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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

IN RE INCRETIN-BASED
THERAPIES PRODUCTS LIABILITY
LITIGATION

As to All Related and Member Cases

Case No. 13md2452 AJB (MDD)

**JOINT MOTION FOR
MODIFICATION OF
SCHEDULING ORDER**

Judge: Hon. Anthony J. Battaglia
Magistrate: Hon. Mitchell D. Dembin

The parties submit this Joint Motion for Modification of Scheduling Order and state the following in support:

1. Under the Court's orders entered to date, ECF Nos. 744, 809, the Court has entered expert deadlines including:

- **January 23, 2015:** The parties must serve any rebuttal expert reports relating to preemption by this date.
- **February 17, 2015:** Plaintiffs' disclosure of experts and their reports as to general causation must be served by this date.
- **March 20, 2015:** Defendants' disclosure of experts and their reports as to general causation must be served by this date.

1 • **March 30, 2015:** Plaintiffs' rebuttal reports as to general causation must be
2 served by this date.

3 • **May 15, 2015:** All expert discovery related to general causation must be
4 completed by this date.¹

5 2. On January 16 and 20, 2015, Defendants moved to disqualify Plaintiffs'
6 expert Dr. G. Alexander Fleming. *See* ECF Nos. 902, 908. The Court set these
7 motions for hearing on March 12, 2015. ECF No. 914.

8 3. The parties have conferred in good faith and, in light of the pending
9 motions to disqualify Dr. Fleming, agree that an extension of deadlines is appropriate.
10 Specifically, the parties agree that the deadline to serve preemption rebuttal reports
11 should be extended pending the Court's decision on the motions to disqualify Dr.
12 Fleming and that all general causation expert deadlines should be extended by
13 approximately 30 days.

14 4. In order to streamline the process for resolving the motions to disqualify
15 Dr. Fleming and to eliminate any possibility of inconsistent rulings, the Plaintiffs and
16 Defendants in the *Byetta* JCCP have agreed to abide by this Court's rulings on the
17 issues presented in the disqualification motions without the need to file separate,
18 companion motions before Judge Highberger.

19 5. The parties have further agreed that should Dr. Fleming be disqualified as
20 an expert for Plaintiffs, Plaintiffs shall not use the disqualification motions and rulings
21 as a basis to request additional time for its preemption or general causation expert
22 designations, reports, and/or schedule, except that Plaintiffs reserve the right to
23 request additional time to identify a replacement endocrinologist and regulatory expert
24 on general causation and/or preemption. Defendants reserve their right to oppose such
25 a request on any grounds.

26
27 ¹ The Court clarified on January 21, 2015 that the parties should not file expert reports
28 on the docket at the same time the reports are served. ECF No. 910.

1 6. Accordingly, the Parties now jointly move this Court to adopt the
2 following revised schedule:

3 a. **As to Preemption:**

4 i. Rebuttal expert reports as to preemption will be due five days after
5 the Court rules on Defendants' motions to disqualify Plaintiffs'
6 Expert Dr. G. Alexander Fleming, ECF Nos. 902, 908.

7 b. **As to General Causation:**

8 i. **March 19, 2015:** Plaintiffs' disclosure of experts and their reports
9 as to general causation must be served by this date.

10 ii. **April 17, 2015:** Defendants' disclosure of experts and their reports
11 as to general causation must be served by this date.

12 iii. **April 27, 2015:** Plaintiffs' rebuttal reports as to general causation
13 must be served by this date.

14 iv. **June 12, 2015:** All expert discovery as to general causation must
15 be completed by this date.

16 7. A proposed order will be e-mailed to chambers in accordance with the
17 Court's Standing Order for Civil Cases.

18
19 Respectfully submitted:

20 Dated: January 30, 2015

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23 By: /s/ Ryan L. Thompson

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Plaintiffs' Counsel

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Dated: January 30, 2015

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SIGNATURE ATTESTATION

I hereby certify that authorization for the filing of this document has been obtained from each of the other signatories shown above and that all signatories concur in the filing's content.

s/ Tor A. Hoerman