

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THE COUNTY OF SANTA CLARA and  
THE COUNTY OF SANTA CRUZ, on  
behalf of themselves and all others  
similarly situated,

No. C 05-03740 WHA

Plaintiff,

v.

**ORDER SETTING SCHEDULE  
FOR ADDITIONAL DISCOVERY**

ASTRA USA, INC.; ASTRAZENECA  
PHARMACEUTICALS LP; AVENTIS  
PHARMACEUTICALS, INC.; BAYER  
CORP.; BRISTOL-MYERS SQUIBB CO.;  
PFIZER, INC.; SCHERING-PLOUGH  
CORP.; SMITHKLINE BEECHAM  
CORP.; TAP PHARMACEUTICAL  
PRODUCTS, INC.; WYETH, INC.;  
WYETH PHARMACEUTICALS, INC.;  
ZENECA, INC.; ZLB BEHRING LLC; and  
DOES 1 through 100, inclusive,

Defendants.

In this action, plaintiffs County of Santa Clara and County of Santa Cruz allege that defendants charged them prices for drugs greater than price ceilings imposed by Section 340B of the Public Health Service Act of 1992 and contractual agreements thereunder. On December 9, 2009, the Ninth Circuit vacated this Court’s order that had granted defendants a protective order precluding discovery by plaintiffs of the information underlying defendants’ reported average manufacturer price (“AMP”) and best price (“BP”) for purposes of calculating the contractual price ceilings. The Ninth Circuit also withdrew its opinion of August 27, 2008, and

1 filed a superceding opinion which omitted the paragraph in the original opinion that had seemed  
2 to limit plaintiffs' ability to challenge those calculations.


3 The Ninth Circuit specifically declined in its new superceding opinion to invoke primary  
4 jurisdiction, which would have stayed or dismissed plaintiffs' claims without prejudice pending  
5 referral to the Secretary of Health and Human Services for agency resolution. The Ninth  
6 Circuit left "open the possibility that the district court may decide after further factual  
7 development that referral to the Secretary is appropriate." Accordingly, discovery will be  
8 reopened for the limited purpose of allowing plaintiffs to take discovery regarding the  
9 information underlying defendant manufacturers' determination of the AMP and the BP.

10 On or before **JANUARY 7, 2010**, plaintiffs shall serve to each defendant document  
11 requests and up to five interrogatories directed to the underlying data. All Rule 26(a)  
12 disclosures may be revised on or before **JANUARY 7, 2010**. The parties must meet and confer  
13 on the requests before **FEBRUARY 4, 2010**, and defendants' responses to these requests are due  
14 by that date. All objections to plaintiffs' discovery requests must be asserted no later than  
15 **FEBRUARY 4, 2010**, or else be waived. The grounds for all objections must be stated with  
16 specificity. Any motion to compel by plaintiffs must be brought on or before **FEBRUARY 25,**  
17 **2010**. Motions regarding these discovery requests should be noticed for hearing not less than 35  
18 days after service pursuant to Civil Local Rule 7-2.

19 The trial currently scheduled to begin as to defendant Bayer on February 23, 2010, is  
20 hereby **VACATED**. The hearing on plaintiffs' and defendant Bayer's motions for summary  
21 judgment scheduled for January 14, 2010, is likewise **VACATED**. Ruling on these motions for  
22 summary judgment is **DEFERRED**. In the event that the Ninth Circuit grants a petition for  
23 rehearing or rehearing *en banc*, this revised schedule may be revisited.

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25 **IT IS SO ORDERED.**

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27 Dated: December 17, 2009.

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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE