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ATLANTIC COUNTY LAW DIVISION

IN RE: REGLAN LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

CASE NO. 289

MASTER DOCKET:

CIVIL ACTION

CASE MANAGEMENT ORDER NO. 7 REGARDING DOCUMENT PRODUCTION PROTOCOL

THIS MATTER, having come before the Court at recent Case Management Conferences, and all parties, having been represented by Counsel, and for good cause shown and the parties having consented to the substance and entry of the Order,

IT IS on this 11 day of Jan, 2011: **ORDERED** as follows:

I. SCOPE OF THIS ORDER

This Case Management Order No. 7 ("CMO No. 7") shall govern all pending cases and hereafter filed cases in the Superior Court of New Jersey Law Division: Atlantic County, which become part of the program of coordinated pretrial proceedings relating to the prescription drug Reglan® and/or Metoclopramide, with the exception of Plaintiff-specific medical providers in this Litigation.

This CMO No. 7 addresses the production of documents, the manner in which a party will log any documents withheld on the basis of privilege, and the Parties' inadvertent production of privileged documents.

II. DOCUMENT PRODUCTION PROTOCOL GOVERNING THE PARTIES' PRODUCTION OF DOCUMENTS

Subject to the entry of the applicable protective orders between Plaintiffs and Defendants, the Parties shall produce documents in a manner complying with the New Jersey Rules of Civil Procedure and in accordance with the following document production protocol:

A. PRODUCTION OF ELECTRONIC DOCUMENTS

1. Production of Electronic Documents: The Parties agree that all responsive electronically stored information ("ESI") shall be produced in the following formats:

a. TIFFs: All images shall be delivered in single-page Group IV TIFF image files ("TIFF format") and at least 300 dpi resolution. Image file names shall not contain spaces or punctuation. To the extent that the imaging conversion process results in degradation in appearance from the underlying original, the producing party agrees to also produce the applicable original in native format upon the reasonable request of the receiving party. To the extent available after document processing, a party that elects to produce a document in image format that was originally available to the party in native format, the document's image shall include all hidden text, comments, and tracked changes.

b. Unique IDs: Each image should have a unique file name with the unique identification number ("Bates number") assigned to it. The Bates number will include a prefix using at least three alpha characters representing the responding party and eight digits without any spaces or punctuation, i.e., ABC00000001. Documents that exist in native format shall be differentiated from those available only in hard copy by a numerical digit immediately following the alphabetic prefix (e.g., ABC00000001 for native documents, and ABC50000001 for hard copy documents). Where applicable, a confidentiality notice will be placed on the page image in a manner that does not conceal

or interfere with any information contained on the page. No other stamp or information will be placed on a document other than Bates number, confidentiality notice, and any redactions. Native electronic files will not be numbered, however, a tiff image slip-sheet, bearing a Bates number, the name of the native file and confidentiality designation, if applicable, will be inserted.

c. Text Files: Extracted full text in format of multi-page .txt files shall be provided. The total number of text files delivered should match the total number of documents delivered. Each text file should match the respective TIFF filename with the exception of the file extension (".txt"). (".txt format"). For documents that contain redactions, text from the redacted pages will be produced in Optical Character Recognition ("OCR format") rather than extracted text.

d. Parent-Child Relationships: Parent-child relationships (the association between an attachment and its parent document) shall be preserved. The database load files (*infra*) shall, for each parent document, identify by Bates number each attachment thereto, and shall, for each attached document, identify by Bates number the applicable parent document.

e. Database Load Files/Cross-Reference Files: Production of ESI will be provided in load file formats compatible with Concordance or Summation, and Opticon or IPRO.

f. Metadata: For documents that were originally created using common, off-the-shelf software (*e.g.*, Microsoft Word, Microsoft PowerPoint, Adobe PDF), the Parties will provide metadata fields to the extent it is available for production after processing. The load file containing the metadata shall conform to the format specified below. A list containing typical metadata fields to be produced is included below. The actual metadata

field names may differ depending on the type of data and data processing protocol. The Parties must produce all files attached to each email they produce, but only if such files are actually attached to that email in the ordinary course of business. To the extent a party produces email attachments that were originally created using common, off-the-shelf software, a party will produce the metadata for those attached electronic documents in accordance with this section.

i. Examples of Typical Metadata Fields:

a.) Custodian

b.) Beginning Bates Number

c.) Ending Bates Number

d.) Beginning Attachment Number

e.) Ending Attachment Number

f.) Record Type

g.) Master Date

h.) Sent On _Date and Time

i.) Received_Date and Time

j.) Create_Date and Time

k.) Last_Modified Date and Time

l.) Parent Folder

m.) Author

n.) To

o.) From

p.) CC

q.) BCC

r.) Subject/Title

s.) Original Source

t.) Native Path

u.) UNC Path

v.) File Extension

w.) File Name

x.) File Size

y.) SHA-1 or MD5 Value (Native only)

z.) Exception File

aa.) Full Text

bb.) Field indicating whether a document contains an Auto Date code in it

cc.) Field identifying whether a documents contains redactions

g. Native Files: For spreadsheets that were originally created using common, off-the-shelf software (e.g., Microsoft Excel), the Parties will produce the spreadsheets in native format, however, a tiff image slip sheet, bearing a Bates number, the name of the native file and confidentiality designation, if applicable, will be inserted. Documents containing redactions will be produced in TIFF format only.

h. Embedded Files: To the extent available through reasonable and good faith efforts to process embedded files, the Parties will produce embedded native spreadsheets. Images of the embedded spreadsheet files will be included as part of a production.

i. HTML Files: For responsive documents that are written in HTML (e.g. internal websites; documents intended to be viewed in an internet browser), the producing party

shall provide, to the extent available, such documents and their embedded files in native format (e.g. *.mht or *.htm) and in a petrified format in a manner that preserves their appearance, including formatting and embedded images, as they were originally intended for viewing.

j. Audio and Video Files: For responsive audio and video files, the Parties shall produce such files in native format with the source file path identified, where available. For content subject to a claim of privilege or work product, the producing party must include a log to the receiving party, as specified below in Section III.A. Privilege Log.

k. Exceptions File: Email attachments that encounter an error during data processing will be identified, by a field in the load file, by a tiff image slip sheet, bearing a Bates number, the name of the native file and confidentiality designation, if applicable, will be inserted and the file will be designated as an exception file.

l. Color: If an original document contains color, the responding party shall not deny reasonable requests for color copies of the original.

m. Duplicates: The Parties agree to de-duplicate only within a custodian's files. To the extent that a producing party elects to globally de-duplicate documents, the producing party shall, in an identifiable field in the applicable load file, list all custodians of the duplicate documents. For purposes of this agreement, "duplicate" documents shall mean documents that are completely identical in visible content, metadata, and "hidden" content such as comments and tracked changes.

B. PRODUCTION OF SEARCH AND CULLING TERMS

1. Each Defendant shall provide to Plaintiffs a list of the search and culling terms used by that Defendant to cull and collect potentially responsive ESI for review and possible

production. Plaintiffs will review the documents produced by each Defendant. If, after any Defendant completes its production of documents, a Plaintiff believes a deficiency exists with respect to the production by a Defendant against whom Plaintiff has asserted a cause of action in its Short Form Complaint, that Plaintiff will identify the perceived production deficiency to that Defendant, in writing. Within seven (7) business days after any particular Defendant receives such a written notice of perceived production deficiency, that Defendant's counsel will meet and confer with that Plaintiff(s)' counsel to discuss the perceived deficiency and to attempt to resolve the issue(s) identified by Plaintiff(s). If those parties are unable to resolve the issue(s) raised by the Plaintiff(s)' written notice of production deficiencies through the meet and confer process, the Plaintiff(s) may seek appropriate relief from the Court.

PRODUCTION OF HARD COPY DOCUMENTS

1. Production Format of Hard Copy Documents: The Parties agree that all responsive hard copy documents shall be produced in the following formats:

a. TIFFs: All images shall be delivered in single-page Group IV TIFF format and at least 300 dpi resolution. Image file names shall not contain spaces or punctuation. To the extent that the imaging conversion process results in degradation in appearance from the underlying original, the producing party agrees to also make available the original document(s) upon the reasonable request of the receiving party.

b. Unique IDs: Each image should have a unique file name with the Bates number assigned to it. The Bates number will include a prefix using at least three alpha characters representing the responding party and eight digits without any spaces or punctuation, i.e., ABC50000001. Documents that exist in native format shall be differentiated from those

available only in hard copy by an identifiable numerical digit immediately following the alphabetic prefix (e.g., ABC00000001 for native documents, and ABC50000001 for hard copy documents). Where applicable, a confidentiality notice will be placed on the page image in a manner that does not conceal or interfere with any information contained on the page. No other stamp or information will be placed on a document other than Bates number, confidentiality notice, and any redactions.

c. OCR: Best available multipage OCR text should be provided. If the quality of the OCR is such that it needs to be redone, as permitted by the quality of the underlying document, it will be redone by the producing party or at the expense of the producing party. Each text file should match the respective TIFF filename with the exception of the file extension (".txt"). (".txt format").

d. Database Load File/Cross-Reference Files: Documents should be provided in load file formats compatible with Concordance or Summation, and Opticon or IPRO, identified in Section II.A.1.e. above.

e. Unitizing of Documents: In scanning hard copy documents, distinct documents shall not be merged into a single record, and single documents shall not be split into multiple records (i.e., hard copy documents should be logically unitized).

f. Parent-Child Relationships: Parent-child relationships (the association between an attachment and its parent document) shall be preserved. The database load files (*infra*) shall, for each parent document, identify by Bates number each attachment thereto, and shall, for each attached document, identify by Bates number the applicable parent document.

g. Objective Coding: The Parties shall provide the following objective coding fields, to the extent available:

1. Beginning Bates Number
2. Ending Bates Number
3. Beginning Attachment Number(s) (if applicable)
4. Parent Number (if applicable)
5. Source/Custodian

h. Objective Coding Format: The Parties shall provide the aforementioned objective coding fields in the following format:

1. Fields should be Pipe delimited.
2. String values within the file should be enclosed with Carats (^). The producing party shall not include Carats in the load file other than those used to delimit string values.
3. Multiple entries in a field should have a semi-colon (;) delimiter.
4. The first line should contain metadata headers and below the first line there should be exactly only one line for each document.
5. Each field row must contain the same amount of fields as the header row.

i. Metadata: To the extent a party that elects to produce a document in image format that was originally available to the party in native format, the party shall provide all applicable metadata described above at Section II.A.1.f., to the extent available.

j. Color: If an original document contains color, the responding party shall not deny reasonable requests for color copies of the original.

C. PRODUCTION OF DOCUMENTS FROM PRIOR LITIGATIONS

1. Defendants shall produce copies of responsive company documents produced by that Defendant in any Reglan®/metoclopramide litigation that was pending at or prior to the time that the *In Re Reglan®/Metoclopramide Litigation*, No. 1997, Court of Common Pleas Philadelphia County, was commenced. Defendants shall produce such documents in the same manner and format as they were produced in those prior litigations. Plaintiffs reserve the right to request additional metadata of the kind referenced in Section II.A.1.f. above, to the extent available. Defendants shall comply with all reasonable requests for available metadata from documents produced pursuant to this sub-section.

D. DELIVERY OF DOCUMENTS

1. All documents produced electronically by Defendants shall be made available to Marc Grossman at Sanders Viener Grossman, LLP, 100 Herricks Road, Mineola, New York 11501 or his designee. The Defendants may produce their electronic document production to Marc Grossman at Sanders Viener Grossman, LLP, 100 Herricks Road, Mineola, New York 11501 or his designee, on a series of clearly labeled CD, DVD, hard drive, or other agreed upon media.

E. REDACTION OF DOCUMENTS

1. The Parties may redact portions of documents that contain (i) the identity of products other than Reglan® / Metoclopramide; (ii) information that is subject to a claim of privilege or the work-product doctrine; (iii) trade secrets specifying the chemical structure or composition of or trade secrets involving the manufacture, production or quality control processes for Reglan® / Metoclopramide; (iv) HIPAA protected information that is private or personal, including, but not limited to Social Security numbers, dates of birth, or

names/addresses of patients; and (v) information which a Party is not permitted to disclose under FDA regulations.

2. For each redaction, the party making such redaction shall provide the reasoning regarding the redaction upon the reasonable request of the receiving party.

3. For redactions upon which privilege or work product is claimed, the redacting party shall provide a log to the receiving party, as specified below in Section III.A. Privilege Log. An exemplar log for the parties to follow is attached as Exhibit "A."

4. Any failure to redact information described above does not waive any right to claims of privilege or privacy, or any objection, including to relevancy, as to the specific document or any other document that is or will be produced by the Parties as set forth in Section IV. Inadvertent Production of Documents.

E. <u>DATABASES</u>

1. Prior to production of any database not already identified for production in this Order, the Parties will meet and confer regarding the discoverability and feasibility of any request for production of a database including the form and content of any such production. Defendants will make reasonable effort to produce Reglan®/Metoclopramide related data from electronic databases that use or are exportable to generally available software in native format (including data and schema or other appropriate form of production, such as exporting to Excel or .csv format) where practical and feasible. Where such production is not practical or feasible, the Parties will confer upon an appropriate form of production. The Court's assistance regarding the discoverability, form and scope of production of data may only be sought after the Parties have failed to reach agreement after good faith discussion.

F. <u>TRANSLATED DOCUMENTS</u>

1. If any document produced by Defendants has an English language translation in the custodial or source file from which the document was produced, Defendants will produce both the original non-English document as well as the translation.

E. REPLACEMENT DOCUMENTS

1. If a file or other document requires replacement, the producing party shall identify such file or document by appending an "R" to the bates number accompanying such replacement (e.g., ABC0000000001- R for native documents and ABC50000001-R for hard copy documents). The producing party shall also identify such replacement files or documents in the cover letter accompanying such production.

III. THE PARTIES' PRIVILEGED DOCUMENTS

A. PRIVILEGE LOG

1. If any party declines to produce a requested document or material, in full or in part, on the ground of the attorney work-product doctrine, the attorney client privilege, or other legal privilege, the party must specify in writing, as to each document or thing not produced, the specific privilege(s) or doctrine(s) relied upon to withhold each document ("Privilege Log") along with sufficient facts which set forth the basis of the privilege.

2. Each Privilege Log shall describe each document or thing to which a privilege or doctrine is asserted in such detail to reasonably permit the party seeking discovery to assess whether to dispute the assertion. Such details include, but are not limited to:

a. The custodial file;

b. The beginning and ending bates number of the document, *i.e.* ABC900000001;

c. The document date;

d. Author;

e. Recipient;

f. CC;

g. BCC;

h. Title/Employer (as applied to d. through g., above);

i. Specification of the privilege claimed;

j. A description of the document; and

k. The basis for the privilege claim;

3. The Parties will produce Privilege Logs in Microsoft Excel format or a similar electronic format that allows for text searching and organization of data.

4. A party will produce a Privilege Log within forty-five (45) days of its production of documents for which any privilege is asserted to apply, and within the same time period following any subsequent or rolling productions.

5. Subsequently produced privilege logs will incorporate by reference prior privilege logs and will not be duplicative.

6. If a party produces a document that was previously identified in a privilege log, the party will do so separately from the rolling production and provide a key in Excel format which identifies the privilege bates number and new bates number if they differ.

IV. THE PARTIES' INADVERTENT PRODUCTION OF PRIVILEGED DOCUMENTS

A. INADVERTENTLY PRODUCED PRIVILEGED DOCUMENTS

1. Inadvertent production of documents (hereinafter, "Inadvertently Produced Documents") subject to attorney work-product doctrine, the attorney-client privilege, or other legal privilege protecting information from discovery shall not constitute a waiver of the doctrine

or privilege, provided that the producing party shall notify the receiving party in writing within fourteen (14) days of the producing party's determination of Inadvertently Produced Documents. If such notification is made, such Inadvertently Produced Documents and all copies thereof shall, upon request, be returned to the producing party, all notes or other work product of the receiving party reflecting the contents of such materials shall be destroyed, and such returned or destroyed material shall be deleted from any litigation support or other database. If the receiving party elects to file a motion pursuant to Section IV(A)(3) below, the receiving party, subject to the requirements of Section IV(A)(2), may retain possession of the Inadvertently Produced Documents as well as any notes or other work product of the receiving party reflecting the contents of such materials pending the resolution by the Court of the Section IV(A)(3) motion. If the receiving party's Section IV(A)(3) motion is denied, the receiving party shall promptly comply with the immediately preceding provisions of this Section.

2. No use shall be made of Inadvertently Produced Documents properly noticed under this Section, including during depositions or at trial, until ruled upon by the Court. Nor shall they be disclosed to anyone who was not given access to them prior to the request to return or destroy them. To be properly noticed as Inadvertently Produced Documents under this Section, the notice must be given prior to the document being introduced into evidence.

a. Documents introduced at a deposition that are noticed because a party has inadvertently failed to designate the documents as confidential will not interrupt the line of questioning of the witness. Notice given on the record during the deposition will constitute that all prior and further questioning on the subject will

be designated as confidential without further written notice of the inadvertently producing party.

b. Documents introduced at a deposition that are noticed because a party has inadvertently failed to claim that the documents are protected from disclosure by the attorney work-product doctrine, the attorney-client privilege, or any other applicable legal privilege, will pause the line of questioning of the witness, in order for the Parties to contact the Court to seek a ruling as to the noticing party's assertion of doctrine or privilege. If the Court determines that the document is not protected by any doctrine or privilege, the questioning party may continue the line of questioning of the witness. However, if the Court determines that the document is protected, the line of questioning of the witness must end.

3. The party receiving such Inadvertently Produced Documents may, after receipt of the producing party's notice of Inadvertently Produced Documents, move the Court to dispute the claim of doctrine or privilege; however to protect the asserted doctrine or privilege, the claimed Inadvertently Produced Documents will be produced only for in camera review. It shall be the receiving party's burden to provide the Court with a complete copy of the Inadvertently Produced Documents for review.

SO ORDERED

Carol E Higbee

HONORABLE ~~JUSTICE~~ Judge HIGBEE

Date Jan 11, 2011

EXHIBIT A

Beg Bates Number	End Bates Number	Attachment Bates Number (beg)	Attachment Bates Number (end)	Parent (P)/Child (C)	Doc Date (MM,DD, YYYY)	Custodian	From	To	CC	BCC	Title/Employer for all entities listed in From/To/CC/ BCC	Privilege Category (e.g. Attorney Client, Work Product)	Narrative Description (must include the document title and document type)	Withheld/ Redacted
WYE90000001	WYE90000002			P	1/1/2001	Mac the Knife	Cleopatra	Denis, Able; George Brown	Mac the Knife	Jeremiah Bullfrog	Mac the Knife, VP Sales, Wyeth Cleopatra, Counsel, ABC Law Firm Able Denis, Sales Rep, Wyeth George Brown, Regional VP, Wyeth Jeremiah Bullfrog, General Counsel, Wyeth	AC	Email attaching Meeting Minutes of yearly sales force meeting where information was obtained in order to render legal advice	W
WYE90000001	WYE90000002	WYE90000003	WYE90000004	C	1/1/2001	Mac the Knife					Mac the Knife, VP Sales, Wyeth	AC	Meeting Minutes of yearly sales force meeting where information was obtained in order to render legal advice	W
WYE90000005	WYE90000007				1/1/2001	Mac the Knife	Cleopatra	Mac the Knife	Wyeth Sales Group	Jeremiah Bullfrog	Mac the Knife, VP Sales, Wyeth Cleopatra, Counsel, ABC Law Firm Jeremiah Bullfrog, General Counsel, Wyeth	AC	Communications to sales force regarding the legal requirements as to such	W
WYE00000001	WYE00000003			P	1/1/2001	Mac the Knife	Cleopatra	Wyeth Sales Group; Wyeth Worldwide Marketing	Mac the Knife	Jeremiah Bullfrog	Mac the Knife, VP Sales, Wyeth Cleopatra, Counsel, ABC Law Firm Jeremiah Bullfrog, General Counsel, Wyeth	AC	Title is privileged because it contains the request for legal advice and the communications within the document are privileged as the request for legal advice is communicated within the memo	R
WYE00000001	WYE00000003	WYE00000004	WYE00000005	C										