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11 Attorneys for Plaintiff
 12 PHIGENIX, INC.

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

<p>16 PHIGENIX, INC., 17 Plaintiff, 18 v. 19 GENENTECH, INC., 20 Defendant. 21</p>	<p>Case No. C 15-01238 BLF-NMC PHIGENIX, INC.’S STATEMENT RE ORDER ON DISCOVERY BRIEF; DISCOVERY ORDER Judges: Honorable Beth Labson Freeman; Honorable Nathanael M. Cousins</p>
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Discovery Order

This Order is issued pursuant to the Court's Order on Discovery Brief, November 23, 2016, docket number 295 ("Order").

1. As to the first issue presented in the Order, the parties have advised the Court that MUSC-FRD has asserted the privilege over documents identified as document nos. 5, 6, 8, 9 and 22 on the Andrews Kurth privilege log. The parties and MUSC-FRD disagree whether MUSC-FRD's assertion of privilege is timely and, if so, whether any potentially applicable privilege was waived through MUSC-FRD's disclosure of the documents to Phigenix.

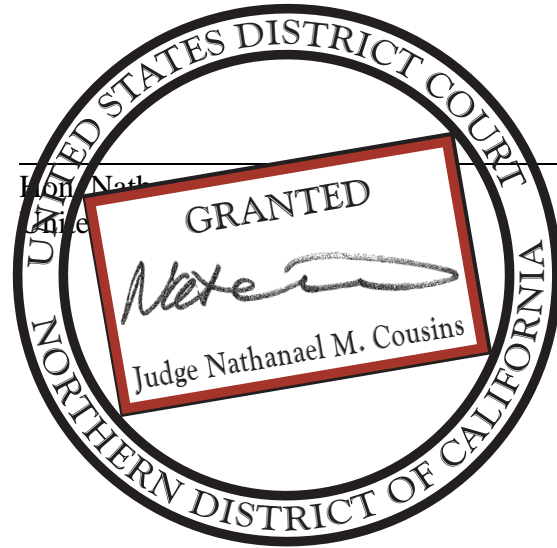
In addition, Genentech now argues that the Court's November 23 Order should also apply to documents on the Andrews Kurth Privilege Log beyond those earlier sought in Genentech's motion, and that such additional documents should be produced as well unless MUSC-FRD asserts that a privilege attaches. Phigenix disagrees that Genentech's belated argument regarding documents not addressed in its original motion is timely or that the court's reasoning underpinning the Order is applicable to documents on which Dr. Donald was a party to the communication in question.

The parties and, if it wishes, MUSC-FRD, shall submit simultaneous briefs to the Court on December 14 on these questions. The briefs shall be no more than 5 pages in length, double-spaced. After receipt of the briefs referred to above, the Court shall rule on the papers or set a hearing.

2. As to the second issue, pursuant to the Order, Phigenix has presented Genentech with a proffer of Dr. Wang's expected testimony. Genentech now agrees that scope of Dr. Wang's testimony set forth in the proffer does not result in a waiver of attorney-client privilege, either

1 express or implied. Accordingly, Genentech's motion seeking a waiver of privilege (Dkt. No. 280)
2 is DENIED as moot.

3 Dated: December 7, 2016
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