ATTACHMENT 1

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OF COUNSEL:
WATERS & KRAUS, LLP

June 30, 2004

VIA FACSIMILE (415) 591-7510
Thomas Pulliam, Jr., Esq.
Drinker, Biddle & Reath
50 Fremont Street, 20th floor
San Francisco, CA 94105

Re: California cause no. C-03-01116-JF(HRL);
Kerry Langstaff, et al. v. McNeil Consumer & Specialty Pharmaceuticals, et al.

Dear Tom:

In reply to your letter of June 30, I offer the following.

First, we will not agree to extend your expert designation deadline in this case. We made you an earlier offer to extend only the expert disclosure deadlines 30 days for each side, and you refused. Therefore, we put our experts in high gear to complete their analyses in a timely fashion, and they did so. Now, you'll have to live with your decision.

I will reply to the remainder of your letter of about the "defects" in our expert disclosure with the following:

1. You complain of "extraneous and improper material" in our disclosures, including the fact that the experts indicate that they may do additional analyses in the case. I know of no case law that mandates that experts must complete all their work by the time disclosures are due, and if you know of any such authorities, please cite them to me, and I will reconsider on this.

We have the right to supplement their reports, and will do so, in a timely manner as required by law. Further, as far as extraneous and improper material, the law requires them to outline in detail the factual bases of their reports, and they have done so. I wouldn't expect you to agree with their opinions, but unless you make specific objections, and cite authority for your position, we will make no deletions or changes.

2. You complain that we referenced "voluminous and improper material". This, respectfully, is self-serving hogwash. To the contrary, we've cited only the documents produced

in this case, the depositions, medical records, medical literature which has been cited and all of which is available at your local medical library or online, or FDA, CMS, or WHO adverse drug reaction data, and all of which is the type of facts and data relied upon by experts in their various fields.

3. You complain about "duplication" in the experts' opinions. If you have case law that says that we can only offer one expert opinion on a particular point, I would like to see it. Each expert has analyzed the case from the perspective of their own discipline, and several of their disciplines overlap. For example, Drs. Salisbury and Meagher are both burn surgeons, but one is a treater, and will testify about issues specific to Kaitlyn's treatment, whereas both will testify about the generic issues of causation and warning. Again, there is no law, state or federal, that says we may not call more than one expert on a particular issue, subject to the trial court's discretion on timely objection at trial, and it is certainly premature to bring that up at this early stage and attempt to get it removed from the disclosure.

In reply to your request that the plaintiffs "do the following", I offer the following response:

1. You want us to delete what you describe as "extraneous information" from the disclosure. However, again there is no case law to my knowledge that restricts what we can say in our formal disclosure. We do know that it is a tactic of your law firm to object to each and every opinion that an expert offers because it was not properly disclosed in the R. 26 expert disclosure, and that is what we are attempting to circumvent. We will make no deletions, *unless* you can point to decisive case law on point on this issue.

2. You want us to delete Atts. 3 & 4 from Rusty Nicar's report. First, there are no attachments to his report. The report is self-contained. However, he reviewed all of the documents & medical articles listed on Atts. 3 & 4 to the disclosure in preparation for his opinions in this case, and it is my understanding that we are required to disclose all documents and facts he has reviewed, and upon which he bases his opinions, either directly or indirectly. Further all of the articles on Att. 3 are freely available to you online or at your local medical library; and the Bate-stamped documents are company documents produced in this case.

If we had not listed them, you would have been complaining that we didn't list all the documents he reviewed! But the specific documents, medical articles and data he relied on are cited in his report, including medical records, medical articles, and company documents, all of which are cited by Bates page number. We have no intention of deleting these attachments from our disclosure, and as I point out, they are *not* attached to his report.

3. You request that we "eliminate the duplicative opinions expressed by plaintiffs' experts". As I stated above, I will consider doing that *if* you provide case authority holding that we cannot offer opinions from more than one expert on a particular issue, and that it is proper to raise this issue at this stage of the case.

4. We have provided the information regarding hourly rate and case testimony in the past 4 years for every witness who has previously testified, to the best of my knowledge. However, I will double check that, if you will identify a witness you feel we did not do so with.

I stress to you that you should <u>not</u> file this motion until we meet and confer. Magistrate Judge Lloyd has made his position on this quite clear. I am open to streamlining the disclosures, if you have case law to support your position. However, my guess is that you are just attempting to buy time for your expert disclosures, and using this threatened motion as a veiled tactic to do so. But let me hear from you.

Sincerely yours,

James C. Barber

JCB/srs

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