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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 AUGUST 14,
) 2014 CASE MANAGEMENT
) CONFERENCE

On August 14, 2014 the Court held a Case Management Conference to address remaining issues following the July 1, 2014 Case Management Conference as well as issues raised by the Parties in their Joint Agenda. (Doc. No. 553.) The following is a summary of the proceedings.

1. As to the status of discovery, The Parties continue to work within the time frame set by the Court. The Parties have alerted the Court to a number of “speed bumps” along the way, however the Parties are continuing the meet and confer in an effort to resolve these issues. The Court commends the Parties’ efforts in working together to expedite the discovery process.
2. The discovery schedule set by the Court in its July 1, 2014 Order is confirmed, recognizing the potential need for modification should the Parties be unable to resolve certain discovery disputes. The Court will address this

1 with the Parties at the next status conference scheduled for September 16,
2 2014 at 4:00pm.

- 3 3. The Parties joint motions for protective order, privilege protocol, and
4 decedent estate order have been reviewed and have been entered.
- 5 4. The Plaintiffs' common benefit order has been received and reviewed. The
6 Court finds it prudent to allow for a period of time for all interested parties
7 to file objections. Any interested parties may file objections to the concept
8 of this motion, without prejudice to future objections on the unresolved final
9 percentage of fees, on or before August 21, 2014 per the Court's Order
10 dated August 11, 2014, (Doc. No. 547).
- 11 5. Counsel are reminded of the limited scope of discovery in the case at this
12 stage on the issues of (1) Preemption and (2) General Causation. As the
13 Court stated, Preemption discovery should be focused on the FDA's intent,
14 Specifically, what the FDA would or would not have done with regards to a
15 proposed labeling change, as expressed in *Wyeth v. Levine*, 555 U.S. 555
16 (2009). As a result, permitted discovery includes communications between
17 the FDA and drug manufacturers at issue and what the FDA had or did not
18 have before it on the use of incretin-mimetic therapies and the causal
19 association with pancreatic cancer. The operative time period should be up
20 to and including the date of the publication of the FDA-EMA Joint Assess-
21 ment ("Egan" report).

22 As to General Causation, the Court reminds the Parties of the scope as set
23 forth in March 25, 2014 Order:

24 ". . . a matter of science, and therefore, scientific documents
25 and/or scientific evidence frame the universe of contemplated
26 discovery. Without a scientific basis for the claim that the
27 pharmaceuticals at issue cause pancreatic cancer there is no
28 other way to prove or disprove Plaintiffs' claims. As a result,
permitted discovery includes actual scientific evidence such
as animal studies, clinical trials, epidemiologic data, adverse
event reports, and submittal documents to scientific and
government organizations including the FDA and EMA
with regard to the causal link in dispute in this case." (Doc. No. 377)

1 The Parties are encouraged to focus their efforts on Preemption first, as the
2 Court will entertain a motion for summary judgment based on Preemption
3 prior to one on general causation.

4 6. The Parties are unable to agree on a protocol for resolving discovery dis-
5 putes, the Court thus sets a procedure in a separate order to follow.

6 As stated above, the next Case Management Conference is scheduled for **Septem-**
7 **ber 16, 2014 at 4:00 pm,** in Courtroom 3B. As the Parties will have commenced
8 depositions at this time, anyone wishing to appear telephonically may do so. Any call-in
9 instructions, topics for discussion, and a list of the individuals who will be appearing
10 telephonically must be submitted to the Court via e-file no later than **September 12,**
11 **2014.**

12 IT IS SO ORDERED.

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14 DATED: August 14, 2014

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17 Hon. Anthony J. Battaglia
18 U.S. District Judge
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