

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

OREXO AB and OREXO US, INC.,)
)
Plaintiffs,)
)
v.)
)
ACTAVIS ELIZABETH LLC, ACTAVIS)
PHARMA, INC., TEVA PHARMACEUTICALS)
USA, INC., and TEVA PHARMACEUTICAL)
INDUSTRIES, LTD.)
)
Defendants.)

C.A. No.: 17-205-GMS

**ORDER APPOINTING A MEMBER OF THE PANEL OF
SPECIAL MASTERS IN COMPLEX CIVIL CASES**

Pursuant to the Court’s September 20, 2017 Minute Entry and direction provided via telephone on September 29, 2017, and upon notification by the parties of their inability to agree upon a plan of discovery to enable the parties and the Court to address Defendants’ Motion to Strike and Dismiss, this 10th day of Oct, 2017, the Court orders the following:

I. Special Master

Judge Charles H. Toliver, IV (retired) is appointed as the Special Master for the purpose of resolving the “dispute to be addressed” as set forth in paragraph II of this Order.

II. Dispute to be Addressed by the Special Master

The dispute to be addressed is Defendants’ allegation that Orexo improperly used confidential information produced under a protective order in C.A. No. 14-829-SLR-SRF in connection with the allegations in the complaint in this action.

After completion of the review described below, the Special Master will provide a report to the Court addressing the following questions:

1. Did Orexo impermissibly “use” Actavis confidential information to support the complaint in this action?
2. Did Defendants meet their burden of proof to show that the protective order in the previous litigation was violated?
3. If there was a violation, identify the violation.
4. Such other questions that may arise that the Special Master deems pertinent to the dispute to be addressed.

The dispute will be resolved applying the burdens of proof as set forth under the Federal Rules and relevant case law. Any disputes between the parties regarding the law to be applied and applicable burdens of proof will be decided in the first instance by the Special Master in a manner to be determined by the Special Master.

Within 7 days of the date of this Order, the parties will provide the Special Master previous briefing, the complaint (D.I. 1, 13, 13-1, 14, 14-1, 22, 22-1, 24, 24-1), and a transcript of the September 20, 2017 Court teleconference.

III. Scope of Discovery

Within 7 days of the date of this Order, Orexo will also provide the Special Master additional documents for review. The documents to be provided shall be determined by the Special Master and may include the categories of documents that Defendants identified as relevant in letters to Orexo during briefing of the motion to strike and dismiss (D.I. 22-1 Ex. H, 05/05/17 and 05/11/17 Letters Lombardi to Taylor) and may include the following subject matter or other subject matter, all to be determined by the Special Master:

1. Information regarding what led Orexo to conduct any testing at all on the products now being accused of infringement;

2. Information regarding whether Orexo tested any generic Suboxone[®] and Subutex[®] products other than those manufactured by Actavis; and
3. The information relied upon for Orexo's allegations in the complaint and the results of any testing performed.

The Special Master's review of documents containing Orexo's work product and privileged information will be *in camera* with appropriate non-waiver agreements to assure that disclosure to the Special Master does not waive any privilege or immunity. To assist with the review, the parties shall provide such submissions and/or declarations that they deem helpful or one otherwise ordered to provide by the Special Master. To the extent that any declaration includes work product or privileged information, those portions will also be submitted *in camera*.

IV. Additional Submissions to the Special Master

Disputes regarding the scope and timing of discovery under this plan will be decided by the Special Master in a manner to be determined by the Special Master. The Special Master may order telephonic conferences, submissions, or such other process as deemed necessary to answer the questions to be addressed in the report (*see* Section II above).

Any party submissions to the Special Master shall be served on all parties, and any party conversations with the Special Master shall be in the presence of all other parties, unless the Special Master orders otherwise. To the extent the submissions contain work product or privileged information those portions will also be submitted *in camera* and provided to opposing counsel in redacted form (to remove privileged and work product information). To the extent any conversations address work product or privileged information those conversations will be held *in camera*.

V. Further Submissions to the Court

The parties reserve all rights to objections, appeal and other submissions to the Court permitted under all Federal Rules, Local Rules, and case law.

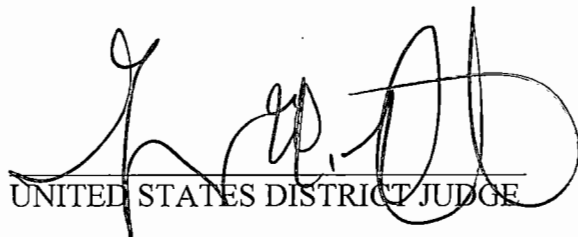
VI. Case Schedule

The district court case will move forward while the Special Master's review proceeds. The parties will meet and confer on or before October 20 to discuss a case schedule and shall submit a schedule, or schedules if not agreed, to the Court on or before November 3, 2017. Defendants shall respond to Orexo's First Set of Requests for Production of Documents and Things, served on August 16, 2017 on or before October 13.

VII. Compensation of the Special Master

The Special Master shall be compensated at his normal hourly rate, which compensation shall be divided and paid equally between the parties, unless otherwise determined, at the discretion of the Special Master in accordance with the terms of the District Court's standing order for the appointment of Special Masters dated December 4, 2014.

IT IS SO ORDERED,


UNITED STATES DISTRICT JUDGE