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NOV 25 2009

J. STEWART

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, CIVIL TRIAL DIVISION

IN RE: YAZ®/YASMIN®/OCELLA®
PRODUCT LIABILITY LITIGATION

Applicable to all cases

SEPTEMBER TERM, 2009

NO. ~~1309~~ 1307

In Re: Yaz/Yazmin/Ocella Litigation-CMOIS



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CASE MANAGEMENT ORDER NO. 2

CONSENT ORDER REGARDING THE PRESERVATION OF DOCUMENTS AND
ELECTRONICALLY STORED INFORMATION

This matter, having been opened to the Court by counsel for the Parties, and the Parties having consented, stipulated and agreed to entry of the within Consent Order, and good cause appearing therefore;

IT IS, on this 24th day of NOV, 2009, hereby **ORDERED** as follows:

I. GENERAL

This Order governs the preservation of potentially relevant documents, data, and tangible things within the Parties' possession, custody and/or control relevant to allegations and defenses and/or that may lead to the discovery of admissible evidence, in cases filed in or consolidated before this Court as components of *In re Yaz®/Yasmin®/Ocella® Litigations*, Philadelphia Court of Common Pleas, September Term 2009, No. 1309 and to every action that is or will in the future become a part thereof (collectively "the Litigation").

II. DEFINITIONS

A. As used herein, "*Documents, Data, and Tangible Things*" shall be interpreted broadly to include electronically stored information ("ESI") on hard drives, USB or thumb drives, databases, computers, handheld devices, floppy disks, CD-ROM, magnetic tape,

optical disks, or other devices for digital data storage or transmittal. No Party is under an obligation to preserve voicemail or instant messages.

B. As used herein, “*Preservation*” shall be interpreted to accomplish the goal of maintaining the integrity of potentially relevant documents, data, and tangible things and shall include taking reasonable steps to prevent the partial or full destruction, alteration, shredding, or deletion of such materials. Provided that reasonable steps have otherwise been taken to preserve potentially relevant materials in accordance with this Order, the Parties may continue the practice of rewriting and/or reusing backup tapes and media.

C. As used herein the terms, “*Yaz*” and “*Yasmin*,” and/or “*the drug(s)*” means Defendants’ oral contraceptive products containing drospirenone and ethinyl estradiol known as Yasmin® and YAZ® (marketed under these names or other names), and the generic equivalent sold by a party other than Defendants under the name Ocella®. Additionally, “the drugs” is further defined to include Defendants’ other products that contain drospirenone (“other DRSP products”) whether on the market currently or in development.

III. Defendants are not obligated to preserve materials relating to any other products except as set forth in paragraph II (C). This Order shall not be construed as any admission or agreement by Defendants that documents or information relating to other DRSP products are a proper subject of discovery. Defendants do not waive and expressly retain all rights to object to discovery relating to other DRSP products. In the event Plaintiffs seek discovery of other DRSP products, Defendants may object and any such objections shall be resolved according to the rules of civil procedure governing *the Litigation*.

IV. GENERAL PRESERVATION OBLIGATIONS – ALL PARTIES

A. All Parties shall take reasonable steps, including the dissemination of Legal Hold Notices to all employees and/or departments likely to possess information relating to Yaz®/Yasmin®/Ocella® defenses and the claims at issue in this action, to ensure the preservation of documents, data, and tangible things that are reasonably likely to be the subject of discovery in *the Litigation*.

V. PLAINTIFFS’ OBLIGATIONS

A. The preservation activities set forth below satisfy the preservation obligations of the Plaintiffs in *the Litigation*:

- (1) Preserve all potentially relevant documents, data, and tangible things in their possession concerning “Yaz” and “Yasmin,” and/or “*the drug(s)*”, and all Yaz®/Yasmin®/Ocella® labels, bottles, product packaging, and containers, of any kind.
- (2) Preserve the contents of the hard drives of those Plaintiffs, or those under their control, who may reasonably possess potentially relevant ESI or documents related to their use of Yaz®/Yasmin®/Ocella® or their injuries alleged to be related to Yaz®/Yasmin®/Ocella®. This obligation does not require subsequent copies of hard drives, if copied, for preservation purposes and,
- (3) Preserve potentially relevant ESI on any removable media containing information related to their use of Yaz®/Yasmin®/Ocella® or their injuries alleged to be related to Yaz®/Yasmin®/Ocella®, and,
- (4) Preserve all medical and pharmacy records in their possession and records of medical expenses allegedly incurred in connection with use of Yaz®/Yasmin®/Ocella®.

VI. ACCEPTABLE METHODS OF PRESERVATION

The following methods of preserving Documents, Data, and Tangible things shall satisfy a Party's duty to preserve in the Litigation. A party may select any of the methods set forth under each sub-section A through C as the means to preserve Documents or Data and the decision as to which method to use is at the judgment of the party.

A. E-mail

The Parties shall preserve potentially relevant e-mail communications (including associated attachments) concerning "*Yaz*" and "*Yasmin*," and/or "*the drug(s)*" of employees and/or departments receiving a Legal Hold Notice by either:

- (1) Maintaining one set of back-up tapes for implicated servers;
- (2) Creating an electronic snapshot of implicated servers; or,
- (3) Maintaining email files on a server or within an electronic archive that is not subject to a deletion schedule.

To the extent subparagraphs (1) – (3) are not feasible, individual Plaintiffs shall preserve any documents, data, and tangible things that may be in electronic form in native format, along with associated attachments.

B. Databases

The Parties shall preserve potentially relevant data concerning "*Yaz*" and "*Yasmin*," and/or "*the drug(s)*" held in databases by either:

- (1) Maintaining such data in accessible electronic systems that are not subject to a deletion schedule;
- (2) Creating an electronic snapshot of relevant database servers;
- (3) Maintaining one set of back-up tapes for relevant database servers; or,

- (4) Enabling an audit trail to allow for rolling back any transaction and recording the date, prior value, and user identification of any person who made any changes.

C. Electronic documents contained in Shared or Home Directories


Where potentially relevant electronic documents in shared or home directories (e.g., word processing documents, spreadsheets, and PowerPoint presentations) are subject to a deletion schedule, the parties shall preserve potentially relevant documents concerning “Yaz” and “Yasmin,” and/or “the drug(s)” contained in shared and home directories by either:

- (1) Maintaining such directories and files contained therein in accessible electronic systems that are not subject to a deletion schedule;
- (2) Creating an electronic snapshot of relevant shared drive or home directory servers; or,
- (3) Maintaining one set of back-up tapes for relevant servers.

VIII. RESERVATION OF RIGHTS

The Parties do not concede that any of the information subject to this Consent Order is discoverable, relevant, or admissible, and the Parties expressly reserve the right to challenge any specific discovery request concerning any such information. The Parties also reserve the right to challenge the competency, relevance, materiality, privilege, and/or admissibility into evidence of such documents, information, or material in these or any subsequent proceedings or at the trial of these or any other actions, in this or any other jurisdiction.

IT IS SO ORDERED.


Honorable Sandra Mazer Moss