



documents. Defendants agree to produce all responsive, non-privileged documents kept in the ordinary course of business.

## **II. MASTER DOCUMENT REQUESTS & INTERROGATORIES**

Plaintiffs' Liaison Counsel hereby serves upon PEM Defendants Plaintiffs' Document Requests and Interrogatories. The Master Discovery to PEM Defendants shall be deemed to have been served upon all PEM Defendants in the Reglan®/metoclopramide Litigation upon execution of this Case Management Order. However, PEM Defendants have been on notice of the applicable Master Discovery that needs to be answered since the hearing with the Discovery Master on June 20, 2011, at which time the timeframe to respond to the Master Discovery commenced.

### **A. MANNER OF PRODUCTION**

1. All documents produced in response to the Document Requests must be produced in accordance with the Document Production Protocol described below in Section III.
2. All documents produced in response to the Document Requests must be produced on a rolling basis, according to deadlines described below in Section II B.
3. Plaintiffs' Document Requests are non-objectionable and shall be answered by each Defendant without objection. PEM Defendants maintain the right to assert attorney-client privilege and/or attorney work product, for which they must provide a privilege log, as described in Section IV A below. Each PEM Defendant shall comply with their obligation to supplement their Responses within reasonable timeframes in accordance with the Pennsylvania Rules of Civil Procedure.
4. To the extent that Plaintiffs dispute any Response, they shall meet and confer with the answering PEM Defendant's counsel in an attempt to resolve that dispute. If no agreement is

reached, the Parties shall submit their dispute to Harris T. Bock who the Court has appointed to serve as a Discovery Master in this proceeding.

**B. RESPONSE DEADLINES**

PEM Defendants identified through any reasonably supported basis in a PEM Plaintiff Fact Sheet as having provided information received by at least one Plaintiff in this Litigation, shall begin responding to Master Discovery, including making their first rolling production in response to the Document Requests, on no later than sixty (60) days from June 20, 2011 (August 19, 2011) and shall complete their responses to Master Discovery no later than October 18, 2011. PEM Defendants (except Thomson Reuters) shall produce to Plaintiffs a reasonable sample of responsive documents (i.e. non-paper, electronic documents) by the close of business on July 20, 2011.

**III. DOCUMENT PRODUCTION PROTOCOL GOVERNING PEM DEFENDANTS' PRODUCTION OF DOCUMENTS<sup>2</sup>**

PEM Defendants shall produce documents in a manner complying with the Pennsylvania Rules of Civil Procedure and in accordance with the following document production protocol. Defendants shall produce the documents in the same format as they exists in defendants' custody, care and control. However, Defendants must produce the responsive documents in a searchable and readable format. At any time, the Parties retain the right to raise with the Discovery Master any issues involving the protocol and format of production of documents.

**A. PRODUCTION OF ELECTRONIC DOCUMENTS**

1. "Electronic Files," as defined in the Document Requests and Interrogatories, respectively, shall be produced in native form unless converted to an image form as part of a

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<sup>2</sup> Nothing in this Case Management Order shall alter the PEM Defendnats' obligations set forth in Case Management Order Nos. 5 and 6.

PEM Defendant's collection and review process, in which case they shall be produced in the post-processing form (and available in native format upon request from Plaintiffs). The parties shall meet and confer prior to a PEM Defendants' first production of documents as to an acceptable form and load file format for the production of Electronic Files that are converted from native form to another form (e.g. TIFF format) by a PEM Defendant. Nothing in this paragraph changes the PEM Defendants' obligation to produce the documents in a readable searchable format.

2. Unique IDs: Each image of an Electronic File converted from a native form to an image form must 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 in a converted image form or 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 slip sheet, bearing a Bates number, the name of the native file and confidentiality designation, if applicable, will be provided.

3. Metadata: For all Electronic Files and those that are produced in native form and that were originally created using common, off-the-shelf software (e.g., Microsoft Word, Microsoft PowerPoint, Adobe PDF), the PEM Defendants will provide metadata fields to the

extent they are available. The PEM Defendants must produce all files attached to each email they produce, whether in native form or converted to an image form, but only if such files are actually attached to that email in the ordinary course of business. To the extent the PEM Defendants produce in native form 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.

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

5. Duplicates: The PEM Defendants 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 which are completely identical in visible content, metadata, and "hidden" content such as comments and tracked changes.

6. Admissibility: Conversion of a document from a native format to an electronically searchable format for litigation purposes will not effect or serve as a basis for objection to the underlying admissibility of the document.

**B. PRODUCTION OF HARD COPY DOCUMENTS**

1. Production Format of Hard Copy Documents: Hard-copy documents shall be produced in the format in which they exist, unless converted to an image form as part of a PEM Defendant's collection and review process, in which case they shall be produced in the post-processing form (and available in hard-copy form upon request from Plaintiffs). The parties shall meet and confer prior to a PEM Defendants' first production of documents as to an acceptable

form and load file format for the production of Electronic Files that are converted from native form to another form (e.g. TIFF format) by a PEM Defendant. If PEM Defendants produce the hard-copy documents in electronic form, they must be searchable and readable. 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, to the extent available.

2. Unique IDs: Each hard copy document and each image of a hard copy document 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.

3. Unitizing of Documents: To the extent a PEM Defendant converts a hard copy document to an image form as part of a PEM Defendant's collection and review process, the PEM Defendant will ensure that distinct documents are not merged into a single record, and single documents are not be split into multiple records (i.e., hard copy documents should be logically unitized).

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

**C. DELIVERY OF DOCUMENTS**

All documents produced electronically or otherwise shall be made available to Leonard Lundy at Lundy Law, 1635 Market Street, 19th Floor, Philadelphia, Pennsylvania 19103-2297 or his designee. The Defendants may produce their document production in hard copy form (for hard copy documents) or on a series of clearly labeled CDs, DVDs, hard drives, or other agreed upon media (for Electronic Files produced in native or image form or for hard copy documents produced in image form).

**D. REDACTION OF DOCUMENTS**

1. Defendants may only redact portions of documents that contain: (i) information about drugs other than Reglan®/Metoclopramide; (ii) information that is subject to a claim of privilege or the work-product doctrine or any other appropriate privilege; (iii) 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 (iv) information which Defendants are not permitted to disclose under any applicable federal or state law or regulation.

2. For each redaction, the party making such redaction shall provide the reasoning behind 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 privilege log to the receiving party, as specified below in Section IV.

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 Defendant(s) as set forth in Section V.

**E. DATABASES**

Prior to production of any database not already identified for production in this Discovery 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. PEM 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. TRANSLATED DOCUMENTS**

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

**IV. 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 date of the document;
- b. The sender;
- c. The recipient;
- d. The author (if known to be different than the sender)
- e. Titles for all individuals in (a) – (d)
- f. The person to whom copies were furnished along with his job title and position;
- g. The subject matter of the document;
- h. The specification of the privilege(s) asserted and the basis(es) upon which the privilege(s) is/are claimed;
- g. The beginning and ending bates number of the document, *i.e.* ABC90000001;

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.

## **V. THE PARTIES' INADVERTENT PRODUCTION OF DOCUMENTS**

### **A. INADVERTENTLY PRODUCED 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 parties 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 V(A)(3) below, the receiving party, subject to the requirements of Section V(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 V(A)(3) motion. If the receiving party’s Section V(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 either the Discovery Master or the Court to seek a ruling as to the noticing party's assertion of doctrine or privilege. If the Discovery Master or 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 Discovery Master or 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.

Date:



**SO ORDERED**



**HONORABLE SANDRA MAZER MOSS**