FILED

OCT 13 2009

Carol E. Higbee, P.J.Cv.

IN RE: LEVAQUIN® LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:ATLANTIC COUNTY

CASE NO. 286

CIVIL ACTION

CASE MANAGEMENT ORDER NO. 4

Protective Order of Confidentiality
Pursuant to R. 4:10-3(g)

1. The parties, by and through their counsel, stipulate and agree that this Protective Order of Confidentiality (hereinafter "Protective Order") and any designation of a document, material or information (whether written, graphic, or electronic) as being confidential and proprietary (hereinafter "PROTECTED DOCUMENT") is intended solely to facilitate the preparation and trial of this case.

2. This Protective Order shall not be construed as a waiver by any party of the right to contest the designation of documents as "PROTECTED" under this Protective Order. Any party desiring to contest the "PROTECTED" designation of specific documents as "PROTECTED" shall give the producing party notice in writing including the bates number and/or specific description of any such document. Unless the producing party agrees to remove the designation of "PROTECTED" on the documents which are the subject of the contest, the parties shall meet and confer and make a good faith effort to resolve the dispute within fifteen (15) days of such notice. If, after fifteen (15) days, no resolution is achieved, the producing party shall promptly request a hearing and file

any necessary moving papers expeditiously. This Court's determination of whether or not a "PROTECTED" designation should be maintained will be governed by New Jersey law. The burden of proving the confidential and proprietary nature of any "PROTECTED" designation as contemplated throughout this agreement shall rest solely with the party who has made the designation. Pending a Court determination, no document designated as "PROTECTED" under this order shall be disseminated other than as provided by this Order unless otherwise ordered by the Court or as stipulated by the parties.

3. The parties, attorneys and law firms appearing as their counsel of record, may make such use of the documents and materials produced by persons subject to this Protective Order as the preparation of this case and trial may reasonably require, but in so doing shall disclose such documents or materials only to such persons, including parties, their employees, counsel of record and their employees, insurers and their employees, and witnesses, and prospective witnesses, including testifying and consulting experts, involved in the litigation process who upon counsel's good faith reasonable belief should have the information from such documents and materials for purposes of preparation of this case and trial, except as follows:

a. Johnson & Johnson, Johnson & Johnson Pharmaceutical Research & Development LLC and Ortho-McNeil-Janssen Pharmaceuticals, Inc. may make available to the Food and Drug Administration (FDA) or any other governmental agency any documents or materials for inspection by, a governmental agency, and/or submitted to a governmental agency pursuant to said agency's specific request.

b. Plaintiffs and Plaintiffs' Counsel shall be allowed to share said documents with co-counsel in the MDL and/or New Jersey State Court

Levaquin ® litigation who agree in writing to be bound by this Order, and with witnesses and expert witnesses, including prospective witnesses and consulting experts, subject to the provisions of this Protective Order.

4. Any party and/or experts desiring to do so may render any documents and materials produced by itself or any other party in response to a written discovery request PROTECTED and restricted and subject to the terms and prohibitions of this Protective Order by designating such document or material as herein provided. Designation shall be made by affixing to the documents, electronic material, or written response the words: "PROTECTED DOCUMENT. DOCUMENT SUBJECT TO PROTECTIVE ORDER." The legend shall be affixed to each page of material to be designated, but shall not obscure any part of the text. A designation shall subject the document or material, and its contents, to this Protective Order without any further act on the part of the person desiring confidentiality.

5. No party or expert shall designate a document as a "PROTECTED DOCUMENT" pursuant to this Protective Order unless that party has a good faith belief that the document contains or may contain or constitute a trade secret, or other confidential or proprietary research, development, manufacturing, or commercial or business information, or medical or other personal information regarding any person claiming personal injuries as a result of use of Levaquin. The types of Documents designated as "PROTECTED DOCUMENT" under the above definition may include, but are not limited to the following: patient names; medical records, social security numbers, proprietary licensing, distribution, marketing, design, development, research, and manufacturing information regarding products and medicines, whether currently

marketed or under development; clinical studies, information concerning competitors; production information, personnel records and information; and financial information. Each party will make a good faith effort not to mark any material as a "PROTECTED DOCUMENT" that is otherwise in general public domain. Any information that is designated "PROTECTED" shall be immediately and at all times hereafter maintained and kept confidential, as subject to this Protective Order.

6. Any and all documents that are produced by Defendants in this litigation which were produced by Defendants on or before the entry of this Order concerning any action related to the *In Re: Levaquin Products Liability Litigation* (MDL), MNDC, 08-MD-1943, and were previously designated as "PROTECTED" pursuant to the terms of the "September 7, 2007 Amended Stipulated Confidentiality Agreement" adopted by the MDL per Pretrial Order No. 1, can remain "PROTECTED" solely for the sake of efficiency in Defendants' production of such documents in this litigation. Defendants will not be subject to any penalties by this Court if it is determined at a later date that such designations are overly-broad and, more specifically, not in compliance with paragraph 5 of this Order. If, however, a party in this litigation elects to contest a "PROTECTED" designation of any of the above referenced documents, a determination of whether such designation should be maintained will be made by this Court pursuant to paragraph 2 of this Order. For all other documents produced by Defendants in this litigation, a "PROTECTED" designation must be in compliance with paragraph 5 of this Order.

7. If a document designated as "PROTECTED" herein is determined by another court of competent jurisdiction to NOT be entitled to protected and/or confidential status, then the document shall not be deemed confidential in this case.

8. To the degree a document contains both confidential and non-confidential information, the designating party may conditionally mark the entire document as PROTECTED. However, upon written request, the designating Party shall identify the specific material within any document that qualifies for protection, within twenty (20) days, or as agreed upon by the parties.

9. If information is redacted on the basis it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, the redacting party shall identify on a separate log that identifies the document subject to redaction and the reason for such redaction.

10. Prior to dissemination of any information from documents or materials that are protected or subject to this Protective Order to any witness, prospective witness or other person, counsel so disseminating shall maintain a copy of the Certification, in the form attached hereto as Exhibit "A", signed by such person verifying that such person has agreed to the terms of this Protective Order.

11. The parties of record have the right to have persons present in the inspection room at all times during the other party's inspection of any original documents and materials produced pursuant hereto. The original documents and materials produced under the terms of this Protective Order shall remain in the custody and control of the producing party at all times.

12. Absent Court Order to the contrary, all documents and materials, and copies of documents and materials (including documents on a portable media such as CDs and DVDs) subject to this Protective Order shall be either destroyed or returned and surrendered to the producing party or person upon the conclusion of the last case in this litigation. Conclusion shall be taken and construed as (1) the date 60 (sixty) days following the entry of a final, non-appealable order disposing of this case, or (2) the settlement of this case. In the event the receiving party elects to destroy documents, materials and/or copies thereof that are subject to this Protective Order upon the conclusion of the last case as set forth herein, their counsel shall so certify that said documents, materials and/or copies thereof have been destroyed in a certified letter to the producing party's counsel. Counsel shall make a reasonable effort to retrieve any document or information subject to this Order from any party or non-party witness to whom such information has been given, and shall notify counsel for the producing party of the failure to retrieve any such information. Such notification shall include descriptive detail of any document or material not returned. Counsel, however, shall not be required to return any pretrial or trial records regularly maintained by that counsel in the ordinary course of business, but such records will continue to be maintained confidential and in conformity with this Order.

13. All counsel shall at all times keep secure all notes, abstractions or other work product derived from or containing protected information, shall be obligated to maintain the confidentiality of such work product, and shall not disclose or reveal the

contents of said notes, abstractions, or other work product after the documents and information are returned and surrendered.

14. This Protective Order shall remain in full force and effect and each person subject to this Order shall continue to be subject to the jurisdiction of this Court, for the purposes of this Order, in perpetuity, and the Court shall not be divested of jurisdiction of any person or of the subject matter of this Order by the occurrence of conclusion of this case, or by the filing of a notice of appeal, or other pleading which would have the effect of divesting this Court of jurisdiction of this matter generally.

15. No person who examines any item produced pursuant to a discovery request and the information of which is protected by this Protective Order shall disseminate orally, or by any other means, any protected information other than as permitted by this Order.

16. All portions of deposition transcripts that relate to information protected by this Protective Order may be designated as "PROTECTED". Any party may designate specific pages as confidential by written notification to all counsel within 15 days of the receipt of the written deposition transcript. If any party wishes to contest the designations being marked confidential, the procedures outlined in paragraph 2, supra, shall apply. Such designated portions will be kept confidential, shall not be made a part of the public record, and may if requested be separately transcribed.

17. The parties will use the following procedure for submitting to the Court papers consisting of, relating to, containing, incorporating, reflecting, describing, or attaching a document that has been designated "PROTECTED":

a. For discovery-related motions, the notice of motion will be filed with the Clerk. All other papers will be served on the parties, but not filed with the Court. Instead, courtesy copies shall be provided to the Court for *in camera* use. Following its disposition of the motion, the Court will destroy the papers or return them to the party filing them.

b. For pretrial nondiscovery-related motions, the parties shall set a schedule during a conference with the Court that is sufficient to allow ten (10) days after the completion of briefing by all parties for any party to file a motion to seal all or part of the papers. For pre-trial nondiscovery motions, the parties shall exchange their respective moving papers, opposition papers and reply papers in accordance with the schedule set by the Court pursuant to the conference, but shall not file these papers until ten (10) days after the service of the moving party's reply papers and then only if no party has notified all other parties that it intends to file a motion to seal any of the papers in support or in opposition to the pretrial nondiscovery-related motion. In the event a party moves to seal any of the motion papers, it shall file its notice of motion, and any brief, certifications or affidavits in support of the motion to seal directly with the Honorable Carol E. Higbee, P.J. Cv. The parties shall also file with the Honorable Carol E. Higbee, P.J. Cv. at that time their respective papers in support of or in opposition to the underlying pre-trial nondiscovery related motion. After the Court disposes of the motion to seal, the Clerk will file the papers on both motions in accordance with the Court's order.

When submitting a document that has been designated "PROTECTED" to the Court and pursuant to the procedures identified in this paragraph, the submitting party shall submit only those pages of the deposition transcript, document or other matter containing "PROTECTED" information that is cited, referred to, or specifically relied on by the submitting party. The submitting party shall not submit or lodge the entirety, or other portion, of the deposition transcript, document, or other matter containing "PROTECTED" information.

18. Each person examining any protected documents or information pursuant to this Protective Order shall first agree to submit himself or herself to the jurisdiction of

this Court, to be bound by this Order, and to keep all information received confidential as herein provided.

19. References to person in this Protective Order shall be taken and construed to refer to natural persons, and to corporations and other entities.

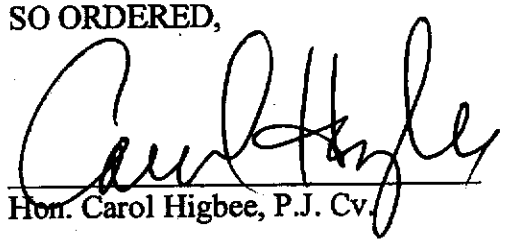
20. If another court or an administrative agency subpoenas or otherwise orders production of a "PROTECTED DOCUMENT" which a person has obtained under the terms of this Order, the person to whom the subpoena or other process is directed shall promptly notify liaison counsel for the designating party in writing via fax and overnight delivery of all of the following: (1) the "PROTECTED DOCUMENT" that is requested for production in the subpoena; (2) the date on which compliance with the subpoena is requested; (3) the location at which compliance with the subpoena is requested; (4) the identity of the party serving the subpoena; and (5) the case name, jurisdiction and index, docket, complaint, charge, civil action or other identification number or other designation identifying the litigation, administrative proceeding or other proceeding in which the subpoena or other process has been issued. In no event shall a "PROTECTED DOCUMENT" be produced prior to the expiration of ten (10) business days following transmission of written notice to liaison counsel for the designating party. Furthermore, the person receiving the subpoena or other process shall cooperate with the producing party in any proceeding related thereto.

21. Any party for good cause shown may apply to the Court for modification of this Protective Order, or the Protective Order may be modified by consent of the parties in writing. This Protective Order shall continue in force until amended or superceded by

express order of the Court, and shall survive any final judgment or settlement in this Action.

DONE this 13th day of Oct 2009

SO ORDERED,



Hon. Carol Higbee, P.J. Cv.

EXHIBIT A

CERTIFICATION

I, _____, certify that I have been provided a copy of the Protective Order of Confidentiality in the In Re: Levaquin® Litigation, pending in the Superior Court of New Jersey, Law Division: Atlantic County, Case Number 286; that I have read the Order; and that I agree to abide by all its terms and to submit to the jurisdiction of the Superior Court of New Jersey, Law Division, Atlantic County, with regard to issues related to this Protective Order. I certify that the foregoing statements made by me are true. I am aware that if any such statements made by me are willfully false, I am subject to punishment.

Dated:_____

_____
[Signature]
Signatory's Name and
Residence Address

_____
_____
_____

Signatory's Employment Position and
Employment Capacity

_____
_____
_____