

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

BAXALTA INCORPORATED, BAXALTA US)
INC. and NEKTAR THERAPEUTICS,)
)
Plaintiffs and)
Counterclaim Defendants,)
)
v.)
)
BAYER HEALTHCARE LLC,)
)
Defendant.)
_____)

Civil Action No. 17-1316-RGA-SRF

ORDER

At Wilmington this **30th** day of **September, 2019**,

WHEREAS, on September 19, 2019, the court held a telephonic discovery hearing in this matter regarding, *inter alia*, the motion to compel defendant Bayer Healthcare LLC (“Bayer”) to use its previously agreed-to ESI search terms to produce responsive emails, filed by plaintiffs Baxalta Incorporated, Baxalta US Inc., and Nektar (“plaintiffs”) (D.I. 302);

WHEREAS, during the September 19, 2019 teleconference, the court ordered the parties to meet and confer for purposes of “negotiat[ing] specific ESI search terms that plug the gap here specifically with respect to Bayer’s production of e-mails relating to marketing, sales, and finance, and the launch of Jivi in and around 2018;” (*Id.* at 46:1-6);

WHEREAS, plaintiffs requests that Bayer run three ESI search terms on three ESI custodians for the period of January 1, 2018 to June 30, 2019 (D.I. 308 at 2);

WHEREAS, Bayer proposes limiting two of the three search terms, and running the search for the time period of January 1, 2018 to December 31, 2018 (D.I. 307 at 2);

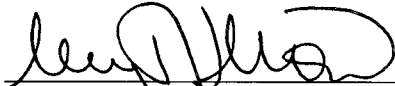
WHEREAS, Bayer further requests the court to compel plaintiffs to run three ESI search terms on three of plaintiffs' damages custodians for the time period from January 1, 2018 to September 1, 2019 (*Id.* at 3);

NOW THEREFORE, IT IS HEREBY ORDERED that plaintiffs' motion to compel is GRANTED. Bayer shall run the following three ESI search terms for the time period from January 1, 2018 to June 30, 2019 on ESI custodians Jennifer Restivo, Sarah Egan, and Olimpia Nan:

1. "BAY 94-9027" or "BAY 94" or BAY94 or "BAY-94" or "BAY 949027" or BAY949027;
2. Jivi; and
3. (BDD or "B-Domain Deleted") w/10 ("factor VIII" or "FVIII" or "F8").

Bayer shall produce the responsive emails and attachments by no later than **October 15, 2019**.

IT IS FURTHER ORDERED that Bayer's motion to compel is DENIED. There is no indication that Bayer raised its new proposed search terms during the meet and confer process.¹


Sherry R. Fallon
United States Magistrate Judge

¹ The court's discussion of the adequacy of plaintiffs' search efforts during the September 19, 2019 teleconference was raised in the context of issues to be discussed during the meet and confer process. (D.I. 302 at 46:11-16) ("During the course of your negotiations . . .").