

1 Hon. Marsha J. Pechman

2
3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON

6
7 GLOBAL CURE MEDICINE, LLC
8 A foreign limited liability company,

9 Plaintiff

10 v.

11 ALFA PHARMA, LLC, a Washington
12 limited liability company, and Suliman Al-
13 Fayoumi, a Washington resident,

14 Defendants.

Case No: 19-cv-00588-MJP

PRETRIAL ORDER

15 JURISDICTION

16 Jurisdiction is vested in this court by virtue of: 28 U.S.C. §1332, diversity of citizenship,
17 and the matter in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs. The
18 Plaintiff is a foreign limited liability company and has its principal place of business in the
19 Sultanate of Oman. The owners of Plaintiff are all citizens and domiciliaries of the Sultanate of
20 Oman. The Defendant limited liability company AlfaPharma is a State of Washington entity. Al-
21 Fayoumi is a U.S. citizen domiciled in Washington State in King County, and the sole owner and
22 Manager of AlfaPharma.

23 CLAIMS AND DEFENSES

The plaintiff will pursue at trial the following claims:

- 24 1. Defendant Alfa Pharma, LLC is liable to Plaintiff for breach of contract and breach of
25 express and implied warranties.
- 26 2. Both Defendants are liable to Plaintiff for fraud.

PRETRIAL ORDER - 1

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The Defendants will pursue the following defenses

- 1. Defendants will contend that Plaintiff has not met its burden of proof.
- 2. Defendants will pursue an affirmative defense of failure to mitigate damages.

ADMITTED FACTS

The following facts are admitted by the parties:

- 1. Plaintiff Global Cure Medicine, LLC (“GCM”) seeks to recover damages stemming from the purchase of pharmaceuticals from Defendants Alfa Pharma LLC (“AlfaPharma”) and Suliman Al-Fayoumi. GCM is a pharmaceutical importer located in Oman. AlfaPharma is a pharmaceutical wholesaler/distributor located in Renton, Washington—wholly owned and solely operated by Defendant Al-Fayoumi.
- 2. In September 2016, the Ministry of Health of the Sultanate of Oman requested proposals to supply the Royal Hospital with vials of injectable solution Eculizumab from Alexion Pharmaceuticals, Inc., headquartered in Boston, Massachusetts.
- 3. The brand name for the drug is “Soliris.” Alexion developed, manufactures, and markets the drug, which is protected by patent. It is the first and only therapy for the treatment of atypical hemolytic uremic syndrome (“aHUS”), a blood disease characterized by low levels of circulating red blood cells. Soliris is a life-saving medication for aHUS, but a single dose containing an impurity, or an improper quantity of the active ingredient could pose immediate life-threatening danger. Soliris was the most expensive drug in the world in 2010 and the fourth most expensive medication in the United States in 2015.

- 1 4. On November 5, 2016, Alfa Pharma sent a quotation to provide GCM with 150 units of
2 Soliris 300 mg vials at a cost of \$705,000.00 USD, for the Royal Hospital. The quotation
3 contains a “Guarantee that all items will be delivered to destination in excellent
4 condition,” and that “Original Certificates of Analysis [‘COA’] & Certificates of Origin
5 [‘COO’] will be supplied.” The COA establishes authenticity and manufacturing date of
6 the product and the COO establishes its origin.
- 7 5. Both parties were aware of counterfeit Soliris medications in the market at that time.
- 8 6. Defendants sent a formal quotation for 75 vials of Soliris and requested a Purchase Order
9 from GCM. The email stated, “We guarantee delivery within 2-3 weeks of order
10 confirmation as we currently have most of the order volume in stock (i.e., around 60
11 vials). We can’t however continue to hold the stock for much longer without a firm
12 order.”
- 13 7. Although AlfaPharma had a warehouse in Renton, it did not hold any of the vials of
14 Soliris physically at its warehouse in Renton.
- 15 8. GCM issued purchase orders to AlfaPharma for collectively 200 units of Myozyme for
16 \$126,000.00 and 75 units of Soliris for \$352,500 (two shipments at \$178,600+\$173,900)
17 to be sourced respectively from Genzyme, U.S.A and Alexion, U.S.A., with minimum
18 expiration dates of 1 year, and to be accompanied by their COA and COO.
- 19 9. AlfaPharma confirmed the order with an Order Confirmation for 75 units of Soliris that
20 again stated “Original Certificates of Analysis & Certificates of Origin will be supplied”
21 and that the expiry dates would be “Min 1 year from delivery.” The order confirmation
22 was sent with a document called “General Terms & Conditions” and dated February 24,
23 2017.

1 10. AlfaPharma invoiced GCM in accordance with the purchase orders and again stated on
2 its invoice that “Original Certificates of Analysis & Certificates of Origin will be
3 supplied” and that the Expiry Date would be “Min 1 year from delivery.”

4 11. GCM through its affiliate Global Industrial Services, LLC paid AlfaPharma \$353,850
5 (which included a \$1,350 shipping fee) for the Soliris plus \$12,400 for stainless steel
6 containers for the medication for a total \$366,250 USD.

7 12. A first shipment of Soliris in fulfillment of a majority of the 75 vials ordered by GCM
8 arrived in Oman on or around April 23, 2017, from a source in Turkey. Another shipment
9 arrived in Oman to complete fulfillment of the order for 75 vials on or around May 11,
10 2017 from the same source in Turkey.

11 13. The vials of Soliris provided to fulfill GCM’s order did not come with adequate
12 documentation. For example, some of the batches delivered had no Certificate of
13 Analysis while others had inconsistencies and irregularities.

14 14. Soliris must be used before its expiration date.

15 15. GCM supplied 40 units of the Soliris to the Royal Hospital at the end of April 2017. The
16 Royal hospital used two of the vials of Soliris supplied to it by GCM. GCM sent the
17 documentation it received from AlfaPharma, including the certificates of analysis, to the
18 Royal Hospital. The Royal Hospital rejected the documentation that was supplied by
19 GCM as inadequate to authenticate the Soliris according to its requirements and withheld
20 payment to GCM of the \$448,500 contract price for the 75-vial order.

21 16. On July 6, 2017 the Royal Hospital formally rejected the Soliris supplied to it by GCM
22 and instructed GCM to retrieve the vials in the Royal Hospital’s possession. GCM
23 forwarded the rejection letter to AlfaPharma.

1 17. GCM requested AlfaPharma to authenticate the Soliris. AlfaPharma was unable to
2 provide documentation sufficient to authenticate the Soliris delivered.

3 18. AlfaPharma did not provide replacement Soliris and did not provide any other form of
4 authentication.

5 19. GCM made additional requests from AlfaPharma for assistance in proving authenticity.

6 On July 20, 2017, GCM sent an email notifying AlfaPharma that the Royal Hospital had
7 rejected the pharmaceuticals and asking AlfaPharma for documentation that Alpha's
8 source in Turkey, a company called Xerox Pharma, had obtained the Soliris from Alexion
9 or an authorized Alexion distributor.

10 20. By email dated August 3, 2017 GCM informed AlfaPharma that the Royal Hospital had
11 now tendered the supply order to others after rejecting the delivery from GCM. GCM
12 requested that AlfaPharma attempt to get fresh documentation to authenticate the Soliris,
13 and if fresh documentation could not be provided, to take back the Soliris at issue, and for
14 AlfaPharma to refund GCM the money paid together with payment of the penalties that
15 the Royal Hospital would assess. AlfaPharma did not take back the pharmaceuticals and
16 did not pay any money to GCM.

17 21. The Royal Hospital obtained 75 vials of Soliris from another source and formally
18 canceled the OMR 172,500 (\$448,500 USD) GCM contract on April 30, 2018. The Royal
19 Hospital imposed its administrative fees and cancelation penalty in the amount of OMR
20 20,624.475, or approximately \$53,624 USD.

21 22. The parties do not know whether the drugs supplied by AlfaPharma are chemically
22 identical to Soliris or not.

23
ISSUES OF LAW

1 The following are the issues of law to be determined by the court:

- 2 1. Whether the Court has determined that the Soliris shipment in this case was not
- 3 merchantable? GCM’s position is that the Court determined in the Order on Cross-
- 4 Motions for Summary Judgment that defendants breached both express warranties
- 5 and the implied warranty of merchantability. Defendants position is that this issue
- 6 was neither briefed nor decided in the Motions for Summary Judgment and that
- 7 “merchantability” is a question of fact that depends on whether the goods fit the
- 8 definition in the UCC at 62A.2-314. This issue relates to defendants’ mitigation
- 9 affirmative defense.
- 10 2. If the parties are not agreed on damages, whether GCM is precluded from arguing as
- 11 part of consequential damages, the value of its loss of its license to import
- 12 pharmaceuticals into Oman?
- 13 3. Whether defendants’ proposed exhibits and testimony related to the FDA and
- 14 Washington State Department of Health investigations should be excluded?
- 15 4. Whether prejudgment interest should be allowed and the amount of prejudgment
- 16 interest on each claim? The parties stipulate that this issue should be decided by the
- 17 Court after receipt of post-verdict briefs, if appropriate.

18
19
20 EXPERT WITNESSES

21 There are no expert witnesses.

22 OTHER WITNESSES

23 The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of plaintiff:

Mahmoud Hamouda, Manager, GCM, will testify concerning formation of the parties' contract, performance, breach and damages to plaintiff.

T.K. Vijayan, Manager, GCM, will testify concerning formation of the parties' contract, performance, breach and damages to plaintiff.

Sajeev V. Kumaran, Manager, GCM, will testify concerning formation of the parties' contract, performance, breach and damages to plaintiff.

Rakesh Kumar, Liaison Manager, Global Source Trading LLC, may testify concerning formation of the parties' contract, performance, breach and damages to plaintiff

Ahmed Al Sherbini, Medicure Sales, GCM, may testify concerning formation of the parties' contract, performance, breach and damages to plaintiff; possible witness only.

Suliman Al-Fayoumi may be called as an adverse witness.

(b) On behalf of defendant:

Suliman Al-Fayoumi, will testify regarding defendants' background, experience, history of parties' dealings, contract formation, performance, allegations of breach, and allegations of damages.

Dima Al-Fayoumi, will testify regarding her knowledge of emails between GCM and Defendant, her knowledge of the transaction at issue, GCM's lawsuit in Oman, and result of that lawsuit.

EXHIBITS

Identify each exhibit with a number, which becomes the number for the exhibit at the trial and appears on the exhibit tag with the following information in table format:

Joint Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
1	Xerox Proforma Invoice. April 28, 2020 5:14 pm. (Disclosed via email from defense counsel Michael Whitticar to GCM counsel Mel Simburg.) ALF001191	X	X		
2	AlfaPharma price quote. November 5, 2016. Alfa to GCM. GCM000195.	X	X		
3		X	X		

1		Letter and item list. January 29, 2017. Royal Hospital, Ministry of Health, Sultanate of Oman to GCM. GCM000002 – GCM000003				
2	4	Email. February 10, 2017 at 12:42 am. AlfaPharma to Global Cure Medicine. GCM000196.	X	X		
3	5	Email. February 10, 2017 at 9:23 pm. AlfaPharma to Global Cure Medicine; email from GCM to Alfa, dated February 10, 2017 at 06:59. GCM000197	X	X		
4	6	Purchase orders. February 20, 2017. Global Cure Medicine to AlfaPharma. GCM000006 Withdrawn. Duplicate of Ex. 132				
5	7	Purchase order. March 1, 2017. Global Cure Medicine to AlfaPharma. GCM000007.	X	X		
6	8	Invoice. March 17, 2017. AlfaPharma to Global Cure. GCM000198.	X	X		
7	9	Invoice. May 11, 2017. AlfaPharma to Global Cure. GCM000009.	X	X		
8	10	Letter dated March 21, 2017, from Global Industrial Service, on behalf of Global Cure to the Oman Arab Bank. GCM000010.	X	X		
9	11	Email dated April 23, 2017 at 3:26 pm, from AlfaPharma to Global Cure confirming	X	X		

1		delivery of 66 vials of Soliris. GCM0000199.				
2	12	[Invoice dated May 17, 2017, from AlfaPharma to Global Cure, confirming 66 vials of Soliris. GCM000012.]				
3		Withdrawn. Duplicate of Ex. 8.				
4						
5	13	Alfa packing list, dated April 23, 2017. ALF 000038.	X	X		
6	14	DHL shipping labels/waybill, dated April 25, 2017. GCM000014 –15.	X	X		
7						
8	15	[Photocopy of identification badge for Ahmet Tarhan Bleda. No date. GCM000016.]			Authenticity (FRE 901)	
9		Withdrawn.			Relevancy (FRE 401/402)	
10						
11	16	Delivery Note, April 27, 2017, for Soliris from Global Cure to the Royal Hospital of Oman with receipt stamp, GCM000017.	X	X		
12						
13	17	Email dated May 11, 2017 at 1:08 p.m., from AlfaPharma to Global Cure; Email, dated May 10, 2017, from Global Cure to AlfaPharma. GCM000200.	X	X		
14						
15						
16	18	Withdrawn. Duplicate of Ex. 9.				
17	19	AlfaPharma packing list, dated May 11, 2017, Alfa to Global Cure. ALF 000039.	X	X		
18						
19	20	Email dated May 11, 2017 at 10:13 am, from Dima (GCM) to GCM. GCM000201.	X	X		
20						
21	21	DHL shipping labels/waybill, dated May 9, 2017. GCM000022 – 23.	X	X		
22						
23	22	[Photocopy of identification badge for Ahmet Tarhan Bleda. No date. GCM000024]			Authenticity (FRE 901)	
		Withdrawn			Relevancy (FRE 401/402)	

1	23	Letter dated May 23,2017, from the Royal Hospital of Oman to Global Cure Medicine. ALF 1189.	X	X		
2						
3	24	Letter, dated May 17, 2017, from Alexion to the Royal Hospital. GCM000026.			Hearsay (FRE801/ 802) Relevanc y/Prejudi ce (FRE 401/402/ 403)	
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7	25	Letter dated June 13, 2017, from Almac to Alexion. GCM000202 - GCM000203.			Hearsay (FRE801/ 802) Relevanc y/Prejudi ce (FRE 401/402/ 403)	
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11	26	Letter dated July 6, 2017, from the Royal Hospital to Global Cure GCM000029.	X	X		
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13	27	Email dated July 26, 2017 at 5:33 pm., from Vijay (GCM) to Mstone (Alfa). GCM000034.	X	X		
14						
15	28	Email dated August 3, 2017 at 4:23 pm, from Vijayan (GCM) to Customer service at Alfa & Suliman (Alfa). GCM000035.	X	X		
16						
17	29	Email dated August 4, 2017 at 11:05 pm., from Vijayan (GCM) to “Vijaykumarkr (GCM) cc: Customerservice at Alfa & Suliman & Mstone (Alfa). GCM000036	X	X		
18						
19	30	Letter dated November 18, 2018, from the Ministry of Health, Republic of Turkey to Global Cure Medicine. GCM00037 – GCM000038 [37 is certified English translation of 38.].			Hearsay (FRE801/ 802) Relevanc y/Prejudi ce (FRE 401/402/ 403)	
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22						
23	31	Letter dated April 30, 2018, from the Ministry of Health in	X	X		

1		Oman to Global Cure Medicine. GCM00039.				
2	32	[Email, dated July 24, 2017 from Promek Export to Global Cure Medicine, and email from GCM to Promek, GCM000040 – 41.] Withdrawn.			Hearsay (FRE 801/802) Relevanc y/Prejudi ce (FRE 401/402/ 403)	
3						
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6	33	Email dated December 20, 2017 and email chain from December 11 to December 20, 2017, from Global Cure to Muscat Government Agency. GCM00042 – 55.	X	X		
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8						
9	34	Letter dated April 12, 2018, from Alexion to Global Cure Medicine, GCM000060.			Hearsay (FRE 801/802) Relevanc y/Prejudi ce (FRE 401/402/ 403)	
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13	35	Digital copies of identification of members of Global Cure Medicine, LLC. No date. GCM000061 - GCM000063.	X	X		
14						
15	36	Digital copy of Global Cure's Commercial Registration Certificate with the Sultanate of Oman. No date. GCM000064 – GCM000070.	X	X		
16						
17						
18	37	Email dated November 14, 2017, from Global Cure Medicine to Ministry of Health of Turkey with embedded letter dated January 15, 2017, from the Omani Embassy in Turkey GCM000071.	X	X		
19						
20						
21	38	Apostille, Secretary of State, Washington State, dated December 20, 2016. GCM000075 – GCM000077.	X	X		
22						
23	39	Document titled ALMAC Certificate of Analysis, for	X	X		

1		Soliris Batch No. P0004801, dated June 9, 2016, bearing signature identified as Trevor Clarke, June 13, 2016. GCM000078 – GCM000079.				
2	40	Screenshot of text messages via WhatsApp between Dima and Mahmoud with partial COA and PDF attachments labeled “Varsayilan” and “Varsayilan 2” at 3:14 PM. Undated. GCM000080.	X	X		
3						
4	41	Screenshot of text message via WhatsApp from Mima with partial COA and PDF attachments labeled “Varsayilan 1” and “Varsayilan 8,” dated April 9 & 23, 2017. GCM000081.	X	X		
5						
6	42	[Emails exchanged between Global Cure Medicine and Ministry of Health of Turkey dated December 11-20, 2017. GCM000082 – GCM000095.] Withdrawn. Duplicate of Ex. 33.				
7	43	Withdrawn. See Ex. 205.				
8	44	Letter to M. Stone at AlfaPharma from Global Cure Medicine, dated May 25, 2018. GCM000098 – GCM000099.	X	X		
9	45	Photocopy of Suliman Al-Fayoumi business card. No date. GCM000100.	X	X		
10	46	Withdrawn. See Ex. 206.				
11	47	Email from customerservice@alfapharma.net to alfayoumi@hotmail.com to customerservice@alfapharma.net to medicure.marketing@gstoman.com re: “Soliris CoAs” and attachments, dated November 23, 2016. GCM000105 – GCM000106.	X	X		
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1	48	[Document titled ALMAC Certificate of Analysis, for Soliris Batch No. P0004202, dated January 5, 2016, bearing signature identified as Trevor Clarke, January 7, 2016. GCM000107 – GCM000108.] Withdrawn. Duplicate of Ex. 115.				
2						
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6	49	[Document titled ALMAC Certificate of Analysis, for Soliris Batch No. P0004707, dated April 8, 2016, bearing signature identified as Trevor Clarke, April 11, 2016. GCM000109 – GCM000110.] Withdrawn. Duplicate of Ex. 116.				
7						
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10	50	[Document titled ALMAC Certificate of Analysis, for Soliris Batch No. P0004708, dated April 8, 2016, bearing signature identified as Trevor Clarke, April 11, 2016. GCM000111 – GCM000112.] Withdrawn. Duplicate of Ex. 117.				
11						
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15	51	Document titled ALMAC Certificate of Analysis, for Soliris Batch No. P0005002R, dated May 2, 2016, bearing signature identified as Trevor Clarke, May 4, 2016. GCM000115 – GCM000116.	X	X		
16						
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18						
19	52	Document titled ALMAC Certificate of Analysis, for Soliris Batch No. 1000028, dated May 2, 2016, bearing signature identified as Trevor Clarke, May 3, 2016. GCM000117 – GCM000118.	X	X		
20						
21						
22	53	Document titled ALMAC Certificate of Analysis, for Soliris Batch No. P0004801, dated April 4, 2016, bearing	X	X		
23						

1		signature identified as Trevor Clarke, April 5, 2016. GCM000119 – GCM000120.				
2	54	[Document titled ALMAC Certificate of Analysis, for Soliris Batch No. P0004906, dated March 16, 2016, bearing signature identified as Trevor Clarke, March 14, 2016. GCM000121 – GCM000122.] Withdrawn. Duplicate of Ex. 111.				
3						
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7	55	[Document titled ALMAC Certificate of Analysis, for Soliris Batch No. P0004907, dated March 16, 2016, bearing signature identified as Trevor Clarke, March 14, 2016. GCM000123 – GCM000124.] Withdrawn. Duplicate of Ex. 112.				
8						
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11						
12	56	Emails between Global Cure Medicine and AlfaPharma, dated February 26, 2017. GCM000125 – GCM000126.	X	X		
13						
14	57	[Document titled General Terms & Conditions, Invoice ALF-154-2017, dated February 24, 2017. GCM000127 – GCM000128.] Withdrawn. Duplicates of Ex. 87. / ALF 01-02.				
15						
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18	58	[Quotation dated February 25, 2017, Invoice # ALFA-154-2017 for 75 vials of Eculizumab for \$353,850 including shipping. GCM000129.] Withdrawn. Duplicate of Ex. 92. (Dup ALF 07).				
19						
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21						
22	59	[Email from Vijayan (GCM) to Dima (GCM) cc: Ahmed (GCM), customer service at Alfa (Alfa), GCM000130.]				
23						

1		Withdrawn. Duplicate of Ex. 66.				
2	60	Email dated July 8, 2017 at 9:34 a.m. from Sam A (Alfa) to Vijayan (GCM) cc: Dima (GCM), Ahmed (GCM), GCM000131.	X	X		
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6	61	Email dated July 8, 2017 at 2:07 p.m. from Vijayan (GCM) to Sam A (Alfa), cc: Dima (GCM), Ahmed (GCM), GCM000132.	X	X		
7						
8	62	Email July 9, 2017 at 5:25 PM from Vijayan (GCM) to Sam A. (Alfa), cc: Dima (GCM), Ahmed (GCM). GCM000133.	X	X		
9						
10	63	Email July 11, 2017 at 8:50 PM. from Vijayan (GCM) to Sam A (Alfa), cc: Ahmed (GCM), GCM000134.	X	X		
11						
12	64	Email July 12, 2017 at 6:51 AM. from Vijayan (GCM) to Dima (GCM), Customer service at Alfa (Alfa), cc: GCM parties, GCM000135.	X	X		
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14						
15	65	Email dated July 12, 2017 at 6:59 AM. from Vijayan (GCM) to Dima (GCM), Customer Service at Alfa (ALFA), cc: GCM team, GCM000136.	X	X		
16						
17	66	Emails between AlfaPharma and GCM July 3, 2017 to July 12, 2017. GCM000137 - GCM000138.	X	X		
18						
19	67	Email dated July 12, 2017 at 8:54 am with password for attachment previously sent, and email string. from customer service at Alfa to Vijayan (GCM), cc: GCM team. GCM000139 – GCM000140.	X	X		
20						
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22						
23	68	Emails July 19, 2017 to July 20, 2017, between Vijayan	X	X		

1		(GCM) and MStone (Alfa). GCM000141 – GCM000142.				
2	69	Email dated July 24, 2017 at 8:47 AM. from Vijayan (GCM) to MStone (Alfa), cc: GCM team, GCM000143.	X	X		
3						
4	70	Email dated July 24, 2017 at 9:40 PM from Mstone (Alfa) to Vijayan (GCM), cc: GCM team, and email dated July 23, 2017 at 23:47 from Vijayan (GCM) to Mstone/Sam/Suliman (Alfa), Dima (GCM). GCM000144.	X	X		
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8	71	Email dated August 4, 2017 at 11:50 PM. from Vijayan (GCM) to MStone (Alfa), cc: GCM team, GCM000145.	X	X		
9						
10	72	Email dated August 8, 2017 at 6:42 AM. from Vijayan (GCM) to MStone (Alfa), cc: GCM team, GCM000146.	X	X		
11						
12	73	Email dated August 23, 2017 at 1:18 PM. from Aysha (GCM) to Vijayan (GCM), cc: M Stone, customer service at AlfaPharma, and Salfayoumi (hotmail) (Alfa), GCM team, GCM000147 – 148.	X	X		
13						
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15						
16	74	Digital copy of Xerox Pharmaceutical invoice (partially redacted) to Global Cure Medicine for 75 Solaris 300mg manufactured by Alexion. Undated. GCM0000149.	X	X		
17						
18						
19	75	Email dated March 29, 2017 from Global Cure Medicine to various personnel at Global Cure Medicine. GCM000158.	X	X		
20						
21	76	Letter dated March 28, 2017 from Global Cure Medicine to Royal Hospital, with annotation “Rejected” and faxed back March 29, 2017. GCM000159.	X	X		
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1	77	Alexion Letter. GCM000162 – GCM000163. Duplicate of Ex. 83. Withdrawn			Hearsay (FRE801/802) Relevancy/Prejudice (FRE 401/402/403)	
2						
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5	78	Email dated July 17, 2017 from Global Cure Global Cure Medicine to AlfaPharma with attached Invoice dated November 28, 2016 from AlfaPharma to Global Cure Global Cure Medicine, Deposition of Al-Fayoumi, Ex. 40, GCM 162 – 166.	X	X		
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11	79	[Digital copy of “XELJANZ” tablet box. Undated. GCM000165.] Withdrawn . Duplicate of Ex. 78.				
12						
13	80	[Invoice dated March 1, 2017 from AlfaPharma to Global Cure Medicine, GCM000166.] Withdrawn . Duplicate of Ex. 78.				
14						
15	81	Email dated April 19, 2017 from Global Cure Medicine to various personnel at Global Cure Medicine re Tofacitinib, GCM000167.	X	X		
16						
17						
18	82	Letter dated April 17, 2017 from Ministry of Health, Sultanate of Oman to Managing Director at GCM, GCM000168, attachment to GCM000167.	X	X		
19						
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21	83	Letter dated May 22, 2017 from Alexion to Royal Hospital of Oman, GCM000172 – GCM000173.			Hearsay (FRE801/802) Relevancy/Prejudice (FRE	
22						
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1				401/402/ 403)	
2	84	Royal Hospital letter to Global Cure Medicine, undated. GCM000174.	X	X	
3	85	Withdrawn.			Relevanc y/Prejudi ce (FRE 401/402/ 403)
4	86	Withdrawn.			Relevanc y/Prejudi ce (FRE 401/402/ 403)
5					
6	87	AlfaPharma general terms and conditions, dated February 24, 2017. ALF000001-2.	X	X	
7	88	Document titled Alexion Certificate of Analysis, for Soliris Batch # P0004202. Undated. ALF000003.	X	X	
8	89	Document titled Alexion Certificate of Analysis, for Soliris Batch # P0004002. Undated. ALF000004.	X	X	
9	90	Document titled Alexion Certificate of Analysis, for Soliris Batch # P0004708. Undated. ALF000005.	X	X	
10	91	Certificate of Origin. Undated. ALF000006.	X	X	
11	92	AlfaPharma price quote to Global Cure Medicine, dated February 25, 2017. ALF000007.	X	X	
12	93	Withdrawn. See Ex. 208			
13	94	Email chain dated October 30, 2016, from Xerox Pharmaceutical Warehouse to 'Suliman', with imbedded attachments. ALF000010 -14.	X	X	
14	95	Forwarded email chain dated July 6 to August 8, 2017 between AlfaPharma and	X	X	
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1		Global Cure Medicine. ALF000019 – 23.				
2	96	Forwarded email exchange dated July 19 – July 20, 2017 between AlfaPharma and Global Cure Medicine. ALF000024 – 25.	X	X		
3						
4	97	Withdrawn. See Ex. 2010.				
5	98	Email dated October 5, 2016 from Xerox Pharmaceutical to AlfaPharma re: P0004708 03/2018 with 1 attachment labeled “CCF05102016.pdf”. ALF000029.	X	X		
6						
7						
8	99	Email exchange dated October 4, 2016 to April 23, 2017 between Xerox Pharmaceutical to AlfaPharma, with 1 attachment labeled “Pack List SOLIRIS 300mg..pdf”. ALF000030 – 31.	X	X		
9						
10						
11						
12	100	Email dated October 4, 2016 from Xerox Pharmaceutical to AlfaPharma, with 2 attachments labeled “CCF04102016_0001.pdf” and “CCF04102016.pdf”. ALF000032.	X	X		
13						
14						
15	101	Email exchange dated September 30, 2016 between Xerox Pharmaceutical and AlfaPharma, with 4 attachments labeled “SOLIRIS-3601.pdf”, “SOLIRIS- 3704.pdf”, “SOLIRIS-4801.pdf”, and “SOLIRIS-4707.pdf”. ALF000033 – 36.	X	X		
16						
17						
18						
19						
20	102	Packing list dated October 3, 2016 from AlfaPharma to Global Cure Medicine. ALF000037.	X	X		
21						
22	103	Packing lists. ALF 38:4/23/2017. Withdrawn. Duplicate of Ex.13.				
23						

1					
2	104	ALF 39. 5/11/2017. Withdrawn. Duplicate of Ex. 19.			
3					
4	105	Document dated May 2, 2016 titled ALMAC Certificate of Analysis, for Soliris Batch No. 1000081, page 1 of 2. ALF000040.	X	X	
5					
6	106	Document dated May 3, 2016 titled ALMAC Certificate of Analysis, for Soliris Batch No. 1000020, page 2 of 2, dated May 2, 2016, with signature identified as Trevor Clarke. ALF000041.	X	X	
7					
8					
9					
10	107	Document titled Alexion Certificate of Analysis, for Soliris Batch No. P0003601, undated. ALF000042.	X	X	
11					
12	108	Document titled Alexion Certificate of Analysis, for Soliris Batch No. P0003704, undated. ALF000043	X	X	
13					
14	109	Document titled Alexion Certificate of Analysis, for Soliris Batch No. P0004707, undated. ALF000044.	X	X	
15					
16	110	Document titled Alexion Certificate of Analysis, for Soliris Batch No. P0004801 undated. ALF000045.	X	X	
17					
18	111	Document dated March 14, 2016 titled ALMAC Certificate of Analysis, for Soliris Batch No. P0004906, dated March 16, 2016, with signature identified as Trevor Clarke. ALF000046. ALF000047.	X	X	
19					
20					
21	112	Document dated March 14, 2016 titled ALMAC Certificate of Analysis, for Soliris Batch No. P0004907, dated March 1?, 2016 (date not fully discernable), with signature	X	X	
22					
23					

1		identified as Trevor Clarke. ALF000048. ALF000049.				
2	113	Purchase order dated September 28, 2016 from Global Cure Medicine to AlfaPharma. ALF000050.	X	X		
3						
4	114	Invoice dated September 28, 2016 from AlfaPharma to Global Cure Medicine. ALF000051.	X	X		
5						
6	115	Document dated January 5, 2016, titled ALMAC Certificate of Analysis, for Soliris Batch # P0004202, with signature identified as Trevor Clarke dated January 7, 2016. ALF000052 – 53.	X	X		
7						
8						
9						
10	116	Document dated April 7, 2016, titled ALMAC Certificate of Analysis, for Soliris Batch # P0004707, with signature identified as Trevor Clarke dated April 11, 2016. ALF000054 – 55.	X	X		
11						
12						
13	117	Document dated April 8, 2016, titled ALMAC Certificate of Analysis, for Soliris Batch # P0004708, with signature identified as Trevor Clarke dated April 11, 2016. ALF000056 – 57.	X	X		
14						
15						
16						
17	118	Document dated May 2, 2016, titled ALMAC Certificate of Analysis, for Soliris Batch # P0005002R with signature identified as Trevor Clarke dated May 4, 2016. ALF000060 – 61. Withdrawn. Duplicate of Ex. 51				
18						
19						
20						
21	119	Xerox Pharmaceutical Proforma Invoice dated September 29, 2016. ALF000062.	X	X		
22						
23	120	AlfaPharma Invoice dated September 28, 2016 to Global				

1		Cure Medicine for 20 unit of Soliris for Batch Nos. P0003601, P0003704, P0004707, P0004801 and P0005002R. ALF000063. Withdrawn. Duplicate of Ex. 114.				
2	121	AlfaPharma Order confirmation to Global Cure Medicine dated March 20, 2017 for 75 units of Soliris, with handwritten note in lower right corner. ALF000064.	X	X		
3	122	AlfaPharma Certificate of Origin as France for 20 vials of Soliris, undated. ALF000065.	X	X		
4	123	Bank of America printout of payments, dated March 1 to March 31, 2017. ALF000067.	X	X		
5	124	Screenshot of ALMAC Certificates of Analysis list of batch numbers P0004202, P0004707, P0004708, P0004801. ALF000068.	X	X		
6	125	Picture of Copy of shipping label dated May 9, 2017 from AlfaPharma to Global Cure Medicine. ALF000069.	X	X		
7	126	Wire transfer request, dated March 22, 2017 from Global Cure Medicine to Oman Arab Bank for payment to AlfaPharma. ALF000070.	X	X		
8	127	Promissory note for \$366,250.00 from Global Cure Medicine to Oman Arab Bank. No date. ALF000071.	X	X		
9	128	Trust Receipt from Oman Arab Bank to Global Cure Medicine. No date. ALF000072.	X	X		
10	129	Order Confirmation dated March 17, 2017 from AlfaPharma to Global Cure Medicine, for stainless steel double ended TPED-compliant	X	X		

1		sample cylinder for \$12,400. ALF000073.				
2	130	Letter dated October 18, 2016 from AlfaPharma, Michael Stone, JD to Global Cure Medicine. ALF00075- 76.	X	X		
3						
4	131	Purchase Order dated March 1, 2017 from Global Cure Medicine to AlfaPharma for 37 units of Soliris. ALF000077.	X	X		
5						
6	132	Purchase Order dated February 20, 2017 from Global Cure Medicine to AlfaPharma, for 38 units of Soliris and 200 of Myozyme. ALF000078.	X	X		
7						
8						
9	133	National Bank of Oman Application dated March 2, 2017 for open account letter from Global Cure Medicine to AlfaPharma for payment of \$14,895. ALF000079	X	X		
10						
11						
12	134	[Letter dated October 18, 2016 from Alfa to GCM. ALF- 000075-76 and ALF001181- 1182.] Withdrawn. Duplicate of Ex. 130.				
13						
14						
15	135	Bank of Baroda delivery report of payment by Global Cure Medicine to AlfaPharma. October 10, 2016. ALF000080.	X	X		
16						
17	136	National Bank of Oman Application for open account letter from Global Cure Medicine to AlfaPharma for payment of \$62,300, dated March 2, 2017. ALF000081.	X	X		
18						
19						
20	137	National Bank of Oman Application for open account letter dated February 5, 2017 from Global Cure Medicine to AlfaPharma for payment of \$9016.68. ALF000082.	X	X		
21						
22						
23	138	Global Cure Medicine purchase order, dated March 5,	X	X		

1		2017 for \$8,590.32. ALF000083 – ALF000084.				
2	139	Withdrawn. See Ex. 209.				
3	140	Email dated August 4, 2017 with earlier email chain dated, July 3 to July 24, 2017 from Global Cure Medicine to Michael Stone AlfaPharma. ALF000308 – 312.	X	X		
4						
5						
6	141	Email dated July 23, 2017 with earlier email chain dated, July 3 to July 20, 2017 from Global Cure Medicine to Michael Stone AlfaPharma. ALF000314 – 317.	X	X		
7						
8						
9	142	Email dated July 19, 2017 with earlier email chain dated, July 3 to July 20, 2017 from Global Cure Medicine to Michael Stone AlfaPharma. ALF000318 – 320.	X	X		
10						
11						
12	143	Email dated August 23, 2017 with earlier email chain dated, July 3 to August 8, 2017 from Global Cure Medicine to Global Cure Medicine and AlfaPharma. ALF000322 – 328.	X	X		
13						
14						
15	144	Email dated August 29, 2017 with earlier email chain dated April 2 to August 11, 2017 from Global Cure Medicine to Global Cure Medicine and AlfaPharma. ALF000330 – 339.	X	X		
16						
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19	145	Email dated August 9, 2017 with earlier email chain dated July 25 to July 28, 2017 from Global Cure Medicine to AlfaPharma. ALF000342 – 343.	X	X		
20						
21						
22	146	Email dated August 3, 2017 with earlier email chain dated July 26, 2017 from Global Cure Medicine to AlfaPharma	X	X		
23						

1		and Global Cure Medicine. ALF000382 – 383.				
2	147	Email dated August 23, 2017 with email chain dated August 3	X	X		
4		8, 2017 from Global Cure Medicine to Global Cure Medicine and AlfaPharma. ALF000386 – 387.				
5	148	Email dated March 24, 2017 with email chain dated March 6	X	X		
7		22 to March 24, 2017. from Global Cure Medicine to Global Cure Medicine. ALF000410 – 412.				
8	149	Email dated July 5, 2017 from Global Cure Medicine to 9	X	X		
10		AlfaPharma. ALF000415.				
11	150	Email dated April 6, 2017 with email chain dated March 14 to 12	X	X		
13		April 6, 2017 from Global Cure Medicine to AlfaPharma. ALF000417 – 422.				
14	151	Email dated March 18, 2017 with email chain dated March 15	X	X		
16		14 to March 17, 2017 from Global Cure Medicine to AlfaPharma. ALF000428 – 17				
18	152	Email dated April 11, 2017 at 12:15 pm with email chain from April 4, 2017 from Alfa to GCM. ALF000431- ALF000432.	X	X		
19	153	Email dated March 7, 2017 at 10:42 PM with email chain from Alfa to GCM. ALF000442.	X	X		
20	154	Email dated March 7, 2017 from Sam to GCM. ALF000497.	X	X		
21	155	Email dated July 11, 2017 with email chain dated July 3 to July 22	X	X		
23		9, 2017 from Global Cure Medicine to AlfaPharma. ALF000539 – 541.				

1	156	Email dated July 9, 2017 with email chain dated from July 3 to July 8, 2017 from Global Cure Medicine to AlfaPharma. ALF000542 – 544.	X	X		
2						
3	157	Email dated July 8, 2017 with email china dated July 3 to July 8, 2017 from Global Cure Medicine to AlfaPharma. ALF000545 – 547.	X	X		
4						
5	158	Email dated July 7, 2017 with email chain dated July 3 to July 6, 2017 from AlfaPharma to Global Cure Medicine. ALF000548 – 549.	X	X		
6						
7	159	Email dated October 4, 2016 with chain email from September 29 to October 4 2016 from Global Cure Medicine to AlfaPharma. ALF000552 – 560.	X	X		
8						
9	160	Email dated October 4, 2016 with email chain dated September 29 to October 4, 2016 from Global Cure Medicine to Global Cure Medicine and AlfaPharma. ALF000569 - 577.	X	X		
10						
11	161	Email dated March 30, 2017 with email chain from March 27 – March 30, 2017 from AlfaPharma to Dr. Mohammed Al-Sabbari CEO Albittar International. ALF000616 – 618.	X	X		
12						
13	162	Email dated March 18, 2017 with email chain dated from March 14 to March 17, 2017 from Global Cure Medicine to AlfaPharma. ALF000684 – 686.	X	X		
14						
15	163	Email dated February 1, 2017 from Sam to M. Hamouda at GCM. Bates No. ALF000734.	X	X		
16						
17	164	Email dated April 4, 2017 with email chain dated from March	X	X		
18						
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21						
22						
23						

1		27 to March 30, 2017 from AlfaPharma to Dr. Mohammed Al-Sabbari CEO Albittar International. ALF001045 – 1047.				
2	165	Email dated October 3, 2016 from Xerox Pharma to AlfaPharma re: COO with 2 attachments labeled “CCF03102016_0001.pdf” and “CCF03102016_0002.pdf”. ALF001130.	X	X		
3						
4	166	Email dated November 22, 2016 from Xerox Farma to AlfaPharma sre: Counterfeit Soliris in the market, with 3 attachments labeled “IMG_5086.JPG”, “IMG_5087.JPG” and “IMG_5088.JPG”. ALF001131.	X	X		
5						
6	167	Email dated May 10, 2017 from Xerox Farma to AlfaPharma with attachment labeled “Pack list SOLIRIS 300mg 11 vials.docx”. ALF001132.	X	X		
7						
8	168	Emails dated November 22, 2016 from Xerox Farma to AlfaPharma. ALF001133.	X	X		
9						
10	169	Email dated November 22, 2016 from AlfaPharma to Xerox Farma. ALF001135.	X	X		
11						
12	170	Email dated November 22, 2016 from AlfaPharma to Xerox Farma. ALF001136.	X	X		
13						
14	171	Email dated October 2, 2016 from Xerox Pharmaceutical to AlfaPharma, re batch P0005002R, with attachment labeled “CCF02102016.pdf”. ALF001176.	X	X		
15						
16	172	Scan copy of annotated copy of AlfaPharma Invoice. Dated March 17, 2017. ALF001177.	X	X		
17						
18						
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20						
21						
22						
23						

1	173	Stipulated Facts	X	X		
2	Defendant's Exhibits					
3	Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
4	201	Letter from Dr. Ibrahim Alrashidi dated July 6, 2017 (ALF00193) plus translation. Withdrawn. See Ex. 26.	Disputed	Disputed	FRE 902(3) authenticity ; 401-2 relevance	
5	202	Decision of Public Prosecution Office, Sultanate of Oman) Case # 2017/15495 (ALF00194-199) plus translation	Disputed	Disputed	FRE 902(3) authenticity ; 401-2 relevance	
6	203	Summary Judgement by The Court of Appeals (ALF00200-202) plus translation	Disputed	Disputed	FRE 902(3) authenticity ; 401-2 relevance	
7	204	Notification from Omani Labor Court (ALF00203)	Disputed	Disputed	FRE 902(3) authenticity ; 401-2 relevance	
8	205	Letter to U.S. FDA from Global Cure Medicine, dated April 18, 2018. GCM000096 – GCM000097.	Disputed	Disputed	FRE 401-2 relevance, not probative of any issue	
9	206	Emails exchanged between Global Cure Medicine and U.S. FDA, April 18 – May 16, 2018. GCM000101 – GCM0000104.	Disputed	Disputed	Hearsay. FRE 401-2 relevance, not probative of any issue.	
10	207	Withdrawn. See Ex. 78				
11	208	Forwarded email chain dated April 24, 2018 from AlfaPharma to Chris Humberson at the Washington State department of Health. ALF000008-ALF000009.	Disputed	Disputed	FRE 401-2 relevance, not probative of any issue. Hearsay	
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1	209	Scan print out dated April 24, 2018, of partial communication from Chris Humberson, P.P.H. Washington State Department of Health with acknowledgement signature of Suliman al-Fayoumi. ALF000112.	Disputed	Disputed	FRE 401-2 relevance, not probative of any issue. Hearsay.	
2						
3						
4						
5						
6						
7	210	Forwarded emails dated February 22 and March 1, 2018, with 9 attachments between AlfaPharma and Sangeeta Vaswani Chaerjee and Michael Cummins or the U.S. Food and Drug Administration. ALF000027 – 28.	Disputed	Disputed	Hearsay. FRE 401-2 relevance, not probative of any issue.	
8						
9						
10						
11						
12						

13 In the Authenticity and Admissibility columns, indicate “Stipulated” or “Disputed”. If
 14 “Disputed”, identify the objection in the Objection column. An objection based on a Fed. R.
 15 Evid. should reference the rule number; additional objections should be referenced by a code that
 16 the parties include with the exhibit list. The “Admitted” column is for use by the Court.

(No party is required to list any exhibit which is listed by another party, or any exhibit to
 be used for impeachment only. See LCR 16 for further explanation of numbering of exhibits).

17 ACTION BY THE COURT

18 (a) This case is scheduled for trial before a jury on December 14, 2020

19 (b) Trial briefs shall be submitted to the court on or before November 30, 2020.

20 (c) Jury instructions requested by either party shall be submitted to the court on or before
 21 November 30, 2020. Suggested questions of either party to be asked of the jury by the court on
 22 voir dire shall be submitted to the court on or before November 30, 2020.

(d) (Insert any other ruling made by the court at or before pretrial conference.)

23 This order has been approved by the parties as evidenced by the signatures of their
 counsel. This order shall control the subsequent course of the action unless modified by a

1 subsequent order. This order shall not be amended except by order of the court pursuant to
2 agreement of the parties or to prevent manifest injustice.

3 DATED this 3rd day of December, 2020.

4 

5 Marsha J. Pechman
6 United States District Judge

7 FORM APPROVED:

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