

1 David K. Callahan, P.C. (IL 620227) dcallahan@kirkland.com
 2 KIRKLAND & ELLIS LLP
 200 East Randolph Drive
 3 Chicago, Illinois, 60601
 Telephone: 312-861-2000
 4 Facsimile: 312-861-2200

Attorney For Plaintiff and Counter-defendant
 5 **BAXTER HEALTHCARE CORPORATION,**
BAXTER INTERNATIONAL INC., and
 6 **BAXTER HEALTHCARE SA**

7 Maureen K. Toohey (SBN 196401) mtoohey@toohey.com
 TOOHEY LAW GROUP LLC
 8 225 Franklin Street, 16th Floor
 Boston, Massachusetts 02110
 9 Telephone: (617) 748-5511

Attorneys for Plaintiff and Counter-defendant
 10 **DEKA PRODUCTS LIMITED PARTNERSHIP**

11 Juanita R. Brooks (SBN 75934) jbrooks@fr.com
 FISH & RICHARDSON P.C.
 12 12390 El Camino Real
 San Diego, CA 92130
 13 Telephone: (858) 678-5070
 14 Facsimile: (858) 678-5099

Attorneys for Defendants and Counter-claimants
 15 **FRESENIUS MEDICAL CARE HOLDINGS,**
INC. AND FRESENIUS USA, INC.

17 **UNITED STATES DISTRICT COURT**
 18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

19 BAXTER HEALTHCARE
 20 CORPORATION,
 BAXTER INTERNATIONAL INC.,
 21 BAXTER HEALTHCARE SA, AND
 22 DEKA LIMITED PARTNERSHIP,

23 *Plaintiffs and Counter-defendants,*

24 vs.

25 FRESENIUS MEDICAL CARE
 26 HOLDINGS, INC., d/b/a FRESENIUS
 MEDICAL CARE NORTH AMERICA,
 27 and FRESENIUS USA, INC.,

Defendants and Counter-claimants.

Case No. C 07-01359 PJH (JL)

“DISCOVERY MATTER”

**STIPULATION REGARDING
 DEFENDANTS SUPPLEMENTATION OF
 RESPONSES TO BAXTER
 INTERROGATORY NOS. 6, 7, AND 13**

Judge: Hon. James Larson
Location: Courtroom F, 15th Floor

1 WHEREAS, pursuant to this Court’s December 12, 2008, Order (Dkt. No. 229) the
2 parties have prepared a Joint Stipulation regarding Defendants’ agreement to provide “exactly
3 the same information sought by Plaintiffs’ motion” (Dkt. No. 219),

4 NOW, THEREFORE, it is stipulated by the respective parties and their counsel of
5 record:

6 Defendants will provide the names and locations of all clinics to which Defendants refer
7 to in their supplemental responses to Baxter Interrogatory Nos. 6 and 7;

8 Defendants will provide all revenue and sales data for every allegedly acceptable non-
9 infringing alternative Defendant product;

10 Defendants will either definitively state that they will not assert that the products they
11 identified were “acceptable” prior to 2006 or Defendants will produce the revenue and sales data
12 for every year that Defendants allege that each alleged acceptable alternatives was indeed
13 acceptable; and

14 Defendants agree to supplement all Interrogatory Responses necessary to comply with
15 this Court’s Order and this stipulation by January 12, 2009.

16
17
18
19
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

| | |
|--|---|
| <p>December 29, 2008</p> <p>By: <u>/s/ David K. Callahan</u></p> <p>KIRKLAND & ELLIS LLP David K. Callahan, P.C. (IL 620227) Garret Leach (<i>pro hac vice</i>) Mary Zaug (<i>pro hac vice</i>) 200 East Randolph Chicago, Illinois, 60601 Telephone: 312-861-2000 Facsimile: 312-861-2200</p> <p>Robert G. Krupka (SBN 196625) 777 South Figueroa Street Los Angeles, California 90017 Telephone: 213-680-8400 Facsimile: 213-680-8500</p> <p>Kenneth Bridges (SBN 243541) 555 California Street San Francisco, California, 94104 Telephone: 415-439-1400 Facsimile: 415-439-1500</p> <p><i>Attorney For Plaintiff and Counter-defendant BAXTER HEALTHCARE CORPORATION, BAXTER INTERNATIONAL INC., and BAXTER HEALTHCARE SA</i></p> | <p>December 29, 2008</p> <p>By: <u>/s/ Michael A. Amon</u></p> <p>Juanita R. Brooks (SBN 75934) Todd G. Miller (SBN 163200) Michael M. Rosen (SBN 230964) FISH & RICHARDSON P.C. 12390 El Camino Real San Diego, CA 92130 Telephone: (858) 678-5070 Facsimile: (858) 678-5099</p> <p>Mathias W. Samuel (<i>pro hac vice</i>) Michael E. Florey (<i>pro hac vice</i>) FISH & RICHARDSON P.C. 60 South Sixth Street, Suite 3300 Minneapolis, MN 55402 Telephone: (612) 335-5070 Facsimile: (612) 288-9696</p> <p>Limin Zheng (SBN 226875) FISH & RICHARDSON P.C. 500 Arguello Street, Suite 400 Redwood City, CA 94053 Telephone: (650) 839-5070 Facsimile: (650) 839-5071</p> <p><i>Attorneys for Defendants and Counter-claimants FRESENIUS MEDICAL CARE HOLDINGS, INC. AND FRESENIUS USA, INC.</i></p> |
|--|---|

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED, that within ten days of this Order, Defendants will: (1) provide the names and locations of all clinics to which Defendants refer to in their supplemental responses to Baxter Interrogatory Nos. 6 and 7; (2) provide all revenue and sales data for every allegedly acceptable non-infringing alternative Defendant product; and (3) either definitively state that they will not assert that the products they identified were “acceptable” prior to 2006 or produce the revenue and sales data for every year that Defendants allege that each alleged acceptable alternatives was indeed acceptable.

DATED: January 12, 2009



JAMES LARSON
Chief Magistrate Judge