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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 IN RE: INCRETIN MIMETICS
11 PRODUCTS LIABILITY
12 LITIGATION

MDL Case No.13md2452 AJB (MDD)

ORDER ON JOINT MOTION FOR
DETERMINATION OF DISPUTES
RELATED TO THE SCOPE OF THE
WRITTEN DISCOVERY RELATED
TO GENERAL CAUSATION

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14 _____
15 As To All Related And Member Cases

(Doc. No. 373)

16 On March 20, 2014, the parties filed a joint motion for determination of disputes
17 related to the scope of written discovery regarding general causation. (Doc. No. 373.)
18 The motion relates to a dispute concerning the language of the Court’s February 18, 2014
19 Order, which limited discovery to matters of general causation. (Doc. No. 325.) The
20 motion was originally set for resolution before Magistrate Judge Dembin, but this Court,
21 with Judge Dembin’s consent, will resolve the matter.

22 The language of the Court’s February 18, 2014 Order was perfectly clear. The
23 burden was put on Plaintiffs to “narrow all discovery related requests to issues involving
24 general causation.” (Doc. No. 325 at 1:26-27.) The Order did not intend to have the
25 Court parse out Plaintiffs’ discovery requests, nor shift the burden to Defendants to parse
26 out responsive information from what appears to be very general and overbroad discov-
27 ery requests. In this regard, the Court directs the parties to pages 6 and 7 of the joint
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1 motion, which are illustrative of Plaintiff’s requests that clearly exceed the bounds of the
2 Court’s Order and are simply out of the ballpark:

3 “[a]ll DOCUMENTS . . . YOU have ever created . . . that in any way involve
4 or concern BYETTA or exenatide, sitagliptin, liraglutide and/or any other
5 GLP-1 agonist or DPP-4 inhibitor” (Exs. 5 & 10, Req. No. 3);

6 descriptions of relationships with “companies . . . that manufactured, mar-
7 keted . . . , distributed, packaged, promoted, and/or sold BYETTA” (Exs. 2
8 & 7, Int. No. 2);

9 “all license . . . and/or development agreements” (Exs. 2 & 7, Int. No. 3);
10 all consulting services “of any kind” (Exs. 2 & 7, Int. No. 5);

11 “[a]ll . . . internal communications pertaining to BYETTA’s past, present or
12 future anticipated market share” (Exs. 5 & 10, Req. No. 31);

13 “contracts” and “invoices” from “third party contractors” that provide
14 “information to pharmacies” (Exs. 5 & 10, Req. No. 34);

15 “advertising, promotional, marketing, sales and/or public relations efforts or
16 campaigns” (Exs. 2 & 7, Int. No. 2); and

17 “[a]ll DOCUMENTS used in the training of YOUR sales force” (Exs. 5 &
18 10, Req. No. 40).

19 (Doc. No. 373 at 6:20-7:9.)

20 Accordingly, the Court agrees with Defendants that general causation—whether
21 the pharmaceuticals at issue cause pancreatic cancer—is a matter of science, and there-
22 fore, scientific documents and/or scientific evidence frame the universe of contemplated
23 discovery. Without a scientific basis for the claim that the pharmaceuticals at issue cause
24 pancreatic cancer there is no other way to prove or disprove Plaintiffs’ claims. As a
25 result, permitted discovery includes actual scientific evidence such as animal studies,
26 clinical trials, epidemiologic data, adverse event reports, and submittal documents to
27 scientific and government organizations including the FDA and EMA with regard to the
28 causal link in dispute in this case.

Any such documents, which would appear in the files in other departments of the
Defendant organizations (i.e., marketing, sales, etc), would be discoverable, but general
marketing, sales, licenses, consulting agreements, market share, third-party contracts,
advertising, promotional, marketing, sales and/or public relations efforts or campaigns, as
well as training documents for sales forces would not. There will be a time and place for

1 more generalized discovery on these issues, but it is not now. Therefore, so there are no
2 further disputes concerning the Court's intent regarding the scope of discovery relating to
3 general causation, the Court hereby ORDERS as follows:

- 4 1. Plaintiffs must propound document discovery with new requests
5 and/or interrogatories within fourteen (14) days of this order, which
6 must be limited to only general causation on the link between the
7 Defendants' pharmaceuticals and pancreatic cancer. No extensions of
8 this deadline will be entertained;
- 9 2. Defendants will fully respond to said requests/interrogatories no later
10 than thirty (30) days from their receipt;
- 11 3. Any issues with regard to compliance are referred to Judge Dembin
12 and Judge Dembin is asked to consider sanctions for any unreasonable
13 positions taken with regard to the completion of this discovery;
- 14 4. Much of the information in the possession of Defendants has already
15 been produced in this action or through the JCCP. To the extent
16 Defendants wish to refer to prior production in responding to current
17 requests or interrogatories, the response should be specific to date,
18 manner, and form of production, including bates numbers or other
19 identifying information; and
- 20 5. This Court will review the parties compliance with this Order as part of the
21 **May 28, 2014** status conference.

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23 IT IS SO ORDERED.

24 DATED: March 25, 2014

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27 Hon. Anthony J. Battaglia
28 U.S. District Judge