UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In Re: Seroquel Products Liability Litigation

Case No. 6:06-md-1769-ACC-DAB

MDL 1769

This Document Relates to All Cases /

PLAINTIFFS' MOTION FOR ORDER IMPOSING DISCOVERY SANCTIONS

INTRODUCTION

The MDL Plaintiffs, by and through their undersigned co-lead counsel, hereby file this Combined Motion and Memorandum for and Order Imposing Discovery Sanctions, Pursuant to M.D.L.R. 3.01(a), and certification of compliance pursuant to M.D.L.R. 3.01(g).

Plaintiffs bring this motion due to AstraZeneca's failure to timely comply with numerous discovery obligations since the inception of this litigation. The Court ordered AstraZeneca to produce the Seroquel IND/NDA by November 7, 2006, but it failed to produce key elements of the IND/NDA until June 25, 2007. The Court ordered AstraZeneca to produce organizational charts by January 15, 2006, but AstraZeneca withheld the vast majority of them until May 14, 2007. Custodial production was to take place on a rolling basis between January 5 and June 30, 2007, but AstraZeneca chose to wait until mid-May to begin production of the overwhelming majority of the documents. It has failed to complete production in spite of the June 30 deadline. Though AstraZeneca was obligated to identify relevant databases in January, it only identified a

fraction of them at that time. Through depositions, plaintiffs have now identified 59 relevant databases. AstraZeneca has only yesterday produced the most basic information about them.

Cumulatively, AstraZeneca's tactics have caused plaintiffs to suffer great prejudice. Due to the fact that AstraZeneca has delayed fulfilling its discovery obligations by at least six months, plaintiffs are at least six months behind in preparing for depositions of AstraZeneca employees and plaintiffs' doctors. This delay has caused more than a waste of time – it may well have made it impossible for plaintiffs to meet the court's deadlines for completing these depositions. Because AstraZeneca is the architect of plaintiffs' current predicament, the equitable solution is to proceed with case-specific discovery as outlined in plaintiffs' June 21, 2007 Motion (Document 236). Plaintiffs further request an order that, until AstraZeneca has produced all documents and databases requested by plaintiffs, and has certified complete production of all 80 custodial files, AstraZeneca shall not be entitled to file any PFS-related motion.

IND/NDA

At the initial pretrial conference on September 7, 2006, AstraZeneca informed the court that the "electronic formatting" of the IND/NDA was under way. As the Court then pointed out, it should already have been produced, particularly since much of that material had been produced to the FDA in electronic format. (Ex. A; Transcript of Hearing September 7, 2006; 17:22-21:25.) AstraZeneca was ordered to produce electronic versions of the IND/NDA on or before November 7, 2006. (Ex. B; Sept. 11, 2006 Order & Notice of Hearing.) When AstraZeneca eventually produced this basic information, it was not in a usable form, and required nearly two months of work for

plaintiffs to make it suitable for substantive review. (Ex. C; Transcript of Hearing November 20, 2006; p 31-40). Furthermore, that production was incomplete. As noted at the November 20 hearing, the production was missing the communications with the FDA – which AstraZeneca had earlier indicated would be included. (Ex. A; 21:1-2.; Ex. D; Transcript of Hearing April 12, 2007; 7:10-10:15.) Importantly, that production also omitted the CANDA safety database, which AstraZeneca used to communicate safety information to the FDA, and which is essential to a meaningful review of the IND/NDA. (*Id.*) It was not until June 8, 2007 that Plaintiffs first received this CANDA data.

ORGANIZATIONAL CHARTS

"I know you have done this, but I want you to continue and really take it to heart. If there's important things like an organization chart or issues like that, I'm just not going to have any patience, either side, making it hard for the other side. Do the easy stuff easily. Because it's going to -- it will be to everybody's benefit both in the short-term and the long term."

Magistrate Judge Baker; November 20, 2006; Ex. C., 73:10-17.

Despite the court's admonition, by December 11, 2006, AstraZeneca still had not produced a single organizational chart. (Exhibit F; Transcript of Hearing December 11, 2006; 65:18-21.) Pursuant to CMO-2, AstraZeneca was to produce organizational charts "reflecting its general corporate structure, the structure of the Seroquel team, and the structure of the drug safety team" no later than January 15, 2007. (CMO 2; Ex. E; p. 4) AstraZeneca did produce approximately 20 pages of organizational charts in January. Then, on May 14, 2007, at the 30(b)(6) deposition of Ann Booth-Barbarian, AstraZeneca produced additional but incomplete sets of charts. Plaintiffs have propounded formal requests for further organizational charts. AstraZeneca has responded to those requests with objections, and indicating that it is "still investigating." AstraZeneca's failure to

timely produce organizational charts has delayed plaintiffs' ability to identify key witnesses for custodial production and deposition.

CUSTODIAL PRODUCTION

By way of background, plaintiffs' first attempt at discovery was in response to AstraZeneca's announcement that it would file a motion to dismiss on the grounds of preemption. (Ex. C; 44:22-25.) Plaintiffs quickly propounded discovery requests tailored to preemption issues. Then, in order to avoid responding to these requests, AstraZeneca abandoned the motion. (Ex. F; 58:11-24). The propounded discovery requests were since replaced by the "custodial" method of production, in which AstraZeneca has exploited every opportunity to delay production of vital information.

Production of documents from 80 custodians selected by AstraZeneca was to begin with the first eight on January 5, and was to continue on a rolling basis through June 30. As the court is aware, AstraZeneca failed to live up to these obligations. As recently as June 25, 2007, it was still producing documents from the first 8 custodians. As of June 11, AstraZeneca had produced documents from only 48 custodians, and plaintiffs do not know how many of those productions are actually complete. Plaintiffs did not receive complete productions for 80 custodians on a rolling basis over a six month period. Instead, plaintiffs received a trickle of documents over four and a half months and then an overwhelming majority of documents in the past 45 days.

Furthermore, there are significant gaps in AstraZeneca's custodial production. First, it is clear that AstraZeneca's custodian selection has omitted many significant

witnesses and documents (Ex. D; 13:22-15:9), particularly those from Europe. (Ex. G; Transcript of Hearing May 22, 2007; 15:3-20.)

Second, AstraZeneca has not made a complete search of all documents associated with each custodian. For example, it does not appear that AstraZeneca has conducted a search of all electronic files, such as those commonly shared on a network drive. (Ex. H; Certification of Custodians.) Further, AstraZeneca limited its search to certain key terms, which were never discussed or agreed among the parties, and which glaringly omit basic terms such as "quetiapine" and "DM." (*Id.*)

Third, missing from AstraZeneca's custodial production is a great deal of email. As first presented at the April 12 hearing, there continues to be a dearth of email, particularly from the late 1990's and earlier, when Seroquel was in development.
(Ex. D; Transcript of Hearing April 12, 2007; 12:20- 13:21.)

Fourth, AstraZeneca's production has been rife with technical problems. The parties met and conferred extensively regarding these technical issues prior to the last hearing, and agreed to certain corrective measures. (Ex. I; Joint Statement of Resolved Issues.) AstraZeneca has failed to comply with agreed deadlines for those corrective measures.

Because of AstraZeneca's continued failures to timely locate and produce information, plaintiffs are months behind in preparing for depositions of AstraZeneca's employees and plaintiffs' doctors.

DATABASES

By January 5, 2007, AstraZeneca was to have provided plaintiffs with a list of databases in which information relevant to this litigation might be found. (Ex. E; CMO-

2; p.6.) In January, AstraZeneca listed 15 databases. (Ex. J; Flaster Email, January 15.) Over the past several months, through interviews, "meet and confers" and 30(b)(6) depositions, plaintiffs have now extracted from AstraZeneca the names of 59 relevant databases. With the exception of the CANDA database noted above, AstraZeneca has produced no information whatsoever from any of these databases.

To assist with the prioritization, formatting and production of these databases, plaintiffs requested basic information about each. AstraZeneca first refused to provide this information. After plaintiffs' counsel indicated they would seek the court's assistance, AstraZeneca finally provided the information on July 2, 2007. AstraZeneca must commence production of information from databases immediately.

ATTEMPT TO RESOLVE

Pursuant to M.D.L.R. 3.01(g), since January, 2007 have attempted to resolve the outstanding issues set forth in this motion. However, despite numerous Court appearances, e-mail exchanges, telephone conferences and various other efforts at communication, Plaintiffs have been unable to secure Defendant's cooperation in resolving these issues.

CONCLUSION

For the reasons set forth above, the parties should proceed with case-specific discovery as outlined in plaintiffs' June 21, 2007 Motion (Document 236). Plaintiffs further request an order that, until AstraZeneca has produced all documents and databases requested by plaintiffs, and has certified complete production of all 80 custodial files, AstraZeneca shall not be entitled to file any PFS-related motion.

/s/ Paul J. Pennock
Paul J. Pennock
Plaintiffs' Co-Lead Counsel
WEITZ & LUXENBERG, P.C.
180 Wall St.
New York, NY 10038
Telephone: 212 558 5504
Facsimile: 212 363 2721
E-mail: ppennock@weitzlux.com

SERVICE LIST
(As of May 15, 2007)

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Paul J. Pennock, Esq. Michael E. Pederson, Esq. Weitz & Luxenberg, P.C. 180 Maiden Lane - 17th Floor New York, NY 10038 Telephone: (212) 558-5500 Ppennock@weitzlux.com Mpederson@weitzlux.com	Camp Bailey, Esq. Fletcher Trammell, Esq. Michael W. Perrin, Esq. Bailey Perrin Bailey LLP The Lyric Centre 440 Louisiana, Suite 2100 Houston, TX 77002 Telephone: (713) 425-7240 cbailey@bpblaw.com mperrin@bpblaw.com
Larry Roth, Esq. Law Offices of Larry M. Roth, P.A. Post Office Box 547637 Orlando, FL 32854-7637 Telephone: (407) 872-2239 LROTH@roth-law.com	Tommy Fibich, Esq. Fibich, Hampton & Leebron, L.L.P. 1401 McKinney, Suite 1800 Five Houston Center Houston, TX 77010 Telephone: (713) 751-0025 tfibich@fhl-law.com
Matthew F. Pawa, Esq. Benjamin A. Krass, Esq. Law Offices of Matthew F.Pawa, P.C. 1280 Centre St., Suite 230 Newton Centre, MA 02459 Telephone: (617) 641-9550 Mp@pawalaw.com	John Driscoll, Esq. Brown & Crouppen, PC 720 Olive St. St. Louis, MO 63101 Telephone: (314) 421-0216 Jdriscoll@brownandcrouppen.com asmith@brownandcrouppen.com blape@brownandcrouppen.com
Keith M. Jensen, Esq. Jensen, Belew & Gonzalez, PLLC 1024 North Main Fort Worth, TX 76106 Telephone: (817) 334-0762 kj@kjensenlaw.com	Scott Allen, Esq. Cruse, Scott, Henderson & Allen, L.L.P. 2777 Allen Parkway, 7th Floor Houston, Texas 77019 Telephone: (713) 650-6600 sallen@crusescott.com

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Matthew E. Lundy, Esq. Lundy & Davis, LLP 333 North Sam Houston Parkway East Suite 375 Houston, TX 77060 Telephone: (281) 272-0797 mlundy@lundydavis.com	W. Todd Harvey, Esq. E. Ashley Cranford Whatley Drake & Kallas, LLC 2001 Park Place North, Suite 1000 Birmingham, AL 35203 Telephone: (205) 328-9576 THARVEY@whatleydrake.com ecf@whatleydrake.com
Lawrence J. Gornick, Esq. William A. Levin, Esq. Dennis J. Canty, Esq. Levin Simes Kaiser & Gornick, LLP 44 Montgomery Street 36th Floor San Francisco, CA 94104 Telephone: (415) 646-7160 lgornick@lskg-law.com dcanty@lskg-law.com llsimes@levins-law.com jkaiser@lskg-law.com echarley@lskg-law.com ddecarli@lskg-law.com bsund@lskg-law.com astavrakaras@lskg-law.com	Gregory P. Forney, Esq. Shaffer Lombardo Shurin 911 Main Street, Suite 2000 Kansas City, MO 64105 Telephone: (816) 931-0500 gforney@sls-law.com rbish@sls-law.com ***Attorney for Defendant, Marguerite Devon French***
Robert L. Salim, Esq. Robert L. Salim Attorney at Law PO Box 2069 Natchitoches, LA 71457-2069 Telephone: (318) 352-5999 robertsalim@cp-tel.net	Eric B. Milliken, Esq. 3 Sir Barton Ct. Newark, DE 19702 ***Pro Se***

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Justin Witkin, Esq. Ken Smith, Esq. Aylstock, Witkin & Sasser, PLC 4400 Bayou Boulevard, Suite 58 Pensacola, FL 32503 Telephone: (850) 916-7450 Jwitkin@AWS-LAW.com ablankenship@aws-law.com aburrus@aws-law.com asmith@aws-law.com ksmith@aws-law.com noverholtz@aws-law.com jsafe@aws-law.com	Louisiana Wholesale Drug Co. Inc. C/O Gayle R. White Registered Agent Highway 167N Sunset, LA 70584 ***Pro Se***
Aaron C. Johnson, Esq. Summers & Johnson 717 Thomas Weston, MO 64098 Telephone: (816) 640-9940 firm@summersandjohnson.com	Catherine Solomon (current address unknown) ***Pro Se***
Todd S. Hageman, Esq. Simon and Passanante, PC 701 Market St., Suite 1450 St. Louis, MO 63101 Telephone: (314) 241-2929 thageman@spstl-law.com	Randy Niemeyer 22442 Pike 309 Bowling Green, MO 63334-5209 ***Pro Se***

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Thomas Campion, Esq. Steven M. Selna Heidi E. Hilgendorff, Esq. Drinker Biddle & Reath, LLP 500 Campus Drive Florham Park, New Jersey 07932-1047 Telephone: (973) 360-1100 tcampion@dbr.com steven.selna@dbr.com heidi.hilgendorff@dbr.com ***Attorneys for Defendants Janssen Pharmaceutical Products and Johnson & Johnson Co.***	Mary B. Cotton John D. Giddens, P.A. 226 North President Street Post Office Box 22546 Jackson, MS 39225-2546 (601) 355-2022 betsy@law-inc.com
Michael Davis, Esq. James Mizgala, Esq. Sidley, Austin, LLP Bank One Plaza One South Dearborn Street Chicago, IL 60603 Telephone: (312) 853-7731 mdavis@sidley.com jmizgala@sidley.com ***Attorneys for Defendants AstraZeneca LP and AstraZeneca Pharmaceuticals, LP***	Joseph C. Langston, Esq. The Langston Law Firm, PA P.O. Box 787 100 South Main Street Booneville, MS 38829-0787 Telephone: (662) 728-3138 tbalducci@langstonlaw.com
Elizabeth Raines, Esq. Baker, Sterchi, Cowden & Rice, LLC 2400 Pershing Road, Suite 500 Kansas City, MO 64108 Telephone: (816) 471-2121 raines@bscr-law.com ***Attorney for Defendant AstraZenca, PLC***	Kenneth W. Bean, Esq. Sandberg, Phoenix & von Gontard One City Centre 15th Floor St. Louis, MO 63101-1880 Telephone: (314) 231-3332 kbean@spvg.com ***Attorney for Defendant Dr. Asif Habib***

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Robert L. Ciotti, Esq. Carlton Fields, P.A. 4221 W. Boy Scout Boulevard Suite 1000 Tampa, FL 33607-5736 Telephone: (813) 223-7000 rciotti@carltonfields.com ***Attorney for Defendants, Astrazeneca Pharmaceuticals, LP and Astrazeneca LP***	Aaron K. Dickey, Esq. K. Lindsay Rakers, Esq. Goldenberg and Heller, PC P.O. Box 959 2227 S. State Road 157 Edwardsville, IL 62025 Telephone: (618) 650-7107 aaron@ghalaw.com
Jona R. Hefner, Esq. 3441 W. Memorial, Suite 4 Oklahoma City, OK 73134-7000 Telephone: (405) 286-3000 attorneyokc@hotmail.com	Mark P. Robinson, Jr., Esq. Robinson, Calcagnie & Robinson 620 Newport Center Drive, 7th Floor Newport Beach, CA 92660 Telephone: (949) 720-1288 mrobinson@robinson-pilaw.com
David P. Matthews, Esq. Lizy Santiago Matthews & Associates 2905 Sackett Houston, TX 77098 Telephone: (713) 222-8080 dmatthews@thematthewslawfirm.com lsantiago@thematthewslawfirm.com	Robert A. Schwartz, Esq. Bailey & Galyen 18333 Egret Bay Blvd., Suite 120 Houston, TX 77058 Telephone: (281) 335-7744 bschwartz@galyen.com
David Dickens Miller & Associates 105 North Alfred Street Alexandria, Virginia 22314-3010 (703) 519-8080 ddickens@doctoratlaw.com	Howard Nations Lori A. Siler 4515 Yoakum Boulevard Houston, TX 77006-5895 Telephone: (713) 807-8400 nations@howardnations.com

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Salvatore M. Machi Ted Machi & Associates, PC 18333 Egret Bay Blvd., Suite 120 Houston, TX 77058	Scott Burdine, Esq. Hagans Burdine Montgomery Rustay & Winchester, P.C. 3200 Travis, Fourth Floor Houston, TX 77006 Telephone: (713) 222-2700 sburdine@hagans-law.com
Pete Schneider, Esq. Grady, Schneider & Newman, L.L.P. 801 Congress, 4th Floor Houston, Texas 77002 (713) 228-2200 pschneider@gsnlaw.com	Lizy Santiago, Esq. Abraham, Watkins, Nichols, Sorrels, Matthews & Friend 800 Commerce Street Houston, TX 77002-1776 (713) 222-7211 lsantiago@abrahamwatkins.com
Fred T. Magaziner Marjorie Shiekman A. Elizabeth Balakhani Shane T. Prince Eben S. Flaster DECHERT LLP 2929 Arch Street Philadelphia, PA 19103 (215) 994-4000 fred.magaziner@dechert.com shane.prince@dechert.com marjorie.shiekman@dechert.com eben.flaster@dechert.com elizabeth.balakhani@dechert.com	Lowell Finson Phillips & Associates 3030 North 3rd Street Suite 1100 Phoenix, AZ 85012 (602) 258-8900, ext. 295 lowellf@phillipslaw.ws

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Scott Armstrong 1719 West Main Street Suite 201 Rapid City, SD 57702 (605) 399-3994 scottarmstrong1235@eathlink.net	Linda S. Svitak Faegre & Benson, LLP 90 South 7th Street, Suite 2200 Minneapolis, MN 55402-3901 (612)766-7000 lsvitak@faegre.com wjohnson@faegre.com
James J. Freebery McCarter & English, LLP 919 N. Market Street, 18th Floor Wilmington, DE 19801 (973) 622-4444 jfreebery@mccarter.com tpearson@mccarter.com	Richard D. Hailey Ramey & Hailey 3891 Eagle Creek Parkway Suite C Indianapolis, IN (317) 299-0400 rhailey@sprynet.com
Gale D. Pearson Stephen J. Randall Pearson, Randall & Schumacher, P.A. Fifth Street Towers, Suite 1025 100 South 5th Street Minneapolis, MN 55402 (612) 767-7500 attorneys@outtech.com	B. Andrew List Clark, Perdue, Arnold & Scott 471 East Broad Street, Suite 1400 Columbus, OH 43215 (614) 469-1400 alist@cpaslaw.com lcollins@cpaslaw.com
Ellen R. Serbin Perona, Langer, Beck, Lalande & Serbin 300 San Antonio Drive Long Beach, CA 90807-0948 (562) 426-6155 davidhwang@plblaw.com	Robert H. Shultz Heyl, Royster 103 West Vandalia Street P.O. Box 467 Edwardsville, IL 62025 (618) 656-4646 rshultz@hrva.com bwallace@hrva.com