

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PURDUE PHARMA L.P., PURDUE
PHARMACEUTICALS L.P., THE P.F.
LABORATORIES, INC., RHODES
TECHNOLOGIES, and GRÜNENTHAL
GMBH,

Plaintiffs,

v.

AMNEAL PHARMACEUTICALS, LLC,

Defendant.

Civil Action No. 15-1152-RGA-SRF

REDACTED - PUBLIC VERSION

MEMORANDUM ORDER

At Wilmington this **25th** day of **July, 2018**, the court having considered the parties' discovery dispute submissions, exhibits, and the arguments presented during the March 1, 2018 discovery dispute hearing regarding: (1) plaintiffs Purdue Pharma L.P., Purdue Pharmaceuticals L.P., The P.F. Laboratories, Inc. (collectively, "Purdue"), Rhodes Technologies, and Grünenthal GmbH's (collectively with Purdue, "Plaintiffs") motion to compel discovery [REDACTED] [REDACTED] of defendant Amneal Pharmaceuticals, LLC ("Amneal") and third-party Kashiv Pharma LLC ("Kashiv"); and (2) defendant Amneal's request for a protective order quashing Plaintiffs' subpoenas on third-parties [REDACTED] [REDACTED] and [REDACTED] (D.I. 193; D.I. 225; D.I. 230; D.I. 231; D.I. 232; D.I. 233; D.I. 242; D.I. 244; 3/1/18 Tr.), IT IS HEREBY ORDERED that Plaintiffs' motion to compel the production of discovery is granted-in-part, and Amneal's request for a protective order against Plaintiffs' subpoenas on third-parties is granted-in-part.

1. Background. Plaintiffs commenced this patent infringement action on December 15, 2015 against defendant Amneal for Amneal’s Abbreviated New Drug Application (“ANDA”) No. 203235 as amended and submitted to the United States Food and Drug Administration (“FDA”) seeking approval to market a generic version of Purdue’s New Drug Application (“NDA”) No. 022272 for oxycodone hydrochloride extended release tablets which are sold under the trade name OxyContin® (“OxyContin”). (D.I. 1) The complaint asserts causes of action for infringement of U.S. Patent Nos. 7,674,799 (“the ’799 patent”); 7,674,800 (“the ’800 patent”); 7,683,072 (“the ’072 patent”); 8,114,383 (“the ’383 patent”); 8,309,060 (“the ’060 patent”); 8,337,888 (“the ’888 patent”); 8,808,741 (“the ’741 patent”); 8,894,987 (“the ’987 patent”); 8,894,988 (“the ’988 patent”); 9,060,976 (“the ’976 patent”); 9,034,376 (“the ’376 patent”); and 9,073,933 (“the ’933 patent”).¹ (*Id.*) Plaintiffs listed the ’799, ’800, ’072, ’383, ’060, ’888, ’741, ’987, ’976, and ’933 patents in the FDA *Approved Drug Products with Therapeutic Equivalence Evaluations* (“Orange Book”) for their OxyContin product. (*Id.* at ¶ 5) The ’376 patent is not listed in the FDA’s Orange Book. (D.I. 266 at ¶ 6) Plaintiffs subsequently brought three additional actions against Amneal for related, newly issued patents, and a separate action

¹ On April 8, 2016, the Federal Circuit affirmed the invalidity of the asserted claims of the ’888 patent based on obviousness and did not reach the question of indefiniteness. (D.I. 50 at 1) As a result, the parties stipulated to dismiss all claims for infringement of the ’888 patent with prejudice. (*Id.* at 2) The parties subsequently stipulated to dismiss the ’799, ’800, ’072, and ’383 patents from the instant case. (D.I. 80) The court signed the order dismissing the patents from the litigation on November 21, 2016. On November 8, 2017, the Patent Trial and Appeal Board (“PTAB”) issued two final written decisions in *inter partes* review (“IPR”) proceedings for the ’976 patent, concluding that the ’976 patent is unpatentable over the prior art. (D.I. 180 at 1) The PTAB also instituted IPR proceedings for all asserted claims of the ’376 patent. (*Id.* at 2) On January 17 and February 8, 2018, the PTAB issued final written decisions invalidating the asserted claims of the ’376 patent as unpatentable under the prior art. (D.I. 255 at 1-2) Most recently, in the proposed pretrial order filed on March 26, 2018, the parties identified the ’987, ’988, ’376, ’976, ’933, and ’060 patents as the “patents-in-suit.” (D.I. 266 at ¶ 1)

against Kashiv. (C.A. No. 17-210-RGA; C.A. No. 17-1421-RGA; C.A. No. 18-51-RGA; C.A. No. 18-52-RGA) All actions are pending before Judge Richard G. Andrews.

2. The discovery dispute presently before the court concerns Plaintiffs' request to compel Amneal and Kashiv to produce discovery [REDACTED]

[REDACTED]. On October 17, 2017, Amneal anticipated merging with Impax, beginning in April 2018 ("the Impax Merger"). (D.I. 230, Ex. 1 at 4) Plaintiffs contend that the Impax Merger implicates a settlement agreement between Purdue and Impax that was entered into in 2013 ("the 2013 Settlement Agreement"). (See D.I. 182; D.I. 230) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. [REDACTED]

[REDACTED]

[REDACTED] Rather, the parties' dispute

concerns the owner of the ANDA at issue, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. On February 3, 2017, Amneal produced a 2013 [REDACTED]

[REDACTED] (D.I. 182, Ex. 5) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. (D.I. 213, Exs. 5, 8)

5. [REDACTED]

that the ownership of Amneal's ANDA had allegedly been transferred to Kashiv. (D.I. 182, Exs. 2, 3; D.I. 213, Ex. 7) On September 27, 2017, Amneal produced those submissions to Plaintiffs and proposed that Kashiv be substituted as the defendant in this litigation. (*Id.*, Ex. 4) Plaintiffs

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

declined to substitute Kashiv as the defendant in this litigation, and, in response, Amneal filed a formal motion to substitute, which, as of the date of this Memorandum Order, remains pending.

(D.I. 212)

6. On November 11, 2017, Plaintiffs requested that Judge Andrews amend the current case schedule and postpone trial in light of the Impax Merger and these outstanding ownership discovery issues. (D.I. 182)

7. On November 21, 2017, Judge Andrews declined to amend the schedule as requested, but permitted Plaintiffs to obtain “discovery about the ownership of the ANDA and the impact of the merger agreement” to “run in parallel with the production of expert reports.” (D.I. 185)

8. In response to Judge Andrews’ November 21, 2017 Order, on November 29, 2017, Plaintiffs served third-party discovery subpoenas on Kashiv, Dr. Nanvit Shah (“Dr. Shah”), Chirag Patel, and Chintu Patel. (D.I. 193) Also on November 29, 2017, Plaintiffs served its Third Set of Requests for the Production of Documents (D.I. 226, Ex. C) and Fifth Set of Interrogatories (D.I. 226, Ex. D) on Amneal.

9. Also in response to Judge Andrews’ November 21, 2017 Order, Amneal produced the

[REDACTED]

[REDACTED] (Id. at AMNOXY 0352992)

10. On December 29, 2017, Amneal served its responses and objections, objecting mainly on relevancy grounds, as well as attorney-client privilege and burden. (D.I. 226 at Exs. I-K)

11. On February 16, 2018, Plaintiffs served third-party discovery subpoenas on [REDACTED]

[REDACTED] (D.I. 225)

12. On March 1, 2018, the court held a discovery dispute teleconference to resolve the parties' dispute relating to discovery of ownership of the ANDA at issue and the ownership of Amneal and Kashiv. (D.I. 229) At the conclusion of the teleconference, the court reserved decision on the motion to compel and motion for a protective order. (3/1/18 Tr. at 38:12-15)

13. Standard of Review. Pursuant to Rule 26,

[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1). A party may move for an order compelling discovery pursuant to Rule 37. Generally, a party moving to compel discovery bears the burden of demonstrating the relevance of the requested information. *See Del. Display Grp. LLC v. Lenovo Grp. Ltd.*, 2016 WL 720977, at *2 (D. Del. Feb. 23, 2016) (citing *Inventio AG v. ThyssenKrupp Elevator Am. Corp.*, 662 F. Supp. 2d 375, 381 (D. Del. 2009)). However, "[t]he parties and the court have a

³ Based on Plaintiffs' submissions to the court and their statements at the teleconference, it appears that Plaintiffs agree to withdraw and "hold in abeyance" the production of documents from [REDACTED]. (See D.I. 244, Ex. 1 at 2-3; 3/1/18 Tr. at 36:11-15)

collective responsibility to consider the proportionality of all discovery and consider it in resolving discovery disputes.” Fed. R. Civ. P. 26 advisory committee’s note to 2015 amendment.

14. Additionally, Rule 26(c) states “[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense....” Fed. R. Civ. P. 26(c) (*see also Ethypharm S.A. France v. Abbott*, 748 F. Supp. 2d 354, 359 (D. Del. 2010) (citations omitted)). The burden of persuasion is on the party seeking the protective order. *Cipollone v. Liggett Grp., Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986). “To overcome the presumption, the party seeking the protective order must show good cause by demonstrating a particular need for protection. *Id.* In *Pansy v. Borough of Stroudsburg*, the Third Circuit recognized several factors that may be considered when deciding whether good cause exists:

- 1) whether disclosure will violate any privacy interests;
- 2) whether the information is being sought for a legitimate purpose or for an improper purpose;
- 3) whether disclosure of the information will cause a party embarrassment;
- 4) whether confidentiality is being sought over information important to public health and safety;
- 5) whether the sharing of information among litigants will promote fairness and efficiency;
- 6) whether a party benefitting from the order of confidentiality is a public entity or official; and
- 7) whether the case involves issues important to the public.

23 F.3d 772, 787-91 (3d Cir. 1994).

15. “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.” *Cipollone*, 785 F.2d at 1121. “The harm must be significant, not a mere trifle.” *Id.* Furthermore, “[g]ood cause is established on a showing that disclosure will work a clearly defined and serious injury to the party seeking closure.” *Pansy*, 23

F.3d at 786. In determining whether there is good cause, courts will balance the party's need for the information against the resulting injury if disclosure is compelled. *Id.* at 787.

16. Moreover, “because release of information not intended by the writer to be for public consumption will almost always have some tendency to embarrass, an applicant for a protective order whose chief concern is embarrassment must demonstrate that the embarrassment will be particularly serious.” *Cipollone*, 785 F.2d at 1121. Therefore, to obtain a protective order, “a business will have to show with some specificity that the embarrassment resulting from dissemination of the information would cause a significant harm to its competitive and financial position.” *Id.*

17. Rule 26(c)(1)(G) states a court can issue a protective order “requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way.” Fed. R. Civ. P. Rule 26(c)(1)(G). The court can also grant a protective order limiting disclosure of discovery materials to protect a party from “competitive disadvantage.” *Miles v. Boeing Co.*, 154 F.R.D. 112, 114 (E.D. Pa. Mar. 2, 1994) (citing *Ball Mem'l Hosp., Inc. v. Mut. Hosp. Ins.*, 784 F.2d 1325, 1345 (7th Cir. 1986) (insurance provider's data on prices bid by hospitals and the calculations the insurance provider performed to decide which hospitals to include in its health care package was confidential, for fear that the hospitals could use the comparative price information to raise their prices or collude in future years.

ANALYSIS

18. Plaintiffs' request to compel Amneal to supplement responses to

Plaintiffs' Fifth Set of Interrogatories. Plaintiffs request that the court compel Amneal to supplement its responses to Plaintiffs' Fifth Set of Interrogatories to Amneal (Nos. 25-28)⁴ by providing all requested information relevant to (1) the [REDACTED] [REDACTED] and (2) the valuation of ANDA No. 203235. (D.I. 244 at 2)

The parties dispute the scope [REDACTED]
[REDACTED], and Plaintiffs argue that Amneal cannot withhold information based on its unilateral interpretation of those terms. (D.I. 230 at 3)

19. [REDACTED]

20. [REDACTED]

[REDACTED]

Kashiv,

[REDACTED] alleged transfer of Amneal's ANDA to [REDACTED]

[REDACTED]

21. Amneal responds that the discovery Plaintiffs seek is neither relevant nor proportional to the needs of Plaintiffs in their prosecution of this case. (D.I. 233 at 1) Amneal argues that Plaintiffs “[REDACTED]

[REDACTED].” (*Id.*) Amneal argues that “nowhere in Judge Andrews’ Order permitting limited additional discovery did [he] authorize discovery [REDACTED].” (*Id.*)

22. Plaintiffs’ request to compel Amneal to supplement its response to Plaintiffs’ Fifth Set of Interrogatories to Amneal (D.I. 226, Ex. D) is granted-in-part. Specifically, Amneal shall supplement its response to Interrogatory No. 25 on or before **August 2, 2018**. Plaintiffs have met their burden to show the relevance of the relationship between Dr. Shah, Kashiv, and Amneal and its proportionality to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Plaintiffs’ request to compel Amneal to supplement its response to Interrogatory Nos. 27-28 is denied without prejudice. Plaintiffs have argued for the need to compel additional discovery into the

[REDACTED], but have not presented arguments to meet their burden in showing why it is relevant or proportional to the needs of this case for Amneal to:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See D.I. 230; D.I. 226, Ex. D at Inter. Nos. 26-28) The issues in the pending case involve the parties' respective allegations of infringement and invalidity. The court declines to open a collateral avenue of discovery into the financial underpinnings and organizational structure of third party entities based upon supposition [REDACTED]

[REDACTED] Documents concerning Kashiv's relationship to Amneal and the ANDA in issue have already been produced. No factual showing has been made that warrants digging deeper to see if anything could be unearthed to call into question the reliability of the production to date.

23. Plaintiffs' request to compel depositions. Plaintiffs request that the court compel Dr. Shah, Chirag Patel, Chintu Patel, and [REDACTED] to appear for oral depositions. (D.I. 244 at 2) Plaintiffs contend that Amneal's and Kashiv's Rule 30(b)(6) witness, Dr. Narasimhan Mani, an Amneal employee, did not have knowledge concerning "a number of critical issues about Kashiv's [REDACTED] future relationship with Amneal." (D.I. 230 at 2) For example, besides knowing that [REDACTED] [REDACTED] [REDACTED] [REDACTED] (D.I. 226, Ex. S at 193:25-197:9) Dr. Mani did not know who appointed the Special Member ([REDACTED] (*Id.* at 205:23-205:7), and did not know the criteria that the Special Member would use to appoint new board members (*Id.* at 256:9-16). Plaintiffs contend that "[REDACTED]

not provide any relevant, unique, or non-duplicative evidence and serves only to harass and burden them. (*Id.*; 3/1/18 Tr. at 28:24-29:9)

25. Plaintiffs' motion to compel Dr. Shah and [REDACTED] [REDACTED] to appear for depositions is granted. Plaintiffs' motion to compel the [REDACTED] and Patel depositions is denied. It is Plaintiffs' burden to demonstrate the relevance of the requested information and its proportionality to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). The court finds that Plaintiffs' request to depose Shah and [REDACTED] to be probative on issues of [REDACTED] [REDACTED] Kashiv. Amneal itself agreed at the discovery dispute teleconference [REDACTED] [REDACTED] (3/1/18 Tr. at 25:17-22) When determining whether the deposition of a high-ranking corporate officer is appropriate, courts in this circuit consider: "(1) whether the executive or top-level employee has personal or unique knowledge on relevant subject matters; and (2) whether the information sought can 'be obtained from lower[-]level employees or through less burdensome means, such as interrogatories.'" *In re Jevic Holding Corp.*, 526 B.R. 547, 556 (D. Del. 2014), *aff'd*, 656 F. App'x 617 (3d Cir. 2016) (citing *Ford Motor Co. v. Edgewood Properties, Inc.*, 2011 WL 677331 at *2 (D.N.J. Feb. 15, 2011)). Plaintiffs have shown that Dr. Shah, as the sole Board Member of Kashiv, and "special member" [REDACTED] [REDACTED] are likely to have information that is unique on the aforesaid relevant issues. They are likely the persons with the most knowledge of [REDACTED] Kashiv.

26. **Plaintiffs' request for production of documents.** Plaintiffs argue that the court should compel the production of documents [REDACTED] [REDACTED]. (D.I. 230 at 3) [REDACTED]

[REDACTED]

[REDACTED] The parties dispute whether such power exists, and Plaintiffs argue that Amneal is withholding information that could address the issue. (D.I. 203 at 3) Plaintiffs argue that they need discovery to determine [REDACTED]

[REDACTED]

[REDACTED] (*Id.*) As such, Plaintiffs believe they are “entitled to documents from Amneal, including e-mail communications, [REDACTED]

[REDACTED]

[REDACTED] (*Id.*)

27. Plaintiffs contend that the discovery it seeks is necessary to determine [REDACTED] the relationships of Kashiv with [REDACTED] Chirag Patel, and Chintu Patel, as well as AE Companies – “an ‘alliance’ of pharma entities formed by Chirag Patel and Chintu Patel.” (D.I. 230 at 2) Plaintiffs argue that, until January 31, 2018, AE Companies listed both Amneal and Kashiv as its members [REDACTED] but since then, AE Companies removed reference to Kashiv from its website. (*Id.* at n.3) (citing D.I. 226, Ex. Q; D.I. 226, Ex. S at 350:21-351:6) Additionally, Plaintiffs contend that Amneal and Kashiv are each financed in part by [REDACTED] (D.I. 230 at 2)

28. Amneal responds that it produced the [REDACTED] [REDACTED] [REDACTED] in response to Judge Andrews’ November 21, 2017 Order, and that this agreement “lays bare the answers to the questions Plaintiffs assert as requiring compelled discovery.” (D.I. 233 at 3) The [REDACTED]

[REDACTED]

[REDACTED] (*Id.*) (citing D.I. 226, Ex. P at AMNOXY 0352991, AMNOXY 0353019) [REDACTED]
[REDACTED]. (*Id.*) (citing D.I. 226, Ex. P at AMNOXY 0352972, AMNOXY 0353018) Therefore, according to Amneal, [REDACTED] are irrelevant, and the question [REDACTED] has already been answered by the [REDACTED], Amneal's interrogatory responses, and the Rule 30(b)(6) deposition of Dr. Mani. (D.I. 233 at 3-4) Moreover, Amneal argues that Plaintiffs are seeking highly confidential information from privately held companies or individuals that has not been publicly disclosed in litigation or otherwise. (3/1/18 Tr. at 26:5-8) For example, Amneal argued at the teleconference that [REDACTED] is "a private investment firm that made an investment in Kashiv in 2010 based on public information;" and AE Companies is an "alliance of independent companies that bring healthcare solutions to people worldwide." (*Id.* at 26:12-17) Amneal contends that there has been no connection of these companies to the 2013 Settlement Agreement, nor is there any mention of these companies in the [REDACTED]. (*Id.* at 26:27-20)

29. For the reasons previously stated at ¶ 22, *supra*, the court is not inclined to open a collateral avenue of discovery not reasonably likely to yield information beyond that disclosed in the documents produced to date and, therefore, which is not proportional to the needs of the case. The court's order is without prejudice should new information develop.

30. Plaintiffs' request for production of documents by Amneal. Plaintiffs request that the court compel Amneal to supplement its responses to Plaintiffs' third set of requests for production of documents numbered 67-75, 77-78, 81-86, 88, 90-91, and 94 (D.I. 226, Ex. C) including, but not limited to, the production of draft documents, e-mail communications, and a

log of documents withheld from production on privilege grounds. (D.I. 244 at 2) Plaintiffs' request to compel the production of documents from Amneal is granted-in-part. The documents are required to be produced on or before **August 2, 2018**. Given the definitions of "[REDACTED]" and "[REDACTED]" in the 2013 Settlement Agreement, the requested discovery as to these topics is relevant to the case at bar. Plaintiffs have not shown, however, the need for discovery as to the connection between Amneal and Kashiv with [REDACTED]. These third-parties are not on the board of Kashiv, nor are they listed anywhere in the [REDACTED].

(D.I. 226, Ex. P) [REDACTED]

[REDACTED] Plaintiffs have also not shown or stated a need for discovery as to the valuation of the ANDA. As such, Plaintiffs' motion to compel is granted-in-part as follows:

Topic	Request No.	Docket Item	Decision
Documents related to the [REDACTED] of Amneal, Kashiv, and post-merger Amneal [REDACTED]	Nos. 67-70	D.I. 226, Ex. C	GRANTED
Documents relating [REDACTED] ANDA No. 203235 and/or the ANDA Products	Nos. 71-73	D.I. 226, Ex. C	GRANTED
Documents relating to the [REDACTED] between any of Kashiv, Amneal, and Impax	No. 74	D.I. 226, Ex. C	GRANTED
Documents relating to the preparation, planning, motivation, and execution of the purported transfer of Amneal's ANDA from Amneal to Kashiv	No. 75	D.I. 226, Ex. C	GRANTED
Documents relating to the valuation of ANDA No. 203235	No. 77	D.I. 226, Ex. C	DENIED
Documents relating to Amneal's allegation that [REDACTED] with respect to Amneal's FDA submissions and Paragraph IV Notice Letters for Amneal's ANDA	No. 78	D.I. 226, Ex. C	GRANTED
Documents relating to the alleged decision to [REDACTED]	No. 81	D.I. 226, Ex. C	GRANTED
Documents relating to the reasonably anticipated [REDACTED]	No. 82	D.I. 226, Ex. C	GRANTED
Documents relating to the basis and status [REDACTED]	No. 83	D.I. 226, Ex. C	GRANTED

Documents relating to [REDACTED] [REDACTED]	No. 84	D.I. 226, Ex. C	GRANTED
Documents relating to the [REDACTED] [REDACTED]	No. 85	D.I. 226, Ex. C	GRANTED
Documents relating to the present or future [REDACTED] Kashiv, Dr. Shah, and/or [REDACTED]	No. 86	D.I. 226, Ex. C	GRANTED
Documents relating to the timing of the Proposed Amneal-Impax Merger, including but not limited to Amneal's Response to Purdue's Interrogatory No. 22	No. 88	D.I. 226, Ex. C	GRANTED
Documents relating to the relationship between Amneal or Kashiv and any of [REDACTED] [REDACTED]	No. 90	D.I. 226, Ex. C	DENIED
Documents related to the [REDACTED] [REDACTED] of Amneal or Kashiv by [REDACTED]	No. 91	D.I. 226, Ex. C	DENIED
Financial relationship between Kashiv and Amneal of ANDA No. 203235 and/or the ANDA Products	No. 94	D.I. 226, Ex. C	DENIED

31. Plaintiffs' request for production of documents by Kashiv. Plaintiffs request that the court compel Kashiv to supplement its responses to document request numbers 37-45, 47, 49, 52-58, 62-63, and 66 (D.I. 193, Ex. 1) including, but not limited to, the production of draft documents, e-mail communications, and a log of documents withheld from production on privilege grounds. (D.I. 244 at 2) Plaintiffs' request to compel the production of documents from Kashiv is granted-in-part. The documents are to be produced on or before **August 2, 2018**. In their letter submissions to Judge Andrews regarding Plaintiffs' November 17, 2017 request for the court to allow additional discovery and amend the case schedule, the parties raised the issue [REDACTED]. (D.I. 182; D.I. 184) Given the facts, Judge Andrews determined that should discovery may be "appropriate," and permitted discovery into "the impact of the merger agreement" in addition to discovery about the ownership of the ANDA. (D.I. 185) In the submissions to the court in

regards to the discovery dispute at bar, Plaintiffs have again met their burden in demonstrating the relevance and proportionality to the case [REDACTED]

[REDACTED] As such, Plaintiffs' motion to compel is granted-in-part as follows:

Topic	Request No.	Docket Item	Decision
Documents related to the [REDACTED] of Amneal, Kashiv, and post-merger Amneal, [REDACTED]	Nos. 37-40	D.I. 193, Ex. 1	GRANTED
Documents relating to the [REDACTED] ANDA No. 203235 and/or the ANDA Products	No. 41-43	D.I. 193, Ex. 1	GRANTED
Documents relating to the [REDACTED] between any of Kashiv, Amneal, and Impax	No. 44	D.I. 193, Ex. 1	GRANTED
Documents relating to the preparation, planning, motivation, and execution of the purported transfer of Amneal's ANDA from Amneal to Kashiv	No. 45	D.I. 193, Ex. 1	GRANTED
Documents relating to the valuation of ANDA No. 203235	No. 47	D.I. 193, Ex. 1	DENIED
Documents relating to Amneal's allegation that [REDACTED] with respect to Amneal's FDA submissions and Paragraph IV Notice Letters for Amneal's ANDA	[REDACTED]	D.I. 193, Ex. 1	GRANTED
Documents relating to the alleged decision to [REDACTED]	No. 52	D.I. 193, Ex. 1	GRANTED
Documents relating to the [REDACTED]	No. 53	D.I. 193, Ex. 1	GRANTED
Documents relating to the reasonably anticipated [REDACTED]	No. 54	D.I. 193, Ex. 1	GRANTED
Documents relating to the basis and status [REDACTED]	No. 55	D.I. 193, Ex. 1	GRANTED
Documents relating to [REDACTED]	No. 56	D.I. 193, Ex. 1	GRANTED
Documents relating to the [REDACTED]	No. 57	D.I. 193, Ex. 1	GRANTED
Documents relating to the present or future [REDACTED] Kashiv, Dr. Shah, and/or [REDACTED]	No. 58	D.I. 193, Ex. 1	GRANTED
Documents relating to the relationship between Amneal or Kashiv and any of [REDACTED]	No. 62	D.I. 193, Ex. 1	DENIED

Documents related to [REDACTED] [REDACTED] of Amneal or Kashiv by [REDACTED]	No. 63	D.I. 193, Ex. 1	DENIED
Financial relationship between Kashiv and Amneal of ANDA No. 203235 and/or the ANDA Products	No. 66	D.I. 193, Ex. 1	DENIED

32. Plaintiffs' subpoena *duces tecum* to Dr. Shah. Plaintiffs request that the court compel Dr. Shah to respond to document request numbers 1-9, 11, 14-20, 24-25, and 28 (D.I. 193, Ex. 3) including, but not limited to, the production of draft documents, e-mail communications, and a log of documents withheld from production on privilege grounds. (D.I. 244 at 2) Plaintiffs' request to compel the production of documents from Dr. Shah in accordance with the subpoena *duces tecum* is granted-in-part. Plaintiffs have shown that the requested documents are relevant and proportional to the needs of the case. As such, Plaintiffs' request to compel is granted-in-part as follows:

Topic	Request No.	Docket Item	Decision
Documents related to the [REDACTED] [REDACTED] of Amneal, Kashiv, and post-merger Amneal	Nos. 1-4	D.I. 193, Ex. 3	GRANTED
Documents relating to [REDACTED] [REDACTED] ANDA No. 203235 and/or the ANDA Products	No. 5-7	D.I. 193, Ex. 3	GRANTED
Documents relating to the [REDACTED] between any of Kashiv, Amneal, and Impax	No. 8	D.I. 193, Ex. 3	GRANTED
Documents relating to the preparation, planning, motivation, and execution of the purported transfer of Amneal's ANDA from Amneal to Kashiv	No. 9	D.I. 193, Ex. 3	GRANTED
Documents relating to Amneal's allegation that [REDACTED] [REDACTED] with respect to Amneal's FDA submissions and Paragraph IV Notice Letters for Amneal's ANDA	[REDACTED]	D.I. 193, Ex. 3	GRANTED
Documents relating to the alleged decision to [REDACTED] [REDACTED]	No. 14	D.I. 193, Ex. 3	GRANTED
Documents relating to the [REDACTED] [REDACTED]	No. 15	D.I. 193, Ex. 3	GRANTED
Documents relating to the reasonably anticipated [REDACTED] [REDACTED]	No. 16	D.I. 193, Ex. 3	GRANTED
Documents relating to the basis and status [REDACTED] [REDACTED]	No. 17	D.I. 193, Ex. 3	GRANTED

Documents relating to [REDACTED] [REDACTED]	No. 18	D.I. 193, Ex. 3	GRANTED
Documents relating to the [REDACTED] [REDACTED]	No. 19	D.I. 193, Ex. 3	GRANTED
Documents relating to the present or future [REDACTED] Kashiv, Dr. Shah, and/or [REDACTED]	No. 20	D.I. 193, Ex. 3	GRANTED
Documents relating to the [REDACTED] [REDACTED]	No. 24	D.I. 193, Ex. 3	GRANTED
Documents relating to the relationship between Amneal or Kashiv and any of [REDACTED]	No. 25	D.I. 193, Ex. 3	DENIED
Financial relationship between Kashiv and Amneal of ANDA No. 203235 and/or the ANDA Products	No. 28	D.I. 193, Ex. 3	DENIED

33. Plaintiffs' subpoena *duces tecum* to Chirag Patel and Chintu Patel. The court denies Plaintiffs' request that the court compel Chirag Patel and Chintu Patel to respond to document requests in the subpoena numbered 1-9, 11, 14-20, 24-25, and 28 (D.I. 193, Exs. 4-5) including, but not limited to, the production of draft documents, e-mail communications, and a log of documents withheld from production on privilege grounds. (D.I. 244 at 2) Plaintiffs allege that Chirag Patel and Chintu Patel, who are co-chairmen, co-founders, and co-CEOs of Amneal (D.I. 184 at 3), [REDACTED] (D.I. 226, Ex. P at AMNOXY 0352979). (D.I. 230 at 2 n.2) [REDACTED] (D.I. 226, Ex. P at AMNOXY 0352972) [REDACTED] Plaintiffs' reference to a February 12, 2018 SEC

filing, wherein Impax stated that Chirag Patel and Chintu Patel beneficially own “43.875% in the aggregate of the outstanding equity securities of Kashiv” (D.I. 230, Ex. 1 at 253), and will serve on the board of directors of the new Amneal-Impax merged entity (D.I. 230, Ex. 1 at 19), is insufficient to warrant opening the door to a collateral avenue of discovery disproportional to the needs of the case. The court finds that the requested discovery is too attenuated from the instant case. As such, Plaintiffs’ request to compel is denied.

34. Plaintiffs’ subpoena *duces tecum* to [REDACTED] The court denies Plaintiffs’ request that the court compel [REDACTED] to respond to document requests in the subpoena numbered 1-23, 26-28, and 30 (D.I. 225, Ex. 1) including, but not limited to, the production of draft documents, e-mail communications, and a log of documents withheld from production on privilege grounds. (D.I. 244 at 2) In the February 12, 2018 SEC filing, Impax stated that Chirag Patel and Chintu Patel beneficially own “43.875% in the aggregate of the outstanding equity securities of Kashiv.” (D.I. 230, Ex. 1 at 253) Plaintiffs allege that Chirag Patel and Chintu Patel, who are co-chairmen, co-founders, and co-CEOs of Amneal (D.I. 184 at 3), [REDACTED] [REDACTED] [REDACTED] (D.I. 226, Ex. P at AMNOXY 0352979). (D.I. 230 at 2 n.2) [REDACTED] (D.I. 226, Ex. P at AMNOXY 0352972) Plaintiffs have, therefore, not reasonably demonstrated the need for going further [REDACTED] [REDACTED]. In addition, Plaintiffs’ request for discovery [REDACTED] [REDACTED] [REDACTED] is overbroad. (D.I. 225, Ex. 1 at Interrogatory Nos. 1, 3) As such, Plaintiffs’ request is denied.

35. Plaintiffs' subpoena duces tecum to [REDACTED]. The court denies Plaintiffs' request that the court compel [REDACTED] to respond to document requests in the subpoena numbered 1-7, 9-25, 27, 32-33, and 36 (D.I. 225, Ex. 4) including, but not limited to, the production of draft documents, e-mail communications, and a log of documents withheld from production on privilege grounds. (D.I. 244 at 2) As discussed *supra*, such discovery was permitted by Judge Andrews in his November 21, 2017 Order. (D.I. 185) ("discovery about...the impact of the merger agreement may be appropriate, and, indeed Amneal acknowledges this...any such discovery can run in parallel with the production of expert reports, etc."). Plaintiffs have not shown that the requested discovery is relevant and proportional to the needs of this case [REDACTED]
[REDACTED]
[REDACTED]. Therefore, Plaintiffs' motion to compel is denied.

36. Plaintiffs' subpoena duces tecum to [REDACTED] Plaintiffs request that the court compel [REDACTED] to produce documents in response to request numbers 1-11, 13, 14-20, 22-24, 27-29, and 32 (D.I. 225, Ex. 5) including, but not limited to, the production of draft documents, e-mail communications, and a log of documents withheld from production on privilege grounds. (D.I. 244 at 2) Plaintiffs' request to compel the production of documents from [REDACTED] is granted-in-part. Plaintiffs have shown the need for discovery into [REDACTED] role in Kashiv, for she is identified as its "Special Member," and has [REDACTED]
[REDACTED]
[REDACTED] (D.I. 233 at 2-3; D.I. 226, Ex P at AMNOXY 0352984) However, much of the duties and responsibilities of the Special Member are defined in the [REDACTED]

██████████ which Amneal has already provided. (D.I. 226, Ex. P) As such, Plaintiffs' request to compel is granted-in-part as follows:

Topic	Request No.	Docket Item	Decision
Documents related to the preparation, planning, motivation, purpose, and execution of the "Special Member Services Agreement" between ██████████ and Kashiv	No. 1	D.I. 225, Ex. 5	GRANTED
Documents relating to ██████████ employment and/or affiliation with any of Amneal, Kashiv, or Impax	No. 2	D.I. 225, Ex. 5	GRANTED
Documents related to ██████████ employment and/or affiliation with ██████████	No. 3	D.I. 225, Ex. 5	DENIED
Documents related to ██████████ compensation as "Special Member" for Kashiv	No. 4	D.I. 225, Ex. 5	GRANTED
Documents related to ██████████ recruitment as "Special Member" for Kashiv	No. 5	D.I. 225, Ex. 5	GRANTED
Documents related to ██████████ duties and obligations as "Special Member" for Kashiv	No. 6	D.I. 225, Ex. 5	GRANTED
Documents related to ██████████ qualifications to act as "Special Member" for Kashiv	No. 7	D.I. 225, Ex. 5	GRANTED
Documents related to ██████████ communications with Dr. Shah, Chirag Patel, or Chintu Patel regarding ██████████'s appointment as "Special Member" for Kashiv	No. 8	D.I. 225, Ex. 5	GRANTED
Documents related to agendas, transcripts, and/or summary of meetings between ██████████ and any of Kashiv, Amneal, or Impax	No. 9	D.I. 225, Ex. 5	GRANTED
All documents related to any meetings of current or former directors of Kashiv, including but not limited to, summaries, agendas, minutes, or resolutions concerning Kashiv, Amneal, or post-merger Amneal	No. 10	D.I. 225, Ex. 5	GRANTED
Documents related to the operation, affairs, and business of Kashiv	No. 11	D.I. 225, Ex. 5	GRANTED
Documents related ██████████	Nos. 13-14	D.I. 225, Ex. 5	GRANTED
Documents relating ██████████	No. 15-17	D.I. 225, Ex. 5	GRANTED
Documents relating to ██████████	No. 18	D.I. 225, Ex. 5	GRANTED
Documents relating to the preparation, planning, motivation, and execution of the purported transfer of Amneal's ANDA from Amneal to Kashiv	No. 19	D.I. 225, Ex. 5	GRANTED
Documents relating to Amneal's allegation that ██████████ ██████████ with respect to Amneal's FDA	██████████	D.I. 225, Ex. 5	GRANTED

submissions and Paragraph IV Notice Letters for Amneal's ANDA			
Documents relating to the [REDACTED]	No. 22	D.I. 225, Ex. 5	GRANTED
Documents relating to the [REDACTED]	No. 23	D.I. 225, Ex. 5	GRANTED
Documents relating to [REDACTED],	No. 24	D.I. 225, Ex. 5	GRANTED
Documents relating to the relationship between Kashiv and any of [REDACTED]	No. 27	D.I. 225, Ex. 5	DENIED
Documents relating to [REDACTED],	No. 28	D.I. 225, Ex. 5	DENIED
Documents relating to [REDACTED],	No. 29	D.I. 225, Ex. 5	DENIED
Financial relationship between Kashiv and Amneal of ANDA No. 203235 and/or the ANDA Products	No. 32	D.I. 225, Ex. 5	DENIED

37. Amneal's motion for a protective order. Amneal's motion for a protective order is granted-in-part. Specifically, the motion is denied as to Shah and [REDACTED] for the reasons stated at ¶¶ 32 and 36, respectively, and is granted as to the remaining subjects of third party subpoenas.⁶ The existing stipulated protective order explicitly provides for protection of third-party confidential information, which adequately protects the confidential information of Shah and [REDACTED] (D.I. 40 at ¶ 24) ("the third-party shall have the same rights and obligations under this Protective Order as held by the Parties to this litigation").

38. Conclusion. For the foregoing reasons, Plaintiffs' motion to compel is granted-in part, as outlined by this Memorandum Order. (D.I. 230) Specifically, the depositions of Dr. Shah and [REDACTED] shall be completed on or before **August 7, 2018**. Amneal shall

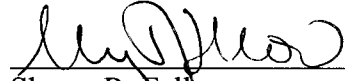
⁶ The motion for a protective order is denied with respect to [REDACTED]

supplement its response to Plaintiffs' Fifth Set of Interrogatories to Amneal (D.I. 226, Ex. D), as outlined by this Memorandum Order, on or before **August 2, 2018**. Amneal and Kashiv shall supplement their responses to the requests for production, as outlined in this Memorandum Order at Paragraph Nos. 30-31, on or before **August 2, 2018**. Amneal's request for a protective order is denied with respect to Dr. Shah and [REDACTED], and is granted in all other respects. (D.I. 231) The court's ruling should not be interpreted as a broadened grant of authority to take discovery beyond the discovery ordered by Judge Andrews in the November 21, 2017 order. The discovery should be narrowly tailored to conform to the crux of the dispute [REDACTED].

39. Given that the court has relied upon material that technically remains under seal, the court is releasing this Memorandum Order under seal, pending review by the parties. In the unlikely event that the parties believe that certain material in this Memorandum Order should be redacted, the parties should jointly submit a proposed redacted version by no later than **August 1, 2018**. The court will subsequently issue a publicly available version of its Memorandum Order.

40. This Memorandum Order is filed pursuant to 28 U.S.C. § 636(b)(1)(A), Fed. R. Civ. P. 72(a), and D. Del. LR 72.1(a)(2). The parties may serve and file specific written objections within fourteen (14) days after being served with a copy of this Memorandum Order. Fed. R. Civ. P. 72(a). The objections and responses to the objections are limited to five (5) pages each.

41. The parties are directed to the court's Standing Order For Objections Filed Under Fed. R. Civ. P. 72, dated October 9, 2013, a copy of which is available on the court's website, www.ded.uscourts.gov.



Sherry R. Fallon
United States Magistrate Judge