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JAN 11 2011
ATLANTIC COUNTY
LAW DIVISION

IN RE: REGLAN LITIGATION	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ATLANTIC COUNTY CASE NO. 289 MASTER DOCKET: ATL-L-3865-10 CT CIVIL ACTION CASE MANAGEMENT ORDER NO. 8

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

I. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in these actions are likely to involve the production of confidential, proprietary, commercially sensitive or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulation and Proposed Protective Order (herein after referred to as "Protective Order" or "Order"). The parties acknowledge that this Protective Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge that this Protective Order creates no entitlement to file confidential information under seal.

II. SCOPE OF ORDER

1. This Protective Order shall govern all hard copy and electronic materials, the information contained therein, and all other information produced or disclosed, either informally or in response to formal discovery requests, during this proceeding, including all copies,

excerpts, summaries, or compilations thereof, whether revealed in a document, deposition, other testimony, discovery response or otherwise, by any Party to this proceeding (the "Producing Party") to any other party or parties (the "Receiving Party"). This Protective Order is binding upon all the Parties to this proceeding, including their respective corporate parents, subsidiaries and affiliates and their respective attorneys, principals, agents, experts, consultants, representatives, directors, officers, and employees, and others as set forth in this Protective Order.

2. The entry of this Protective Order does not preclude any party from seeking a further order of this Court pursuant to New Jersey statutes and laws.

3. Nothing herein shall be construed to affect in any manner the admissibility at trial or any other court proceeding of any document, testimony, or other evidence.

4. This Protective Order does not confer blanket protection on all disclosures or responses to discovery and the protection it affords extends only to the specific information or items that are entitled to protection under the applicable legal principles for treatment as confidential.

5. New Jersey statutes and rules shall govern the filing of documents under seal and this Protective Order shall in no way be interpreted to affect any request by any party relating thereto.

III. DEFINITIONS

6. Party: "Party" means any of the parties in this Litigation who at the time this Protective Order is entered are in the business of manufacturing and/or distributing Reglan and/or metoclopramide, including officers and directors of such parties. If additional parties are added other than parents, subsidiaries or affiliates of current parties to this Litigation, then their

ability to receive Confidential Information as set forth in this Protective Order will be subject to them being bound, by agreement of Court Order, to this Protective Order.

7. Discovery Material: "Discovery Material" means any information, document, or tangible thing, response to discovery requests, deposition testimony or transcript, and any other similar materials, or portions thereof. To the extent that matter stored or recorded in the form or electronic or magnetic media (including information, files, databases, or programs stored on any digital or analog machine-readable device, computers, Internet sites, discs, networks, or tapes) ("Computerized Material") is produced by any Party in such form, the Producing Party may designate such matters as confidential by a designation of "CONFIDENTIAL" on the media. Whenever any Party to whom Computerized Material designated as "CONFIDENTIAL" is produced reduces such material to hardcopy form, that Party shall mark the hardcopy form with the corresponding "CONFIDENTIAL" designation.

8. Confidential Information: "Confidential Information" is defined herein as information that the Producing Party in good faith believes constitutes, reflects, discloses, or contains information subject to protection, whether it is a document, information contained in a document, information revealed during a deposition or other testimony, information revealed in an interrogatory response, or information otherwise revealed. In designating discovery materials as Confidential Information, the Producing Party shall do so in good faith consistent with the provisions of this Protective Order and rulings of the Court. Nothing herein shall be construed to allow for global designations of all documents or discovery responses as "CONFIDENTIAL."

9. Receiving Party: "Receiving Party" means a Party to this Litigation, and all employees, agents and directors (other than Counsel) of the Party that receives Discovery Material from a Producing Party.

10. Producing Party: "Producing Party" means a Party to this Litigation, and all directors, employees and agents (other than Counsel) of the Party who makes available Discovery Material to a Receiving Party.

11. Protected Material: "Protected Material" means any Discovery Material, and any copies, abstracts, summaries, or information derived from such Discovery Material, and any notes or other records regarding the contents of such Discovery Material, which is designated as "CONFIDENTIAL" in accordance with this Protective Order.

12. Outside Counsel: "Outside Counsel" means any law firm or attorney who represents a party, or parties, in this litigation, and their respective support staff, including secretarial and other assistants.

13. In-House Counsel: "In-House Counsel" means an attorney employee of a party in this litigation.

14. Counsel: ""Counsel," without another qualifier, means Outside Counsel and In-House Counsel.

15. Independent Expert: "Independent Expert" means an expert and/or independent consultant formally retained, and/or employed to advise or to assist Counsel in the preparation and/or trial of this Litigation, and their staff whom it is necessary to disclose Confidential Information for the purpose of this Litigation.

16. This Litigation: "This Litigation" means the action styled In Re: REGLAN® LITIGATION, Superior Court of New Jersey, Case No. 289, Master Docket No.: ATL-L-3865-10 CT.

IV. DESIGNATION AND REDACTION OF CONFIDENTIAL INFORMATION

17. For each document produced by the Producing Party that contains or constitutes Confidential Information pursuant to this Protective Order, each page shall be marked "CONFIDENTIAL–SUBJECT TO PROTECTIVE ORDER" or a comparable notice.

18. Specific discovery responses produced by the Producing Party shall, if appropriate, be designated as Confidential Information by marking the pages of the document that contain such information with the notation "CONFIDENTIAL–SUBJECT TO PROTECTIVE ORDER" or a comparable notice.

19. Information disclosed at a deposition taken in connection with this Litigation may be designated as Confidential Information. The designation of confidentiality may be made on the record at the time of the deposition, at which time the testimony and transcript thereof shall be subject to the full protection of this Protective Order. Within ten (10) days after the completion of the deposition, counsel for the party asserting confidentiality shall clarify all portions to which it claims confidentiality by designating the portions of the transcript containing Confidential Information in a letter to be served on the court reporter and counsel for the parties. Once the Confidential Information has been identified that portion of the testimony and transcript thereof shall be subject to the full protection of this Protective Order. During the ten-day period, the testimony will be treated as though it had been designated as "CONFIDENTIAL" pursuant to the terms of this Protective Order. If the Producing Party does not serve a designation letter within the ten-day period, then the entire transcript will be deemed not to contain Confidential Information.

20. This Protective Order shall not be construed to protect from production or to permit the "Confidential Information" designation of any document that (a) the party has not

made reasonable efforts to keep confidential, or (b) is at the time of production or disclosure, or subsequently becomes, through no wrongful act on the part of the Receiving Party, generally available to the public through publication or otherwise.

V. ACCESS TO CONFIDENTIAL INFORMATION

21. In the absence of written permission from the Producing Party or an order of the Court, any Confidential Information produced in accordance with the provisions of this Protective Order shall be used solely for purposes of this Litigation (except as provided by (f) and (i) below) and its contents shall not be disclosed to any person other than:

(a) The Receiving Party;

(b) Outside Counsel and In-House Counsel, and the attorneys, paralegals, stenographic, and clerical staff employed by such counsel;

(c) Deposition videographers, stenographic employees and court reporters recording or transcribing testimony in this Litigation;

(d) The Court, any Special Master appointed by the Court, and any members of their staffs to whom it is necessary to disclose the information;

(e) Formally retained independent experts and/or consultants, subject to the provisions of Paragraph 23;

(f) Counsel for claimants in other pending litigation alleging personal injury or economic loss arising from the use of Reglan® /Metoclopramide manufactured and marketed by Defendants for use in this or such other action in which the Producing Party is a Defendant in that litigation, provided that the proposed recipient is: (i) already operating under a STIPULATED protective order(s) governing the use of Confidential Information, which will be

provided to Plaintiffs' counsel prior to the disclosure of Confidential Information, or (ii) agrees to be bound by this Protective Order and signs an acnknowledgment described in Paragraph 22;

(g) Any individual(s) who authored, prepared or previously received the

(h) Vendor agents retained by the parties or counsel for the parties;

(i) Plaintiffs counsel of record to any Plaintiff with a case pending in the coordinated action in the Court of Common Pleas located in Philadelphia, PA, or the Superior Court of California, County of San Francisco, shall be permitted to receive the Confidential Information of any Producing Party regardless of whether that attorney is counsel of record in any individual action against the Producing Party and there shall be no need for such counsel to execute such acknowledgement because such counsel is bound by the terms of the Protective Order in that litigation;

(j) Plaintiffs' prescribing and treating medical practitioners; and

(k) Any witness or prospective witness in this Litigation.

VI. CONFIDENTIALITY ACKNOWLEDGEMENT

22. Prior to the disclosure of any Confidential Information to any person identified above, each putative recipient of Confidential Information shall be provided with an abbreviated copy of this Protective Order consisting of Paragraphs 1 and 22 through 23. Upon reading such abbreviated copy, such person shall sign an Acknowledgment, in the form annexed hereto as Exhibit A, acknowledging that he or she has read the abbreviated copy of this Protective Order. Outside Counsel to the parties in this matter, the Court, and the Court's staff, court reporter(s), and deposition videographers, are not required to sign an acknowledgement. These Acknowledgments are strictly confidential. Counsel for each Party shall maintain the Acknowledgments without giving copies to the other side. The parties expressly agree, and it is

hereby ordered that, except in the event of a violation of this Protective Order, there will be no attempt to seek copies of the Acknowledgments or to determine the identities of persons signing them. If the Court finds that any disclosure is necessary to investigate a violation of this Protective Order, such disclosure will be pursuant to separate court order. Persons who come into contact with Confidential Information for clerical or administrative purposes, and who do not retain copies or extracts thereof, are not required to execute Acknowledgements but must comply with the terms of this Protective Order.

23. Notwithstanding the requirement for the signing of a Confidentiality Acknowledgement as described above, despite reasonable efforts to obtain a signed Acknowledgement, if a treating physician is unwilling to sign Exhibit A to this Protective Order they may still be shown Confidential Information provided that the witness does not retain any copies of the Confidential Information. At any deposition of the treating physician, any party's counsel may request that the treating physician agree on the record that he or she will maintain the confidentiality of any Confidential Information shown or revealed at the deposition. If the treating physician does not so agree, then the treating physician shall not be allowed to retain copies of any Confidential Discovery Information, and may only review such information at the Court Reporter's office or the office of a party's attorney who has executed a Confidentiality Acknowledgment within the limited time period for reading, correcting and signing the deposition pursuant to New Jersey rules. Deposition testimony relating to any confidential information may, at the discretion of the party producing the confidential information, be designated as "CONFIDENTIAL" and protected testimony as set forth above.

VII. HANDLING OF CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION DURING SWORN TESTIMONY

24. The handling of confidential information during sworn testimony shall be addressed by a separate order.

VIII. PROTECTION AND USE OF CONFIDENTIAL INFORMATION

25. Persons receiving or having knowledge of Confidential Information by virtue of their participation in this Litigation, or by virtue of obtaining any documents or other Protected Material produced or disclosed pursuant to this Protective Order, shall use and disclose that Confidential Information only as permitted by this Protective Order.

26. Nothing herein shall restrict a person qualified to receive Confidential Information pursuant to this Protective Order from making working copies, abstracts, digests and analyses of such information for use in connection with this Litigation and such working copies, abstracts, digests and analyses shall be deemed to have the same level of protection under the terms of this Protective Order. Further, nothing herein shall restrict a qualified recipient from converting or translating such information into machine-readable form for incorporation in a data retrieval system used in connection with this Litigation, provided that access to such information, in whatever form stored or reproduced, shall be deemed to have the same level of protection under the terms of this Protective Order. However, nothing in this Protective Order requires the Receiving Party's Counsel to disclose work product at the conclusion of the case.

27. Nothing contained in this Protective Order shall preclude any Party from using its own Confidential Information in any manner it sees fit, without prior consent of any Party or the Court.

28. To the extent that a Producing Party uses or discloses to a third party its designated confidential information in a manner that causes the information to lose its confidential status, the Receiving Party is entitled to notice of the Producing Party's use of the

confidential information in such a manner that the information has lost its confidentiality, and the Receiving Party may also use the information in the same manner as the Producing Party.

29. Confidential documents or information produced by Defendants in other litigation in the United States can be used by plaintiffs' counsel pursuant to the terms of this Protective Order. All documents or information so produced shall remain subject in all respects to all protections provided by this Protective Order even though they have not been designated with the specific markings described in paragraph II.A. Documents or information stamped as or otherwise marked as "confidential" in prior litigation shall suffice. Their contents or existence shall not be disclosed by plaintiffs or co-defendant(s) except as provided in this Protective Order. The foregoing provision does not apply to documents no longer considered confidential.

IX. THIRD PARTY REQUEST FOR CONFIDENTIAL MATERIAL

30. If Confidential Discovery Material in the possession of a receiving party is subpoenaed or requested by any court, administrative or legislative body, or any other person or organization purporting to have authority to subpoena or request such data or information, the party to whom the subpoena or request is directed shall not, to the extent permitted by applicable law, provide or otherwise disclose such documents or information without waiting five (5) days after first notifying counsel for the producing party in writing of: (1) the information and documentation which is requested for production in the subpoena or request; (2) the date on which compliance with the subpoena or request is sought; (3) the location at which compliance with the subpoena or request is sought; (4) the identity of the party serving the subpoena or making the request; and (5) the case name, jurisdiction, and index, docket, complaint charge, civil action or other identification number or designation identifying the litigation, administrative proceeding, or other proceeding in which the subpoena or request has been issued.

X. RETURN OF DOCUMENTS AND INFORMATION

31. Copies of documents and information produced by a party to this Litigation may remain in the possession of the Plaintiff's attorney and other counsel as outline in section IV throughout the pendency of any Reglan® /Metoclopramide cases that attorney has filed. Within thirty (30) days after the conclusion of the last Reglan® /Metoclopramide cases filed by an attorney against the Producing Defendant, even if that case is not included in this Litigation, including any appeals related thereto, such attorney shall either return all the documents and information to the Producing Party at a location selected by the producing defendant and at the Producing Party's expense, or produce an affidavit executed by the Plaintiffs' attorney indicating that all of the documents from the Producing Party have been destroyed or will be destroyed within a reasonable time. However, Counsel may retain their privileged communications, work product, Acknowledgments pursuant to this Protective Order, materials required to be retained pursuant to applicable law, and all court-filed documents even though they contain Discovery Materials produced by the Producing Party, but such retained materials shall remain subject to the terms of this Protective Order.

XI. INADVERTENT OR UNINTENTIONAL DISCLOSURE

32. Any inadvertent or unintentional disclosure of confidential and proprietary material will not be construed as a waiver, in whole or in part, of (1) the producing party's claims of confidentiality either as to the specific information inadvertently or unintentionally disclosed or as to any other confidential material disclosed prior to or after that date, or (2) the producing party's right to designate said material as confidential material pursuant to this Protective Order. This Protective Order does not in any way deprive a party of its right to contest the producing party's claims to protection for confidential, proprietary, and trade secret information. Nor does

this Protective Order in any way deprive the producing party of its right to claim that such information should be protected from disclosure. Production of documents or information pursuant to this Protective Order shall not be construed as a waiver of any sort by the parties.

XII. CHALLENGE TO DESIGNATION

33. A Receiving Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed. A Receiving Party may challenge a Producing Party's confidentiality designation or by notifying the Producing Party, in writing or voice-to-voice dialogue, of its good faith belief that the confidentiality designation was not proper and must give the Producing Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain, in writing within ten (10) days, the basis of the chosen designation. If a Receiving Party elects to press a challenge to a confidentiality designation after considering the justification offered by the Producing Party, the receiving party shall, in writing, notify the producing party that a resolution cannot be reached regarding the confidentiality designation of a document, then the Producing Party shall, within ten (10) days of receiving such notice from the Receiving Party, file and serve a motion that identifies the challenged material and sets forth in detail the basis for the "CONFIDENTIAL" designation. The burden of persuasion in any such challenge proceeding shall be on the Producing Party. Until the Court rules on the challenge, all Parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation. If after the expiration of the fifteen (15) days the Producing Party has not filed a motion with the Court, the designation of the document subject to the dispute regarding its "CONFIDENTIAL" designation will be

automatically changed. If a document was originally designated as "CONFIDENTIAL," the "CONFIDENTIAL" designation will be removed.

XIV. MISCELLANEOUS PROVISIONS

34. Nothing in this Protective Order shall abridge the right of any person to seek judicial review or to pursue other appropriate judicial action to seek a modification or amendment of this Protective Order.

35. In the event anyone shall violate or threaten to violate the terms of this Protective Order, the Producing Party may immediately apply to obtain injunctive relief against any person violating or threatening to violate any of the terms of this Protective Order, and in the event the Producing Party shall do so, the respondent person, subject to the provisions of this Protective Order, shall not employ as a defense thereto the claim that the Producing Party possesses an adequate remedy at law.

36. This Protective Order shall not be construed as waiving any right to assert a claim of privilege, relevance, or other grounds for not producing Discovery Material called for, and access to such Discovery Material shall be only as provided for by separate agreement of the Parties or by the Court.

37. It is expressly understood by and between the Parties that in producing Confidential Information in this Litigation, the Parties shall be relying upon the terms and conditions of this Protective Order.

38. This Protective Order may be amended without leave of the Court by agreement of Outside Counsel for the Parties in the form of a written stipulation filed with the Court. The Protective Order shall continue in force until amended or superseded by express order of the Court, and shall survive and remain in effect after the termination of this Litigation.

IT IS SO ORDERED:

Dated: Jun 11, 2011

Honorable Carol E. Higbee, P.J. CV.

EXHIBIT A
ACKNOWLEDGEMENT

Dear _____:

Please be advised that any documents provided to you or shown to you that are stamped "CONFIDENTIAL – SUBJECT TO AGREED PROTECTIVE ORDER" are being provided to you pursuant to Case Management Order No. 8, Protective Order of Confidentiality as Between Plaintiffs and Defendants_____, signed by the Honorable Carol E. Higbee, P.J. Cv. on [**DATE**] in the *In Re: Reglan Litigation*, Case No. 289, Master Docket No.: ATL-L-3865-10 CT (N.J. Sup. Ct., Atlantic County) ("Order").

Pursuant to the terms of the Order (abbreviated copy set forth below), you are prohibited from copying and/or disseminating these documents and/or materials in any form, including in hard copy, electronically, or by verbally communicating any information contained therein, to anyone.. If you do not agree to abide by these restrictions, please return the enclosed documents and/or materials to me immediately. Otherwise, please return them to my office at the conclusion of this litigation. Thank you for your cooperation.

Very truly yours,

[Plaintiffs' counsel of record]

ABBREVIATED PROTECTIVE ORDER

1. This Protective Order shall govern all hard copy and electronic materials, the information contained therein, and all other information produced or disclosed, either informally or in response to formal discovery requests, during this proceeding, including all copies, excerpts, summaries, or compilations thereof, whether revealed in a document, deposition, other testimony, discovery response or otherwise, by any Party to this proceeding (the "Producing Party") to any other party or parties (the "Receiving Party"). This Protective Order is binding upon all the Parties to this proceeding, including their respective corporate parents, subsidiaries and affiliates and their respective attorneys, principals, agents, experts, consultants,

representatives, directors, officers, and employees, and others as set forth in this Protective Order.

22. Prior to the disclosure of any Confidential Information to any person identified above, each putative recipient of Confidential Information shall be provided with an abbreviated copy of this Protective Order consisting of Paragraphs 1 and 22 through 23. Upon reading such abbreviated copy, such person shall sign an Acknowledgment, in the form annexed hereto as Exhibit A, acknowledging that he or she has read the abbreviated copy of this Protective Order. Outside Counsel to the parties in this matter, the Court, and the Court's staff, court reporter(s), and deposition videographers, are not required to sign an acknowledgement. These Acknowledgments are strictly confidential. Counsel for each Party shall maintain the Acknowledgments without giving copies to the other side. The parties expressly agree, and it is hereby ordered that, except in the event of a violation of this Protective Order, there will be no attempt to seek copies of the Acknowledgments or to determine the identities of persons signing them. If the Court finds that any disclosure is necessary to investigate a violation of this Protective Order, such disclosure will be pursuant to separate court order. Persons who come into contact with Confidential Information for clerical or administrative purposes, and who do not retain copies or extracts thereof, are not required to execute Acknowledgements but must comply with the terms of this Protective Order.

23. Notwithstanding the requirement for the signing of a Confidentiality Acknowledgement as described above, despite reasonable efforts to obtain a signed Acknowledgement, if a treating physician is unwilling to sign Exhibit A to this Protective Order they may still be shown Confidential Information provided that the witness does not retain any copies of the Confidential Information. At any deposition of the treating physician, any party's

counsel may request that the treating physician agree on the record that he or she will maintain the confidentiality of any Confidential Information shown or revealed at the deposition. If the treating physician does not so agree, then the treating physician shall not be allowed to retain copies of any Confidential Discovery Information, and may only review such information at the Court Reporter's office or the office of a party's attorney who has executed a Confidentiality Acknowledgment within the limited time period for reading, correcting and signing the deposition pursuant to New Jersey rules. Deposition testimony relating to any confidential information may, at the discretion of the party producing the confidential information, be designated as "CONFIDENTIAL" and protected testimony as set forth above.