IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Wiley Y. Daniel

Civil Action No. 04-cv-02501-WYD-CBS

METABOLITE LABORATORIES, INC., a Colorado corporation,

Plaintiff,

v.

AMERICSOURCEBERGEN CORPORATION, a Delaware corporation;
MCKESSON CORP., a Delaware corporation,

Defendants.

ORDER

THIS MATTER is before the Court on Defendants' Motion to Strike Plaintiff's Motion for Consolidation (filed March 8, 2006). Plaintiff filed a response to this motion on March 28, 2006. For the reasons stated below, Defendants' motion is denied.

Defendants first contend that Plaintiff's motion should be stricken because it was filed in violation of a stay order issued by Magistrate Judge Shaffer. I reject that argument, as the order only stayed discovery, not the filing of motions. As to alleged procedural maneuvering by Plaintiff, that is an issue that needs to be resolved in connection with the Motion for Consolidation.

Defendants also contend that Plaintiff did not meaningfully confer as required pursuant to D.C.COLO.LCivR 7.1(A). While I agree that Plaintiff did not give Defendants very much time for them to advise whether they opposed the filing of Plaintiff's motion, it is undisputed that Plaintiff did attempt to confer. Accordingly, I

deny Defendants' motion to strike on this ground. In the future, however, I will not hesitate to strike pleadings if I find that Plaintiff (or any party) did not make a meaningful effort to confer with opposing counsel as required by the Local Rules.

Defendants' alternative request that they be given a deadline to file a substantive response to Plaintiff's Motion for Consolidation is granted. Defendants shall file such a response by Monday, April 10, 2006.

In conclusion, it is

ORDERED that Defendants' Motion to Strike Plaintiff's Motion for Consolidation (filed March 8, 2006) is **DENIED**. It is

FURTHER ORDERED that Defendants shall file a substantive response to Plaintiff's Motion for Consolidation by **Monday, April 10, 2006**.

Dated: March 31, 2006

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
U. S. District Judge