tell the Court how your issues and claims and your motions differentiate from ones that are already decided. Because there's no way we're going backwards. Or even standing still. But I would like to, also, reign in the amount of and prediction of future amendments. And it would seem it's about time.

MR. NIELSEN: Understood, Your Honor.

THE COURT: All right, how long do you think this will take if I grant it?

MR. NIELSEN: There's no motion pending, and we plan to amend, as of right, under the Federal rules. So, you know, we can be prepared to do that quickly.

THE COURT: Okay. Does anyone from any other Plaintiff's group wish to speak to this particular intention of the State's Attorney General's Office? In the nature of an opposition.

MS. ROBERTA LIEBENBERG: No, Your Honor.

THE COURT: All right. Then, is there any reason to hear from any Defendant representative here?

MS. JAN LEVINE: We don't believe so, Your Honor. This is the first we're hearing the details and if there are, we will address the Court. But I don't see anything right now.

THE COURT: Very well. Thank you.

MR. NIELSEN: Thank you, Your Honor.

THE COURT: The sooner, the better.

MR. NIELSEN: Understood.

THE COURT: Okay. Now, I think the largest substance that we can deal with this morning are the issues raised in the Report and Recommendation from Special Master David Marion setting forth the Case Management Order and Discovery Schedule. And we would like to address the various objections that have been raised by filing briefs. We reviewed them but I would like to give everyone that has filed such objections an opportunity to address the Court. Briefly, succinctly, but I still think it's appropriate. So, again, we'll start with Plaintiffs.

MS. LIEBENBERG: Thank you, Your Honor. Good morning, Bobbie Liebenberg on behalf of the EPPs.

THE COURT: Good morning.

MS. LIEBENBERG: I planned to offer some brief introductory remarks to provide an overview of Plaintiffs' response to Special Master Marion's Report and Recommendation. I'm going to then turn the presentation over to Mr. Nielsen who will address the reasons why we believe full custodial files for certain key custodians should be produced. Or, alternatively, why Special Master Marion's recommendation to require the use of broad search terms without a prior relevance review should be applied to the document productions.

As you know, Plaintiffs first filed their complaints in March 2016, almost three and a half years ago, and, yet, Defendants have not begun to make any meaningful production of substantive documents. This Court has repeatedly emphasized its desire to expedite discovery and to put in place a Case Management Order and, in fact, one of the reasons these cases were consolidated to the MDL by the JPML in the first place was to promote the coordination of efficiency and resolution of the--timely resolution of these cases.

The Court now has before it a comprehensive and carefully considered Case Management Order that reflects a fair and workable compromise of the competing proposals that had been submitted by the Plaintiffs and Defendants, supplemented by Plaintiffs' proposed modifications, which are set forth in our brief, we believe this CMO will propel these cases towards completion with undue delay. The Court's recent decision denying the motions to dismiss found that Plaintiffs had plausibly alleged an overarching conspiracy regarding the broader market of generic drugs that extended beyond any individual drug.

The Court was very specific in its opinion and we reiterated several times that discovery is needed to test the scope of the overarching conspiracy allegations and the defenses to them. Thus, Special Master Marion correctly concluded that under Rule 26, Plaintiffs were entitled to

conduct discovery concerning the full scope of Defendants' unlawful anticompetitive conduct with respect to all drugs in the MDL as well as--including discovery that relates to what this Court described as the connective tissue between any individual single drug conspiracy and the broader overarching conspiracy.

Thus, the Report and Recommendation, consistent with Your Honor's recent ruling, provides an effective framework for the timely completion of discovery for all drugs in this MDL now as well as additional drugs that will be brought into the MDL through new or amended complaints. Indeed, I think it really bears emphasis that, under the recommended CMO, completion of document discovery as to all of these drugs is contemplated to be done in just one stage within the next year. And I want to repeat that. That is a really way-to-go forward in this case. And that stands in stark contrast to the Defendants' proposal which seeks to phase and silo discovery and to create a suspense docket that will encompass the vast majority of drugs that are involved in this MDL. Defendants specifically propose to limit--limiting discovery, in a phase one, to approximately the thirty drugs that were at issue in this MDL before the states filed their May 20th, 2019, Teva complaint. And to suspend all discovery and other pretrial proceedings as to the approximately ninety-five drugs that were added to the MDL by that complaint as well as new drugs and new

Defendants.

Under the Defendants' proposal, the states' May 2019 Teva complaint and all other complaints filed under that date will not come out of the suspense docket until after the Court's decision on the class certification of the phase one overarching conspiracy complains, which doesn't even include all of the thirty complaints at issue, and completion of summary judgment as to those briefing. And Plaintiffs estimate that that won't occur until sometime fall of 2021. And by that time, the conduct at issue in this case would have taken place six to eleven years earlier.

The undue delay inherent in Defendants' phased discovery approach will cause substantial prejudice to Plaintiffs. And time, Your Honor, is of the essence. In the three and a half years that has elapsed, two witnesses have died, memories have faded, and at least one key custodian's files have been destroyed.

Thus, Special Master Marion's Report and Recommendation properly rejected Defendants' phased discovery approach and the proposed suspense docket recognizing that it would cause delay, redundancy, multiple depositions of witnesses, and confusion. Court have repeatedly emphasized that administering an MDL is very different than overseeing an individual case and it often requires the adoption of special procedures. Indeed, in the PPA product liability litigation, a

case cited by the Defendants, the Ninth Circuit emphasized that effective coordination of an MDL proceeding requires that a district court be given even greater discretion to structure a procedural framework that will move the case as a whole and that Rule 16 authorizes the Court to manage these cases so that disposition is expedited and settlement is facilitated.

Plaintiffs endorse the Case Management proposal set forth by Special Master Marion because it provides an efficient procedural framework for the timely commencement and completion of discovery for all drugs in these cases and it avoids the substantial delays inherent in Defendants' phased discovery approach. I'm now going to turn the presentation over to Mr. Nielsen to address really what we think are the two key discovery issues before this Court and that is the use of custodial files or broad search terms. Thank you, Your Honor.

THE COURT: Mr. Nielsen?

MR. NIELSEN: Thank you, Your Honor. Before I start, I just wanted to mention that with me today is Angelina Whitfield, an Assistant Attorney General from the State of Illinois, sitting in the jury box, who prepared the briefing for the states on this issue and I wanted her to introduce herself to the Court.

THE COURT: Thank you.

MR. NIELSEN: As Ms. Liebenberg said, I did want to address the two key issues involved in the case management

briefing and that is the Plaintiffs' request for full custodial file productions from certain key individuals at the Defendants as well as the Defendants' request to filter their productions based on responsive - - relevance prior to producing the documents as to the Plaintiff states.

First, Your Honor, with regard to the custodial file issue, I wanted to make it clear that the Plaintiffs are requesting full custodial files for a limited set of the key individuals from each company. This is not an expansion of what the Plaintiffs were previously seeking in discovery. In fact, the Plaintiffs had negotiated a much larger list of custodians in the meet and confer with the Defendants prior to this case management proposal. So, this is actually a concession in that respect from the Plaintiffs and there is a lot of risk involved from the Plaintiffs' perspective to make this proposal. There will certainly be a number of custodians who had relevant and, indeed, highly relevant documents that the Plaintiffs would be willing to forgo discovery on in order to focus on the limited set of key individuals and getting a real deep dive into their documents. Because they are the key individuals responsible for engaging in the collusion or in the price increases that were at issue in the complaints.

And in the context of making this proposal, Your Honor, what the Plaintiffs are trying to do here is come up with an innovative and creative way to accomplish the

objectives of the JPML and of this MDL, which are number one, to avoid duplication of discovery and, two, to conserve the resources of the parties, their counsel, and of this Court.

The Plaintiffs believe that the production of full custodial files is the most efficient and reasonable approach to move the entire MDL forward as quickly as possible while still taking into account and accommodating future complaints that will be filed and not putting all of those cases into a suspense docket where they would be stayed indefinitely.

Full custodial file production, Your Honor, would reduce the number of custodians at issue significantly. It would, therefore, reduce the number of places where the Defendants have to go to find and produce documents. It will likely reduce the total number of documents that have to be produced by the Defendants. And that's just common sense, Your Honor. Less custodians equal less documents. Especially when the alternative is what Special Master Marion has proposed which would be broad search terms apply to a larger, much larger, number of custodians.

And, in their brief, Your Honor, the Defendants argue, and I'm quoting from page 11, that the sheer size of a typical custodial file would make the volume of documents to be reviewed unworkable. And I can tell you from experience that that's flatly incorrect. Number one, many of these Defendants have actually produced full custodial files to the states

during the course of their investigation so, I know it's not unworkable.

Also, the volume of the documents in those custodial files that have been produced is not overwhelming. In fact, the largest custodial file that the states received as part of their investigation was a total of 167,000 pages. Which, in a very large antitrust case such as this one, is not significant overall where typically cases involve hundreds of millions of documents in cases like this. But even if the custodial file were much larger than 167,000 pages, that would be proportional to the scope and magnitude of this MDL. The sheer size, the volume of the evidence, the allegations, the overarching conspiracy, and the importance of the market that we're talking about, Your Honor.

Production of full custodial files will also be quicker and more efficient. We can eliminate search terms entirely from the process. And I would point to pages 18 to 23 of the Defendants' brief, Your Honor, where they go through and describe the inherent delays associated with applying search terms. In particular, the parade of horribles that will result if Special Master Marion's recommendation is applied to them. They go through and they seek, you know, they describe the significant delays that will result. Many of those delays are just the basic fundamental agreement on search terms themselves. Which search terms are going to be applied and

will there be a dispute about that? And I would point to page 19 of the Defendants' brief, Your Honor, where the Defendants actually say, without knowing--without having done any testing on any of the search terms and without having gone through meet and confer on any of these proposed search terms from Special Master Marion's recommendation, that most if not all of the Defendants will dispute the search terms. They say they know that that's going to happen, and the production of full custodial files will cut through all of that, leaving only a privileged review by the Defendants. And there are many ways for these Defendants to engage in a very efficient and reasonable privileged review that can be done quickly and protect their rights.

The production of full custodial files would also eliminate duplication, which again is one of the primary objectives of the MDL. With full custodial files documents are produced once, that is it. These Defendants will never have to go back to that custodian's files ever again for anything. And they will accomplish discovery in the cases that are on file currently as well as future cases that involve different drugs but the same companies.

These key individuals at these companies had responsibility for all the companies' drugs and would be involved and key players in future cases as well.

Custodial files will also reduce the number of

potential depositions as well as the risk of multiple depositions of the same individuals over time. As additional documents are produced piecemeal... If we do this the way the Defendants proposed to do it, as additional cases come out of the suspense docket and new discovery is conducted, additional depositions of the same individuals would have to happen multiple times over and over again. The production of full custodial files will cut through that.

And, in additional to all these benefits and savings, the production of full custodial files is appropriate based on the allegations in the complaints that are on file. This is an extremely unique case with the volume of the allegations, the allegations of an industry-wide overarching conspiracy and the volume of the evidence and communications that has already been alleged. But I just want to identify one example of why a full custodial file would be important, Your Honor. And that involves the full custodial file that the Defendant Teva produced with regard to Nisha Patel who was also an individual Defendant in the state's May 10th complaint. Having the full custodial file from Defendant Patel allowed the states to understand the extensive nature of the conduct and develop that complaint based almost primarily on her full custodial file.

As you may or may not know, if you haven't read the full entire complaint, it goes through in painstaking detail alleging how the Defendant Nisha Patel started at Teva, she

began formulating price increase lists and formulating--ranking competitors based on their quality and identifying price increase candidates based on the relationships that she and others at Teva had with these competitors. And she... Ultimately, we determined that she spent a good day [sic] of her--of each of her workday communicating with competitors to identify and seek agreements on these price increases.

And this story, when you read it in the complaint, Your Honor, it seems obvious and apparent but none of that was obvious or immediately apparent from the documents as they were produced. Significantly, Nisha Patel never once referred to a single competitor that she communicated with by name in a document. When she spoke to these competitors and then passed along information internally to her colleagues, in emails or in other documents, she would often do it using code or veiled, opaque references to information that she had learned from the competitors.

Throughout the complaint, you see terms like strategic, to identify that there was an agreement in place with a competitor on a certain drug. When she would get off the phone with a competitor, she would send an email saying there was a rumor of a price increase. It didn't say where she got the information, who she had spoken to, any of those things. She used terms like fluff pricing to indicate a cover bid where Teva would not seek to obtain the business from their

competitor. Even the term quality, Your Honor, doesn't necessarily immediately jump out at you as identifying that there is a collusive relationship in place. All of that, the context of each and every document was important and could not be properly evaluated without having access to many other sources of information, many of which the Defendants just simply won't have in order to look through these documents and determine relevance.

For example, the states have an industry-wide phone record database where it makes it very easy for the states to identify which competitors were talking to each other, when and for how long. We have developed extensive information about pricing and price increases throughout the industry over time relating to specific companies and the states also, in the course of their investigation, have a number of documents from competitors that we can look at to determine the context and determine whether these documents are relevant.

And all of these documents and all of these sources of information were necessary in order to create this context where the documents in her full custodial file could be properly understood. And she is not alone, Your Honor. We identified a number of individuals at various companies who are also named as individual Defendants in our complaint who engaged in conduct at similar levels in terms of communicating with competitors. And at a minimum, the states have

established through their allegations that the full custodial files from the individual Defendants would be appropriate based on the scope and volume of their conduct.

Full custodial files would also be necessary and appropriate in order to evaluate the defenses that will be raised by the Defendants in this case. Just on example of a defense that will be hotly contested, Your Honor, is the authority of these individuals to engage in price fixing agreements and market allocation agreements with their competitors. And the full custodial files are necessary to determine the scope of these individuals' authority on an everyday basis. Is this part of their authority to identify price increases or to list price increases or to do these different things? The full context, even with regard to drugs that are not at issue in the complaint, will be relevant to determine these key individuals' authority. And full custodial files will be necessary to evaluate that.

One thing that the...one opposition that the Defendants raised to the production of full custodial files is that they will contain a lot of personal information. And I can tell you, Your Honor, from experience, some of that personal information is actually highly relevant to the case and to the story on what happened over time.

One example I'll point out, I'll be brief, it also involves Nisha Patel while we're on that theme of Nisha Patel.

Nisha Patel went on maternity leave during a period of time when she was engaged in this price increase campaign and the fact that she--the dates of when she was on maternity leave and when she started to come back where important for a number of reasons. Number one, it showed and demonstrated that no one else at Teva was doing anything with regard to price increases at all other than Nisha Patel. The activity on price increases completely stopped and that was important to establish her authority and her domain over identifying and implementing price increases.

Secondly, the communication patterns between the companies changed during the time she was out and knowing when she was out it was important because, for example, another Defendant--individual Defendant in the case, his name is David Berthold [phonetic]. He was a high-level executive at Defendant Lupin. He had been communicating with Nisha Patel up until the time of her maternity leave and when she was out, he just communicated with the VP of sales and other individual Defendant in our case and one other person at Teva. And that fact, Your Honor, is important for a couple of reasons. Number one, it shows that Nisha Patel was not a rogue employee who was out on her own, communicating with competitors. This was an institutional agreement between these companies that was understood at higher levels than her. And so, even personal information can be part of the story and the context is very

important. We would not have been able to make these connections or develop this information without her full custodial file.

And lastly, Your Honor, on the issue of custodial files. They're also critically important because search terms will undoubtedly miss some highly relevant documents. The Defendants in this case understood that their conduct was unlawful, and they took steps to avoid documentation of the conduct in writing. They used veiled, opaque references in their documents. They used code words. Some even took active steps to destroy documents, any evidence of their conduct. And all of that context makes it very difficult to find search terms that will come up with every relevant document.

And I would point the Court to two examples that we have attached to the joint brief. Exhibits "D" and "E", Your Honor. And if you don't have a copy of those immediately, I can--

THE COURT: [Interposing] I have a copy.

MR. NIELSEN: You do. So, Exhibits "D" and "E" are two different text messages between Jason Malek, a former Heritage executive, and an unknown recipient. The only information in there on the recipient is a phone number. So, one of the text messages from Jason Malek says, "Tell Tim to stay away from ABC." And then there's a response from the unknown number saying, "Done." Now, those two documents are

key documents in the states' case against Heritage, the first complaint that the states filed. Highly relevant and those documents will never, ever come up using any search terms that could be devised by any of the parties. Even if they did come up, Your Honor, it's likely that no one would understand that there were relevant documents to begin with. There are actually... When you read the documents in the context of the allegations in the complaint, it makes sense. But when you look at those documents by themselves, you can't tell that they're relevant without doing about five different steps of investigation in order to determine relevance.

First, you have to determine who is Jason Malek even talking to. There's just a phone number in the documents. So, you have to do a lot research to identify the phone number, which involves a lot of document review, trying to find that number in a document database or through other sources. Turns out, in this case, Jason Malek is talking to a Heritage employee, a subordinate. He's telling a subordinate to go talk to Tim.

But, second, you have to understand what they might even be talking about. And in order to do that, that requires a lot of document review of other Heritage documents surrounding this time period to see what was going on with ABC, how did this issue come up? As it turns out, ABC had asked Heritage for an offer on a drug called Glyburide. But that

wasn't immediately obvious.

Third, you have to determine who Tim is. Is Tim a Heritage employee? Is Tim, you know, a competitor? There's a lot of document review involved in trying to find who this unknown Tim might be. You have to look at org charts from competitors, search documents, a lot of different things. It takes a while. As it turns out here, Tim is a sales rep at a competitor, Aurobindo.

Then, you have to look and see whether the Heritage subordinate actually talked to Tim. And in order to do that, you need phone records. You have to actually subpoena the phone records from either the Heritage person or Tim. It turns out the states had already done that and, once you look at the phone records, you find that the subordinate does actually call Tim and then sends that second text message saying, "Done."

And, last, you have to try to fit that communication and that context into a story about a conspiracy. And it doesn't immediately fall into a timeline. There's a lot of work. And so, my point here is many of these documents, not only do they not come up in search terms but they're hard to even determine whether they're relevant. And there's a lot of context involved.

I would point out just one other example, very quickly, Your Honor, of a document that will never come up using any search terms although it is highly relevant. And

that's in paragraph 647 of the Plaintiffs states' May 10th complaint. It's an email from David Rekenthaler, who's an individual Defendant in the case, a VP of sales at Teva, where he sends a Teva pricing list, price increase list, to his personal email account so he can then forward it from his personal email account to a competitor's personal email account to avoid detection. And the reason that this document will never come up using search terms, even though it has a full list of price increases, is because he copied that and pasted it into his email as an image so there are actually no words associated with it. So, any search terms that come up will not hit on that document even though that is an attempt by this senior executive to avoid any documentation of his collusion with a competitor through using personal email.

The Defendants actually propose a solution for finding these types of documents in their brief, Your Honor, in pages 15 to 16 of their brief. But the solution is completely absurd when you look at what would have to be done in order to comply with their solution. The Defendants propose that, for these types of instances where we know of communications between competitors. We can meet and confer on every single communication these competitors ever had and devise document review projects where the Defendants will actually look at documents surrounding the time periods of all these communications and see if they can identify and then produce to

us relevant documents that would not otherwise hit on search terms. So, they're essentially proposing that we meet and confer on tens of thousands of different communications and then devise independent, individual document review projects for each which would just delay this case forever. And in addition, it would require the Plaintiffs to provide the Defendants with all our work product on all of the different collusive communications that we have found which is, again, another reason it's not appropriate.

So, Your Honor, that is the Plaintiffs' position on custodial files. I would also want to make a point on the relevance review issue. And that is that the Defendants contend that the Federal Rules require that only they should be responsible for filtering their documents in determining relevance and responsiveness. They cite cases to that effect. However, their own cases that they cite actually demonstrate that there are circumstances where that is inappropriate. For example, the Defendants block quote the following passage from Wilson versus Rockline Industries at page 7 of their brief. And, in that case, the Court in Rockline--Wilson actually says in our system of law we allow the party responding to discovery to filter his own documents and provide only those which are relevant to the litigation. In the absence of some showing that relevant information is being withheld, and here there is none, there's no basis to make the responding party produce all

information. So, what the Court is actually saying is where there is a showing that relevant information is being withheld, then there should be a no relevance review.

And here we have made that show and we've gone through at length in our briefs, Your Honor, demonstrating how many of these Defendants have attempted to provide--to impose a relevance review on the PTO 70 AG access documents that were produced and claw back a number of documents based on relevance. And we highlight a number of those.

I would just mention a couple. For example, Teva produced 250,000 documents to the states during the course of their investigation. In the context of PTO 70, they tried to claw back initially 100,000 of those documents or 40 percent of that production. And they claimed to be using a very broad definition of relevance that took into account the states' May 10th, 2019, complaint. However, when we loaded those documents into our document review platform and we dandled them together, it was immediately obvious that there were, you know, approximately a hundred documents that had been coded hot. There were several hundred warm documents. And we don't even code for relevance, Your Honor, so, it's uncertain how many of those documents were just clearly obviously relevant. We only code the very significant documents but, you know, they--Teva actually tried to claw back documents that were quoted in our complaint. A number of documents about playing nice in the

sandbox, documents showing that Teva had advance knowledge of a Heritage price increase on a drug called Theophylline, which is the subject of the states' first complaint. Documents demonstrating the relationship between Teva and - - and a number of other price increases that are at issue in the complaint.

Taro was another Defendant who sought to do this on a much smaller scale. However, with the same results in terms of clawing back highly relevant documents. Taro also tried to claw back a document that was actually quoted in our complaint as well as hundreds and hundreds of other documents specifically relating to drugs at issue that in the states' complaint that we had sued Taro about. Just a few examples. Enalapril is a drug that we allege Taro entered the market and illegally agreed to allocate customers as they were entering the market. They were a number of emails there relating to Taro's entry into the market for Enalapril that were--tried to be clawed back. Adapalene gel, which is a price increase drug in the complaint. There are documents relating to Taro's evaluation of its fair share for that drug. Ketoconazole, which is another price increase drug in the states' complaint. There are emails, internal Taro emails, that they seek to claw back directly relating to their decision to follow Teva's price increase which is specifically the subject of the states' complaint.

And we listed a number of other examples, I'm not going to go through them but from activist - - those are detailed throughout pages 16 and 17 of the joint brief.

And the Defendants' own proposal, Your Honor, in determining how they would provide discovery relating to the overarching conspiracy, that proposal by itself shows that the Defendants are incapable of determining relevance in this case. The Defendants make a proposal that the original 31 drugs in this case will be... offense will be placed around those cases. The rest of the cases will be put in a suspense docket, no discovery. But what they do offer is some discovery on overarching conspiracy that could apply to all the cases. But what they do is they specifically limit overarching conspiracy discovery to two specific requests for production which they are referring to as relationship documents. The relationship documents, however, are only a small fraction of what is needed to properly evaluate the overarching conspiracy in this case. By limiting overarching conspiracy discovery to two RFEs, Defendants would necessarily exclude a significant amount of important evidence including meetings and communications with competitors where the subject matter of those communications is unknown. We actually provide an example of that document where a Heritage representative said, "Spoke with Gloria" and she's actually referring to a competitor and that's a part of the whole ongoing story. We wouldn't get any of those trade

association related requests including girls' nights out and similar events. The Court has indicated in her overarching conspiracy decision on the motion to dismiss that those are highly relevant documents, important pieces of the conspiracy puzzle. We wouldn't get any of those calendars, expense reports, journals, text messages, for employees who may have engaged in price fixing. None of that would be produced.

But, probably most importantly, Your Honor, their proposal would exclude those basic everyday documents that show that these companies are acting in accordance with the agreement that they have with these competitors.

So, conceding--deciding to concede share to a new market entrant, as they enter the market, would be actions consistent with the overarching conspiracy. Not stealing a competitor's share when the competitor raises price. Again, the same thing. These are all dividing up customers. When a company is losing exclusivity, all actions showing that these companies have a consistent adherence to the common scheme. We would not get any of that under the Defendants' proposal and, for those reasons, we believe that Special Master Marion's proposal not allowing for relevance review is appropriate if the Court does not agree that we should get the full custodial files for those limited set of key custodians.

And I just want to make one additional point, Your Honor, and this has to do with the--putting a fence around the

original 31 drugs and placing everything else in a suspense docket. The states in particular, and I'm speaking for the states here, have a fundamental objection to that idea. When we filed our complaint in May, we did not object to a transfer to the MDL here. And it was never contemplated when we took that action that that case would be placed in a suspense docket and discovery on it would be stayed indefinitely.

And any future complaints that we file, we similarly would not expect that and if that were the case, we would fundamentally object to them being transferred here. It would be a big problem for the states to have those cases stayed. And I think for everybody, it would be a big problem.

Fundamentally doing that, and I believe that this is what the Defendants intend, will stay a huge majority of the drugs at issue in the MDL. Those are in the states' complaint filed in May. 114 different drugs at issue substantially expanded the scope and Defendants' proposal would essentially stay that entire case.

Your Honor, given the extraordinarily high stakes involved in this MDL, as well as the parties' relative access to information and the importance of discovery in resolving these issues, broad discovery is warranted here on all the cases. Thank you, Your Honor.

THE COURT: Thank you, Mr. Nielsen. Anyone else from the Plaintiffs' side?

MS. LIEBENBERG: No, Your Honor.

THE COURT: Then I'll turn to the defense. - - .

FEMALE VOICE 2: Good afternoon now, Your Honor.

THE COURT: Yes, it is.

FEMALE VOICE 2: - - defense liaison. I just want to, first, thank Your Honor for scheduling argument and giving the time to hear all parties' positions. You would not be surprised that the Defendants have a different view how to efficiently and effectively move this case along. And I wanted to introduce to you so you would know how we thought argument should go by the different defense counsel that will be presenting argument.

The lead argument on behalf of all Defendants will be presented by Devora Allon. We then want to have shorter presentations by Mark Robertson. For the peripheral Defendants, Alana Eisenstein. For the newly-name Defendants in the states' May 10th complaint, Dietrich Schnell for Rajib Malek, and Frank Battaglia would like to make a few comments on behalf of - - . So, without further ado, I'd like to present Devora Allon. Thank you.

THE COURT: Thank you.

MS. DEVORA ALLON: Good morning, Your Honor.

THE COURT: Good morning--

MS. ALLON: [Interposing] Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. ALLON: Devora Allon on behalf of the Defendants. I'd like to start with the Defendants' primary and most critical objection to the Report and Recommendation and that is in paragraph 3 where it suggests that Defendants be precluded the opportunity to review documents for relevance before they are produced to the Plaintiffs. And, of course, this Court's analysis begins with Rule 26 which only permits discovery that is relevant to a parties' claims or defenses. And, of course, as Rule 26 goes on to make clear, that parameter is not discretionary, and this Court must limit discovery when it exceeds the scope anticipated by Rule 26.

Here, the Plaintiffs and Special Master Marion concede that precluding a response in this review will result in the production of irrelevant documents to the Plaintiffs. There's not dispute about that. And many of those irrelevant documents will also be commercially and competitively sensitive. That is why nearly universal discovery practice mandates that producing parties be given the opportunity to review their documents for responsiveness before they are produced. And Courts around the country, we've collected these cases at pages 6 and 7 of our submission, have rejected the approach recommended in the Report and Recommendation. There is simply no basis to impose what is a discovery sanction precluding a response in this review where there has been no showing that relevant information has been improperly withheld.

And I think, frankly, if you look at the cases, the Plaintiffs rely on, in support of the notion that Defendants should be precluded from response in this review, those cases make our point. Because in those cases, the Courts preclude a response in this review as a sanction in reaction to lengthy, repeated, pervasive discovery misconduct by the party opposing discovery in each of those cases.

So, I'll just give two examples. One is the - - case that the Plaintiffs rely on. There the Court ordered sanctions in response to the following behavior by the Defendant. No search for electronic documents at all. Employees asked to identify relevant emails themselves. Defendant failed to comply with four court orders on motions to compel. And the Defendant had no document retention policy and had taken no steps to preserve documents specific to the litigation. In light of that discovery misconduct, the Court thought it was appropriate to preclude a response in this review.

One other example, the Carillo [phonetic] case, also cited by the Plaintiffs. There, too, the Court ordered sanctions in light of these circumstances: Defendant's witness testified in deposition that she had deleted relevant emails. Defendant certified to the Court it did not have documents in a particular category. Other productions from another Defendant showed that to be false. The records custodian designated by the Defendant to testify could not call any--recall any

searches that the Defendant had done to locate responsive documents. There, the Court found it appropriate to preclude a response in this review.

All of the other cases follow the same pattern. There are no allegations like that here. What the Plaintiffs are asking this Court to do, they make it clear, in footnote 18 of their brief, is to assume violations like that will happen in the future and preemptively issue sanctions based on that speculation.

Now, their only support for that request is to talk about what happened in the PTO 70 context. And for them to say that five Defendants improperly clawed back documents... Now, I'm going to talk a little bit about what actually happened but, even taken at their word, that does not come close to justifying this type of sanction.

But let me just explain for a minute what actually happened. PTO 70 gave the Defendants thirty days to assert claw backs to documents that had been produced to the Connecticut Attorney General but were irrelevant to the MDL. Now, just a couple of weeks before five Defendants were approaching that deadline, the AGs filed the Teva complaint which, of course, dramatically changed the scope of this MDL. It added nearly a hundred new drugs and many new Defendants. And, of course, it expanded the universe of potentially relevant documents.

So, those five Defendants had a deadline coming up and they now had a new five-hundred-page complaint to review and respond to. And those Defendants took one of two responses. Some Defendants quickly attempted to re-review their claw backs and remove claw backs over documents that were now relevant in light of the new complaint. Some Defendants, like my client, chose to stand on their claw backs and then, as soon as they could, withdraw those over the documents that were now relevant in light of the new complaint. Whichever approach those five Defendants took, the end result was the same.

The Defendants have or are about to withdraw any claw back on any additional document that is only relevant in light of the new complaint. Plaintiffs have not been prevented access to any of these documents. And Mr. Nielsen highlighted the example of Teva so, I'll just briefly give the numbers on that. The Plaintiffs identified 18 documents that they say should not have been clawed back. 15 of those are only relevant in light of the new complaint. And, again, each Defendant looked at the documents, - - that Defendant an opportunity to review them based on the allegations in the new complaint and promptly withdrew the claw backs that were no longer appropriate.

There is no basis to infer from that conduct that Defendants cannot actively determine responsiveness under the Federal Rules. And there is no basis for imposing a discovery

sanction on every Defendant. That conduct is worlds apart from the conduct in the cases where the Court has ordered such sanctions.

The last point I'd like to make on this issue is that precluding a response in this review will not accelerate the discovery process. That's because Defendants still have the right to review each document for privilege. It doesn't speed up the process to eliminate a response in this review. PTO 90, which this Court entered, already has a process for searching for responsive information, the - - protocol. The Defendants have invested time and cost to comply with that process. We've agreed on custodians, we've made methodology and search term proposals and we have tried to negotiate those proposals with the Plaintiffs.

The only reason we do not have agreement on those search term proposals and the only reason full blown discovery has not begun is because the Plaintiffs unilaterally stopped engaging in those search term negotiations once debate over the CML began. For months now, Defendants have reached to the Plaintiffs seeking feedback on search term proposals with no answer.

Nonetheless, every Defendant who has been served discovery has produced documents. Many Defendants have made significant productions in terms of volume and in terms of scope. The productions have included substantive materials

like pricing contracts, communications with competitors, financial documents. 15 Defendants have produced transactional data or samples.

Defendants are eager to move this process forward and there is no reason it cannot be done within the framework anticipated by PTO 95. In fact, the Defendants' proposal, which we attached as Exbibit "A" to our submission, anticipated that search term negotiations could conclude within 20 days of an order from this Court. Document production in earnest could start just a couple of weeks later and could be finished by April 30.

Under this framework, discovery can and will move forward and Plaintiffs will have the complete document production in just over six months. And Defendants will not be deprived of their right under the Federal Rules to review documents for responsiveness before they are produced, a sanction that is unjustified and would be unprecedented.

Now, Rule 26 similarly precludes Plaintiffs' request for full custodial files. So, I'd like to address that, just briefly. First of all, I think there can be no question that the production of custodial files will result in millions of irrelevant documents being produced to the Plaintiffs. We put some analyses in our brief, just as an example. When we ran the last proposal that the Plaintiffs made on our documents, we found that their search terms hit approximately thirty to forty

percent of the documents we had collected. Which means that sixty to seventy percent are presumptively irrelevant. Now, I understand that the Plaintiffs' theory of the case is that this conspiracy was pervasive and that these custodians spend a lot of their time on this conspiracy. But these Defendants inarguably did something else and that was engage in a lawful business of developing, manufacturing, and distributing life-saving and affordable drug products. Their custodial files will contain millions of those documents that are completely unrelated to the claims in this MDL.

And that's really the key distinction from one of the cases the Plaintiffs rely on most heavily in support of their request is that UPMC decision. And there the court ordered the production of one custodial file, but it made clear that it was doing so because the Defendant could not articulate what irrelevant documents would result from the production of the custodial files. And I think that's obviously very different then the case here. Their request for full custodial files is also not proportional given the burden to the Defendants and the fact that there are less burdensome ways for the Plaintiffs to get the documents they say they want.

Let me start with burden. The volume of documents that must be reviewed for privilege will increase exponentially if Defendants are required to produce full custodial files. We're talking about an increase of five, six, seven times.

This is not speculation and it's not exaggeration. We submitted affidavits with our submission, three of them, Exhibit 3, Exhibit 4 and Exhibit 5. Analyzed the size of an average custodial file based on the date range that Special Master Merenstein has ordered is relevant in this case. Those affidavits show that the production of full custodial files will increase the volume of documents to be reviewed for privilege exponentially.

And to give just one example the Plaintiffs have asked for 11 full custodial files from Santos. That would be 10.5 million documents compared to 2.3 million documents from the search terms. That is a huge increase in burden that we quantified. Now it is true that we do not know how many custodial files the Plaintiffs would like from each Defendant. That's because the Plaintiffs refuse to tell us despite repeated requests. If they were to identify how many and which custodians we could certainly submit additional affidavits but at this point we have quantified a concrete burden from their proposal. The examples they give of custodial files they have that are smaller are simply not indicative. Mr. Neilson gave one example of a custodial file that was about 160,000 documents. But that was from a custodian who was only employed for two and a half years less than the date range ordered by Special Master Merenstein. Other full custodial files some of them actually did use search terms, some were limited to email

only or were limited in other ways. But again, the court doesn't have to guess. We've analyzed the size of our custodial files and we put that information in an affidavit to quantify our burden to the court.

And equally important to the proportionality analysis under Rule 26 is that there are other less burdensome ways for the Plaintiffs to obtain the documents they want. And again, this is another key distinction in the Plaintiffs primary case, UPMC. In that case the court noted the Defendant could not suggest what it said was a feasible way of separating arguably irrelevant material from relevant material. But we've done just that. We know search terms can work. As one pressure test, we've run our search terms and we've seen that our proposals capture as just one example all of the documents in the Teva Complaint. Now the Plaintiffs' response is to say that our proposal won't capture relevant documents either because they're hard to find with search terms or because the Defendants won't know to mark them responsive. Now both of those statements are wrong and what I would like to do is just respond to some of the examples that Mr. Neilson just gave and show how each and every one can be caught with search terms and irresponsiveness review.

So let me just start with the example he gave from Ms. Patel. Where she had an email where she said unable to bid for strategic reasons. How would anybody know that was

responsive. Well that, that example is a little bit misleading because the email refers to three drugs that are in this MDL. And would have been caught through the Defendants proposal in search terms. That one's pretty obvious. She also gave the example of internal emails that the Plaintiffs say are significant because they were sent around the time of alleged competitor calls or market events. So an internal email that says, "call me, I have some information." And their concern is that because the Defendants don't have access to the phone records, or their analysis of the phone records we just won't know that that email is responsive. There's a very easy solution.

The Plaintiffs conserve a Rule 34 request for production. They can ask for email between or among specified individuals around the date of the alleged communication or marketed event. The Defendants can search for or review all emails from that timeframe and they can produce emails unless they are on their face not responsive, meaning personal in nature. So essentially for this category there would be a presumption of responsiveness. Now of course this does put a burden on the Plaintiffs to serve targeted discovery, but I have to disagree with Mr. Nielsen that that would be absurd. I think that is exactly the process contemplated by Rule 26. Another example Mr. Nielsen gave is documents that suggest concealment, clean your suspense file out. No emails.

Now the allegation that the Defendants tried to conceal their conduct is horribly unique to this case. Those types of allegations are made in many cases and those documents to the extent they exist can be caught through search terms. Search the word clean near the word suspense file. Search the words destruct or discard or erase near email or message and those emails will be caught with search terms. He also gave the example of a competitor email that uses concealed language. The example he gave was an email to a competitor that just said, "done." Again, Plaintiffs conserver Rule 34 RFP, they can identify the key individuals that they are interested in or the key phone numbers if they don't know the names and we can look at all Defendant emails to and from those phone numbers and apply a presumption of relevance. That's not novel at all.

And the last example Mr. Nielsen gave, is an email that has a picture of competitively sensitive information. Mr. Nielsen said that email will never come up with search terms. But of course the Plaintiffs say the significance of that email is not just that it had a picture in it, it's the employee sent the picture to his personal email address so that he could then forward to a competitor to hide the fact that he was sharing competitively sensitive information. Now that can be searched for easily regardless of the test of the email. All you have to do is search for employees' emails for their personal email addresses. You can search for that regardless of the text of

the email and that will turn up precisely the documents that Mr. Nielsen says can never be found.

Production of full custodial files will not be efficient or faster. Privilege review will not be as they say easy, that's because I think any attorney cares about their fiduc -- fiduciary obligations to their client. You can't just run a couple of attorney names, hold those back as privilege and produce everything else. We all know that there are emails and documents that will contain legal advice and that must be withheld that don't have an attorney name on them. Reviewing the universe of documents from full custodial files for privilege will add years to discovery in this case.

Just as one example, we took the average size of custodial files from our affidavits, the average number of custodians based on the information the Plaintiffs have given us so far. The average speed at which an attorney can do document review we assume a team of 25 attorneys who do nothing else but review documents for this case and using those assumptions that team would need 35 months or about three years to finish privilege review on full custodial files. That means discovery would not close until late 2022 at the earliest. I'd like the court to compare that late 2022 for the close of document discovery with the Defendants proposal which anticipates a close of document discovery next April. The Plaintiffs' proposal would have us doing privilege review when

the Defendants' proposal would have us finish with summary judgment. It just can't be said that their proposal is in any way faster or more efficient.

There is a reason why the Plaintiffs cannot cite a single case where a court has ordered this type of discovery. They have five cases. Two of them the Plaintiffs badly misrepresent. Actos and Prempro the filings in those cases make clear in Actos its Docket Number 50679 in Prempro its Docket Number 1572 and 1594. That in those cases the Defendants were permitted to use search terms and were permitted to do responsiveness review. Those cases are talking about the number of custodians not the production of full custodial files. Their third case UPMC we've already talked about it's distinguishable for a number of reasons including the Defendant did not quantify burden like we have. And at best it ordered the production of one custodial file and their other two cases talk about not custodial files, sales files, personnel files. Files that are measured in the 100s of pages. No court has ever ordered this type of production.

The last point I'd like to make is about the suspense docket. The report and recommendation requires the MDL to proceed on all cases regardless of when they're filed at the same time. With motions to dismiss being filed, discovery being expanded each time there's a new case that has new drugs or new Defendants. Which means this court will be endlessly

inundated with countless rounds of motions to dismiss. Defendants may at any time have to start new production to account for these new drugs and Defendants. That will impede the ability of this case to move forward and proceed to post discovery litigation and to get some cases to class certifications summary judgment.

The Defendants' proposal gives structure and efficiency to the MDL. It permits the already filed cases to move to resolution without any destruction each time we get a new complaint. The way the Defendants' proposal works is we have two phases. Everything before the cutoff goes forward immediately. Everything after the cutoff goes into suspense docket until the first set of cases is resolved. That way the parties can do one round of clean up discovery once all the cases are filed. This situation is of the Plaintiffs' creation. They have chosen to file ceriotom [sic] complaints and that's their right but there needs to be a structure to allow the parties to move through this MDL without disruption each time a new complaint is filed. We know additional complaints are coming. This is not a hypothetical concern.

And the most important point is that our proposal is not prejudicial to any party. First of all, it's obvious that the Plaintiffs in the earlier filed cases get everything they need right away to move the cases to resolution. But we also offered a key compromise this was mentioned in Special Master

Merenstein submission last night. Ms. Liebenberg didn't mention this morning, but I want to make sure the court appreciates the compromise that we offered. Which is two requests for production, 21 and 23 target what we've called relationship documents if there any documents internal or external that talk about communications with other Defendants about prices, customer allocation anything of that nature. We had reached agreement with the Plaintiffs to limit the documents that we produce in connection with those to drugs at issue in this case only, in the current cases. But we agreed as a part of this suspense docket that we would search for those documents without regard to any specific drug. By the way, it's not as Mr. Nielsen suggests, we're not saying that's all we're going to do on discovery. We're going to run search terms. We're going to respond to every other RFP. But while cases are on the suspense docket those Plaintiffs will get the documents, they have said are most critical to their case, most critical to overarching conspiracy allegations. They will get those documents immediately without any delay. There's no question that this court has the authority to implement an efficient litigation structure. The Plaintiffs' proposal would have us repeating efforts constantly interrupting each time a new complaint is filed. A suspense docket will help move cases forward through discovery and to resolution. Thank you, Your Honor.

THE COURT: Thank you, Ms. Allon.

MALE VOICE: You want any responses on that?

THE COURT: Later.

MALE VOICE: Later.

THE COURT: Yes.

MR. ROBERTSON: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. ROBERTSON: I'm Mark Robertson. I'm from Norton Rose Fulbright. And I'm here this afternoon speaking on behalf of seven defendants who filed the Peripheral Defendants' Objection for the report of recommendation. Uh, the big difference between the Peripheral Defendants and the other Defendants and by the way we joined in the, the overall Defendants' objections. But the big difference between the Peripheral Defendants and the other Defendants is that none of the Peripheral Defendants are Defendants in the new State's Complaint. And so there's nothing that's changed for the Peripheral Defendants from the time they entered agreements with the Plaintiffs pursuant to the process that this Court setup about what the scope of discovery should be with respect to the purported coconspirators, the other Defendants, the drugs at issue and even the time period. And so, there's no reason for Paragraph 3 of the Report and Recommendation to be adopted with respect to the seven Peripheral Defendants. I'm not saying it should be adopted for anybody, but it should not

expand the scope to lots of other drugs and lots of other purported codefendants that are not codefendants and drug accused, I guess, the peripheral defendants.

Let me explain a little bit. So the process that this court setup in PTO 49 and PTO 68, was that if a ruling was made by the Special Discovery Master, the Special Discovery Master would issue a written confirmation of the ruling and the agreement. And that is what happened in this case. After the Plaintiffs served the document requests on the many Defendants a dispute arose about the scope of what documents should be searched and produced, including what competitors would be included in the production, what generic pharmaceuticals would be included and what the proper time period would be.

Special Discovery Merenstein gave his recommendations and after some back and forth negotiations all the Peripheral Defendants came to agreement with the Plaintiffs based on Mr. Merenstein's ruling. His April 3rd, 2019 letter memorialized the agreements and the court's April 5th order responding to the letter, PTO 82 recognized that the agreements had been entered. Even my client, Defendant, Oceanside and its corporate affiliates and Defendant, GMW, who were not even served with discovery when this whole dispute came up and after the briefing - - and they were not served with discovery until after the briefing was done and in fact they weren't sued in the second case they were brought in until after the arguments

were made. They even entered agreements based on the scope of discovery on Mr. Merenstein's Ruling.

In other words, by April 2019 all of the Peripheral Defendants had agreements in place about what the proper scope of discovery would be in these cases, and nothing has changed. The only thing that has changed is that the State filed a new complaint versus different Defendants about a month after these agreements were entered into. And not one of the Peripheral Defendants is named in the State's new complaint. The claims against the seven Peripheral Defendants haven't changed since April. The drugs at issue with respect to the seven Defendants has not changed. The purported conspire -- coconspirators hasn't changed since April 2019. Nothing has changed with respect to these Defendants. So there's no reason to tear up the agreements that were reached using PTO 49 and PTO 69 and recognized by the Court in PTO 82. There's no reason to tear those agreements up. As Paragraph 3 of the R and R would do.

My clients and we their lawyers, we understand that discovery has to proceed but the pleadings decide -- determine what the scope of discovery is. And the scope of discovery is not determined about what has been alleged against other Defendants in a different lawsuit. And it's not determined by what might be alleged in some defendant in the future. I mean one of the cases we cite in any trust case that is filed, *Coles Wexford Hotel*, the court sustained the Defendant's objection to

a report and recommendation because the Report and Recommendation would have permitted "discovery broader then the scope of discovery contemplated by Rule 26." The Court went on to explain that withstanding the, the, the objection because "now under admitted Rule 26 the scope of all discovery is limited to matters that is relevant to the claims or defenses in the case and proportional to what is at stake in the given case." The court made a similar point in a case we didn't cite, another antitrust case called Kerwood versus, I love this name, Cage Fury Fighting Championships, 2015 Westlaw 5092976 in the Eastern District of Pennsylvania, where the court explained "the scope of discovery is measured against the complaint and its claims." The facet case that we cite and other cases we cite say basically the same thing. "To determine the scope of discoverable information under Rule 26(b)(1), the court looks initially to the pleadings."

Now the complaints that are lodged against the Peripheral Defendants those are the complaints that provide the scope of discovery and they don't provide a basis for the broad discovery that Paragraph 3 would, would have. The agreements that memorialized in Mr. Merenstein's April 3rd agreement -- letter that shows what the scope should be of discovery with respect to these complaints. The complaints lodged against the Peripheral Defendants do not include the 100 plus new drugs in the State's new complaint. They do not include all the

Defendants named in the State's complaint. And they do not include the same time periods. So all of which the Report and Recommendation would bring into the scope of discovery for the Peripheral Defendants. I, I would, would say this past Friday, the impair Plaintiffs actually made the same point when they served objections to document requests. And they had general objection number 16 and the impair Plaintiffs objected to providing any information about drugs other than the drugs identified in the EPPs Complaint because "other drug information as applied to Plaintiffs and Plaintiff Velarde is not relevant. Is not proportional to the needs of the case." The EPP goes on to say in general objection 17 that "this objection will be referred to as Plaintiffs and Plaintiff Velarde's other drug objection."

You see the interplay -- impaired Plaintiffs, they agree with what the Peripheral Defendants are saying, which is what's in the complaint against these defendants that limit discovery and setup what the discovery is. It's not the broad discovery in the, the Report and Recommendation. Ms. Liebenberg said something about Amended Complains or new complaints, but future amendments or future complaints is not what the discovery is based on. The case we cited *Shuker v. Smith & Nephew*, the court analyzed this specific issue and explained that discovery on a potential claim might or might not be filed in the future amended complaint is not permissible

because "the Federal Rules of Civil Procedure do not authorize such precomplaint discovery." Paragraph 3 of the Report and Recommendation exceeds the permissible scope of discovery with respect to these seven Peripheral Defendants because it would require discovery about people and entities and over 100 drugs that are not alleged to have anything to do with the Peripheral Defendants. And the teachings of the cases calls *Wexford*, *Facet*, *Kerwood*, *Shoker* and the other cases we cite in the brief. They stand for the proposition that a claim asserted against others but not the Peripheral Defendants would be inappropriate and would not be proportionate. Therefore, we ask that any case management order adopted by this Court not throw out the agreements that have been entered with the help of Special Master Merenstein. And instead limit the scope of discovery against the Peripheral Defendants for the claims that have been asserted against the Peripheral Defendants and not broaden the scope to claims that have been made against different defendants. Thank you very much.

THE COURT: Thank you Mr. Robertson.

MS. EISENTSTEIN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. EISENTSTEIN: Ilana Eisentstein I represent Pfizer and Greenstern in this litigation and I'm here to speak on behalf of the milieda [sic] defendants brief that was filed in objection to the proposed Record and Recommendation. Your

Honor as you've heard today, they are many reasons why one size fits all approach that was proposed in the case management order is simply unworkable. And it's not going to lead to the efficiency is that the initial appeal of that kind of simple approach might be as the presentations that have been made so far highlight. This is a litigation that is obviously complex. There are different classes of Plaintiffs but there are also different classes of Defendants. And the Defendants aren't similarly situated as you just heard with the Peripheral Defendants with respect to the scope of the litigation and in our case with respect to the timing of the litigation. The newly added Defendants are just that. They are limited group of defendants who have been recently added to this litigation only in the May 10th, 2019 complaint. They have not participated in the three years of litigation that you've heard described by the Plaintiffs in the particular by Mr. Nielsen. They were served with party discovery only within the last several weeks or not at all in most of the cases of the newly added defendants. None of the newly added defendants have had any opportunity to respond to attest the sufficiency of the May 10th, 2019 complaint. And indeed, that complaint has remained adjourned and the State's has referred today intend amend that complaint at some future undetermined point in which case even that complaint will become unaulity and there will be some new complaint.

THE COURT: What I heard was what we condemn within a matter of days or weeks at the worst they're an amended complaint adding one defendant and clarifying some other. So I don't think it's the because we wouldn't have granted permission for another complicated extravagant amended complaint. So I don't see that happening. But...

MS. EISENSTEIN: But even so that private plaintiffs have not sued any of the newly added defendants in the MDL either. So in terms of this litigation the newly added defendants are truly fresh to this situation and if just the facial review of the case management order reveals that it does not contemplate or even reasonably consider what is an appropriate way to provide an onramp for newly added defendants to this litigation. It assumes that there have been agreed to or existing discovery procedure in custodian that certain processes have already been underway which just simply isn't the case with the newly added defendants. And clearly the discovery schedule that is proposed by the case management order and even that which might be appropriate for litigants who have been part of this litigation and have been facing discovery requests for years is not appropriate for newly added defendants.

I also wanted to speak to the issue of responsive pleading that I certainly heard Your Honor that you had decided some of the critical issues in the case with respect to some of

the overarching issues in this matter with respect to motions to dismissal. But of course some of the newly added defendants may and do intend assert as to the May 10th complaint and potentially future complaints that have yet to be filed. Motions dismiss that do pose unique and new issues and we want to make sure that we have an opportunity to do that. The case management order that has been proposed provides no schedule or opportunity for responsive pleadings and motions. And you know without a harmonized schedule is that Your Honor referred to that there would be some kind of briefing schedule. But keep in mind that the private defendants that they intend to file their own complaint potentially in October. I don't know if that date will hold but how will, how will this Court manage particularly with respect to newly added defendants this serial nature of these complaints.

And our proposal is that first of all we fully support the all Defendants' proposal for a suspense docket. That is a reasonable way and efficient way to handle this issue of serial complaints because it allows for the rest of the initial issues and whether it comes to pass and, and class certification and other significant issues to be determined and then to resolve and hopefully and faster and more efficient way to future complaints including new defendants that are added in series. Even if the court were amendable to that we certainly think that a case management order should be entered at least

or at the time that the Plaintiffs have finished this at least this round of complaint. Because right now we know that the State's are going to amend, we know that the Plaintiffs are going to add on complaints and that it is reasonable to defer the entry of a separate case management order that handles new defendants, the responsive pleadings schedule until after that time. And at that time a reasonable discovery and motion schedule can be set.

THE COURT: I appreciate that point. Although I will clarify Ms. Eisentstein and this is for everyone. When you enter an MDL the historic practice and the procedures of the MDL panel that have been developed over the years really control the one thing that you then enter the case management orders and the pretrial orders that are currently in place. Until otherwise decided. And that is the sediment. So we have whatever discovery orders have been approved before or developed before we have that in place we are now talking about a larger more expeditious discovery motion discovery order. And yet we have some in place that would apply to any newly added new defendants or parties. Thank you.

DIETRICH SNELL: Good afternoon, Your Honor.

THE COURT: Good afternoon.

DIETRICH SNELL: I'm Dietrich Snell. I represent Vergeg Malek [phonetic] who has been sued in some of the cases that are pending in this MDL. His personal capacity. And to

just be clear Mr. Malek is not named as a defendant in the May 2019 discovery. Mr. Malek's situation is unique among the defendants that Your Honor has been hearing about this morning. The Plaintiffs preferred to the defendants as a home genius group. They clearly are not for the reasons that my colleagues have stated. But Mr. Malek in particular is absolutely under both the case management order that's proposed. And the approach the Plaintiffs want to take to have full custodial production. This term now will be forced to from his personal email account not his corporate account his personal account the most sensitive type of information and documents if any individual possesses. He would be forced to produce this fast audience in this case personal tax returns, personal financial statements, personal health records, communications with his family, his children, with his wife, estate planning documents. All of that would have to be handed over to the Plaintiffs and, and 49 state attorney general.

In addition to that astounding extrusion on his privacy Mr. Malek is unique because he faces a much narrow set of allegations than virtually any other defendant in this case certainly as an individual. He's been sued with respect to one identify drug and over a much narrower timeframe than the fraud over conspiracy that's been alleged. So for both of those reasons I'm actually surprised that he in front of Your Honor on this motion that is even necessary being referred. And I'm

surprised because it seems like earlier in these proceedings that the Plaintiff understood the unique situation that Mr. Malek he was sued more narrowly.

The request for production that he was served with was fewer in number and narrower focused on the conduct that was alleged, alleged in respect to him. And he was also able -- we were able to negotiate during the meeting - - period, we were able to negotiate narrower definitions for those requests for production with the Plaintiffs. They understood they seem that once I saw wouldn't work with respect to Mr. Malek. And even only as recently as a couple weeks ago they acknowledged to us that he's not a manufacturer. That's simply true. So why, why is it that the traditional responsiveness and relevance review that the Federal Rules contemplate and that are the norm in simple discovery why is that not apply to Mr. Malek? He's heard no answers to that question. And they have none. Under event he search term approach contemplated by the Special Master the documents that I described earlier would be produced. We've run that, we've tested that and that's a fact. It's not speculation, it's not a conjured-up piece of a greater particles, it's a fact. The only suggestion of an answer that we've heard from Plaintiffs is that well there's a claw back. But let's think about that for a second. A claw back for procedure for personal tax returns or communications for the status or communications with a private pharmacist for related

to a health problem that someone in the family might have. In order for to do a claw back one has to identify what one's seeking a claw back those prior documents with their extensive information will now suddenly have spotlights training from all different directions on them. Oh let's figure out do we want to resist the claw back. That's simply and unacceptable intrusion on a fundamental right to privacy that Mr. Malek is entitled to have with respect. So for these reasons as well as those eloquently expressed my colleagues I urge the court to reject the Plaintiffs position and certainly with respect to Mr. Malek authorize a traditional relevance and responsiveness review with respect with his personal email account. Thank you very much.

THE COURT: Thank you. Mr. Battaglia?

MR. BATTAGLIA: Good afternoon, Your Honor. Frank Battaglia with Asent Pharmaceuticals. As the court will accede in assent filings. Asent plaintiffs agree that the schedule set forth with Special Master Merenstein opposed case management order should not apply to ascend. Because ascend is uniquely situated in that it was only served with discovery in recent weeks. Because this schedule in the case management order assumes that the parties have already participated numerous meetings and confers and have been assessing this discovery request for quite some time. Plaintiffs have assent -- plaintiffs and ascend have agreed that ascend should be given

an extension to all production deadlines in the proposed schedule. To that end, Asent filed an objection to the case management order outlining this agreement. But we wanted to bring it to the court's attention because we can file a joint stipulation or a proposed order setting forth this carved out for ascend it would be this court's preference.

THE COURT: And it's really because you were newly added? Is that what you're saying?

MR. BATTAGLIA: We were served with discovery until mid-couple weeks ago, Your Honor. Mid-August.

THE COURT: Okay. Alright. Thank you. Response from the Plaintiffs.

MR. ROBERTSON: Thank you, Your Honor. Just briefly. I will start with the last one first. Asent which the State's would agree that Asent should have additional time to respond since they were only recently served in the same logic applies to the newly added defendants who are also newly recently served. However, the State's do believe that the case -- whatever case management order is entered should apply equally to those defendants as it would apply to any other defendants. But we are -- we understand the need for an additional period of time to have -- to be able to formally respond to such they are only recently served.

THE COURT: Alright.

MR. ROBERTSON: So on those two issues I think there

should be an agreement in terms of...

THE COURT: Timing.

MR. ROBERTSON: It's just timing. Right. And on the last the one before Asent, Rajib Malek he is we've conceived Rajib Malek is a unique situation. He is actually I think the only individual defendant was actually served with party discovery at this point. The newly added individual defendants in the Teva complaint has not yet been served. So he these issues have not come up. And I think there's some confusion on the State's part as to how to actually proceed given the pending the case management order. But I will just say I think we'll just be able to work those issues out. The State's are not looking for the highly personal documents from Rajib Malek from his personal files. And I think we would agree that individual defendants should be treated, and again I'm speaking for myself here, we haven't gotten confirmation from all the state's yet.

THE COURT: I realize that.

MR. ROBERTSON: Based on my discussions that we would agree to search terms and, and relevance review for individual productions in the part -- for the individual defendant productions. And we would agree that can be treated somewhat differently than custodial files or broad search terms from the court bred files of those same...

THE COURT: Okay.

MR. ROBERTSON: And then just some points relating to the main arguments and then I'm Ms. Liebenberg has some points on the Peripheral Defendant argument. But to summarize some of my, my notes here. If this case calls out for special procedures given the uniqueness of the case, I won't get into the details of al the case law that have been cited on both sides but because all those cases are fundamentally factually different then this case. But the one thing that is clear this court does have the authority to faction discovery in a way that will most efficiently move this entire MDL forward and that is in fact the purpose of having MDL.

If we move the entire thing forward in void of duplication and conserve the resources of the parties. And that's what we are trying to reach here is the appropriate method for dealing with the entire MDL. One of the arguments that Ms. Allon made was that running some of these search terms will inevitably lead to millions and millions of irrelevant documents. She cited some suggestions that 60 to 70 percent of the search terms of documents not hit by search terms are presumably irrelevant. The correlates in that is that the other are presumably relevant. And therefore, there's no need for a relevance review in these documents and that's precisely the result that Special Master Merenstein tried to reach in his ruling. She also mentions several times that the Plaintiffs are seeking discovery sanctions against the Defendants and that

the production of full custodial files are broad search terms with no relevant review be the equivalent of sanctions. I just want to make it clear that's not what the Plaintiffs are seeking at all. We've never mentioned the word sanctions. This is how supposed to be sanction this is supposed to be a way to move these cases forward efficiently. And that may involve the production a large set of documents where some documents are irrelevant but in order to move this case forward that's a compromise that has to be made. And that's what we're proposing.

She also mentioned some of the issues relating to the claw back issues under PTO 70. I just want stress that Ms. Allon argued that everything is fine because ultimately many of these defendants withdrew these claw backs. And therefore, you know all's right with the world. I want to point out that the only reason they did that is because we happen to have those documents already so we could actually see that what they were trying to do is claw back highly relevant documents. And today's said that they said they need additional time to review the documents before given us those fall back requests. They certainly did ask to spread an extension in light of the complaint knowing that he just submitted those call backs. Just a couple more Your Honor, the defendants say that under their plan document production will be complete in six months, but I want to stress that's only for 31 out of the 25 drugs

their currently at issue in the MDL. That is a very small subset of this MDL that the Defendants are proposing to full their proposing offense around original 31 drugs which I did not make this point in my original presentation but there are at least seven drugs that would be in both categories. The fact that the original 31 drugs are also in the some of those seven of those drugs are in the Teva complaint that the State's filed in May. However, the discovery on the 31 without also having to do with discovery on some of those drugs in the Teva complaint. And some of those drugs were part of broader agreements to conclude those multiple drugs at once. So the, the inheritant difficulties with drugs that's the original 31 drugs. And just another point on the custodians as Ms. Allon the plaintiffs refused to provide a list of key custodian's files for that's absolutely untrue. The defendants have flatly refused to ever entertain the idea of custodial files. So there was never a point where we needed to provide that to them. It was never even an option because the defendants would never agree to it. I would tell you that we do have a list and we would be able to provide that very quickly in the list limits the number of custodians by about 65 percent so we're seeking literally about a third of the total number of custodians that were negotiated.

And just lastly on the point that Ms. Allon made about, you know, of course the Defendants would be able to

fashion search terms to find any single document in the production, I would just point out that it's very easy when you know what's in the document to fashion a search term to find. But if you don't know what's in the documents and you don't know the key code words or what -- what references they might make, it's much more difficult and that's what we're seeking.

THE COURT: Thank you.

MS. ALLON: Thank you, Your Honor. Thank you for your patience. The seven Defendants who have described themselves as the peripheral Defendants were all named in several overarching complaints that survived the joint Motions to Dismiss. Under the antitrust laws, they all have joint and several liability and for all of the damages resulting from that conspiracy if they're found liable. And regardless of the scope and extent of their involvement, there simply aren't any peripheral Defendants in this MDL.

Mr. Robertson argued that these seven Defendants should be treated differently because they have not yet been sued by the State AGs. That has no relevance to the right of the private Plaintiffs under the Federal Rules of Civil Procedure to take discovery from them concerning their role in the overarching conspiracy that the Court has found to be plausibly alleged. The Defendants claim that a limited -- or no involvement, by the way, again also does not curtail -- should not curtail the scope of discovery.

And in fact, before discovery begins, the Plaintiffs had no idea whether these Defendants are peripherally involved as they claim, or are -- or their involvement is much more significant. But this Court emphasized in its recent ruling that Plaintiffs -- that their involvement in the overarching conspiracy should be tested by discovery.

Moreover, any differential treatment of these Defendants under Paragraph 3 of the CMO would simply balkanize discovery and it would again, as I said and emphasize again, that it would run counter to this Judge's -- to your -- to Your Honor's opinion that we should be or that Plaintiffs should be allowed to pursue evidence concerning their claims of a broad overarching conspiracy spanning the generic drug industry which includes these Defendants, and that we should be allowed the discovery to discovery the connective tissue between the single individual price-fixing conspiracy and the overarching conspiracy.

In sum, the arguments that these peripheral Defendants are merely peripheral -- peripheral, excuse me, are not only factually unsubstantiated but they also failed to demonstrate that the current recommendations should not be adopted for them. I just emphasize again under the antitrust laws they have joint and several liability regardless of the scope of their involvement. There is simply no such thing as peripheral discovery, peripheral liability, or peripheral

Defendants.

I also want to just respond to the complaint made by the Defendants that, you know, the filing of serial complaints in this case. Obviously, these complaints have been filed as we have uncovered the wrongdoing, which Defendants made assiduous efforts to conceal. As a result, we've only learned about this -- this conduct and we are proceeding expeditiously. And I think it's just important to emphasize that who are the victims in this case and Plaintiffs were the victims of unprecedented price increases on countless generic drugs and incurred billions of damages. And this case management order helps to ensure that the Plaintiffs will get the discovery that they need within a timely manner, within one year, for document discovery so that we can proceed to expedite these cases towards resolution. Thank you, Your Honor.

THE COURT: Would you like to have a brief rebuttal?

FEMALE VOICE 1: Thank you, Your Honor. I'll just make a couple of quick points. The first is with respect to the suspends docket, so I've heard the Attorney General promise they would only have one amendment to the Teva complaint. But they have never assured this Court that there will not be new complaints.

And that is what makes the suspends docket so critical. Now, we're --

THE COURT: [Interposing] I don't understand that.

Of why -- why does that relate to the suspends docket which I'm about ready to abolish?

FEMALE VOICE 1: Well, if they're going to file a new complaint that's not an amendment to the Teva complaint, it's a brand new complaint so, for example, they have the Heritage complaint and then they have the Teva complaint. And who knows what the next one will be. I hope that it's not my client, but some other name there, when that new complaint comes - there may be two; there may be three. We don't know how many there will be.

Each time that new complaint is filed, there has to be new Motions to Dismiss, new discovery. That delays the case. If it -- if the Plaintiffs were ready to assure us that they're going to amend the Teva complaint, that there's not going to be any others, they're done, that would be a different story.

We have said the cutoff should be before the Teva complaint. We think that makes sense for a lot of reasons. It actually doesn't matter where the cutoff is. The cutoff could be today and that would work just as well. The idea is we need a known universe of complaints to litigate and to move to resolution. And we don't want to get distracted every time the Plaintiffs choose to file a new complaint.

And again, if -- if -- if what their position is today is that they don't have any more complaints, I'd like to

hear that, but I think that would probably fundamentally change things. But I don't hear them saying that.

With respect to the response in this review on full custodial files, so first of all, that the document that hits on a search term is not presumptively relevant. And just to underscore why, let me give the Court a couple of examples of search terms in the Plaintiffs most recent proposal: in person, coffee, beer, speak.

I think it's pretty obvious that just because a document hits on those search terms it is not presumptively relevant to the allegations in this case. And where it has search terms that broad, that has to be applied against high-level custodians, CEOs, presidents, heads of departments, which we've agreed to. We've negotiated with those custodians. We're giving them executive level of custodians.

Those search terms will turn up documents that are not only irrelevant but competitively sensitive. It doesn't matter if the Plaintiffs call it a sanction or not. That's what they are asking for. Now, Mr. Nielsen didn't want to get into what he called the details of the case law because there is none supporting his position. I said in my presentation their request was unprecedented. They're not disputing that. There are lots of large and complex MDLs that many of us have litigated, and this relief has never been necessary and it's not necessary here.

The last point, I think, I don't hear the Plaintiffs dispute for including a responsiveness review or production of full custodial files will result in the production of irrelevant information. They can't take it all. It's obvious. It's indisputable. That violates Rule 26. The Plaintiffs have no right to that information.

This case can move forward officially while giving the Defendants the right they are entitled to under the Federal Rules that the Plaintiffs only get documents that are relevant to their claims in this case. Thank you, Your Honor.

THE COURT: Mr. Robertson?

MR. ROBERTSON: Thank you, Judge. I just want to be sure that the Court understands the peripheral Defendants are not trying to avoid discovery here and not trying to avoid discovery in the complaints against the peripheral Defendants.

THE COURT: Great. All right. That's - - , you know?

MR. ROBERTSON: Yeah.

THE COURT: That you're trying to sound like you're out there and --

MR. ROBERTSON: [Interposing] Well --

THE COURT: -- and in the fringes.

MR. ROBERTSON: -- let me say, Judge, that it's -- it's not just the seven peripheral Defendants that think that. The corporate direct Plaintiffs of that complaint think that --

calls this group -- not just this group, but some of them, quote, "additional conspirators," end quote, in contrast to what they call other Defendants which are the, quote, "core conspirators," end quote. So, you can call this 'additional,' but peripheral I think is a pretty good moniker to have.

THE COURT: I think that's a lot better.

MR. ROBERTSON: Yes. You can't mix up everything, don't you think? But the grounding point here is that we have motion practice about the scope of the -- about the scope of discovery. We followed the discovery procedures set up by this Court and we came to agreements about what that scope should be. So we -- and nothing has changed with respect to that scope in the complaints against these Defendants. And that's all that we're seeking here is to keep to what is the process that's been in place and the agreements that have been in place.

THE COURT: I appreciate that. Thank you. All right. That has been a very interesting oral argument. I'm glad I heard it even though my ears are quite clouded, I did hear everything. And I'm sorry for my coughing and sneezing because it's very irritating and, um, it must be to you too. I'll take that under advisement and get you a decision right away because discovery will move and I meant what I said about considering taking all cases out of suspense and moving them forward. I don't think that's a place to hide or stall or

suspect that you don't have to comply with discovery.

So, we're going to be looking at that too. And if I need your input, I will -- I will seek it. We do have a joint proposed schedule for future status conferences and I appreciate those on Counsel submitting this. And it says that if I approve this, and I do, the next status conference for October 25th, 2019, at 10:30 A.M. That is a Friday.

I know that you're working on another schedule for the coming year, but I believe that we will be able to accommodate that in the future. There is no November status conference schedule because of timing at the end of the year. December status conference is December 13th at 1:30 P.M. That is a Thursday.

Then in 2020 -- oh my god; it's 2020. [Laughter] The second Thursday of every month at 10:30 A.M. unless otherwise scheduled, and I hope that suits most of you. Right now it suits the Court. We may have to play with some of these individual months and dates, but it's not as if it has to be Thursday afternoon. Anything anyone wants to add on this? Seems like something's up over there.

MS. ALLON: No, we're fine, Your Honor.

THE COURT: Okay. I've also been asked to approve stipulations in an individual Case Number 3768 of 2017. I have approved the stipulations. They'll be entered by order today. They relate to the EmCure Pharmaceuticals in the matter and the

Plaintiff State's allegations against them in the State of Connecticut versus Activus. All right?

FEMALE VOICE 1: Your Honor, I just wanted to clarify, on the December 13th. You meant December 12th? That's the Thursday?

THE COURT: It says 13th on what you gave me.

FEMALE VOICE 1: Oh, oh. Yeah, they're -- December 13th but at 10:30, yes. So at 10:30 if we can.

THE COURT: Oh, yes. I thought we said something different.

FEMALE VOICE 1: Sorry, Your Honor.

THE COURT: Twenty -- let me see --

[Crosstalk]

THE COURT: It was the --

FEMALE VOICE 1: [Interposing] Yeah, and in the afternoons in 2020 going forward.

THE COURT: They're just rescheduled at 1:30.

FEMALE VOICE 1: Rescheduled at 1:30

THE COURT: Exactly.

FEMALE VOICE 1: Yeah. Thank you, Your Honor.

THE COURT: I'm sorry. I didn't have my calendar with me. I misunderstood that. And the 13th is the Friday?

FEMALE VOICE 3: Yeah. Friday the 13th.

FEMALE VOICE 2: Really?

THE COURT: Okay. No, that's better for me too. I

mean this is whatever to -- that I don't think will be resolved so I think Friday is better.

FEMALE VOICE 1: Thank you, Your Honor. Sorry to have bothered you.

THE COURT: All right. Anything else? I do appreciate all of your attendance and I look forward to resolving these issues quickly and moving on to the next.

FEMALE VOICE 2: Thank you very much, Your Honor.

THE COURT: You're welcome.

FEMALE VOICE 2: We'll see you on the 11th.

* * * * *

C E R T I F I C A T I O N

We, Nathalie I. Moore and Ubiqus Reporting, Inc., court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

_____

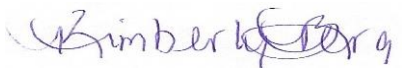
Nathalie I. Moore

_____

DATE: September 26, 2019

C E R T I F I C A T I O N

We, Kimberly Berg and Ubiqus Reporting, Inc., court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

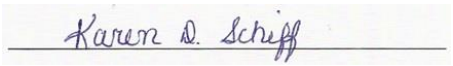


Kimberly Berg

DATE: September 26, 2019

C E R T I F I C A T I O N

We, Karen D. Schiff and Ubiqus, Inc., court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.



Karen D. Schiff

_____

Ubiqus, Inc.

DATE: September 27, 2019

APPENDIX H

From:	Clark Kirkland, Jr
To:	MDL2724AllDeftsService@pepperlaw.com
Cc:	MDL2724plaintiffsleadsetc@ag.ny.gov; Kyle Smith; Brandon Floch; Laura Mummert; Crevier, Jonathan; Judith Zahid; Peter Gil-Montllor; "Timothy Fraser"; "Karen Halbert"; "Hubbard, Robert"; Nielsen, Joseph (Joseph.Nielsen@ct.gov); "Josh Gray"; Adam Pessin; Wood, Abigail; Davis, Rachel; Joseph N. Roda; Michael D. Ford; Roberta Liebenberg; Laura Mummert; Jennifer Risener; Lee Yun Kim
Subject:	[EXT] Generics: Search Terms
Date:	Wednesday, September 11, 2019 2:07:15 PM
Attachments:	Generics. Search Terms 9-11-2019 (02087293xD2C78).XLSX

Counsel,

As you know, the proposed Case Management Order (the "proposed CMO") accompanying Special Master Marion's Report and Recommendation contemplates that search terms be "established either by agreement reached among the parties in negotiations supervised by Special Master Marion and ESI Master Regard or as ordered by Special Master Marion or ESI Master Regard if not agreed to within twenty (20) days from entry of this Order." Proposed CMO § 3.a. Plaintiffs intend to object to the proposed CMO on several grounds, but we further recognize that the proposed CMO, or something close to it, may well govern these actions in the near future. Accordingly, Plaintiffs have developed a "global" set of search terms consistent with the Report and Recommendation and proposed CMO. The terms are similar to, although broader than, the proposed search terms Plaintiffs have counter-proposed to several Defendants during the parties' individual negotiations; they should therefore be somewhat familiar to you. The attached spreadsheet contains Plaintiffs' proposed search terms and instructions on how they are to be run appear below.

Because the proposed CMO contemplates a relatively tight time window for the parties to reach agreement on search terms, we are providing Defendants with the terms now. Plaintiffs do not want the negotiation window itself to become an impediment to the provision of the hit reports contemplated by the proposed CMO. Further with respect to hit count reports, Plaintiffs propose meeting and conferring to reach an agreement on a standard format. As an example starting point, Plaintiffs want the hit reports to be disaggregated by custodian. Plaintiffs believe that a single negotiation (overseen by the Special Masters if necessary) as to what the hit reports look like would be most efficient for the parties and for the Special Masters. A standard format will ensure that the proper data points are being compared on an apples-to-apples basis and will promote efficiency during the negotiation process. Plaintiffs will shortly propose a hit-report template for Defendants' consideration.

By proposing these search terms we do not waive our rights to object to the proposed CMO. Plaintiffs reserve the right to supplement or revise these terms as necessary.

The proposed terms are divided into seven categories; each category is listed on a separate page. The categories are:

- Drug Names
- Defendants
- Defendant Domain Names
- People

- Events
- Named Plaintiffs
- General Standalone Terms

Each category is to be applied to the custodial and other files subject to searches (the "Search Data Set") without being limited by other terms.

Please note that for certain searches (e.g., "ghost call*"), Plaintiffs have included asterisk wildcard symbols within quotes. Each Defendant should confirm that the search engine it intends to use will treat them as root-expanding wildcards. Plaintiffs have also proposed search terms in which a slash is within quotes (e.g., "M/S" W/10 (acquisition* OR divestiture* OR dynamics OR guidance* OR merger*)). Each Defendant should confirm that the search engine it intends to use will treat the slash as a command and not as a character. If these or other proposed terms adversely impact the search process please let us know so that corrective actions can be taken.

Certain searches (again, e.g., "M/S" W/10 (acquisition* OR divestiture* OR dynamics OR guidance* OR merger*)) are aggregated such that one term is to be run within a certain proximity to multiple (in this example, five) other terms. In the event such an aggregated search yields a high number of hits (e.g. over 10,000 hits), please disaggregate the search into its component parts (e.g., "M/S" w/10 acquisitions, "M/S" w/10 divestiture*, "M/S" w/10 dynamics, etc.) to determine which words or phrases may be driving the volume.

Please also note that the Defendants and Defendant Domain Names categories currently list the names and domain names of all Defendants. Defendants are not expected to run searches for their own names or domain names. Accordingly, before running searches, each Defendant should identify to Plaintiffs the specific terms in the Defendants and Defendant Domain Names categories that it proposes to exclude from its search. Similarly, Defendants are not expected to run searches for the names of their own employees during the periods in which they were employed. Accordingly, before running searches, each Defendant should identify to Plaintiffs the specific terms in the People category that it proposes to (a) exclude (because the person was employed by that Defendant during the entire period covered by the Search Data Set), or (b) partially exclude using date limiters (because the person was employed by that Defendant during part of the period covered by the Search Data Set and was employed by one or more other Defendants during other periods covered by the Search Data Set).

Regards,

Clark

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State of South Carolina
(803) 734-0057
Ckirklandjr@scag.gov

General Standalone Terms

Terms
"fluff pric*"
"ghost call*"
"heads up"
"M/S" W/10 (acquisition OR divestiture OR dynamics OR guidance OR merger)
"M/S" W/10 (add* OR adjust* OR chang* OR declin* OR decreas* OR divid* OR drop OR expan* OR gain* OR heavy OR high* OR hik* OR hold* OR increas* OR lead* OR low* OR more OR new OR "pick up" OR rais* OR reduc* OR relinquish* OR retain OR secure OR shift* OR split* OR tak*)
"M/S" W/10 (allocat* OR agree OR aim* OR compet* OR compromis* OR even OR fair OR fix* OR forecast* OR game* OR gave OR giv** OR goal OR "let W/5 have" OR "like mind*" OR opportunit* OR position OR priorit* OR strateg* OR target*)
"M/S" W/10 (challeng* OR concern OR confirm* OR disrupt* OR disturb* OR follow* OR enough OR police OR policing OR pressur* OR project* OR saturat* OR "too much" OR trad* OR underdevelop* OR underrepresent* OR upset*)
"M/S" W/10 (chill OR irrational* OR irresponsible OR rational* OR reasonable OR responsible)
"M/S" W/10 (criminal OR illegal OR schem*)
"M/S" W/10 (desir* OR feedback OR hear* OR look* OR need* OR notif* OR piece* OR seek* OR want* OR
"PI"
"play* nice*"
"Red Flag"
"slow follower"
"slow to follow"
"slow to raise pric*"
"strong follower"
"strong leader"
"women in the industry"
"zero sum" OR zero-sum
(ask OR "touch base" OR tell OR told OR inform* OR reach*) W/10 (friend OR buddy OR contact)
(meet* OR met OR have OR had) W/10 (dinner OR drink* OR event OR restaurant OR concert OR spa OR secret OR unofficial)
(text* OR txt*) W/10 (me OR cell OR you OR her OR him OR them OR receive* OR got OR friend OR buddy)
“fair share”
“giv* up” w/5 (business OR share OR market OR drug)
“horse trad*”
“Market Share” OR “mkt share” OR marketshare*
“on the street”
activist
anticompetitive OR (anti w/2 competitive)
antitrust OR (anti w/2 trust)
beer*
bid W/10 "do not"
bid W/10 aggressive*
bid W/10 attempt*
bid W/10 declin*
bid W/10 don't
bid W/10 fak*

General Standalone Terms

Terms
bid W/10 high*
bid W/10 it
bid W/10 low
bid W/10 lowball*
bid W/10 no
bid W/10 rescind*
bid W/10 retract*
bid W/10 unsolicited
bid W/10 war*
bourbon
Break w/2 rank
Bring* w/5 (“price up” OR “Money up” OR “$ up” OR share)
call* W/10 (me OR cell OR you OR her OR him OR them OR receive* OR got OR friend OR buddy)
cartel
cede* OR conced*
cocktail*
coffee
collu*
colus*
communicat* W/10 illegal
compet* W/10 (don't OR do OR non OR avoid or exclude)
competit* W/10 adjust*
competit* W/10 agree*
competit* W/10 analy*
competit* W/10 decreas*
competit* W/10 game*
competit* W/10 increas*
competit* W/10 informat*
competit* W/10 irrational
competit* W/10 irresponsible
competit* W/10 key
competit* W/10 offer*
competit* W/10 quality
competit* W/10 rational
competit* W/10 reasonable
competit* W/10 responsible
competit* W/10 share*
complain*
conspir*
cost* W/10 decreas*
cost* W/10 increas*
declin* W/10 match
defend*
dinner
discontinu* W/10 sale*
drink*

General Standalone Terms

Terms
dumb
enter*
expect W/10 increas*
fair W/10 police
fair W/10 policing
feeler
fill W/10 ("you in" OR "u in" OR "me in" OR "him in" OR "her in" OR "them in" OR "us in")
follow* W/10 "not"
follow* W/10 expect*
follow* W/10 has*
follow* W/10 increas*
follow* W/10 inten*
follow* W/10 suit
follow* W/10 we
follow* W/10 will
follow* w/4 leader”
game* W/10 theory
Get* w/5 (“price up” OR “Money up” OR “$ up” OR share)
Gin
golf*
goug*
hear*
idiot*
Illegal* w/5 (this OR that* OR worr* OR afraid OR concern*)
in person
increas* W/10 (wac OR awp)
increas* W/10 list*
increas* W/10 potent*
intel* OR "CI"
lunch
Market W/10 "let W/5 have"
Market W/10 "like mind*"
Market W/10 "pick* up"
Market W/10 "too much"
Market W/10 (acquisition* OR divestiture* OR dynamics* OR guidance* OR merger*)
Market W/10 (chill OR irrational* OR irresponsible OR rational* OR reasonable OR responsible)
Market W/10 (criminal OR illegal OR schem*)
Market W/10 add*
Market W/10 adjust*
Market W/10 agree*
Market W/10 aim*
Market W/10 allocat*
Market W/10 challeng*
Market W/10 chang*
Market W/10 compet*
Market W/10 compromis*

General Standalone Terms

Terms
Market W/10 concern*
Market W/10 confirm*
Market W/10 declin*
Market W/10 decreas*
Market W/10 desir*
Market W/10 disrupt*
Market W/10 disturb*
Market W/10 divid*
Market W/10 drop*
Market W/10 enough
Market W/10 even*
Market W/10 expan*
Market W/10 fair*
Market W/10 feedback
Market W/10 fix*
Market W/10 follow*
Market W/10 forecast*
Market W/10 gain*
Market W/10 game*
Market W/10 gave
Market W/10 giv**
Market W/10 goal*
Market W/10 hear*
Market W/10 heavy
Market W/10 high*
Market W/10 hik*
Market W/10 hold*
Market W/10 increas*
Market W/10 lead*
Market W/10 look*
Market W/10 low*
Market W/10 more
Market W/10 need*
Market W/10 new
Market W/10 notif*
Market W/10 opportunit*
Market W/10 piece*
Market W/10 police
Market W/10 policing
Market W/10 position*
Market W/10 pressur*
Market W/10 priorit*
Market W/10 project*
Market W/10 rais*
Market W/10 reduc*
Market W/10 relinquish*

General Standalone Terms

Terms
Market W/10 retain*
Market W/10 saturat*
Market W/10 secure*
Market W/10 seek*
market w/10 settl*
Market W/10 shift*
Market W/10 split*
Market W/10 strateg*
Market W/10 tak*
Market W/10 target*
Market W/10 trad*
Market W/10 underdevelop*
Market W/10 underrepresent*
Market W/10 upset*
Market W/10 want*
Market W/10 yield*
martini*
Mkt W/10 (add* OR adjust* OR chang* OR declin* OR decreas* OR divid* OR drop* OR expan* OR gain* OR heavy OR high* OR hik* OR hold* OR increas* OR lead* OR low* OR more OR new OR "pick* up" OR rais* OR reduc* OR relinquish* OR retain OR secure OR shift* OR split* OR tak*)
Mkt W/10 (allocat* OR agree OR aim* OR compet* OR compromis* OR even OR fair OR fix* OR forecast* OR game* OR gave OR giv** OR goal OR "let W/5 have" OR "like mind*" OR opportunit* OR position OR priorit* OR strateg* OR target*)
Mkt W/10 (challeng* OR concern* OR confirm* OR disrupt* OR disturb* OR follow* OR enough OR police OR policing OR pressur* OR project* OR saturat* OR "too much" OR trad* OR underdevelop* OR underrepresent* OR upset*)
Mkt W/10 (chill OR irrational* OR irresponsible OR rational* OR reasonable OR responsible)
Mkt W/10 (criminal OR illegal OR schem*)
Mkt W/10 (desir* OR feedback OR hear* OR look* OR need* OR notif* OR piece* OR seek* OR want* OR yield*)
Mkt W/10 acquisition*
Mkt W/10 divestiture*
Mkt W/10 dynamics*
Mkt W/10 guidance*
Mkt W/10 merger*
offer*
party OR parties
play* W/10 (fair OR nice)
pric* W/10
pric* W/10 "like mind*"
pric* W/10 "too much"
pric* W/10 (chill OR irrational* OR irresponsible OR rational* OR reasonable OR responsible)
pric* W/10 (criminal OR illegal OR schem*)
pric* W/10 (desir* OR feedback OR hear OR look* OR need* OR notif* OR piece* OR seek* OR want*)
pric* W/10 acquisition*
pric* W/10 adjust*
pric* W/10 agree*

General Standalone Terms

Terms
pric* W/10 aim*
pric* W/10 challeng*
pric* W/10 chang*
pric* W/10 committee
pric* W/10 compar*
pric* W/10 compet*
pric* W/10 compromis*
pric* W/10 concern*
pric* W/10 confirm*
pric* W/10 decreas*
pric* W/10 desir*
pric* W/10 disrupt*
pric* W/10 disturb*
pric* W/10 divestiture *
pric* W/10 drop*
pric* W/10 fair
pric* W/10 feedback
pric* W/10 fix*
pric* W/10 follow*
pric* W/10 forecast*
pric* W/10 gain*
pric* W/10 game*
pric* W/10 goal*
pric* W/10 high*
pric* W/10 hik*
pric* W/10 increas*
pric* W/10 lead*
pric* W/10 line
pric* W/10 look*
pric* W/10 low*
pric* W/10 market *
pric* W/10 meet*
pric* W/10 merger*
pric* W/10 mod*
pric* W/10 need*
pric* W/10 notif*
pric* W/10 opportunit*
pric* W/10 piece**
pric* W/10 police
pric* W/10 policing
pric* W/10 position*
pric* W/10 pressur*
pric* W/10 project*
pric* W/10 rais*
pric* W/10 reduc*
pric* W/10 saturat*

General Standalone Terms

Terms
pric* W/10 seek*
pric* W/10 shift*
pric* W/10 slow*
pric* W/10 strateg*
pric* W/10 target*
pric* W/10 upset*
pric* W/10 want*
pric* W/10 war
pric* W/10 wars
retain*
Rules /4 road
rumor*
sandbox OR "sand box"
scotch
send w/3 message”
share W/10 "let W/5 have"
share W/10 "like mind*"
share W/10 "pick* up"
share W/10 "too much"
share W/10 (acquisition* OR divestiture* OR dynamics* OR guidance* OR merger*)
share W/10 (chill OR irrational* OR irresponsible OR rational* OR reasonable OR responsible)
share W/10 (criminal OR illegal OR schem*)
share W/10 add*
share W/10 adjust*
share W/10 agree*
share W/10 aim*
share W/10 allocat*
share W/10 challeng*
share W/10 chang*
share W/10 compet*
share W/10 compromis*
share W/10 concern*
share W/10 confirm*
share W/10 declin*
share W/10 decreas*
share W/10 desir*
share W/10 disrupt*
share W/10 disturb*
share W/10 divid*
share W/10 drop*
share W/10 enough
share W/10 even
share W/10 expan*
share W/10 fair
share W/10 feedback
share W/10 fix*

General Standalone Terms

Terms
share W/10 follow*
share W/10 forecast*
share W/10 gain*
share W/10 game*
share W/10 gave
share W/10 giv**
share W/10 goal*
share W/10 hear*
share W/10 heavy
share W/10 high*
share W/10 hik*
share W/10 hold*
share W/10 increas*
share W/10 lead*
share W/10 look*
share W/10 low*
share W/10 more
share W/10 need*
share W/10 new
share W/10 notif*
share W/10 opportunit*
share W/10 piece*
share W/10 police
share W/10 policing
share W/10 position*
share W/10 pressur*
share W/10 priorit*
share W/10 project*
share W/10 rais*
share W/10 reduc*
share W/10 relinquish*
share W/10 retain*
share W/10 saturat*
share W/10 secure*
share W/10 seek*
share W/10 shift*
share W/10 split*
share W/10 strateg*
share W/10 tak*
share W/10 target*
share W/10 trad*
share W/10 underdevelop*
share W/10 underrepresent*
share W/10 upset*
share W/10 want*
share W/10 yield*

General Standalone Terms

Terms
speak or spoke
split* W/10 business
stand w/10 down
steal* w/4 share
trash* w/3 market
vodka
walk W/10 (we OR I OR let's OR from OR away)
whiskey
wine

Events

Events	Terms
2014 H-E-B Tournament of Champions	tournament w/5 champions
ACO (Accountable Care Organizations) Summit	(aco or "accountable care organizations") w/5 summit
Ahold	"ahold delhaize"
American Associated Pharmacies (AAP) Annual Meeting & Convention	(aap or "american associated pharmacies") w/5 (meeting or convention)
American Burn Association	"american burn association"
American Society of Clinical Oncologists (ASCO)	"american society of clinical oncologists" or asco
American Society of Consultant Pharmacists (ASCP) Meeting	("american society of consultant pharmacists" or ascp) w/5 (meeting or conference or midyear or "mid year" or clinical)
American Society of Health System Pharmacists (ASHP) Summer trade show	"american society of health-system pharmacists" OR ashp
Amerinet	amerinet
Amerisource Bergan (ABC) Thinklive 2013	thinklive or "think live"
AmeriSource Bergen (ABC) Thoughtspot	thoughtspot
Amerisource Generic NHCE Show	(generic w/5 show) or nhce
Anda Fall Supplier Strategy Meeting	"anda fall supplier" w/5 meeting
Anda Supplier Strategy Meeting	"anda supplier" w/5 meeting
Anda Supply Chain Symposium	"anda supply chain" w/5 symposium
Annual PBA Health Conference	pba w/5 (conference or "trade show")
APCI	apci
Apexus/340B Coalition	apexus* w/5 Coalition
API Meeting (AAP Membership Registration)(American Associated Pharmacies)	"api meeting"
Armada Summit	"armada summit"
BILO Winn-Dixie Annual Sales Planning Meeting	"bilo winn-dixie" w/5 "sales planning meeting"
Cardinal - Syracuse	cardinal w/5 syracuse
Cardinal Annual Pharmacy Business Conference	cardinal w/5 conference
Cardinal BPC Conference	(bpc w/5 conference) or "buisness partners conference"
Cardinal Health Business Partners Exchange	cardinal w/5 "business partners exchange"
Cardinal Managers Meeting	"cardinal managers meeting"
Cardinal Trade Show (RBC)	(cardinal w/5 "trade show") or rbc
CBI (division of UMB Americas) Research Forecasting Conference	cbi w/5 conference or ("research forecasting" w/5 conference)

Events

Events	Terms
Chain Drug Consortium Annual Planning Conference	"chain drug consortium" w/5 conference
Connections 2014 ValueTrak training	valuetrak w/5 training
CSHP (California Society of Health-system Pharmacists)	cshp or "california society of health-system pharmacists"
CVS Caremark Classic	"cvs caremark classic"
CVS Caremark Retail Leadership Conf & trade show	(cvs or caremark) w/5 (conference or "trade show")
CVS Charity Classic	"cvs charity classic"
Dakota Drug	"Dakota Drug"
Drogeria Bentances (Drogueria Betances) trade show	"drogeria bentances" or "drogueria betances"
Drogueria Betances (Hacienda Cafetalera)	"hacienda cafetalera"
ECRM	EPPS or ECRM or "total store expo" or "electronic customer relationship management" or "efficient collaborative retail marketing"
ECRM - Hospital, IDN's & GPO's	"hospital, idn's & gpo's" or "hospital, idn's and gpo's"
ECRM (Efficient Collaborative Retail Marketing)- Institutional, Mail Order and Managed Care	"institutional, mail order and managed care"
ECRM (Efficient Collaborative Retail Marketing) Retail Pharmacy Generics	"retail pharmacy generics"
ECRM Generic Pharmacy Meeting	"generic pharmacy meeting"
EPIC RX (Epic Pharmacies Annual Stockholders Mtg. & Trade Show)	epic w/5 ("trade show" or "stockholders meeting" or "stockholders mtg")
ESI Outcomes Conference	(esi or "express scripts") w/5 conference
Express Scripts Pharmaceutical Outcomes Conference	"pharmaceutical outcomes conference"
FAH Public Policy Conference & Business Expo (Federation of American Hospitals)	(fah or "federation of american hospitals") w/5 (conference or expo*)
Federation of American Hospitals	"Federation of American Hospitals" or FAH
Florida State Society of Health-System Pharmacists (FSHP) mentioned but no dates	"florida state society of health-system pharmacists" or fshp
Fruth Pharmacy Gold Tournament	"fruth pharmacy" w/5 Tournament
FW Kerr Gold Tournament	"fw kerr" w/5 tournament
Generic Pharmaceutical Association	GPHA or AAM or CMC or "generic pharmaceutical association" or "association for accessible medicine"
Georgia Society of Health System Pharmacists (GSHP)	"georgia society of health system Pharmacists" or gshp
GeriMed Annual Meeting	"gerimed annual meeting"
Giant Eagle	"giant eagle"

Events

Events	Terms
Girls' Night Out	"girls night out" or GNO or (women w/10 event)
H.D. Smith National Meeting and Management Conference	"hd smith" w/5 (meeting or conference or "trade show")
Harvard Annual Vendor-Partner Meetings	harvard w/5 (meet* or conference or expo*)
Harvard Drug Group Customer Appreciation Golf Outing	harvard w/5 golf
HD Smith 60th Anniversary Gala	"hd smith" w/5 gala
HDMA (Now HAD-Health Distribution Alliance)Business and Leadership Conference	"business and leadership conference" OR BLC
HDMA Track and Trace Technology Seminar	"track and trace" w/5 seminar
HDMA(Now HAD-Health Distribution Alliance) CEO Roundtable	"ceo roundtable"
Health Care Supply Chain Expo	"health care supply chain expo"
Health Connect Partners	"health connect partners"
Healthcare Distribution Alliance	HDA* or HDMA or BCL or "CEO Roundtable" or "Healthcare Distribution Alliance" or "health distribution management association"
Healthcare Industry Supply Chain Institute	HISCI or "healthcare industry supply chain institute"
Healthcare Supply Chain Association	NPF or "National Pharmacy Forum" or "supply chain association"
HealthTrust Purchasing Group (HealthTrust University Conf.)	healthtrust w/5 conference
HEB Pharmacy Conference	"heb pharmacy conference"
Henry Schein Managers Meeting	"henry schein managers meeting"
HIGPA (Health Industry purchasing group)	higpa or "health industry purchasing group"
HSCA (Healthcare Supply Chain Association)	hsca or "healthcare supply chain association"
HSCA (Health Supply Chain Association) (National Pharmacy Forum)	"national pharmacy forum"
ICHP (Illinois Council of Health-System Pharamcists) Spring Meeting	(ichp or "illinois council of health-system pharmacists") w/5 "spring meeting"
IMCO (Independent medical CO-OP)	imco or "independent medical co-op"
Independent Pharmacy Cooperative	"Independent Pharmacy Cooperative" or IPC*
Indiana Pharmacists Alliance	"indiana pharmacists alliance"
Innovatix	innovatix

Events

Events	Terms
Innovatix & Essensa National Meeting	"essensa national meeting"
IPC (Independent Pharmacy Cooperative) Member Conference	(ipc or "independent pharmacy cooperative") w/5 conference
JDRF (Rite Aid) 5TH Annual Golf Classic	(jdrf or "rite aid") w/5 "golf classic"
JDRF (type 1 diabetes organization) Gold Classic	"diabetes organization" w/5 "gold classic"
Kerr 17th Annual Golf Outing	kerr w/5 "golf outing"
Kerr Drug #2 (Annual Business Seminar & Trade Show)	kerr w/5 (seminar or "trade show")
Kinney Drug 7th Annual Fall Charity Event	"kinney drug" w/5 (conference or "trade show" or event)
Kmart	kmart w/5 meeting
Kroger	kroger w/5 (conference or expo*)
Louisiana Society of Health-System Pharmacists (LSHP)	"louisiana society of health-system pharmacists" or lshp
Masters Golf Tournament	masters w/5 (golf or tournament)
McKesson ideaShare	mckesson w/5 ideashare
McKesson Management Conf (National Sales Conference)	mckesson w/5 (conference or "trade show")
Medassets Healthcare Business Summit	(medassets or med w/2 assets) W/10 (program or summit)
MedAssets Healthcare Business Summit	"medassets healthcare business summit"
MedAssets Healthcare Program	"medassets healthcare program"
Meijer	Meijer
MHA (Managed Health Care Associates) Business Summit	(mha or "managed health care associates") w/5 summit
Miami Luken	"miami luken"
Minnesota Multistate Contracting Alliance for Pharmacy	MMCAP or "Multistate Contracting Alliance" or "minnesota multistate contracting alliance for pharmacy"
MMCAP - National Conference	"national conference"
MMCAP Vendor Trade Show	"vendor trade show"
Morris & Dickson (MAD) Days of Summer	"days of summer"
Morris & Dickson Trade Show	"morris and dickson" w/5 "trade show"
MPhA Annual Convention and Trade Show	mpha w/5 (convention or "trade show")
MSHP (Maryland Society of Health-System Pharmacy)	mshp or "maryland society of health-system pharmacy"
MSSHP (Mississippi Society of Health-System Pharmacists)	msshp or "mississippi society of health-system pharmacists"
N.C. Mutual 2013 Partnership Trade Show (Formerly Customer Appreciation Expo)	"nc mutual" w/5 "trade show" or "customer appreciation expo*"

Events

Events	Terms
National Association of Chain Drug Stores	NACDS or "total store expo" or "National Association of Chain Drug Stores"
National Community Pharmacists Association	NCPA or "National Community Pharmacists"
National Home Infusion Association (NHIA)	"national home infusion association" or nhia
National Pharmacy Forum (HSCA) healthcare Supply Chain Association	"national pharmacy forum"
National Pharmacy Purchasing Association	NPPA or "national pharmacy purchasing association"
Navarro Trade Show	navarro w/5 "trade show"
NC Mutual Customer Appreciation Golf Outing/Stock Holder Mtg.	"nc mutual" w/5 (golf or "stock holder meeting" or tournament)
NCPDP (national council for prescription drug programs)	ncpdp or "national council for prescription drug programs"
New York State Council of Health-system Pharmacists (NYSCHP) Annual Assembly	("new york state council of health-system pharmacists" or nyschp) w/5 assembly
Northeast Pharmacy Service Corp. trade show	"Northeast Pharmacy Service Corp*" w/5 "trade show"
Novation Supplier Summit	Novation w/4 summit
Oncology Managers Of Florida	"oncology managers of florida"
OptiSource Annual Partnering Meeting	optisource w/5 (meeting or "trade show")
Pharmaceutical Care Management Association	"pharmaceutical care management" or pcma or "pbm summit"
Pharmacy Rx, Adherence, Services, Tech & Automation EPPS	"pharmacy rx, adherence, services, tech and automation epps"
Pharmacy Select Vendor Meeting	"Pharmacy Select" w/4 meeting
PLN - Pharmacy Learning Network	pln or "pharmacy learning network"
Premier Breakthrough Conference & Exhibitions	premier w/5 (conference or exhibition or meeting or "trade show")
Price Chopper Trade Show	"price chopper" w/5 ("trade show" or meeting)
PSHP (Pennsylvania Society of Health-system Pharmacists)	pshp or "pennsylvania society of health-system pharmacists"
Red Oak Meeting	"red oak meeting"
Revitas Industry Summit Life Sciences (CARS Summit)	("revitas industry" w/5 summit) or ("life sciences" or cars) w/5 summit
Rite Aid Tradeshow	"rite aid" w/5 ("trade show" or tournament or golf)
Sales OPS Planning Conference	"sales ops" w/5 conference
Schnucks Annual Pharmacy Show	schnucks w/5 show
Smith Drug - Annual Sales & Performance Meeting	"smith drug" w/5 (meeting or "trade show")
Spartan Stores Pharmacy Conference	spartan w/5 conference

Events

Events	Terms
SUPERVALU Desert Classic	supervalu w/5 ("desert classic" or golf)
The Burlington Drug Show	"burlington drug show"
Thrifty White Trade Show	"thrifty white" w/5 ("trade show" or meeting)
Topco - Annual Super Show, S&M	topco w/5 "super show"
TSHP (Texas Society of Health-System Pharmacists)	tshp or "texas society of health-system pharmacists"
UHC (University HealthSystem Consortium)	uhc or "university healthsystem consortium"
USA Drug Golf Sponsorship	"usa drug golf sponsorship"
Value Drug Merchandise Expo	"value drug" w/5 (expo* or "trade show" or conference)
ValueCentric Conference	valuecentric w/5 conference
VSHP (Virginia Society of Health-System Pharmacists)	vshp or "virginia society of health system pharmacists"
Wakefern Food Corp/ShopRite Pharmacy	wakefern or "shoprite pharmacy"
Walmart Supplier Summit	walmart w/5 summit

Defendant Domain Names

Terms
@actavis.com
@akorn.com
@amneal.com
@apotex.com
@ascendlaboratories.com
@ascendlabs.com
@aurobindo.com
@aurobindousa.com
@barrlabs.com
@bpirx.com
@citronpharma.com
@davapharma.com
@drreddys.com
@emcure.com
@emcureusa.com
@endo.com
@Epic-Pharma.com
@fougera.com
@glenmark-generics.com
@glenmarkpharma.com
@greenstone.com
@gwlabs.com
@heritagepharma.com
@hitechpharm.com
@igilabs.com
@impaxlabs.com
@impaxpharma.com
@lannett.com
@libertaspharma.com
@lupin.com
@lupinusa.com
@maynepharma.com
@mgp-online.com
@midlothianlabs.com
@mylan.com
@mylanbertek.com
@mylanlabs.com
@oceansidepharma.com
@parpharm.com
@perrigo.com
@pfizer.com
@pliva.hr
@plivainc.com
@sandoz.com
@sunpharma.com
@sunpharmausa.com

Defendant Domain Names

Terms
@taro.com
@teligent.com
@teva.com
@tevapharm.com
@tevausa.com
@thepharmanetwork.com
@udl.com.pk
@udlpharma.com
@upsher-smith.com
@valeant.com
@west-ward.com
@west-ward.net
@wockhardt.com
@zydususa.com

People

Person	Company	Proposed Term
Adams, John	Dr. Reddy's	adams w/2 john*
Aigner, Michael Francis	Mylan	Aigner OR "maigner25@msn.com"
Alexander, Kaitlin	Citron	Kait* w/2 Alexander
Allen, Michael	Dr. Reddy's	Michael w/2 Allen
Altamuro, Michael	Par	Altamuro*
Anderson, Mary	Fougera-Sandoz	Mary w/2 Anderson
Andrus, Karen	Wockhardt	Andrus
Aprahamian, Ara	Actavis/Taro	Apraham*
Augustine, Rita	Lannett	Augustine
Aupperlee, Christopher	Epic	Aupperlee
Austin, Jake	Dr. Reddy's	austin w/2 jake
Axner, Tom	Apotex	Axner*
Azzalina, Douglas	Fougera-Sandoz	Azzalina
Bacerott, Ramsey	Wockhardt	Bacerott
Bachmeier, Kelly	Par/Qualitest	Bachmeier
Badura, Lisa	Akorn/Hi-Tech	Badura
Baeder, Christine	Teva	Baeder
Baeringer, Ira	Citron	Baeringer*
Baker, Jocelyn	Teva	Baker w/2 Joc*
Ball, William	Impax	(Ball w/2 Will*) OR (Ball w/2 Bill*)
Ballard, Andrea	West-Ward	Ballard w/2 Andrea
Barjous, Zakaria	West-Ward	Barjous
Barrett, Maureen	Actavis	Barret* OR Baret* OR Meehan*
Bayer, Sandra (Sandra Gendrikovs-Bayer)	Par/Qualitest	Sand* w/2 Bayer
Bebout, Todd	Mylan	Bebout
Bedrosian, Arthur	Lannett	Bedrosian
Beem, Heather	Heritage	Beem
Beers, Philip	Wockhardt	Philip w/2 Beers
Bell, Janet	Mylan	Bell w/2 Jan*
Belli, Michelle	Teva	Belli
Ben-Maimon, Carol	Impax	BenMaimon OR Maimon
Berrios, Ed	Akorn/Hi-Tech	Berrios* OR Berios*
Berry, Tim	Apotex	Tim* w/2 Berry*
Berthold, David	Lupin	berthold w/2 dav*
Bertucci, Buddy	Apotex	Bertuc* OR Burtuc*
Bianco-Falcone, Maria	Zydus	Bianco* OR Falcone

People

Person	Company	Proposed Term
Bihari, Chris	Sandoz/Glenmark	chris w/2 bihari
Bjork, Dawn	Perrigo	Bjork
Blackwell, Josh	Mayne	Josh* w/2 Blackwell
Blake, Stuart	Aurobindo	Blake* w/2 Stu*
Blashinsky, Mitchell	Glenmark	blashinsky w/2 mitchell
Blitman, Mark	Actavis	Blitman
Block, Michael	Lannett	(Block w/2 Mike*) OR (Block w/2
Bogda, Michael	Lannett	Bogda
Bohling, Michael	Apotex	Bohling*
Boothe, Doug	Perrigo/Actavis	Boothe OR
Booydegraaf, Jim	Perrigo	Booyd*
Borelli, Victor	Dr. Reddy's	borelli w/2 victor
Bornell, Nekela	Epic	Bornell
Borowiec, Maggie	Apotex	Borowi*
Boulton, Sam	Apotex	Boulton*
Bover, Mark	Mylan	Bover OR "jmbover2@gmail.com"
Bowman, Demian	Apotex	Bowman*
Boyd, Craig	Mayne	Craig w/2 Boyd
Boyer, Andy	Actavis	Boyer*
Brassington, Michelle	Upsher-Smith	Brassington
Bresch, Heather	Mylan	Bresch
Brick, Scott	Taro	Brick w/2 Scott*
Brodner, Stephen	Akorn/Hi-Tech	Brodner
Brodowski, Katie	Heritage/West-Ward/Fougera-Sandoz	Brodow* OR "kbrodowski@hotmail.com"
Brooks, Kimberley	Mylan	Kim* w/2 Brooks
Brown, Jim	Glenmark	brown w/2 (jim* OR james)
Burd, Jeff	Dr. Reddy's	Burd
Burnett, James	Par	James w/2 Burnett
Burton, Gerald (Mike/Michael)	Dr. Reddy's/ Par	(Michael OR Mik* OR Ger*) w/2
Busbee, Walter	Par/Qualitest	Busbee
Calabro, Carla	Par	Calabro
Campanelli, Paul	Par	Campanel*
Campbell, Brittany Autumn	Mylan	Brit* w/3 (Campbell OR Sheets)
Cangemi, Jessica	Glenmark	cangemi w/2 jessica
Cannon, Sheryl	Mayne	Sheryl w/2 Cannon
Cantey, Brooke Tilley	Mayne	(Tilley OR Cantey) w/3 Brook*
Canver, Veronica	Akorn/Hi-Tech	Canver

People

Person	Company	Proposed Term
Caronna, Christine (DeLucia)	Par	Christine w/2 (DeLucia* OR Caronna)
Carotenuto, Lauren	Lannett	Caroten*
Casey, Brandon	Citron	Brandon w/2 Casey
Castillo, Katherine	Epic	Castillo w/2 (Kath*)
Cavanaugh, Maureen	Teva	Cavanaugh
Chang, Jennifer	Teva	Chang w/2 Jen*
Chase, Deborah	Glenmark	Deb* w/2 Chase
Citrino, Robert	Sun/Mutual (URL)	Citrino
Cividanes, Ernesto	West-Ward	Cividanes
Clark, Napoleon	Actavis	Napoleon*
Cohen, Steve	Actavis	Steve* w/2 Cohen
Cohon, Scott	Breckenridge	Cohon*
Collins, Jennifer	Teligent	Jen* w/2 Collins
Colvin, Jennifer	Upsher-Smith	Colvin* w/2 Jen*
Connolly, Lauren	G&W/Lupin	connolly w/2 lauren
Cook, Paul	Epic	Paul w/2 Cook
Cooper, Paul	Fougera-Sandoz	Paul w/2 Cooper
Copeland, Gwen	Apotex	Copeland*
Corley, Mike	Akorn/Hi-Tech	Corley
Couchman, Dawn	Perrigo	Couchman
Coughlin, Terrance (Terry)	Glenmark	Coughlin* w/2 Terr*
Coward, Teresa (Teri)	Teva	Coward w/2 Ter*
Craney, Mike	Wockhardt	craney w/2 (mike OR michael)
Crawford, John	Apotex	Crawford* w/2 John*
Cristiano, Phil	Lannett	Phil* w/2 Cristiano
Cromer, Melissa	Mayne	Melissa w/2 (Cromer OR Garnder)
Cross, Stefan	Mayne	Stefan w/2 Cross
Cullen, Blake	Mayne	Blake w/2 Cullen
Cunard, Robert	Aurobindo	Cunard*
Darnell, Danny	Impax	Darnel*
Davis, Chiwen (AKA Christine	Akorn/Hi-Tech	(Chiwen OR Kristy) w/2 Davis
Dean, Jill Anne	Mylan	Dean w/3 Jill
DeGolyer, Don	Fougera-Sandoz	DeGolyer
Deiriggi, John	Mylan	Deiriggi
DeMarco, Michael	Lannett	Demarco*
Dengler, James	Epic	Dengler
Denman, John	Teva	Denman
Desai, Jeremy	Apotex	Desai*

People

Person	Company	Proposed Term
DeSalvo, Marcia	Citron	DeSalvo*
Dillaway, John	Ascend	dillaway w/2 john
DiValerio, Tracy (nee Sullivan)	Lannett	DiValerio OR (Tracy w/2 Sullivan)
Dorsey, Michael	Actavis	Dorsey*
Dota, Joseph	Epic	Dota
Duda, Joseph	Mylan	Duda
Dudick, Mark	Akorn/Hi-Tech	Dudick*
Duncan, Jennifer	Par	Duncan w/2 Jen*
Dundas, Alana	Actavis	Dundas
Dunn, Jason	Par	Jasen w/2 Dunn
Dunrud, Cassie (LeTourneau)	Teva	Dunrud OR LeTourneau
Durga, Kishore	Epic	Durga
Dutra, Paul	Glenmark	Dutra
Edelson, Matthew	Heritage	Edelson w/2 Matt*
Edwards, James	Par	(Jam* or Jim) w/2 Edwards
Ehlinger, Robert	Lannett	Ehlinger
Emerson, Rodney	Mayne/Mylan	Rod* w/2 Emerson
Engle, Todd	Impax	Engle
Escoto, Edgar	Mylan	Escoto*
Estes, Jim	Par	Jim w/2 Estes
Evolga, Alexis	Actavis/Apotex	Evolga w/2 Alex*
Evolga, Alicia	Lupin	Evolga w/2 Alic*
Falkin, Marc	Actavis	Falk*
Fallis, Wayne	Sun/Mutual	Fallis
Fang, Jian	West-Ward	Fang w/2 Jian
Fanolic, John	Akorn/Hi-Tech	Franolic
Farley, Kathleen	Epic	Kathleen w/2 Farley
Fatmi, Aqeel	Epic	Fatmi
Felix, Andrea	Perrigo	Felix w/2 And*
Field, Rusty	Upsher-Smith	Field w/2 Rust*
Finio, Damian	West-Ward	Finio
Fiveash, Lisa	Mayne	Fiveash
Fleming, Keith	Heritage	Fleming*
Flinn, John	Apotex	Flinn*
Foley, Robert	Lannett	(Foley w/2 Bob*) OR (Foley w/2 Rob*)
Ford, Patrick	Heritage	Pat* w/2 Ford
Fournier-Bruyette, Tracy	Mylan	Fournier* OR Fornier*
Galant, Rachelle	Actavis /Dr. Reddy's	Galant* w/2 Rach*
Galownia, Kevin	Teva	Galownia

People

Person	Company	Proposed Term
Galvan, Martin P.	Lannett	Galvan
Ganesh, Vikram	Citron	Ganesh
Gargiulo, Peter	Par	Gargiulo
Gassert, Chad	Par	Gassert
Gavaris, Spiro	West-Ward	Gavaris
Gensburger, Jason	Lupin	Gensburger
Giannone, Bill	Fougera-Sandoz/Lannett	Giannone* OR Gianone*
Giannone, Tony (Anthony)	Actavis	Giannone* OR Gianone*
Giering, David	Breckenridge	Giering*
Gittle, Susan	West-Ward	Gittle
Giuli, Steve	Apotex	Giuli*
Glazer, Jeffrey	Heritage	Glazer
Goberdhan, Sasenarine	Epic	Goberdhan
Goldschmidt, Peter	Fougera-Sandoz	Goldschmidt
Goldstein, Philip	Breckenridge	Goldstein* w/2 Phil*
Goldy, Scott	Teva/Zydus	Goldy
Goodman, Samuel	West-Ward	Sam* w/2 Goodman
Goodnature, Kara	Perrigo	Goodnature w/2 kara
Gorelik, Mikaella	Fougera-Sandoz	Gorelik
Gorla, Gangadhara Roa	Aurobindo	Gangadhara OR Gorla*
Gouzouassis, Nicole	Heritage	Gouzo*
Gramuglia, Gina	Heritage	Gramug* OR Cassaro
Grauso, Jim	Aurobindo/Glenmark	Grauso*
Graverson, Todd	Akorn/Hi-Tech	Graverson
Green, Kevin	Teva/Zydus	Green W/2 Kev*
Greenstein, Steven	Sandoz	greenstein w/2 steve*
Grenfell-Gardner, Jason	Teligent	Grenfell*
Grigsby, Michael	Impax	Grisby* OR Grigsby
Grossenbach, Scott	Akorn/Hi-Tech	Grossen*
Guerrero, Elizabeth	Taro/West-Ward	Guerrero
Guillory, Rick Mark	Par	Guill* w/3 Rick
Guise, Gloria	Epic	Guise
Guo, Dahai	Epic	Guo
Gupta, Vinita	Lupin	Vinita w/2 Gupta

People

Person	Company	Proposed Term
Gustafson, Tim	Aurobindo	Gustafson*
Gutwerg, Ori	Perrigo	Gutwerg*
Guy, Brian	Breckenridge	Guy w/2 Brian
Haag, Steve	Fougera-Sandoz	Haag
Haakenstad, Peter	Perrigo	Haaken*
Hall, Darren	Par	Darren w/2 Hall*
Hamilton, Beth	Apotex	Hamilton* w/2 Beth
Hampton, Jeffrey	Apotex	Hampton* w/2 Jeff*
Hansen, Laura	Sandoz/Fougera	Hansen w/2 Laur*
Hasija, Anuj	Fougera-Sandoz	Anuj
Herman, George	Epic	George w/2 Herman
Hickson, Morris	Epic	(Morris OR Keith) w/2 Hickson
Hinman Smock, Niki	Apotex	Hinman* w/2 Smock
Hoffman, Brian	West-Ward	Hoffman w/2 Brian
Hoffman, Robert	Lupin	(Rob* OR Bob) w/2 Hoffman
Holden, Jon	Par	(Holden w/2 Jon*) OR (Holden w/2 John*)
Huang, Daphne	Epic	Daphne w/2 Huang
Huang, Lear	Citron	Lear w/2 Huang
Huang, Willi	Impax	Will* w/2 Huang
Hussey, Scott	Upsher-Smith	Hussey
Irwin, David	Glenmark	Irwin w/2 Dav*
Iyer, Swaminathan Sambamurty	Aurobindo	Iyer OR Swamin* OR Sambam*
Johnson. Jeffrey	Glenmark	Johnson w/2 Jeff*
Jomisko, Stephanie	Dr. Reddy's	Jamisko
Jorge, Luis	Fougera-Sandoz	Luis w/2 Jorge
Josway, Jim	Akorn/Hi-Tech/Taro	Josway*
Kaczmarek, Walt	Fougera	kaczmarek w/2 walt
Kafer, Jonathan	Akorn/Hi-Tech	Kafer
Kandikar, Keerthi	Dr. Reddy's	Kandlikar
Kaus, Tina	Apotex	Kaus
Kavuru, Vimal	Citron	Kavuru*
Kazemi, Kian	Fougera	kazemi w/2 kian
Keefe, Marsha	Lannett	Keefe
Keenley, Michael	Zydus	Keenley
Kellum, Armando	Sandoz	kellum w/2 armando

People

Person	Company	Proposed Term
Kendrick, Nikki	Fougera-Sandoz	Nikki w/2 Kendrick
Kenney, Renee	Par	(Kenney w/2 Rene*) OR (Kenny w/2
Kern, Dawn	West-Ward	Kern
Kerr, Jonathan	Aurobindo	Kerr w/2 Jon*
Khera, Sunil	Wockhardt	Khera
Kirkov, Kirko	Fougera-Sandoz	Kirkov
Klaum, David	Fougera/Mylan	klaum w/2 dav*
Knarr, Kevin	G&W and Wockhardt	knarr w/2 kevin
Knoblauch, Susan	Citron/Sun/Mutual/Taro	Knoblauch*
Kochan, Sharon	Perrigo	kochan w/2 sharon
Koenig, Scott	Wockhardt	koenig w/2 scott
Kolb, Luis	Impax	Kolb
Koleto, Christina	Actavis	Koleto*
Koonce, Sherice	Dr. Reddy's	Koonce
Koski, John	Upsher-Smith	Koski
Kozlowski, John	Lannett	Kozlowski*
Krauthauser, Paul	Sandoz	krauthauser w/2 paul
Krinke, Stephen	Mylan	Krinke
Krishan, Sanjeev	Glenmark	Krishan
Kronovich, Tom	Akorn/Hi-Tech	Kronovich
Kutinsky, Bruce	Akorn/Hi-Tech	Kutinsky*
Kuziora, Keith	Dr. Reddy's	Kuziora OR Kuzoria
Kyle, Susan D.	West-Ward	Kyle w/2 (Susan OR Susie OR Sue OR
Kylochko, Amy	Perrigo	kylochko*
Lamasky, Joanne	Akorn/Hi-Tech	Lamasky
Lambertz, Jason	Perrigo	Lambertz
Lankford, Anastasia ("Stacy")	Par	Lankford
Lapila, Larry	Breckenridge	Lapila*
Lattanzi, James	West-Ward	Lattanzi
Leonard, Brad	Upsher-Smith	Brad w/2 Leonard
Levinson, Jared	Teva	Levinson w/2 Jared
Lewis, Tom	Lannett	Tom* w/2 Lewis
Lichter, Steve	Akorn/Hi-Tech	Lichter
Likvornik, Aleksey ("Alex")	Taro	Likvornik
Link, David	Apotex	Link w/2 Dav*

People

Person	Company	Proposed Term
Lopez, John	Wockhardt	John w/2 Lopez
Lubke, Della	Sandoz	lubke w/2 della
Lukasiewicz, Daniel	Heritage/Zydus	Lukasiew* OR Lukasew* OR
Lupo, Michael	Epic	Michael w/2 Lupo
Lyle, Joan	Breckenridge	Lyle w/2 Joan*
Maahs, Jim	Upsher-Smith	Maahs
MacDonald, Marcy	Sandoz	(MacDonald w/2 Mar*) OR
Macrides, Stephen	Par/Qualitest	Macrides
Magerkurth, Brian	Par	Magerkurth
Maiolo, Christine	Actavis	Maiolo
Malek, Jason	Heritage	Malek OR "malekjason@ymail.com"
Malik, Rajiv	Mylan	Malik
Marcus, Howard	Taro	Marcus w/2 How*
Mares, Eyel	Akorn/Hi-Tech	Mares
Markowitz, Paul	West-Ward	Markowitz w/2 Paul*
Marrow, Sharron	Lannett	Marrow w/2 Shar*
Martin, Howard	Mylan	Howard w/2 Martin
Mason, Rob	Upsher-Smith	Mason w/2 (Rob* OR Bob*)
Matchett, Richard	Lannett/Sun/Mutual/Taro	Matchet*
Matsuk, Robert	Glenmark	Matsuk*
Matthew, Lexie (Mills)	Mylan	Lexie w/2 (Matthews OR Mills)
Mauro, Anthony	Mylan	Mauro
Maynard, Diane	Breckenridge	Diane* w/2 (Maynard* OR Nazar)
Mayya, Ashok	Citron	Mayya OR Ashok
McBride, Michael	Upsher-Smith	(McBride w/2 Michael) OR (McBride
McCanna, Mick (AKA Michael Brian McCann)	Akorn/Hi-Tech	McCann*
McCorkle, Chip	Heritage/G&W	mccorkle w/2 chip
McCormack, Katie	Perrigo	McCorm* w/2 Kat*
McCormick, Jinping	Dr. Reddy's/Actavis	Jinping* OR McCormick*
McElfresh, Kevin	Mylan	McElfresh
McGalliard, Jolene	Glenmark/Lannett/Sun/Mutual/	McGalliard*
McGarty, Paul	Lupin	McGarty
McKenna, Nancy	Par	Nancy w/2 McKenna
McLeod, Jessica	Actavis	Jess* /2 McLeod
McMahon, Paul	Aurobindo	McMahon*
McManimie, Jim	Taro	Mcmanimie w/2 Jim*
McManus, Justin	Lannett	McManus*

People

Person	Company	Proposed Term
McMorrow, Shawn	Teligent	mcmorrow w/2 shawn
Mechler, Crystal	Aurobindo	Mechler*
Medalle, Cynthia	Dr. Reddy's	Medalle
Miller, Jeff	Lannett	Miller w/2 Jeff*
Miller, Michelle	Lannett	Michelle w/2 Miller
Minnihan, Lori	Par/Qualitest	Minnihan
Miranda, Roberto (Bob)	Actavis	(Rob* OR Bob*) w/2 Miranda
Mitchell, David	Mylan/Mayne	Mitchel* w/2 Dav*
Moldin, Richard	Mayne	Moldin
Molina, Millie	Lannett	Millie w/2 Molina
Morales, Joel	Par	Joel w/2 Morales
Morris, Andrea	Mylan	Morris w/2 Andrea
Mosberg,Vanda	Teva	Mosberg
Mouro-Sherman, Teri	Teva	(mouro OR sherman OR mouro-
Muller, Miriam	Teva	Miriam w/2 Muller
Mullery, Frank William	Mylan	Mullery
Murphy, Denise	Lannett	Denise w/2 Murphy
Muse, Eric	Teligent	Eric w/2 Muse
Muzetras, Mike	Upsher-Smith	Muzet*
Myers, David	Actavis	Dav* /2 Myer*
Nailor, Jill	Greenstone	nailor w/2 jill
Nallappan, Naveen	Citron	Nallappan
Narine, Jeenarine	Epic	Narine
Nasse, Kim	Par	Nasse
Neely, Katherine	Citron/Dr. Reddy's	Neely
Negron, Sebastian	Akorn/Hi-Tech	Negron
Nesta, James	Mylan	Nesta
Neurohr, Christopher	Fougera-Sandoz	Neurohr
Nielson, Dave	Breckenridge	(Nielson w/2 Dav*) OR (Nelson w/2
Niemi, Joseph	Wockhardt	Niemi
Nigalaye, Ashok	Epic	Nigalaye
Norris, Pam	Mayne	Pam w/2 Norris
Novak, Brett	Akorn/Hi-Tech	Novak*
Nugent, Tim	Aurobindo	Nugent* w/2 Tim*
Nuzum, Stephanie	Mylan	Nuzum
O'Sullivan, Terence	Fougera-Sandoz	Terence w/2 O'Sullivan
Obeidat, Mohammad	West-Ward	Obeidat
Oberman, Allan	Teva	Oberman
O'Connor, Karen	Par	(OconnOR w/2 Karen) OR (ConnOR

Person	Company	Proposed Term
O'Dell, Lois	Par/Qualitest	O'Dell
Odina, Grace	Zydus	Odina
Olafsson, Sigurder	Actavis	Olafsson* OR Sigurder*
Olson, Chad	Upsher-Smith	Olson w/2 Chad
O'Mara, Neal	Heritage	Omara OR mara
O'Neill, Robert	Mylan	(Oneil* w/2 Rob*) OR (Oneil* w/2
Organ, Erin	Apotex	Organ w/2 Erin
Orlofski, Kurt	G&W	orlofski w/2 kurt
Ortiz, Rick	Lannett	Rick w/2 Ortiz
Ostaficiuk, Konstantin	Camber	Ostaficiuk
Padilla, Myrna	Apotex	Padilla*
Pak, Connie	Fougera-Sandoz	Connie w/2 Pak
Pannier, Beth	Upsher-Smith	Pannier
Papa, Joseph	Perrigo	Papa w/2 (Joseph OR Joe OR Joey)
Park, James	Dr. Reddy's	James w/2 Park
Patel, Nisha	Teva	Patel w/2 Nisha
Patil, Abhijit	Dr. Reddy's	Abhijit w/2 Patil
Pavlak, Michael	G&W	pavlak w/2 michael
Peck, John	West-Ward	Peck w/2 John
Pefley, Warren	Par/Qualitest	Pefley
Pehlke, Lisa	Actavis/Taro	Pehl* OR Pelke*
Peluso-Schmid, Gloria	Mayne	Peluso* OR (schmid w/2 gloria)
Pera, Antonio	Par	Pera
Perfetto, Michael	Actavis/Taro	Perfet*
Peters, Jessica	Teva	Peter* w/2 Jess*
Petro-Roy, Walter	Lannett	Petro-Roy
Picard, David	Fougera-Sandoz	Picard
Picca, Stephanie	Glenmark	Picca
Pickford, Marilyn (Lyn)	Par	Pickford
Pierce/Peirce, Lori	Teva	(LORi w/2 Pierce*) OR (LORi w/2
Player, Erica	Teva	Player w/2 Erica
Polizzi, Marco	Fougera-Sandoz	Polizzi
Polman, Anthony (Tony)	Perrigo	Polman
Post, Vincent	Lannett	Vincent w/2 Post
Potter, Robert	Mylan	(Potter w/2 Rob*) OR (Potter w/2
Potti, Manish	Epic	Potti
Price, Shannon	Apotex	Price w/2 Shannon
Propst, Charles ("Trey")	Par	(Trey OR Charles) w/2 Propst
Purcell, Barbara	Zydus/Valeant	purcell w/2 barbara

People

Person	Company	Proposed Term
Quarrick, Traci	Mylan	Quarrick
Radtke, Kim Allison	Akorn/Hi-Tech	Radtke
Rai, Raj	Akorn/Hi-Tech	Raj* w/2 (Rai* or Raj*)
Randazzo, Steve	Lupin	Randazzo
Raya, Michael	West-Ward	(Raya w/2 Mik*) OR (Raya w/2 Michael)
Reading, Sean	Aurobindo	Reading* w/2 Sean*
Rebnicky, Amanda	Dr. Reddy's	Rebnicky
Reddy, Ramprasad	Aurobindo	Reddy* w/3 (Ram* OR Prasad*)
Reed, John Jr.	Actavis	Reed* w/2 John*
Reilly, Sean	Mylan	Reilly w/2 Sean
Reiney, Michael	Par/Qualitest	Michael w/2 Reiney
Reiss (nee Roberts), Katie	Mayne	Kat* w/2 (Reiss OR Roberts)
Rekenthaler, David	Teva	Reken*
Renner, Joseph	Zydus	Joseph w/2 Renner
Rice, Karen	Apotex	Rice w/2 Karen
Ricketts, Elizabeth	Teva	(Ricket* w/2 Eliz*) OR (Ricket* w/2
Riker, William	Impax	(Riker w/2 Will*) OR (Riker w/2 Bill*)
Rizk, Nabil	West-Ward	Rizk OR Nabil
Rodarmer, Chessa	Lannett	Rodamer* OR Rodarmer
Rodowicz, Rob	Dr. Reddy's	Rodowicz
Rogerson, Rick	Actavis	rogerson w/2 rick
Romero, Gladys	Epic	Gladys w/2 Romero
Ronco, Kristy	Zydus	Ronco
Rosado, Freddy	Zydus	Fred* w/2 Rosado
Rose, Jon	Fougera-Sandoz	Jon* w/2 Rose
Rosenstack, Joel	Fougera-Sandoz	Rosenstack
Ross, Thomas	West-Ward	(Thomas or Tom) w/2 Ross
Rotunno, Mary	Upsher-Smith	Rotunno
Ryan, Marge	Heritage	(Marg* OR Margaret) w/2 Ryan
Sabat, John	Akorn/Hi-Tech	Sabat*
Sabo, Ernest J.	Lannett	Sabo
Sachdev, Gurpartap ("GP	Sun/Mutual	(GP w/2 Sing*) OR Sachdev OR
Santangelo, Patrick	Aurobindo	Santangelo*
Sather, Anne	Heritage	Sather
Saunders, Brent	Actavis	Saunder*
Savastano, Frank	West-Ward	Savastano
Schatz, Martin	Breckenridge	(Schatz w/2 Mart*) OR (Shatz w/2 Mart*)
Schiwbalak, Anthony	Epic	Schiwbalak OR Shiwbalak

People

Person	Company	Proposed Term
Schneider, Chris	Mayne	schneider w/2 chris
Schreck, William	Lannett	Schreck OR Shreck
Schultz, Adam	Lannett	Adam w/2 Schultz
Schwinn, Chad	Fougera-Sandoz	Schwinn
Scott, Char	Perrigo	Scott w/2 Char
Seaback, David	Par/Qualitest	Dav* w/2 Seaback
Seitz, Gregory	Sandoz	Seitz
Shah, Anand	Sun/Mutual	Shah w/2 Anand
Sherman, Teresa (Teri) Mouro-	Teva	(Sherman w/2 Ter*) OR Mouro
Shook, Kevin	Epic	Shook w/2 Kev*
Short, Laura	Citron/Zydus	(Short w/2 Laur*) OR (Short w/2
Sica, Kevin	Impax	Sica w/2 Kev*
Silver, Sean	Teva	Silver w/2 Sean
Simmons, Bob	Apotex	(Simmons w/2 Bob*) OR (Simmons
Simpson, Kristen	Lannett	Krist* w/2 Simpson
Sims, Scott	Par	Scott w/2 Sims
Skalski, Gary	Impax	Skalsk*
Slavsky, Allan	Actavis	Slavsky
Smith, John	Epic	John w/2 Smith
Smith, Kevin R.	Lannett	Smith w/2 Kev*
Smith, Rich	Heritage	Rich* w/2 Smith
Smith, Scott	Fougera-Sandoz	Scott w/2 Smith
Smith, Steven ("Steve")	Sun/Mutual	Smith w/2 Stev*
Soars, Lew	Heritage	Soars w/2 Lew*
Soni, Beena	Heritage	Beena
Sonig, Alok	Dr. Reddy's	Sonig
Spina, Robert	Fougera-Sandoz	Spina
Spotts, Tom	Teva	Spotts
Statler, Doug	West-Ward	Statler
Statler, Sr., Doug	Sun/Mutual and Taro and West	Stat* w/2 Doug*
Staud, Amy	Mylan	Staud
Stefaniak, Jeanne	Epic	Stefaniak
Stephens, Kristie	Lannett	Krist* w/2 Stephen*
Stevens, Cindy	Actavis/ Dr. Reddy's	Cindy /2 Stevens
Stillman, Breanna	Lannett	(Stillman w/2 Brean*) OR (Stillman
Stone, Emilio	Wockhardt	Emilio w/2 Stone
Strelau, Karen	Citron/Zydus	Strelau*
Strzeminski, Robin	Greenstone	strzeminski w/2 robin
Sundaram, Kal	Sun/Mutual/Taro	Sundaram
Szechenyi, Arpad	Fougera-Sandoz	Szechenyi
Taffe, Patrick	Wockhardt	Taffe OR Taaffe

People

Person	Company	Proposed Term
Tamboia, Janine	Par	Tamboia
Tatum, Jeremy	Par	Jeremy w/2 Tatum
Tekumal, Arvind	Dr. Reddy's	Tekumal
Thapur, Vic	Emcure	thapur w/2 vic
Thomas, Jermaine	Akorn/Hi-Tech	Jermaine w/2 Thomas
Thomassey, Anthony	Aurobindo and Fougera	Thomassey*
Tighe, Robert/Gary	Mylan	Tighe
Tolusso, Mike	Taro	Tolusso
Tranter, Matthew Scott	Akorn/Hi-Tech	Tranter
Tremonte, Richard	Fougera-Sandoz	Tremonte
Tropiano, Michael	Par	Tropiano
Truchan, Don	Citron	Truchan*
Tustin, Bill	Citron	Tustin*
Urbanski, Christopher ("Chris")	Taro	Urbansk*
Van Allen, Matt	Glenmark	Matt* w/3 Allen*
Van Lieshout, James	Apotex	Vanlies* OR Lieshout*
Van Stedum, Colter	Perrigo	"Van Stedum"
Van Winkle, Schuyler	Ascend	"van winkle" w/2 schuyler
Vandervort, Thomas	Teligent	Vandervort
Veira, Deborah	Apotex	Veira*
Velez, Luis	West-Ward	Velez
Venkatasubramaniam, Ganesh	Aurobindo	Venka* OR Ganesh
Vezza, Mike	Sandoz	vezza w/2 (mike OR michael)
Vitols, David	Dr. Reddy's	Vitolis
Vogel-Baylor, Erika	G&W	(vogel OR baylOR OR vogel-baylOR) w/2 erika
Vohra, Umang	Dr. Reddy's	Vohra
Vraniak, Maria (McManus)	Zydus	Vraniak
Walker, Kevin	Lupin	Kevin w/2 Walker
Walten, Lauren	Lupin	Walten
Walton, Christine	Dr. Reddy's	Christine /2 Walton OR "cvwalton@gmail.com"
Watkins, Greg	Ascend	watkins w/2 greg
Watson, Jeff	Apotex	Watson* w/2 Jeff*
Watson, Robert	Wockhardt	(Rob* or Bob) w/2 Watson
Weber, Jodi	Zydus	Jodi w/2 Weber
Wesolowski, John	Perrigo	Wesolowski

People

Person	Company	Proposed Term
Wetzel, Trish	DRL	wetzel w/2 trish
Wiesemann, Denise	Mayne	Wiesemann
Wilkinson, George Frederick (Fred)	Impax	(Wilkinson* w/2 Fred*) OR (Wilkinson w/3 George)
Wilks, Grace	Lannett	Wilk*w /2 Grac*
Williams, Erik	Mylan	(William* w/2 Erik) OR (William* w/2 Eric)
Williams, Jane	Apotex	William* w/2 Jane*
Wingerter, Martin	Mylan	Wingert*
Workman, David	Mylan	Workman w/2 Dav*
Wyatt, Lance Sterling	Mylan	Wyatt w/3 Lance
Zitnak, David	Upsher-Smith	Zitnak

Named Plaintiffs

Plaintiff Search Terms	Plaintiff Name
"1199SEIU" OR "@1199seiubenefits.org"	1199SEIU National Benefit Fund
"1199SEIU" OR "@1199seiubenefits.org"	1199SEIU Greater New York Benefit Fund
"1199SEIU" OR "@1199seiubenefits.org"	1199SEIU National Benefit Fund for Home Care Workers
"1199SEIU" OR "@1199seiubenefits.org"	1199SEIU Licensed Practical Nurses Welfare Fund
"Cesar Castillo"	César Castillo, Inc.
"Chet Johnson"	Chet Johnson Drug, Inc.
"Chippewa Pharmacy"	Chippewa Pharmacy, Inc.
"Falconer Pharmacy"	Falconer Pharmacy, Inc.
"Halliday's"	Halliday's & Koivisto's Pharmacy
Humana OR *humana.com OR HPI OR RightSource OR "Right Source" OR HPS	Humana Inc.
"Marion Diagnostic"	Marion Diagnostic Center LLC
"Philadelphia Federation" OR (PFT w/5 Fund) OR "@pfthw.org"	Philadelphia Federation of Teachers Health and Welfare Fund
"Rochester Drug"	Rochester Drug Co-Operative, Inc.
"Russell's"	Russell's Mr. Discount Drugs, Inc.
"Sergeants Benevelont" OR "@sbanypd.nyc"	Sergeants Benevolent Association of the Police Department of the City of New York Health and Welfare Fund
"Southside Pharmacy"	Southside Pharmacy, Inc.
"Uniformed Fire Officers" OR "Local 854"	Uniformed Fire Officers Association Family Protection Plan Local 854
"Unite Here" OR UHH OR "@uhh.org"	Unite Here Health
"West Val"	West Val Pharmacy
("Blue Cross" w/10 Louisiana) OR (BCBS w/10 Louisiana) OR "@bcbsla.com"	Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana and HMO Louisiana, Inc.
("Self-Insured Schools" w/5 California) OR SISC OR "@sisc.kern.org"	Self-Insured Schools of California
(AFSCME w/5 37) OR "District Council 37" OR "DC 37" OR "@dc37.net"	American Federation of State, County and Municipal Employees District Council 37 Health & Security Plan
(AFSCME w/5 47) OR "District Council 47" OR "DC 47" OR "@dc47union.org"	American Federation of State, County and Municipal Employees, District Council 47, Health and Welfare Fund
(City w/3 Providence) OR "@providenceri.gov"	The City of Providence, Rhode Island
(Detective* w/2 Endowment) OR "@nycdetectives.org"	Detectives Endowment Association of the City of New York

Named Plaintiffs

Plaintiff Search Terms	Plaintiff Name
(UFCW w/10 Arizona) OR ("United Food" w/10 Arizona)	United Food & Commercial Workers and Employers Arizona Health and Welfare Trust
(UFCW w/5 1500) OR "Local 1500" OR "@ufcw1500.org"	UFCW Local 1500 Welfare Fund
“Albertsons.com” OR Albertsons	Albertsons Companies, LLC
“heb.com” OR HEB OR "H-E-B" OR "HE Butt" OR "H.E. Butt"	H.E. Butt Grocery Company L.P.
“Kroger.com” OR Kroger	The Kroger Co.
Ahold	Ahold USA, Inc.
David w/2 Sherman	David Sherman
FWK or Kerr	FWK Holdings, L.L.C.
Hennepin w/2 County	Hennepin County
HPI OR HUM	Humana Inc.
KPH or "Kinney Drugs"	KPH Healthcare Services, Inc., a/k/a Kinney Drugs, Inc.
Nina w/2 Diamond	Nina Diamond
Optum* OR ORX OR Briova OR Catamaran OR Genoa OR Avella OR @optum.com OR @briovarx.com OR @genoahealthcare.com OR @avella.com OR catamaranrx.com	OptumRX
Ottis w/2 McCrary	Ottis McCrary
Robby w/2 Johnson	Robby Johnson
Unitedhealth* OR United W/2 Health* OR United OR UHC OR UHG OR UH OR @uhg.com OR @uhc.com	United Health
Valerie w/2 Velardi	Valerie Velardi

Drug Names

Search Term
Acetaz*
Diamox
Adapal*
Albut*
Proventil
Ventolin
Volmax
Vospire
Amilor*
Amitrip*
Elavil
Endep
Amit*
Amox* OR Clavul*
Amphet* OR Dextro*
Amphet* OR Dextro*
Azithro*
Azithro*
Baclo*
Kemstro
Lioresal
Baclo*
Benaz*
Benaz*
Lotensin
Bethanechol
Budes*
Budes*
Bumet*
Buspir*
Cabergo*
Capecit*
Carbamaz*
Carbamaz*
Cefdin*
Cefdin*
Cefproz*
Celecox*
Cephalex*
Cimetid*
Cipro*
Clarith*
Clemast*
Clobet*
Cormax
Embeline

Drug Names

Search Term
Impoyz
Temovate
Clomip*
Anafranil
Clomip*
Clonid*
Clotrim*
Cypro*
Desmo*
Desog* OR Ethinyl OR Estrad* OR Kariva
Deson*
Desowen
Dexmeth*
Dextro*
Diclo*
Diclo*
Diflun*
Digox*
Digotek*
Cardoxin*
Digitek
Lanoxi*
Diltiaz*
Disop*
Dival*
Depakote
Doxa*
Doxy*
Periostat*
Alodox*
Avidoxy*
Oraxyl*
Acticlate
Adoxa
Doryx
Monodox*
Morgidox
Oracea
Targadox
Vibra*
Vibra*
Drosp* OR Ethinyl OR Ocella OR Estrad*
Econa*
Spectazole
Enala*
Enteca*

Drug Names

Search Term
Epitol
Estaz*
Estrad*
Ethin* OR Estrad* OR Levonor* OR Portia OR Jolessa
Ethosux*
Ethosux*
Etodol*
Etodol*
Feno*
Flucon*
Fluocin*
Lidex
Vanos
Fluocin*
Fluocin*
Fluocin*
Fluocin*
Fluox*
Flurb*
Flutam*
Fluvast*
Fosi*
Monopril*
Gabap*
Glimep*
Glip*
Metaglip
Glyb*
Diabeta
Glynase
Micronase
Glucovance
Glyb*
Griseof*
Haloper*

Drug Names

Search Term
Hydroxy*
Hydroxy*
Irbes*
Isoniaz*
Ketocon*
Ketocon*
Ketopro*
Ketor*
Labetal*
Lamiv* OR Zido* OR Combiv*
Leflu*
Arava
Levo*
Levo*
Euthyrox
Synthroid
Thyro*
Unithroid
Lido*
Anodyne
Emla
Lipro*
Medolor
Prizopak
Loper*
Medrox*
Mepro*
Equanil
Miltown
Methotrex*
Metronid*
Metrocream
Metrogel
Metrolotion
Noritate
Vandazole
Mimvey* OR Estrad* OR Noreth
Moexip*
Moexip*
Nabum*
Nadol*
Niacin
Nimo*
Nimo*
Nitrofur*
Noreth* OR Ethinyl OR Estrad* OR Balziva

Drug Names

Search Term
Northin*
Nortrip*
Nystat*
Candex
Myco*
Mykinac
Nilstat
Omega*
Oxaproz*
Oxybut*
Parical*
Parom*
Humatin
Penicill*
Pentox*
Pirox*
Prava*
Prava*
Prava*
Praz*
Prochlor*
Propran*
Inderal
Innopran
Propran*
Ralox*
Ranit*
Tamox*
Temoz*
Theop*
Aerolate
Quibron
SloPhyl* or (slo w/2 Phyl*)
"Theo* ER"
Theochron
Theoclear
Theodur or (Theo w/2 Dur)
Theolair
Tphyl or "T-Phyl"
Unidur or (Uni w/2 Dur)
Tizan*
Tobram*
Tolmet*
Tolter*
Tolter*
Topir*

Drug Names

Search Term
Triflu*
Urso*
Actigall
Valsar*
Verap*
Calan
Isoptin
Verelan
Warfar*
Reclast
Zometa
Zoled*

Defendants

Terms
“Dr. R*”
“G&W”
“Hi Tech”
“HiTech”
“Hi-Tech”
“West Ward”
“WestWard”
“West-Ward”
Acorn
Actavis*
Akorn*
AKRX
Amneal
Apotex*
Ascend
Auro* OR Bindo
Barr
Bidco
Breck*
Citron
Dava
DRL
Emcure
Endo
ENDP
Epic
Fougera*
Glenmark
Greenstone
Heritage*
Impax*
Lannett
Lupin
Mayne*
MAYNF
Morton w/2 Grove
Mutual
MYL
Mylan*
MYX
Oceanside
Par
Perrigo*
Pfizer
Pliva
PRGO

Defendants

Terms
RDY
Reddy*
Sandoz*
Sun
SUNPHARMA
Taro
Teligent*
Teva
UDL
Upsher*
Valeant
Wockh*
Zydus

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: GENERIC PHARMACEUTICALS PRICING ANTITRUST LITIGATION	: MDL NO. 2724 : 16-MD-2724
	: HON. CYNTHIA M. RUFE
ALL ACTIONS	:

Report and Recommended Order from Special Master David H. Marion Setting Forth a Case Management Order and Discovery Schedule

This report and recommended order is respectfully submitted by Special Master David H. Marion to accompany a recommended Case Management Order and Discovery Schedule.

I. BACKGROUND

As of the status conference before Judge Rufe held on July 12, 2019, the parties had yet to agree on a Case Management Order or Discovery Schedule. After several meet and confers and ex parte meetings requested by the parties, on July 17, I asked the Plaintiffs and Defendants to each submit a letter brief and a proposed Case Management Order including a Discovery Schedule (collectively herein, "CMO"). In response to that request, on July 29, I received written submissions from both sides. A joint meeting was held on August 1, prior to which I issued an "informal recommendation" in an effort to accelerate progress in moving this MDL forward. Following the August 1, joint meeting, I asked the parties to submit supplemental edits, including proposed deadlines, to my informal recommendation. After receiving the parties' edits on August 6, ex parte meetings were held on August 7.

II. DISCUSSION

Because I have already received four well-drafted proposals and letter briefs fully setting forth the opposing positions on a CMO, and have conducted several rounds of ex parte and joint meetings on the subject, I think it is reasonable to require the simultaneous submission of objections to the recommended Order attached hereto on or before September 13. If suitable and convenient to the Court, that schedule would allow Judge Rufe six business days for review prior to the September 24 status conference.

It appears unlikely that there will be mutual agreement on this subject, and therefore I am now recommending entry of the attached CMO, which I believe is a fair and workable compromise between the two sides' positions.

Plaintiffs initially presented two options to proceed. The first would require Defendants to produce full custodial files for a subset of key custodians selected by Plaintiffs from the much larger list of custodians of which the parties had already agreed. Although Plaintiffs presented a strong case in support of their "full custodial file" option, at my request they also put forward a second option which they could live with but did not prefer (and could later move for reconsideration), under which Defendants would run broad search terms – not limited to drugs or defendants already in the MDL – across all agreed-upon custodial files and to produce all "hits," absent those documents withheld for privilege, to Plaintiffs as the custodial documents. Plaintiffs further suggested the parties should meet and confer as to how to deal with any additional new or amended complaints which might be included in this MDL. Plaintiffs later amended their proposal to include a timeframe for the selection of bellwether criteria and segmented out various components of discovery by party and document type.

Defendants favored a phased approach, setting a cutoff date after which any new or amended complaints would be placed in a "Suspense Docket." The first phase of discovery would be limited to drugs and defendants in cases pending as of March 20, 2019 and would proceed though a fairly customary discovery schedule. They vigorously resisted access to any custodian's complete records without limitation by search terms. Other variations between the two sides' proposals included the order of summary judgment motions as compared to class certification and the determination of a "bellwether" case or cases. Following a joint meeting, Defendants amended their proposal to include a full schedule with definitive dates through and including motions for class certification and motions for summary judgment. Defendants further proposed a detailed outline on the selection of search terms to be used on the suggested custodial files, and the production of documents as a result of those search terms after a privilege and responsiveness review. Plaintiffs strenuously opposed Defendants' withholding documents based on their unilateral determination of irrelevance or non-responsiveness.

III. RECOMMENDED ORDER

Based on the multiple and lengthy meetings with the parties both ex parte and jointly, and review of their conflicting briefs and proposed CMO's, I now recommend the Court's entry of the attached CMO based in part on the following considerations:

1. Given the nature of the allegations of both overarching and specific price-fixing and market allocation antitrust conspiracies, and the extraordinarily high stakes involved, extensive and broad-ranging discovery is both necessary and appropriate for these cases to be fairly adjudicated; and is also essential for any meaningful settlement

discussions, since cases like this are usually ultimately settled, and reasonable settlements are beneficial to the Court and the parties.

2. The phased approach proposed by the Defendants may risk redundancy, multiple depositions of witnesses, and confusion; but Defendants reasonably contend they need some fixed date and time period for application of agreed-upon or Court-ordered search terms.

3. The proposed Order attempts to protect Defendants' asserted rights, in that there would be agreed-upon or Court-ordered search terms, a definite cut-off date, and Defendants could perform a privilege review prior to production of the "hits" generated from the custodial files. Moreover, the procedures set forth in PTO 70 regarding confidentiality designations and the "clawback" of highly sensitive personal matters not relevant to the litigation would be utilized within an extended schedule.

4. By proceeding with discovery, class certification and then summary judgment motions – with a defined universe (unaffected by newly filed complaints or amendments) and a process for selection of "bellwether" cases, defendants, and drugs, it is probable that the issues for the parties will be narrowed, even as to new drugs, cases or parties that may be added, as they were after the Court decided the first tranche of motions to dismiss.

5. By involving ESI Master Regard to assist me in resolving and ultimately recommending appropriate search terms within a tight schedule, and Special Discovery Master Merenstein to assist with respect to disputes that may arise within the "clawback" process (and of course all three of us will be available to deal with whatever other non-

dispositive disputes may arise going forward), I believe discovery can proceed promptly, efficiently and in accordance with the Federal Rules.

6. Attached hereto as Exhibit "A" is my Recommended Order. The above summary does not attempt to cover all the contentions made on each side or indeed all the considerations behind the proposed Order.

Respectfully submitted,

David H. Marion, Special Master

EXHIBIT “A”

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: GENERIC PHARMACEUTICALS PRICING ANTITRUST LITIGATION	: MDL NO. 2724 : 16-MD-2724
	: HON. CYNTHIA M. RUFE
ALL ACTIONS	:

PROPOSED CASE MANAGEMENT ORDER AND DISCOVERY SCHEDULE

The Special Master recommends: (1) the following shall control the management and schedule for discovery, class certification, summary judgment, and *Daubert* motions, applicable to all cases pending in the MDL as of September 1, 2019; (2) objections thereto by any party or parties be submitted to the Court on or before September 13, 2019.

1. With respect to any new complaint or amended complaint thereto filed after September 1, 2019, responsive pleadings and/or motions shall be filed as normally required or agreed. Discovery from new defendants may be guided by but will not be governed by this CMO. Discovery with respect to those defendants shall be governed by separate agreement(s) to be negotiated by the parties or separate order(s), recommended by the Special Master and/or as decided by the Court. However, discovery involving pre-existing parties may be expanded as appropriate to include newly added defendants and/or drugs.

2. All parties are required to preserve any and all communications in any potentially relevant custodial file including, but not limited to, (i) communications pertaining to any generic prescription drug with any other seller or manufacturer of any other generic prescription drug, or (ii) internal communications concerning (i).

3. **DISCOVERY OF DEFENDANTS' CUSTODIAL FILES**: Production from the files of all Defendants' Agreed Custodians (as defined in PTO 95, ¶ 1.5), or other Defendant custodian(s) as ordered, using search terms, established as follows:

    a. Search terms shall be established either by agreement reached among the parties in negotiations supervised by Special Master Marion and ESI Master Regard or as ordered by Special Master Marion or ESI Master Regard if not agreed to within twenty (20) days from entry of this Order.

        i. Such terms shall include, but are not limited to, all drugs named in any complaint and all Defendants named in any complaint as of the date of September 1, 2019.

ii. Any drug or drug manufacturer or seller defendant added hereafter in any new or amended complaint, shall be added to the search terms and searched on a reasonable schedule to be established by the parties with the assistance of Special Master Marion and ESI Master Regard, as necessary.

b. Defendants shall apply the agreed search terms to the agreed custodial files and may review the identified documents for privilege, but may not withhold prior to production any documents based on relevance or responsiveness.

c. The deadline for meeting and conferring on the proposed search terms is ten (10) days from entry of this Order.

i. Any dispute arising out of the above provisions shall be brought to Special Master Marion and ESI Master Regard via simultaneous letter briefs within thirty (30) days from the date of this Order, to be promptly resolved by them.

ii. The briefs should include "hit" counts and suggested alternatives to the disputed search term(s).

iii. Special Master Marion and/or ESI Master Regard will then meet and confer with the parties together or ex parte to discuss the proposals and will propose search terms to all parties for testing.

iv. The parties shall have fourteen (14) days to test the search terms and submit objections to them.

v. To the extent the parties do not reach agreement, any disputes shall be resolved pursuant to the Special Master Protocol, PTO 68.

d. Production deadline: December 20, 2019; Privilege log deadline: January 15, 2020.

e. Confidentiality:

i. All documents shall be stamped "Outside Counsel Eyes Only" for 120 days (as set forth in PTO 70).

ii. Confidentiality re-designation deadline: 120 days after production (as set forth in PTO 70).

iii. Request for Clawback: 120 days from production (as guided by PTO 70).

iv. Clawback disputes to be resolved promptly with assistance from Special Discovery Master Merenstein and Special Master Marion, as necessary.

4. **DISCOVERY OF DEFENDANTS' TARGETED DOCUMENTS** relevant to the claims regarding all drugs and all Defendants in the MDL.

    a. Targeted documents include, but are not limited to:

        i. Defendants' documents responsive to Plaintiffs' document requests that are regularly maintained in a known location, or in a location that is knowable upon reasonable inquiry of those with knowledge about Defendants' document management systems, departmental practices with respect to filing documents, and similar information, such that they do not require search terms. Such documents, which have previously been referred to as "go get" documents, may be found in custodial or non-custodial sources and include but are not limited to: e.g. calendars, travel and expense records, telephone records, board of directors' materials, forecasts, strategic sales databases, financial statements, accounting documents.

        ii. Defendants' documents relevant to class certification, experts, and other economic or data-related issues, which may or may not require targeted search terms; and

        iii. Additional targeted search terms based on review of documents and samples.

    b. Deadline to complete meet and confers with respect to such documents:

        i. Paragraph 4(a)(i): October 16, 2019.

        ii. Paragraph 4(a)(ii) and (iii): February 7, 2020.

    c. Any dispute arising out of these meet and confers shall be brought to Special Master Marion via simultaneous letter briefs on or before October 30, 2019 (for ¶ 4(a)(i)), or February 17, 2020 (for ¶ 4(a)(ii) and (iii)).

    d. Complete production of documents: November 15, 2019 (for ¶ 4(a)(i)) and March 13, 2020 (for ¶ 4(a)(ii) and (iii)); Privilege log deadline December 16, 2019 (for ¶ 4(a)(i)) and April 16, 2020 (for ¶ 4(a)(ii) and (iii)).

    e. Confidentiality:

        i. All documents stamped Outside Counsel Eyes Only for 120 days (as outlined in PTO 70).

        ii. Confidentiality re-designation deadline 120 days after production (as outlined in PTO 70).

iii. Request for Clawback: January 16, 2019 (for ¶ 4(a)(i)), March 16, 2020 (for ¶ 4(a)(ii) and (iii)) (as guided by PTO 70).

iv. Clawback disputes to be resolved promptly with assistance from Special Discovery Master Merenstein and/or Special Master Marion, as necessary.

5. **DEFENDANTS' TRANSACTIONAL DATA, COST INFORMATION, AND RELATED DOCUMENTS**

a. No later than ten days after entry of this Order, samples of each Defendant's transaction-level sales data and cost information covering at least one year for one drug must be been produced. Disputes concerning these samples shall be brought to Special Master Marion promptly.

b. Meet and confers concerning transaction-level sales data, cost information, and related documents shall be completed within forty-five (45) days of the entry of this Order. Any dispute shall be brought to Special Master Marion via simultaneous letter briefs no later than December 13, 2019.

c. Deadline to produce Defendants' complete transaction-level sales data and cost information:

i. Drugs in the MDL as of September 1, 2019: January 16, 2019.

ii. For any new drugs involving an existing Defendant already in the MDL, added as of September 1, 2019: January 16, 2019 or within 60 days of a new or amended complaint, whichever is later.

6. **WRITTEN DISCOVERY**: On or before October 11, 2019, all outstanding signature(s) and/or verifications required by Rule 33 of the Federal Rules of Civil Procedure shall be produced by either party.

7. **PLAINTIFFS' DOCUMENT PRODUCTIONS AND TRANSACTIONAL DATA**

a. The parties shall meet and confer regarding Plaintiffs'[1] custodians, ESI sources, outstanding discovery requests, search terms and methodology for unstructured data, shall be completed no later than October 14, 2019 (for Private Plaintiffs) and January 15, 2020 (for the States).

b. Any dispute arising out of this provision shall be brought to Special Master Marion, Special Master Merenstien and/or ESI Master Regard via letter briefs within ten (10) days of the applicable meet and confer deadlines.

[1] "Plaintiffs" here refers to Plaintiffs in operative complaints and already served with discovery as of September 1, 2019.

c. Production deadline: December 20, 2019 (for Private Plaintiffs); March 2, 2020 (for the States); Privilege log deadline: 30 days thereafter.

d. Plaintiffs' production in response to Defendants' discovery requests shall otherwise proceed simultaneously and under the same procedures applicable to Defendants' production as set forth above in paragraphs 4-6.

8. **FACT DEPOSITIONS**

a. Depositions in all cases shall begin March 16, 2020 and continue through September 16, 2021.

b. Witnesses associated with bellwether case(s) or claims are to take priority.

c. Starting February 6, 2019, the parties shall meet and confer regarding the scheduling of depositions. Any dispute arising out of these meet and confers shall be submitted promptly to Special Master Marion via simultaneous letter briefs.

9. **BELLWETHER SELECTIONS**

a. Within 45 days of the entry of this Order, the parties shall meet and confer with the assistance of Special Master Marion to identify criteria for selecting bellwether claims or case(s) for class certification, expert discovery, summary judgment, *Daubert* motions, and/or trial(s).

b. Upon identification of the bellwether criteria, bellwether claims or case(s) shall be established either by agreement reached among the parties in negotiations supervised by Special Master Marion or as ordered by Special Master Marion if not agreed to within thirty (30) days after the meet and confer.

c. The paragraphs below apply only to such cases.

10. **MERITS EXPERT DEPOSITIONS**[2]

a. Plaintiffs shall serve expert reports no later than April 30, 2021. Plaintiffs' experts shall be made available for depositions no later than June 14, 2021.

b. Defendants shall serve expert reports no later than July 30, 2021. Defendants' experts shall be made available for depositions no later than August 16, 2021.

c. Plaintiffs shall serve rebuttal expert reports no later than October 15, 2021.

d. Unless good cause can be shown, each expert providing a merits report is to be deposed only one time. Any dispute arising from the scheduling of expert

[2] Dates hereafter may be modified either by agreement or by Order of the Court, dependent on the selection of bellwether criteria.

depositions shall be brought to Special Master Marion via simultaneous letter briefs.

11. **CLASS CERTIFICATION AND RELATED *DAUBERT* MOTIONS**

a. Motions for class certification for the bellwether case(s) or claims, if required, shall be filed by October 7, 2020. Plaintiffs in such cases shall simultaneously serve expert reports on which they rely for class certification.

b. Depositions of Plaintiffs class certification experts shall be completed by November 6, 2020. Unless good cause can be shown, each of Plaintiffs' class certification expert is to be deposed only one time.

c. Opposition to class certification and related *Daubert* motions for the bellwether case(s) or claims shall be filed by December 18, 2020. Defendants in such cases shall simultaneously serve expert reports on which they rely in opposition.

d. Depositions of Defendants' class certification experts shall be completed by January 8, 2021. Unless good cause can be shown, each of Defendants' class certification expert is to be deposed only one time.

e. Replies in support of class certification and related *Daubert* motions for the bellwether case(s) or claims shall be filed, and supporting expert reports served, by January 18, 2021.

f. The hearing on class certification shall be set on a date to be determined by the Court.

12. **SUMMARY JUDGMENT MOTIONS AND MERITS *DAUBERT* MOTIONS** shall proceed as follows:

a. Motions and supporting briefs for bellwether case(s) or claims shall be filed no later than sixty (60) days after the later of close of merits expert discovery and disposition of motions for class certification.

b. Oppositions shall be filed sixty (60) days thereafter.

c. Replies shall be filed forty-five (45) days after the filing of oppositions.

APPENDIX J

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: GENERIC PHARMACEUTICALS PRICING ANTITRUST LITIGATION	:	MDL NO. 2724 16-MD-2724
THIS DOCUMENT RELATES TO	:	HON. CYNTHIA M. RUFE
ALL ACTIONS	:	

SPECIAL MASTER DAVID H. MARION'S SUPPLEMENTAL SUMMARY TO REPORT AND RECOMMENDED ORDER DATED AUGUST 16, 2019

I. INTRODUCTORY STATEMENT

In light of the massive amount of paper submitted in response to my Report and Recommended Order ("R&R") setting forth a Case Management Order and Discovery Schedule ("CMO"), I am hereby submitting this summary and outline of the issues which may be of assistance to the Court. This is not intended to argue or respond on the merits to any disputed issues.

I do want to note that I take full responsibility for my R&R, but I should acknowledge three points:

1. The "meet and confers," as well as a number of both joint and ex parte meetings I held with counsel, along with exchanges of proposals, were becoming endless and dragging on for months. Therefore, I hastily put together an R&R recommending a CMO in mid-August. Plaintiffs' response has noted several typo's and omissions for which I apologize, but knowing the Court's busy schedule for late August and September, I wanted to allow sufficient time for the anticipated objections of the parties to be submitted prior to the scheduled Status Conference on September 24. (Certain unexpected family medical emergencies occurred at the same time.) What is most important is to get this MDL on track toward resolution with deadlines, subject to adjustment if necessary, in order to meet the objectives set forth by the Court during the last Status Conference on July 12.

2. I did consult with and receive input from both Discovery Master Merenstein and ESI Master Regard prior to submitting my R&R and CMO, but any errors of law that may appear therein are mine, not theirs.

3. I would like to note and recognize the substantial and valuable assistance of my White and Williams colleague Ms. Morgan Birch in this effort.

II. MAIN ISSUES

A. PRODUCTION OF FULL CUSTODIAL FILES

Plaintiffs wanted a complete turnover of all documents from a select few of Defendants' key employees/custodians. Defendants wanted search terms that would limit the scope of the production to a limited number of issues, drugs and parties.

My compromise – With the help of ESI Master Regard, we will meet and hopefully agree on the use of broad search terms that would cover all drugs and contacts with and about all makers and sellers of drugs. If there is no agreement on search terms, ESI Master Regard and I would provide an R&R to the Court on search terms. Similarly, Plaintiffs would have an opportunity to argue for all files for cause shown.

B. SCOPE OF DISCOVERY

Defendants sought to limit "phase one" of discovery to roughly 30 drugs at issue as of May 20, 2019; all other discovery would be stayed until that initial phase of discovery is completed and a selection of bellwether case(s) was made, so that precedential class certification and summary judgment motions could be resolved. Under Defendants proposal, proposed discovery would start over for additional drugs and parties in what Plaintiffs feared would be the distant future. Plaintiffs sought to proceed with all discovery on all drugs and makers and sellers, and additional drugs and defendants would be added as new or amended complaints are filed; to avoid repeated depositions and/or massive delays; and to make settlements possible at an earlier stage, since Defendants will want to cover all drugs and parties in any settlements and releases, and Plaintiffs would only get limited discovery in the near future under Defendants' phased plan.

C. OTHER ISSUES

1. My order includes deadlines that can be changed and modified, but it is my belief there must be tight deadlines to achieve the Court's expressed objective of moving these cases toward resolution as promptly as possible.

2. Clawbacks: My R&R allows Defendants to withhold documents for privilege, but not to unilaterally withhold documents as either unresponsive or irrelevant. Such a clawback process as set forth in PTO 70, worked well as it pertained to the Attorney General documents. Moreover, Discovery Master Merenstein and I are committed to be available to rapidly resolve any such disputes.

3. My Recommended Order also provides a process to select bellwether case(s), and deal with fact and expert depositions, class certification motions, summary judgment motions, a bellwether trial(s).

III. CONCLUSION

I have told all parties that I expected objections and would take no offense thereto, since our relations have been cordial and respectful throughout. These are difficult issues, and all counsel have been understandably attentive to their duties to their clients. Respectfully and with apologies, I also recognize that the Court may not be able to simply sign my recommended Order as is; but I hope it will at least provide a convenient structure to move these cases forward expeditiously.

Respectfully submitted,

David H. Marion

DHM:msb

APPENDIX K

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: GENERIC PHARMACEUTICALS PRICING ANTITRUST LITIGATION	**MDL 2724** **16-MD-2724**
THIS DOCUMENT RELATES TO: ***ALL ACTIONS***	**HON. CYNTHIA M. RUFE**

PRETRIAL ORDER NO. 110
(AMENDING CERTAIN DATES IN PRETRIAL ORDER NO. 105)

AND NOW, this 26th day of December 2019, upon consideration of the attached stipulation of counsel, submitted on behalf of their respective parties in the MDL to Extend Certain Pretrial Discovery Deadlines ("Stipulation"), it is hereby **ORDERED** that the Stipulation is **APPROVED**. The deadlines previously provided in Pretrial Order No. 105 are hereby **AMENDED** as set forth in the Stipulation.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFE, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: GENERIC PHARMACEUTICALS PRICING ANTITRUST LITIGATION	MDL 2724 16-MD-2724
THIS DOCUMENT RELATES TO: *ALL ACTIONS*	HON. CYNTHIA M. RUFE

JOINT STIPULATION TO EXTEND CERTAIN PRETRIAL DISCOVERY DEADLINES

WHEREAS the Court entered a Case Management Order and Discovery Schedule on October 24, 2019 (Pretrial Order No. 105, ECF 1135) setting forth certain deadlines for the management of and discovery schedule for cases pending in the MDL as of September 1, 2019 (the "CMO");

WHEREAS the parties in the MDL have engaged in substantial ongoing efforts since the CMO's entry to complete discovery within the deadlines provided therein;

WHEREAS the parties have discussed, in light of the large number of parties involved in the MDL, the complexity of the issues and discovery process, and the parties' substantial and ongoing efforts to complete discovery, that an extension to certain deadlines provided in the CMO is warranted;

NOW, THEREFORE, it is jointly stipulated and agreed by and among the parties, through their undersigned liaison counsel, to extend certain deadlines set forth in the CMO as follows:

3. DISCOVERY OF DEFENDANTS' CUSTODIAL FILES

Section 3(c)(i): The deadline provided herein shall be extended to December 20, 2019.

Section 3(d): The deadline provided herein for substantial completion of custodial document productions shall be extended to March 9, 2020. The deadline for service of privilege logs shall be extended to April 6, 2020.

4. DISCOVERY OF DEFENDANTS' TARGETED DOCUMENTS

4(b)(i): The deadline provided herein shall be extended to January 20, 2020.

4(b)(ii): The deadline provided herein shall be extended to April 27, 2020.

4(c): The deadline provided for raising disputes about documents identified in ¶ 4(a)(i) of the CMO with the Special Masters shall be extended to February 3, 2020. The deadline provided for raising disputes about documents identified in ¶¶ 4(a)(ii) and (iii) of the CMO with the Special Masters shall be extended to May 7, 2020.

4(d): The deadline provided herein for substantial completion of the production of documents identified in ¶ 4(a)(i) of the CMO (otherwise known as "go get" documents) shall be extended to February 6, 2020. The deadline to produce privilege logs related to those documents identified in ¶ 4(a)(i) of the CMO shall be extended to February 21, 2020. The deadline provided herein for substantial completion of the production of documents identified in ¶¶ 4(a)(ii) and (iii) of the CMO shall be extended to June 2, 2020. The deadline to produce privilege logs related to those documents identified in ¶¶ 4(a)(ii) and (iii) of the CMO shall be extended to July 7, 2020.

4(e)(iii): The deadlines provided herein shall be extended to March 23, 2020 for requests for clawbacks related to those documents identified in ¶ 4(a)(i) of the CMO and May 28, 2020 for requests for clawbacks related to those documents identified in ¶ 4(a)(ii) and (iii) of the CMO.

5. DEFENDANTS' TRANSACTIONAL DATA, COST INFORMATION AND RELATED DOCUMENTS

5(b): The deadline provided herein to complete meet and confers concerning transaction-level sales data, cost information, and related documents shall be extended to February 19, 2020.

The deadline provided herein to bring any disputes to Special Master Marion shall be extended to February 25, 2020.

5(c): The deadline provided herein for Section 5(c)(i) shall be extended to March 30, 2020. The deadline provided herein for Section 5(c)(ii) shall be extended to March 30, 2020 or within 60 days of a new or amended complaint, whichever is later.

7. PLAINTIFFS' DOCUMENT PRODUCTIONS AND TRANSACTIONAL DATA

7(a): The deadline provided herein to meet and confer with the States shall be extended to March 30, 2020.

7(b): The deadlines provided shall be extended to December 13, 2019 for the Private Plaintiffs and April 13, 2020 for the States.

7(c): The deadlines provided herein shall be extended to March 9, 2020 for the Private Plaintiffs and May 21, 2020 for the States. Privilege logs shall be produced 30 days thereafter from each respective deadline.

8. FACT DEPOSITIONS

8(a): The deadline provided herein shall be extended to June 4, 2020 and continue through December 6, 2021.

8(c): The deadline provided herein shall be extended to April 27, 2020.

9. BELLWETHER SELECTIONS

9(b): The deadline provided herein shall be extended by agreement of the parties after consultation with the Special Master, or if no agreement is achieved, by later Order of the Court.

10. MERITS EXPERT DEPOSITIONS

10(a): The deadline provided herein for Plaintiffs to serve expert reports shall be extended to July 19, 2021. The deadline provided herein for Plaintiffs' experts to be made available for depositions shall be extended to September 2, 2021.

10(b): The deadline provided herein for Defendants to serve expert reports shall be extended to October 18, 2021. The deadline provided herein for Defendants' experts to be made available for depositions shall be extended to November 4, 2021.

10(c): The deadline provided herein shall be extended to December 27, 2021.

11. CLASS CERTIFICATION AND RELATED *DAUBERT* MOTIONS

11(a): The deadline provided herein shall be extended to January 4, 2021.

11(b): The deadline provided herein shall be extended to February 3, 2021.

11(c): The deadline provided herein shall be extended to March 17, 2021.

11(d): The deadline provided herein shall be extended to April 7, 2021.

11(e): The deadline provided herein shall be extended to April 19, 2021.

It is further jointly stipulated and agreed by and among the parties, through their undersigned liaison counsel, that all other deadlines and/or obligations imposed by the CMO that are not extended herein shall remain in effect.

It is so **STIPULATED**.

Dated: December 23, 2019

[**SIGNATURES ON THE NEXT TWO PAGES**]

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