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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: INCRETIN MIMETICS) MDL Case No.13md2452 AJB (MDD)
PRODUCTS LIABILITY)
LITIGATION,) As to all related and member cases
)
) ORDER FOLLOWING FIRST
) STATUS CONFERENCE

On October 17, 2013, the Court held a Status Conference in the above entitled action. Forty-five lawyers appeared on behalf of the various parties, and Judge Highberger of Los Angeles Superior Court appeared telephonically to provide insight into cases pending in his court involving similar issues and some of the same defendants. All appearances are reflected in the minutes of the Court.

Prior to the commencement of the Status Conference in open court, the Court met with proposed lead, liaison, and co-counsel for both Plaintiffs and Defendants in chambers. A discussion of the items listed in the Joint Status Report and in the Joint Proposed Agenda ensued. (Doc. Nos. 122, 123.) Following the in-chambers conference, court convened to report the status of the proposed agenda items and the interim plan to move forward. Those matters are as follows:

1. The Court granted the parties’ joint application to appoint the lead, liaison, and coordinating counsel and co-counsel for Plaintiffs and the various Defendants. An Order detailing these appointments will follow;

- 1 2. Plaintiffs are working on composing a Master Consolidated Complaint.
2 Plaintiffs will continue to meet and confer with the Defense in this regard.
3 The parties must complete the meet and confer process, and either file the
4 Master Consolidated Complaint, or contact Judge Dembin’s chambers to
5 resolve any impasse, no later than **November 18, 2013**. In the event the
6 Master Consolidated Complaint is filed on or before **November 18, 2013**,
7 Defendants must file a Master Answer no later than **December 18, 2013**;
- 8 3. The parties anticipate that a “Bellwether” process will help facilitate and
9 focus the management of this litigation. Counsel for Plaintiffs and the
10 Defense will meet and confer to continue to develop a plan for “Bellwether”
11 trials in this action;
- 12 4. The parties suggested holding a “Science Day” to assist with the technical
13 aspects of the case. The Court set a preliminary date of **February 5 and 6,**
14 **2014**. Counsel will meet and confer to develop a plan to address the neces-
15 sary discovery, other proceedings, and document production that may be
16 necessary to facilitate “Science Day.” Any impasse regarding discovery or
17 document production relating to “Science Day” must be raised before Judge
18 Dembin;
- 19 5. Future dispositive motions and/or *Daubert* motions will be the subject of
20 ongoing discussion between the parties. Dispositive motions and/or *Daubert*
21 motions will follow “Science Day,” and proceed on a schedule to be pro-
22 posed by counsel after the completion of necessary discovery. Dispositive
23 motions and *Daubert* motions regarding the issue of general causation will
24 be the focus;
- 25 6. The parties will come to an agreement with regards to taking *in extremis*
26 depositions. This agreement will be submitted to the Court as a joint motion
27 with an attached proposed order;
- 28

- 1 7. The parties are continuing to meet and confer regarding general deposition
2 protocol. By **November 18, 2013**, this protocol must be submitted to the
3 Court, or a process for resolving remaining differences must be discussed
4 and established by and between the parties and Judge Dembin;
- 5 8. Document production is proceeding and the parties will continue to meet and
6 confer as issues arise;
- 7 9. The parties will resubmit the protective order approved by Judge Dembin on
8 June 3, 2013 in Civil Case No. 12cv0249 AJB (MDD) for filing in this MDL
9 proceeding. This will ensure the applicability of the protective order to all
10 member and related cases;
- 11 10. The disclosure of information regarding applicable insurance coverage by
12 Defendant Amylin will be resolved as a discovery matter by Judge Dembin;
- 13 11. Judge Highberger provided the status of the Los Angeles County JCCP
14 proceedings. The parties, the Court, and Judge Highberger all agreed to
15 coordinate the state and federal proceedings to help minimize cost, facilitate
16 the forward movement of the state and federal cases, and to avoid inconsis-
17 tent rulings. The Parties will meet and confer regarding the timing of state
18 and federal trial dates, and will consider the five year status of certain state
19 cases;
- 20 12. Plaintiffs informed the Court that there are currently 150 individual cases in
21 the MDL, and that there could a total of 2,000 individual cases after all new
22 filings are complete. New cases are being filed at a rate of between 20 and
23 40 per month. The filing pace is dictated by Plaintiffs' obligations to
24 provide "Plaintiff Fact Sheets" and authorizations as agreed to by the parties.
25 The parties may consider a less exhaustive preliminary "Plaintiff Fact Sheet"
26 to facilitate quicker filing. This would be without prejudice to the prior
27 more detailed fact sheet. The parties must submit a joint motion and pro-
28 posed order regarding direct filing in the MDL proceeding;

- 1 13. The parties continue to meet and confer regarding an ESI protocol. No later
2 than **November 18, 2013**, the parties must complete their meet and confer
3 process, and either reach agreement, or contact Judge Dembin's chambers to
4 schedule proceedings to resolve any impasse;
- 5 14. The parties are conferring on a Defendant Fact Sheet. The Defendant Fact
6 Sheet will inform the parties about certain facts regarding the products at
7 issue. No later than **November 18, 2013**, the parties must complete their
8 meet and confer process, and either reach agreement, or contact Judge
9 Dembin's chambers to schedule proceedings to resolve any impasse;
- 10 15. The parties are negotiating the scope of 30(b)(6) depositions necessary for
11 the case, including the utilization of depositions taken in the related state
12 court matters. No later than **November 18, 2013**, the parties must complete
13 their meet and confer process, and either reach agreement, or contact Judge
14 Dembin's chambers to schedule proceedings to resolve any impasse;
- 15 16. The parties are discussing the inclusion of thyroid cancer cases into the
16 MDL. There are approximately 15 cases pending in the Southern District of
17 California, in addition to cases in other courts or those cases not yet filed.
18 The parties are working on a joint motion and proposed order to allow the
19 thyroid cancer cases to be included in the MDL, and to provide for direct
20 filing of thyroid cancer cases into the MDL, with the reservation of certain
21 rights. The thyroid cancer cases only involve Defendants Amylin and Eli
22 Lilly. The joint motion must be submitted no later than **November 18,**
23 **2013.**

24 The next Status Conference will be held on **November 21, 2013**, starting at 9:00
25 a.m. in Courtroom 3B. At approximately 9 a.m., the Court will meet and confer infor-
26 mally with lead and liaison counsel for Plaintiffs and the Defense in chambers. This
27 informal meeting will be followed by an on the record session starting at 10:00 a.m. in
28 Courtroom 3B. Judge Highberger is invited to attend both sessions telephonically. At the

1 next Status Conference, the Court and counsel will review the status of the parties’
2 progress on the matters set forth in paragraphs 1 through 16 above. Counsel may file a
3 joint supplemental agenda for any **additional** items to be discussed at the November 21,
4 2013 Status Conference no later than **November 18, 2013.**

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7 IT IS SO ORDERED.

8 DATED: October 18, 2013

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12 Hon. Anthony J. Battaglia
13 U.S. District Judge
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