UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED, Plaintiff, v. ABRAXIS BIOSCIENCE, INC., Defendant.	)	Civil Action No. 06-438-GMS **REDACTED - PUBLIC VERSION**

DECLARATION OF ERIC C. PAI IN SUPPORT OF DEFENDANT ABRAXIS BIOSCIENCE, INC.'S MOTION FOR PROTECTIVE ORDER AGAINST THE DEPOSITIONS OF DRS. PATRICK SOON-SHIONG AND NEIL DESAI

I, Eric C. Pai, declare as follows:

1. I am an attorney admitted to practice in the State of California, and I am admitted *pro hac vice* in the above-captioned action. I am an associate with the law firm of Morrison & Foerster LLP, attorneys for Abraxis BioScience, Inc. ("Abraxis") in the above captioned action. I submit this declaration in support of Abraxis's Motion for Protective Order Against Elan's Notices of Deposition of Drs. Desai and Soon-Shiong. I have personal knowledge of the matters set forth herein, and if called upon to do so, I could and would competently testify thereto.

2. Attached hereto as Exhibit A is a true and correct copy of Elan Pharma International Limited's ("Elan") Notice of Deposition of Neil Desai, dated June 29, 2007.

3. Attached hereto as Exhibit B is a true and correct copy of Elan's Notice of Deposition of Patrick Soon-Shiong, dated June 29, 2007.

4. Attached hereto as Exhibit C is a true and correct copy of Elan's Amended Notice of Deposition of Neil Desai, dated July 18, 2007.

5. Attached hereto as Exhibit D is a true and correct copy of Elan's Amended Notice of Patrick-Soon-Shiong, dated August 1, 2007.

6. Attached as Exhibit E is a true and correct copy of a letter from Emily Evans, counsel for Abraxis, to Linda Glover, counsel for Elan, dated June 10, 2007.

7. Attached as Exhibit F is a true and correct copy of a chain of emails between Paul Fehlner, counsel for Elan, and Emily Evans, dated June 14, 2007.

8. Attached hereto as Exhibit G is a true and correct copy of an email from Emily Evans to Linda Glover, dated June 25, 2007.

9. Attached hereto as Exhibit H is a true and correct copy of an email from Emily Evans to Linda Glover and Paul Fehlner, dated June 27, 2007.

10. Attached hereto as Exhibit I is a true and correct copy of an email from Paul Fehlner to Emily Evans, Diana Kruze, Michael Jacobs, and Eric Walters, counsel for Abraxis, dated June 28, 2007.

11. Attached hereto as Exhibit J is a true and correct copy of an email from Diana Kruze to Linda Glover and Fred Barrera, counsel for Elan, dated July 9, 2007.

12. Attached hereto as Exhibit K is a true and correct copy of an email from Emily Evans to Stephen Scheve, counsel for Elan, dated July 10, 2007.

13. Attached hereto as Exhibit L is a true and correct copy of an email from Emily Evans to Stephen Scheve, dated July 11, 2007.

14. Attached hereto as Exhibit M is a true and correct copy of a chain of emails between Paul Fehlner and Emily Evans, dated July 11, 2007.

15. Attached hereto as Exhibit N is a true and correct copy of a letter from Stephen Scheve to Emily Evans, dated July 13, 2007.

16. Attached hereto as Exhibit O is a true and correct copy of an email from Emily Evans to Stephen Scheve, dated July 13, 2007.

17. Attached hereto as Exhibit P is a true and correct copy of a chain of emails between Emily Evans, Paul Fehlner, and Stephen Scheve, dated July 13 and 14, 2007.

18. Attached hereto as Exhibit Q is a true and correct copy of an email from Paul Fehlner to Emily Evans, dated July 14, 2007.

19. Attached hereto as Exhibit R is a true and correct copy of a letter from Emily Evans to Paul Fehlner, dated July 16, 2007.

20. Attached hereto as Exhibit S is a true and correct copy of a chain of emails between Diana Kruze and Paul Fehlner, dated July 16, 2007.

21. Attached hereto as Exhibit T is a true and correct copy of the transcript of proceedings, dated July 16, 2007.

22. Attached hereto as Exhibit U is a true and correct copy of an email from Paul Fehlner to Emily Evans, Michael Jacobs, and Diana Kruze, dated July 17, 2007.

23. Attached hereto as Exhibit V is a true and correct copy of a chain of emails from Linda Glover and Emily Evans, dated July 18, 2007.

24. Attached hereto as Exhibit W is a true and correct copy of an email from Diana Kruze to Linda Glover and Paul Fehlner, dated July 23, 2007.

25. Attached hereto as Exhibit X is a true and correct copy of a chain of emails between Diana Kruze and Linda Glover, dated August 6, 2007.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 9th day of August, 2007 in Palo Alto, California.

Eric C. Pai

CERTIFICATE OF SERVICE

I, Elena C. Norman, Esquire, hereby certify that on August 20, 2007, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

Steven J. Balick, Esquire
ASHBY & GEDDES
500 Delaware Avenue, 8th Floor
Wilmington, DE 19801

I further certify that on August 20, 2007**,** I caused a true and correct copy of the foregoing document to be served by e-mail on the above-listed counsel of record and on the following non-registered participants in the manner indicated:

BY E-MAIL

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Stephen Scheve, Esquire
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steve.scheve@bakerbotts.com

Paul F. Fehlner, Esquire
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paul.fehlner@bakerbotts.com

William J. Sipio, Esquire
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Yardley, PA 19067
sipz25@aol.cm

YOUNG CONAWAY STARGATT
& TAYLOR, LLP

/s/ *Elena C. Norman*

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Attorneys for Defendant
ABRAXIS BIOSCIENCE, INC.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED,	§	
Plaintiff,	§	
v.	§	C.A. No. 06-438-GMS
ABRAXIS BIOSCIENCE, INC.,	§	
Defendant.	§	

NOTICE OF DEPOSITION OF NEIL DESAI

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiff Elan Pharma International Limited will take the continuing deposition by oral testimony of Neil Desai, commencing on July 19, 2007 at 9:00 a.m. PST.

The deposition shall take place at the offices of Esquire Deposition Services, 6222 Wilshire Blvd, 2nd FL, Los Angeles, California, or at such other place, date and time as is mutually agreed upon or ordered by the Court, before a notary public or other officer authorized to administer oaths. The testimony shall be recorded by stenographic and/or videographic means and shall continue from day to day until completed.

ASHBY & GEDDES

/s/ Steven J. Balick

Steven J. Balick (I.D. #2114)
John G. Day (I.D. #2403)
Tiffany Geyer Lydon (I.D. #2950)
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Attorneys for Plaintiff
Elan Pharma International Limited

Of Counsel:

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Yardley, PA 19067
Telephone: (215) 801-3625

Dated: June 29, 2007
181939.1

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED,	§	
Plaintiff,	§	
v.	§	C.A. No. 06-438-GMS
ABRAXIS BIOSCIENCE, INC.,	§	
Defendant.	§	

NOTICE OF DEPOSITION OF PATRICK SOON-SHIONG

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiff Elan Pharma International Limited will take the continuing deposition by oral testimony of Patrick Soon-Shiong, commencing on July 13, 2007 at 9:00 a.m. PST.

The deposition shall take place at the offices of Esquire Deposition Services, 6222 Wilshire Blvd, 2nd FL, Los Angeles, California, or at such other place, date and time as is mutually agreed upon or ordered by the Court, before a notary public or other officer authorized to administer oaths. The testimony shall be recorded by stenographic and/or videographic means and shall continue from day to day until completed.

ASHBY & GEDDES

/s/ Steven J. Balick

Steven J. Balick (I.D. #2114)
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Dated: June 29, 2007
181938.1

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

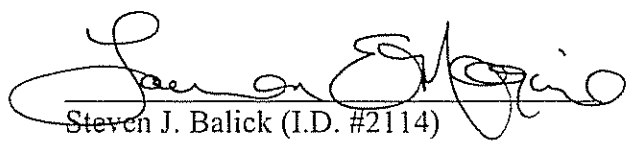
ELAN PHARMA INTERNATIONAL LIMITED,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 06-438-GMS
	)	
ABRAXIS BIOSCIENCE, INC.,	)	
	)	
Defendant.	)	

AMENDED NOTICE OF DEPOSITION OF NEIL DESAI

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiff Elan Pharma International Limited will take the continuing deposition by oral testimony of Neil Desai, commencing on August 8, 2007 at 9:00 a.m. PDT.

The deposition shall take place at the offices of Morrison Foerster's offices, 555 West Fifth Street, Suite 3500, Los Angeles, California, or at such other place, date and time mutually agreed upon or ordered by the Court, before a notary public or other officer authorized to administer oaths. The testimony shall be recorded by stenographic and/or videographic means and shall continue from day to day until completed.

ASHBY & GEDDES



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Sipz25@aol.com

Dated: July 18, 2007

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of July, 2007, the attached **AMENDED NOTICE OF DEPOSITION OF NEIL DESAI** was served upon the below-named counsel of record at the addresses and in the manner indicated:

Josy W. Ingersoll, Esquire — HAND DELIVERY
Young, Conaway, Stargatt & Taylor
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Michael A. Jacobs, Esquire — VIA ELECTRONIC MAIL
Morrison & Foerster, LLP
425 Market Street
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Emily A. Evans, Esquire — VIA ELECTRONIC MAIL
Morrison & Foerster, LLP
755 Page Mill Road
Palo Alto, CA 94304-1018

Anders T. Aannestad, Esquire — VIA ELECTRONIC MAIL
Morrison & Foerster, LLP
12531 High Bluff Drive, Suite 100
San Diego, CA 92130

Lauren E. Maguire

173077.1

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED, Plaintiff, v. ABRAXIS BIOSCIENCE, INC., Defendant.	)	C.A. No. 06-438-GMS

AMENDED NOTICE OF DEPOSITION OF PATRICK SOON-SHIONG

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiff Elan Pharma International Limited will take the continuing deposition by oral testimony of Patrick Soon-Shiong, commencing on August 13, 2007 at 9:00 a.m. PST.

The deposition shall take place at the offices of Esquire Deposition Services, 6222 Wilshire Blvd, 2nd FL, Los Angeles, California, or at such other place, date and time mutually agreed upon or ordered by the Court, before a notary public or other officer authorized to administer oaths. The testimony shall be recorded by stenographic and/or videographic means and shall continue from day to day until completed.

ASHBY & GEDDES

/s/ Lauren E. Maguire

Steven J. Balick (I.D. #2114)
John G. Day (I.D. #2403)
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Dated: August 1, 2007
182821.1

EXHIBIT E

June 10, 2007

Writer's Direct Contact
650.813.5625
EEvans@mofo.com

By Electronic Mail and United States Mail

Linda M. Glover
Baker Botts L.L.P.
One Shell Plaza
910 Louisiana Street
Houston TX 77002-4995

Re: *Elan Pharma International Limited v. Abraxis BioScience, Inc.*

Dear Linda:

I write regarding our telephone conferences today and on Tuesday and the proposals and requests Elan made during those conferences. As discussed below, we believe the parties should keep trying to meet the current case schedule before asking the Court to change the calendar.

Elan's Rule 30(b)(6) Deposition Notices

During the conferences, we offered the following dates for witnesses who will be testifying in response to Elan's three outstanding Rule 30(b)(6) witnesses:

June 20 [9am-5pm]	Raj Selveraj	Topics 1-11 of Elan's First Amended Rule 30(b)(6) Notice dated May 17, 2007 [Document 110], subject to the objections in my letter to Linda Glover dated May 31, 2007 Topics 2.a. and 2.b. of Elan's Rule 30(b)(6) Notice dated May 17, 2007 [Document 111], subject to the objections in my letter to Linda Glover dated May 31, 2007
June 22 [9am-12pm]	Randy Kreibich	Topic 8 of Elan's Rule 30(b)(6) Notice dated May 17, 2007 [Document 111], subject to the objections in my letter to Linda Glover dated May 31, 2007

June 22 [1pm-5pm]	Steve Brenner	Topics 3-7 of Elan's Rule 30(b)(6) Notice dated May 17, 2007 [Document 111], subject to the objections in my letter to Linda Glover dated May 31, 2007
June 29 [2pm-5pm]	Bruce Wendell	Topic 1 of Elan's Rule 30(b)(6) Notice dated May 17, 2007 [Document 111], subject to the objections in my letter to Linda Glover dated May 31, 2007
June 29 [11am-1pm]	Joe Hogan	Topics 2.c.-2.e. of Elan's Rule 30(b)(6) Notice dated May 17, 2007 [Document 111], subject to the objections in my letter to Linda Glover dated May 31, 2007
June 29 [9am-11am]	Julie Lisano	Topics 2.f. and 2.g. of Elan's Rule 30(b)(6) Notice dated May 17, 2007 [Document 111], subject to the objections in my letter to Linda Glover dated May 31, 2007 Topic 6 of Elan's Rule 30(b)(6) Notice dated May 16, 2007 [Document 109], subject to the objections in my letter to Linda Glover dated May 31, 2007

I asked you how long Elan would need with each of these witnesses and you did not have an estimate. Unless I hear from you to the contrary, I will plan to have the witnesses available for deposition at the times specified in brackets in the table above. Please confirm that there will be a breakout room available at the location noticed for the depositions in which we can confer privately.

Elan did not state whether it would take the depositions on the proffered dates.

We discussed Abraxis's objections to certain aspects of Elan's Rule 30(b)(6) Notices, contained in my three letters to you on May 31, 2007. The following agreements are subject, of course, to other specific objections we may have at the deposition, such as to disclosure of information subject to attorney-client privilege and work product doctrines.

We agreed that you may ask the witness produced on testing of Abraxane whether he is aware of other types of testing of Abraxane not specifically identified by Elan and generally what he knows about such testing. We agreed that the term "predecessors" means ABI-007 and Capxol, but that you will provide us with a third name you would like included in the

meaning of "predecessor," which we will consider. We will allow questions regarding "intermediates" to the extent the witness can understand what that term means.

You agreed to provide us with Elan's production numbers for documents supporting its notice topics regarding the alleged "joint sales meeting."

We will determine whether Abraxis has additional responsive organizational charts with the understanding those would obviate the need for a deposition on "The current and historical corporate organizational structure of Abraxis."

We will produce a witness to testify on the likely locations of types of documents (e.g., marketing documents, laboratory notebooks, etc.) within Abraxis to the extent the questions do not call for privileged information or legal conclusions by that witness, that is, no interpretation of the scope of Elan's document requests.

We also discussed the notice topics regarding electronic documents. We explained that the electronic discovery agreement reached by the parties in March/April of this year covered all electronic documents, not just e-mail. Please confirm that Elan has the same understanding and has searched and produced all of its electronic documents in accordance with the parties' agreement. To the extent Elan seeks documents beyond that agreement Elan is in breach of the agreement. We will, however, permit Elan to ask our witness regarding Topics 3-7 what general electronic document repositories exist at Abraxis and whether those were searched in connection with producing documents to Elan.

Elan's Proposal to Extend the Discovery Deadlines

Elan proposed that the parties:

- Complete production of all documents, both paper and electronic, by July 15.
- Do not take any depositions (except Rule 30(b)(6) depositions on document collection) until July 30.
- Complete fact discovery September 30.
- Extend expert discovery deadlines.

Abraxis does not believe it is appropriate to extend the Court's deadlines at this time. Elan pushed the Court, over Abraxis's objection, for an aggressive schedule, and Abraxis has worked to comply with that schedule.

- First, Abraxis expects to complete its electronic document production by next week and expects to finish its entire production, including the documents addressed at the recent discovery conference, by the end of June.

- Second, we see no reason why depositions cannot proceed within the time allotted by the Court. Elan noticed its three Rule 30(b)(6) depositions to be taken by June 1 and therefore must have been ready to take those depositions on the noticed dates. As to the remaining depositions, Elan will have more than sufficient time. Other than any documents identified as a result of Abraxis's re-review of its laboratory notebooks, Abraxis expects to substantially complete its document production next week. Any previously overlooked laboratory notebooks will be in Elan's hands by the end of the month. This leaves ample time for the parties to take the 10 depositions that were agreed upon by the end of July.

- The proposed September 30 fact discovery cut-off is several weeks after opening expert reports are due, which is not workable. When I pointed that out during our conference, you proposed pushing off the expert dates as well, which you did in a subsequent e-mail. Again, we believe it is inappropriate to make such drastic changes to the schedule set by the Court. These are the dates Elan wanted. The parties knew from the beginning of the case that we would have to live with these dates.

In the spirit of compromise, however, we are willing to offer the following:

- We will agree to a stay of damages discovery until January 1, 2008, with a corresponding extension of the due date for damages expert reports and depositions.

- We will also agree to offer Dr. Selveraj for deposition on July 5, which will give Elan three more weeks to prepare for that deposition.

- Although we do not believe delaying the discovery deadlines is appropriate at this time, as the discovery deadline approaches, we would be willing to discuss, on a case-by-case basis, whether it is appropriate to extend the deadline if it turns out that additional time is necessary to complete discrete discovery tasks.

We urge Elan to take its Rule 30(b)(6) depositions on the dates proffered by Abraxis. We also urge Elan to tell us the other witnesses whom it wants to depose so that we can schedule those witnesses.

Elan's Request for Additional Abraxis Laboratory Notebooks

During the call, Elan requested that Abraxis make its Abraxane laboratory notebooks available for inspection. As we discussed on Friday, Abraxis will agree to make those notebooks available in Los Angeles and Chicago (depending on where the notebooks are located) on June 13 through June 18, under the following conditions:

- Elan's inspection will be in the presence of a Morrison & Foerster employee (with a private break-out room available).
- Elan will not remove, copy or take notes about the contents of any of the notebooks.
- Elan will use tape flags to indicate the portions of the notebooks for which it wants hard copies.
- Elan will not broadly designate entire notebooks, but rather will designate only those portions of the laboratory notebooks of demonstrable relevance to this lawsuit.
- Elan's review will be conducted only by Approved Outside Counsel as specified in the enclosed proposed Interim Order, and these counsel will sign undertakings to be bound by that Interim Order before review will be permitted. This provision is necessitated by the fact that some of the laboratory notebooks disclose secret details of Abraxis's manufacturing process for Abraxane.
- Elan's review will also be subject to the other applicable provisions of the current Protective Order regarding non-waiver of attorney-client privilege.
- Elan's review will be permitted only *after* the Court enters the enclosed Interim Order, which should be filed on Monday.

Upon receiving Elan's notebook designations, Abraxis will work expeditiously to review those documents for privilege, segregate the manufacturing detail information for separate production (see below), with the goal of producing hard copies of all the designated portions to Elan by the end of June. Further, if Elan wants us to prioritize production of certain of those notebooks over others we will do so to the extent practicable.

We cannot offer inspection of the notebooks at a later time, because that would be inconsistent with the current discovery deadlines set by the Court. Please let us know as soon as possible on Monday, June 11, whether Elan will take Abraxis up on the offer above. If Elan declines, Abraxis will undertake the review and production I explained in my letter of June 1, 2007, again planning to complete this production by the end of June, with the caveat

the documents containing manufacturing details will be disclosed only after entry of a suitable protective order by the Court.

Abraxis's Deposition Notices

Abraxis served 6 deposition notices on May 29 and June 1, 2007. Elan was unable to say during our conferences whether the witnesses would be available on the noticed dates, other than that Mr. Davis, who you said is not available on June 25, is generally available the following weeks. We will propose a date for Mr. Davis on Monday, June 11. Please let us know on Monday, June 11, whether the remaining witnesses will appear on the noticed dates and, if not, the earliest dates they will be available for deposition.

Amended Protective Order

We discussed Abraxis's proposed Amended Protective Order briefly. The parties' discussion was as follows:

- Elan said making the manufacturing information available for inspection by outside counsel electronically using the third party vendor IntraLinks was acceptable.

- Elan said it wants access in Bill Sipio's office, and in Baker Botts' New York and Dallas offices.

    - We said that access would be to specified individuals, not offices, but that if the specified attorneys were in those three locations that would be fine.

- Instead of three outside counsel having access, Elan wanted "unlimited" outside counsel to have access.

    - We stated that "unlimited" access was unacceptable, especially when Mr. Scheve told the Court only a couple of weeks ago that only three Elan outside counsel needed access. We did, however, say that we might be amenable to an intermediate position.

- Instead of two technical experts having access, Elan wants three, and Elan does not want to go through the approval process with Abraxis for those experts before submitting the Amended Protective Order to the Court.

    - We said we did not understand why three experts were required when Mr. Scheve told the Court two would suffice. We also do not understand why Elan is delaying identifying its proposed experts, and resisting pre-vetting them, which would expedite this process.

- Elan wants its experts to have electronic IntraLinks access to Abraxis's manufacturing information in the experts' laboratories.
    - As we said, this is unacceptable. These people are not officers of the Court and this would result in an unacceptable and unnecessary risk of dissemination of Abraxis's trade secrets. We have offered to make the material available on a computer in any U.S. Morrison & Foerster office. That should suffice.
- Elan wants one hard copy of the document, to use for depositions and court filings.
    - We asked Elan to make a specific proposal regarding this.

Bottom line, we signaled our willingness to consider certain modifications to the Amended Protective Order we proposed to Elan. We asked you to come back with a specific counter-proposal, that is, a red-lined version of the Amended Protective Order we sent to you, showing the changes Elan wants. We still have not received that. The ball is in your court.

To expedite review by Elan's outside counsel of the manufacturing information while the parties work out the details of a comprehensive Amended Protective Order, we propose stipulating to the enclosed Interim Order. The Interim Order, if entered by the Court, provides for five named Elan outside counsel to review the manufacturing details, which, as noted above, we could make available next week. No copies or disclosure to anyone other than those five named outside counsel would be permitted. No access to experts would be permitted (of course, even under the existing Protective Order, no experts have been approved to review *any* material designated by Abraxis under the Protective Order). Once the Amended Protective Order is entered, that would supersede this Interim Order. If we cannot reach agreement and have it approved by the Court in advance of the review, we will wait until the Amended Protective Order is entered for production of manufacturing details. Please let us know as early as possible on Monday, June 11, 2007 whether Elan accepts this proposal.

We welcome discussion about any of the issues addressed in this letter.

Sincerely,

/s/ Emily A. Evans

Emily A. Evans

EXHIBIT F

From: PAUL.FEHLNER@bakerbotts.com [mailto:PAUL.FEHLNER@bakerbotts.com]
Sent: Thursday, June 14, 2007 2:51 PM
To: Evans, Emily A.
Cc: sipz25@aol.com; Steve.Scheve@BakerBotts.com; linda.glover@BakerBotts.com; Lisa.Chiarini@BakerBotts.com
Subject: RE: Abraxis: depositions

Emily:

Thank you for your email.

Please advise how the specified outside counsel will access the IntraLinks site for the Abraxane manufacturing process. We understood that access would begin upon entry of the Interim Protective Order.

Per my voice mail message, we confirm Pramod Sarpotdar's deposition for June 29, 2007 in San Diego. We will get back to you on the other depositions as soon as possible.

Please provide organizational charts by Monday, June 18, 2007 so that we can determine and confirm that the deposition of Bruce Wendell can be withdrawn.

Best regards,

Paul

Paul Fehlner
Tel. 212.408.2527
Cell 917.826.9452
Fax 212.259.2527

mailto:paul.fehlner@bakerbotts.com

> -----Original Message-----
> **From:** Evans, Emily A. [mailto:EEvans@mofo.com]
> **Sent:** Wednesday, June 13, 2007 8:39 PM
> **To:** Fehlner, Paul F.; Glover, Linda
> **Cc:** sipz25@aol.com; Scheve, Steve
> **Subject:** Abraxis: depositions
>
> Paul and Linda,

As a follow up to my letter of June 10, 2007, we are still waiting to hear whether, other than Mr. Davis, Elan will make witnesses available on the dates noticed in the six deposition notices Abraxis served on May 29 and June 1, 2007. As noted in my letter, we understand Mr. Davis is unavailable on June 25, 2007; we will propose an alternate date shortly.

In light of Elan's withdrawal of two of its 30(b)(6) deposition notices, and the consequent fact that Raj Selveraj will testify only as to topics 2.a. and 2.b. of Elan's remaining Notice [Docket No. 111], we plan to consolidate his deposition with the others to occur on Friday, June 22. We thus will present witnesses to testify on the topics of the outstanding Notice on the following schedule:

June 22: Randy Kreibich (9am-12pm), Steve Brenner (1pm-4pm), and Raj Selveraj (4pm-5:30pm)
June 29: Julie Lisano (9am-11am), Joe Hogan (11am-1pm), and Bruce Wendell (2pm-5pm)

We understand Elan's position that it will not require the testimony of Bruce Wendell if Abraxis produces additional, older organizational charts.

We again urge you to tell us which Abraxis personnel Elan would like to depose before the discovery cut-off on July 30 so that we can begin working with the witnesses to schedule their depositions.

Best regards,

Emily

Emily A. Evans
Morrison & Foerster, LLP
755 Page Mill Road
Palo Alto, CA 94304
Tel.: (650) 813-5625
Fax: (650) 494-0792
eevans@mofo.com

==========

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==========

EXHIBIT G

From: Evans, Emily A.
Sent: Monday, June 25, 2007 9:03 PM
To: linda.glover@BakerBotts.com
Cc: Steve.Scheve@BakerBotts.com; 'PAUL.FEHLNER@bakerbotts.com'; sipz25@aol.com; Lisa.Chiarini@BakerBotts.com
Subject: Abraxis: deposition schedule

Linda,

We have asked Elan many times to tell us the Abraxis personnel whom it would like to depose before the July 30 cut-off. Elan has never responded. It is now 5 weeks from the discovery cut-off. The longer you wait, the more difficult it will be to schedule these witnesses before the cut-off. To facilitate compliance with the discovery cut-off, I indicate below the availability for deposition before the cut-off of Abraxis personnel listed in our Initial Disclosures:

Carlo Montagner: July 3
Michael Hawkins: July 6
Bruce Wendel: July 11
Patrick Soon-Shiong: July 13
Mitchell Clark: July 17
Neil Desai: July 19

Please let us know as soon as possible whether Elan is declining the opportunity to depose any of these witnesses, so that they can free up these dates for other obligations. Please also let us know as soon as possible if Elan is interested in deposing any other witness.

I confirm that we will be making Bruce Wendel available this Friday, June 29, at 2:00 p.m., to testify regarding topic 1 of Elan's Rule 30(b)(6) Notice, subject to the objections in my earlier correpondence regarding that Notice. I also confirm that we will be making Julie Lisano available this Friday, at 9:00 a.m., to testify regarding topics 2.f., 2.g., 11, and 12 of Elan's Rule 30(b)(6) Notice, subject to the objections in my earlier correspondence regarding this Notice. In addition, due to scheduling difficulties, Julie Lisano also will be testifying this Friday, June 29, regarding topics 2.c., 2.d., and 2.e. of the Notice, subject to the same objections, instead of Joe Hogan.

With respect to the depositions noticed by Abraxis, we again object to Elan scheduling three of the most important witnesses in the last 3 days of the discovery period. Assuming those are the only dates Drs. Liversidge, Liversidge, and de Garavilla are available in July, Abraxis accepts those dates under protest. Thus, the confirmed deposition dates for Elan witnesses are as follows:

Current Rule 30(b)(6): June 29
Pramod Sarpotdar: June 29
William Davis: July 16
Lawrence de Garavilla: July 26

Elaine Liversidge: July 30
Gary Liversidge: July 30

As you know, Abraxis also has noticed the following depositions:

Nancy Peltier: July 6
Eugene Cooper: July 12

Please confirm tomorrow that the witnesses will appear on those dates.

As always, feel free to contact me to discuss these scheduling issues.

Emily

Emily A. Evans
Morrison & Foerster, LLP
755 Page Mill Road
Palo Alto, CA 94304
Tel.: (650) 813-5625
Fax: (650) 494-0792
eevans@mofo.com

EXHIBIT H

From: Evans, Emily A.
Sent: Wednesday, June 27, 2007 6:20 AM
To: linda.glover@bakerbotts.com; PAUL.FEHLNER@bakerbotts.com
Cc: Steve.Scheve@bakerbotts.com; Lisa.Chiarini@bakerbotts.com; William J. Sipio (sipz25@aol.com)
Subject: Abraxis: discovery cut-off and depositions

Paul and Linda,

I write regarding our telephone conference yesterday.

With respect to your request that Abraxis join Elan in requesting a two-month extension of the discovery cut-off, Abraxis declines. We do not believe that Elan has done and is doing all it can to comply with the Judge Sleet's Scheduling Order -- an Order, by the way, that adopted an aggressive fact discovery cut-off at Elan's insistence. Parties are always strained during the last month of fact discovery and this case is no different. Both parties are represented by large firms that can marshal the resources necessary to comply with Judge Sleet's Order. Under these circumstances it is not appropriate for the parties to ask Judge Sleet to revisit his Scheduling Order.

A case in point is Elan's position yesterday regarding taking depositions of Abraxis personnel. Despite numerous requests by us that Elan let us know whom Elan would like to depose before the discovery cut-off, Elan has yet to identify a single witness. In an attempt to move this case along and comply with Judge Sleet's Scheduling Order, I sent you an e-mail on Monday listing dates when Abraxis personnel listed on our Initial Disclosures would be available for deposition before the discovery cut-off. These dates are:

Carlo Montagner: July 3
Michael Hawkins: July 6
Bruce Wendel: July 11
Patrick Soon-Shiong: July 13
Mitchell Clark: July 17
Neil Desai: July 19

You indicated that Elan was not able at this time to tell us whether it will want to depose these, or any other, Abraxis personnel. I indicated that these high-level personnel have very limited availability before the discovery cut-off due to long-scheduled pre-existing commitments. While we will of course make every effort to make requested witnesses available for deposition before the cut-off, the longer Elan waits the harder that will be for us to do. If Elan chooses to pass on the dates proferred above, we may not be able to make these witnesses available in July. For example, some of the witnesses will be out of the country in the latter part of the month. Elan may forfeit its chance to depose these -- and other -- witnesses if it chooses to follow the strategy you posited of waiting until late in July to notice all of its witnesses. Certainly this calculated bid to force an extension of the discovery cut-off is not good cause to modify the Scheduling Order.

With respect to Mr. Montagner and Dr. Hawkins, who are being proferred for deposition next week, please let us know by close of business this Thursday, June 28, whether Elan will notice and take their depositions on those dates. If we do not hear from you by then, we can no longer make the witnesses available on those dates. While the witnesses currently have reserved those days for their deposition, we require this notice to prepare for these depositions appropriately. Elan's steadfast refusal to identify witnesses whom it plans to depose -- you said you were unable to identify a single person -- is prejudicing our ability to defend against Elan's meritless lawsuit. We should not have to expend the resources necessary simultaneously to prepare all our employees for a possible deposition this coming month. This is Elan's lawsuit. Put your cards on the table and get on with your case.

With respect to the witnesses whom Abraxis would like to depose, you indicated that you would let us know today whether Ms. Peltier and Dr. Cooper will be made available for deposition on the dates specified in our deposition notices and, if not, when they will be available before the discovery cut-off.

With respect to document production, we indicated that we expected to produce the remainder of our documents by the end of this week, as we have previously predicted. You indicated that you did not know when Elan would be completing its document production but that Elan would produce tens of thousands of documents this Friday, with more to come "later." Abraxis objects to Elan's dilatory document production. This appears to be another cynical ploy to extend the discovery cut-off and increase the cost to Abraxis of defending against this frivolous lawsuit.

We also discussed the Rule 30(b)(6) depositions last Friday. I indicated that we would double-check to confirm that the collection of documents by Abraxis had been sufficient and proper, and indicated that we would remedy any deficiency if identified. I also reminded you that Abraxis already has searched for and produced many, many documents beyond what we were required, or agreed, to produce. I cannot say the same for Elan.

As always, I am available to discuss these important issues with you.

Emily

Emily A. Evans
Morrison & Foerster, LLP
755 Page Mill Road
Palo Alto, CA 94304
Tel.: (650) 813-5625
Fax: (650) 494-0792
eevans@mofo.com

EXHIBIT I

-----Original Message-----
From: PAUL.FEHLNER@bakerbotts.com <PAUL.FEHLNER@bakerbotts.com>
To: Evans, Emily A.; Kruze, Diana B.; Jacobs, Michael A.; Walters, Eric S.
CC: Steve.Scheve@bakerbotts.com <Steve.Scheve@bakerbotts.com>;
Lisa.Chiarini@bakerbotts.com <Lisa.Chiarini@bakerbotts.com>; sipz25@aol.com <sipz25
@aol.com>; linda.glover@bakerbotts.com <linda.glover@bakerbotts.com>;
Jeffrey.Sullivan@bakerbotts.com <Jeffrey.Sullivan@bakerbotts.com>;
Jennifer.Cozeolino@bakerbotts.com <Jennifer.Cozeolino@bakerbotts.com>
Sent: Thu Jun 28 16:54:43 2007
Subject: Elan v. Abraxis: discovery cut-off and depositions; objection to Abraxis's expert

Counsel:

1. Deposition of Abraxis witnesses

We accept the offer in Dr. Evans' email of 26 June 2007 to examine Dr. Hawkins on July 6; Dr. Soon-Shiong on July 13; and Dr. Desai on July 19. Formal notices will follow. We reserve the right to notice depositions of the other Abraxis witnesses, including Messrs. Montagner, Wendell, and Clark as facts and circumstances warrant, in accordance with the Federal Rules of Civil Procedure.

2. Deposition of Elan witnesses Cooper, Peltier, and Shaw

Ms. Nancy Peltier will be available for examination at the office of Baker Botts in New York City on July 13, 2007.

Dr. Eugene Cooper will be available for examination at a location in Philadelphia, Pennsylvania on July 18, 2007.

We will provide a time and location for the deposition of Dr. J. Michael Shaw as soon as possible.

3. Abraxis's proposed expert

Pursuant to Section 6.3 of the Stipulated Protective Order, Elan objects to the disclosure of Elan's Designated Material to Dr. Mansoor M. Amiji. We understand that Dr. Amiji is engaged in consulting on nanoparticulate compositions on behalf of commercial entities as to which Elan's information would be competitively and commercially relevant. Dr. Amiji's consulting work presents an unacceptable risk to Elan's Designated Material, and disclosure to him of Elan's Designated Material is not authorized. Elan reserves the right to state additional bases for objection as they become known.

We have scheduled a meet and confer from Monday afternoon to discuss Abraxis's objection to Elan's proposed expert. I suggest that we use the opportunity to discuss our objection to Abraxis's proposed expert as well.

Sincerely,

Paul F. Fehlner, Ph.D.

Baker Botts L.L.P.
30 Rockefeller Plaza
New York, NY 10112

Tel. 212.408.2527
Cell 917.826.9452
Fax 212.259.2527
mailto:paul.fehlner@bakerbotts.com

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EXHIBIT J

From: Kruze, Diana B.
Sent: Monday, July 09, 2007 11:26 AM
To: linda.glover@bakerbotts.com; 'fred.barrera@bakerbotts.com'
Subject: Elan vs. Abraxis/Depositions

Dear Linda and Fred:

Please allow this email to memorialize our conversation of today's date. The parties agreed that the following depositions will take place in the following locations:

1. Thursday, July 12, 2007 at 9 am/Deposition of Peltier/Baker Botts New York Office (located at 30 Rockefeller Plaza in New York, New York)
2. Friday, July 13, 2007 at 9 am/Deposition of Soon-Shiong/Morrison & Foerster's Los Angeles Office (located at 555 West Fifth Street, Suite 3500
Los Angeles, California)
3. Thursday, July 19, 2007 at 9 am/Deposition of Desai/Morrison & Foerster's Los Angeles Office (located at 555 West Fifth Street, Suite 3500
Los Angeles, California)

For security purposes, the parties will forward the names of individuals attending each deposition at least 24 hours in advance. Thanks so much.

Best regards,

Diana
Diana Kruze
Morrison & Foerster, LLP
755 Page Mill Road
Palo Alto, CA 94304-1018
Telephone: 650.813.5649
Facsimile: 650.494.0792
dkruze@mofo.com

EXHIBIT K

REDACTED IN ITS ENTIRETY

EXHIBIT L

From: Evans, Emily A.
Sent: Wednesday, July 11, 2007 3:04 PM
To: Steve.Scheve@BakerBotts.com
Cc: PAUL.FEHLNER@BakerBotts.com; sipz25@aol.com; linda.glover@BakerBotts.com; Lisa.Chiarini@BakerBotts.com
Subject: Abraxis: deposition of Dr. Soon-Shiong

Dear Steve,

I responded to your email yesterday regarding putting off Dr. Soon-Shiong's deposition, letting you know that this Friday is Dr. Soon-Shiong's only availability during the discovery period and that we would not block your examination of Dr. Soon-Shiong into the issues that caused the suspension of Dr. Hawkins' deposition. I gave you until noon today to get back to me regarding whether, in light of these circumstances, Elan still was declining to take Dr. Soon-Shiong's deposition this Friday. I still have not heard from you. In addition, within the past hour I have tried to contact you, Linda Glover, Paul Fehlner, and Bill Sipio to find out what Elan was doing about Dr. Soon-Shiong's deposition. None answered the phone and I left voicemails for all of you. In view of Elan's failure to communicate to the contrary, I assume that your earlier email yesterday cancelling Dr. Soon-Shiong's deposition remains operative.

Emily

Emily A. Evans
Morrison & Foerster, LLP
755 Page Mill Road
Palo Alto, CA 94304
Tel.: (650) 813-5625
Fax: (650) 494-0792
eevans@mofo.com

EXHIBIT M

From: PAUL.FEHLNER@bakerbotts.com [mailto:PAUL.FEHLNER@bakerbotts.com]
Sent: Wednesday, July 11, 2007 5:02 PM
To: Evans, Emily A.
Cc: Steve.Scheve@BakerBotts.com; sipz25@aol.com; linda.glover@BakerBotts.com; Lisa.Chiarini@BakerBotts.com
Subject: RE: Abraxis: deposition of Dr. Soon-Shiong

Emily:

Per our telephone conference of earlier today, we confirm that Elan stands by the email from Steve Scheve to you of yesterday's date, stating that Elan would postpone the deposition of Dr. Soon-Shiong in light of Abraxis's actions at Dr. Hawkins' deposition this past Friday, July 6th.

Elan in no way waives its right under the Federal Rules to depose Dr. Soon-Shiong in the future. Elan cannot reasonably be expected to proceed with Dr. Soon-Shiong's deposition under the cloud created by the improper suspension of Dr. Hawkins' deposition until a Discovery Master takes control of this matter. Abraxis has demonstrated a willingness to disregard the Rules, so your assurances that your conduct will be in accordance with the Rules, which frankly we believed could be presumed, are not availing now.

Best regards,

Paul

Paul Fehlner
Tel. 212.408.2527
Cell 917.826.9452
Fax 212.259.2527

mailto:paul.fehlner@bakerbotts.com

> -----Original Message-----
> **From:** Evans, Emily A. [mailto:EEvans@mofo.com]
> **Sent:** Wednesday, July 11, 2007 6:04 PM
> **To:** Scheve, Steve
> **Cc:** Fehlner, Paul F.; sipz25@aol.com; Glover, Linda; Chiarini, Lisa
> **Subject:** Abraxis: deposition of Dr. Soon-Shiong
>
> Dear Steve,

I responded to your email yesterday regarding putting off Dr. Soon-Shiong's deposition, letting you know that this Friday is Dr. Soon-Shiong's only availability during the discovery period and that we would not block your examination of Dr. Soon-Shiong into the issues that caused the suspension of Dr. Hawkins' deposition. I gave you until noon today to get back to me regarding whether, in light of these circumstances, Elan still was declining to take Dr. Soon-Shiong's deposition this Friday. I still have not heard from you. In addition, within the past hour I have tried to contact you, Linda Glover, Paul Fehlner, and Bill Sipio to find out what Elan was doing about Dr. Soon-Shiong's deposition. None answered the phone and I left voicemails for all of you. In view of Elan's failure to communicate to the contrary, I assume that your earlier email yesterday cancelling Dr. Soon-Shiong's deposition remains operative.

Emily

Emily A. Evans
Morrison & Foerster, LLP
755 Page Mill Road
Palo Alto, CA 94304
Tel.: (650) 813-5625
Fax: (650) 494-0792
eevans@mofo.com

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http://www.mofo.com/Circular230.html

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==========

EXHIBIT N

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RIYADH
WASHINGTON

July 13, 2007

Stephen E. Scheve
TEL +1 713-229-1659
FAX +1 713-229-2859
steve.scheve@bakerbotts.com

076406.0108

BY FEDEX AND ELECTRONIC MAIL

Dr. Emily Evans
Morrison Foerster
755 Page Mill Road
Palo Alto, California 94304

Re: Cause No.: 06-438-GMS; *Elan Pharma International Limited v. Abraxis BioScience, Inc.*; In the United States District Court; District of Delaware

Dear Emily:

As you are aware, Elan's deposition of Dr. Desai is scheduled for July 19. As Elan's lead counsel, I intend to depose Dr. Desai. Pursuant to the Interim Protective Order Regarding Secret Abraxane Manufacturing Information, please advise no later than 5 p.m. PDT July 16, 2007 whether Abraxis grants me permission to access Dr. Desai's laboratory notebooks posted on Intralinks. Please also advise whether Abraxis will provide me with a hard copy of Dr. Desai's laboratory notebooks that are posted on Intralinks by July 17 for use in deposition.

I hope you are having a very nice day.

Very truly yours,

Stephen E. Scheve

SES:94367
cc: Paul Fehlner
William J. Sipio
Jeffrey Sullivan
Linda Glover
Lisa Chiarini

EXHIBIT O

-----Original Message-----
From: Evans, Emily A.
Sent: Friday, July 13, 2007 8:03 PM
To: Steve.Scheve@bakerbotts.com
Cc: PAUL.FEHLNER@bakerbotts.com; Jeffrey.Sullivan@bakerbotts.com; linda.glover@bakerbotts.com; Lisa.Chiarini@bakerbotts.com; sipz25@aol.com
Subject: Abraxis: Desai deposition

Dear Steve,

As you are aware, you told the Court that Elan only needed three outside counsel to have access to Abraxane Secret Manufacturing Information. Nevertheless Elan chose not to list you among the five attorneys whom Abraxis agreed could have access to Abraxane Secret Manufacturing Information. That was Elan's decision. As you also know, Elan waited three weeks to respond to Abraxis' initial proposal regarding a final revised Protective Order to replace the Interim Order. That also was Elan's decision. Yet again it appears that Elan is prepared to use its own dilatory prosecution of this litigation to stall discovery. Abraxis objects to this tactic.

Nevertheless, to help Elan out in this situation -- even though Elan created it -- we propose the following:

1. We will undertake a second review this weekend of Neil Desai's laboratory notebooks posted on IntraLinks and reduce designations to Restricted Confidential where appropriate. Hard copies of any such notebooks with reduced designations would be provided to you on Monday, July 16.

2. We will permit Elan to split its 7 hours' time with Dr. Desai between two attorneys:

(a) you may examine Dr. Desai on July 19 with respect to Restricted Confidential information and documents. This part of the transcript would be separately bound

(b) one of the five designated outside counsel in the Interim Order may examine Dr. Desai regarding Secret Abraxane Manufacturing Information on July 19 after or before your examination. This transcript will be treated as specified below.

3. With respect to 2(b): We will make two hard copies of Dr. Desai's notebooks on Intralinks available at Dr. Desai's deposition to one of the five counsel specified in the Interim Order who is taking Dr. Desai's deposition on that subject matter. The notebooks may not leave the deposition room and a Morrison & Foerster employee will be present at all times while the notebooks are in Elan's custody. One of the notebook copies may be marked as exhibits. The other copy set will be returned to us after the deposition. Elan will agree that we will keep custody of these deposition exhibits, which we will promptly post on IntraLinks. Elan will also agree that this portion of the deposition transcript will not be provided to it or its counsel by the court reporter. Rather, the court reporter will provide this transcript to us and we will promptly post it on IntraLinks.

4. Of course, this is an interim solution. When the Court enters an Amended Protective Order governing treatment of the Abraxane Secret Manufacturing Information, the terms of that Order shall govern treatment of that portion of Dr. Desai's transcript and exhibits.

Please let me know tomorrow whether Elan will proceed with Dr. Desai's deposition on July

19.

Emily

-----Original Message-----
From: lori.druckenbrodt@bakerbotts.com [mailto:lori.druckenbrodt@bakerbotts.com]
Sent: Friday, July 13, 2007 1:49 PM
To: Evans, Emily A.
Cc: Steve.Scheve@bakerbotts.com; PAUL.FEHLNER@bakerbotts.com;
Jeffrey.Sullivan@bakerbotts.com; linda.glover@bakerbotts.com;
Lisa.Chiarini@bakerbotts.com; sipz25@aol.com
Subject: Elan Pharma International Limited vs Abraxis BioScience Inc.

On behalf of Stephen E. Scheve, attached please find the above referenced letter.

Thank you.

Lori Druckenbrodt
Legal Secretary to:
Stephen E. Scheve, Partner
Linda M. Glover, Associate
Cheri Thomas, Associate
Jacqueline Lowe, Paralegal

Baker Botts LLP
910 Louisiana, One Shell Plaza
Houston, Texas 77002
phone: (713) 229-2059
fax: (713) 229-1522
email: lori.druckenbrodt@bakerbotts.com

<<July 13 2007 ltr to Dr. Emily Evans.PDF>>

EXHIBIT P

From: Evans, Emily A.
Sent: Saturday, July 14, 2007 4:30 PM
To: 'PAUL.FEHLNER@bakerbotts.com'; Steve.Scheve@bakerbotts.com
Cc: Jeffrey.Sullivan@bakerbotts.com; linda.glover@bakerbotts.com; Lisa.Chiarini@bakerbotts.com; sipz25@aol.com; Jennifer.Cozeolino@bakerbotts.com
Subject: RE: Abraxis: Desai deposition

Thank you. I will confirm with you on Monday whether Ci will be available on Friday.

From: PAUL.FEHLNER@bakerbotts.com [mailto:PAUL.FEHLNER@bakerbotts.com]
Sent: Saturday, July 14, 2007 3:55 PM
To: Evans, Emily A.; Steve.Scheve@bakerbotts.com
Cc: Jeffrey.Sullivan@bakerbotts.com; linda.glover@bakerbotts.com; Lisa.Chiarini@bakerbotts.com; sipz25@aol.com; Jennifer.Cozeolino@bakerbotts.com
Subject: Re: Abraxis: Desai deposition

Yes, and Ci on Friday.

Regards,

Paul

----- Original Message -----
From: Evans, Emily A. <EEvans@mofo.com>
To: Fehlner, Paul F.; Scheve, Steve
Cc: Sullivan, Jeffrey D.; Glover, Linda; Chiarini, Lisa; sipz25@aol.com <sipz25@aol.com>
Sent: Sat Jul 14 16:33:22 2007
Subject: RE: Abraxis: Desai deposition

Paul,

Please clarify whether Elan will be taking Dr. Desai's deposition on July 19.

Thank you,

Emily

From: PAUL.FEHLNER@bakerbotts.com [mailto:PAUL.FEHLNER@bakerbotts.com]
Sent: Saturday, July 14, 2007 1:43 PM
To: Evans, Emily A.; Steve.Scheve@bakerbotts.com

Cc: Jeffrey.Sullivan@bakerbotts.com; linda.glover@bakerbotts.com; Lisa.Chiarini@bakerbotts.com; sipz25@aol.com
Subject: Re: Abraxis: Desai deposition

Emily:

We stand by Steve Scheve's letter of the 13th.

The Interim Protective Order was just that, an interim order designed to facilitate document review. Abraxis could not reasonably expect that this order would control use of documents in the litigation, and any contention otherwise is specious, bordering on disingenuous. Restricting some Baker Botts attorneys from access to information that is relevant (by Elan's determination) is unprofessional, illogical, and inappropriate. Either all Baker Botts attorneys are capable of adherence to our ethical obligations or none of us are. By conceding that some of us are, Abraxis concedes that we all are.

At this point Abraxis must do its part and make available the exhibits Elan will use in its examination of Dr. Desai. Abraxis should consider carefully before it improperly interferes with yet another deposition.

Best regards,

Paul

Paul Fehlner
Tel. 212.408.2527
Cell 917.826.9452
Fax 212.259.2527

mailto:paul.fehlner@bakerbotts.com

----- Original Message -----
From: Evans, Emily A. <EEvans@mofo.com>
To: Scheve, Steve
Cc: Fehlner, Paul F.; Sullivan, Jeffrey D.; Glover, Linda; Chiarini, Lisa; sipz25@aol.com <sipz25@aol.com>
Sent: Fri Jul 13 22:02:57 2007
Subject: Abraxis: Desai deposition

Dear Steve,

As you are aware, you told the Court that Elan only needed three outside counsel to have access to Abraxane Secret Manufacturing Information. Nevertheless Elan chose not to list you among the five attorneys whom Abraxis agreed could have access to Abraxane Secret Manufacturing Information. That was Elan's decision. As you also know, Elan waited three weeks to respond to Abraxis' initial proposal regarding a final revised Protective Order to replace the Interim Order. That also was Elan's decision. Yet again it appears that Elan is prepared to use its own dilatory prosecution of this litigation to stall discovery. Abraxis objects to this tactic.

Nevertheless, to help Elan out in this situation -- even though Elan created it -- we propose the following:

1. We will undertake a second review this weekend of Neil Desai's laboratory notebooks posted on IntraLinks and reduce designations to Restricted Confidential where appropriate. Hard copies of any such notebooks with reduced designations would be provided to you on Monday, July 16.

2. We will permit Elan to split its 7 hours' time with Dr. Desai between two attorneys:

(a) you may examine Dr. Desai on July 19 with respect to Restricted Confidential information and documents. This part of the transcript would be separately bound

(b) one of the five designated outside counsel in the Interim Order may examine Dr. Desai regarding Secret Abraxane Manufacturing Information on July 19 after or before your examination. This transcript will be treated as specified below.

3. With respect to 2(b): We will make two hard copies of Dr. Desai's notebooks on Intralinks available at Dr. Desai's deposition to one of the five counsel specified in the Interim Order who is taking Dr. Desai's deposition on that subject matter. The notebooks may not leave the deposition room and a Morrison & Foerster employee will be present at all times while the notebooks are in Elan's custody. One of the notebook copies may be marked as exhibits. The other copy set will be returned to us after the deposition. Elan will agree that we will keep custody of these deposition exhibits, which we will promptly post on IntraLinks. Elan will also agree that this portion of the deposition transcript will not be provided to it or its counsel by the court reporter. Rather, the court reporter will provide this transcript to us and we will promptly post it on IntraLinks.

4. Of course, this is an interim solution. When the Court enters an Amended Protective Order governing treatment of the Abraxane Secret Manufacturing Information, the terms of that Order shall govern treatment of that portion of Dr. Desai's transcript and exhibits.

Please let me know tomorrow whether Elan will proceed with Dr. Desai's deposition on July 19.

Emily

-----Original Message-----
From: lori.druckenbrodt@bakerbotts.com
[mailto:lori.druckenbrodt@bakerbotts.com]
Sent: Friday, July 13, 2007 1:49 PM
To: Evans, Emily A.
Cc: Steve.Scheve@bakerbotts.com; PAUL.FEHLNER@bakerbotts.com; Jeffrey.Sullivan@bakerbotts.com; linda.glover@bakerbotts.com; Lisa.Chiarini@bakerbotts.com; sipz25@aol.com
Subject: Elan Pharma International Limited vs Abraxis BioScience Inc.

On behalf of Stephen E. Scheve, attached please find the above referenced letter.

Thank you.

Lori Druckenbrodt
Legal Secretary to:
Stephen E. Scheve, Partner
Linda M. Glover, Associate
Cheri Thomas, Associate
Jacqueline Lowe, Paralegal

Baker Botts LLP

910 Louisiana, One Shell Plaza
Houston, Texas 77002
phone: (713) 229-2059
fax: (713) 229-1522
email: lori.druckenbrodt@bakerbotts.com

<<July 13 2007 ltr to Dr. Emily Evans.PDF>>

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EXHIBIT Q

From: PAUL.FEHLNER@bakerbotts.com [mailto:PAUL.FEHLNER@bakerbotts.com]
Sent: Saturday, July 14, 2007 1:43 PM
To: Evans, Emily A.; Steve.Scheve@bakerbotts.com
Cc: Jeffrey.Sullivan@bakerbotts.com; linda.glover@bakerbotts.com; Lisa.Chiarini@bakerbotts.com; sipz25@aol.com
Subject: Re: Abraxis: Desai deposition

Emily:

We stand by Steve Scheve's letter of the 13th.

The Interim Protective Order was just that, an interim order designed to facilitate document review. Abraxis could not reasonably expect that this order would control use of documents in the litigation, and any contention otherwise is specious, bordering on disingenuous. Restricting some Baker Botts attorneys from access to information that is relevant (by Elan's determination) is unprofessional, illogical, and inappropriate. Either all Baker Botts attorneys are capable of adherence to our ethical obligations or none of us are. By conceding that some of us are, Abraxis concedes that we all are.

At this point Abraxis must do its part and make available the exhibits Elan will use in its examination of Dr. Desai. Abraxis should consider carefully before it improperly interferes with yet another deposition.

Best regards,

Paul

Paul Fehlner
Tel. 212.408.2527
Cell 917.826.9452
Fax 212.259.2527

mailto:paul.fehlner@bakerbotts.com

----- Original Message -----
From: Evans, Emily A. <EEvans@mofo.com>
To: Scheve, Steve
Cc: Fehlner, Paul F.; Sullivan, Jeffrey D.; Glover, Linda; Chiarini, Lisa; sipz25@aol.com <sipz25@aol.com>
Sent: Fri Jul 13 22:02:57 2007
Subject: Abraxis: Desai deposition

Dear Steve,

As you are aware, you told the Court that Elan only needed three outside

counsel to have access to Abraxane Secret Manufacturing Information. Nevertheless Elan chose not to list you among the five attorneys whom Abraxis agreed could have access to Abraxane Secret Manufacturing Information. That was Elan's decision. As you also know, Elan waited three weeks to respond to Abraxis' initial proposal regarding a final revised Protective Order to replace the Interim Order. That also was Elan's decision. Yet again it appears that Elan is prepared to use its own dilatory prosecution of this litigation to stall discovery. Abraxis objects to this tactic.

Nevertheless, to help Elan out in this situation -- even though Elan created it -- we propose the following:

1. We will undertake a second review this weekend of Neil Desai's laboratory notebooks posted on IntraLinks and reduce designations to Restricted Confidential where appropriate. Hard copies of any such notebooks with reduced designations would be provided to you on Monday, July 16.

2. We will permit Elan to split its 7 hours' time with Dr. Desai between two attorneys:

(a) you may examine Dr. Desai on July 19 with respect to Restricted Confidential information and documents. This part of the transcript would be separately bound

(b) one of the five designated outside counsel in the Interim Order may examine Dr. Desai regarding Secret Abraxane Manufacturing Information on July 19 after or before your examination. This transcript will be treated as specified below.

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Please let me know tomorrow whether Elan will proceed with Dr. Desai's deposition on July 19.

Emily

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[mailto:lori.druckenbrodt@bakerbotts.com]
Sent: Friday, July 13, 2007 1:49 PM
To: Evans, Emily A.

Cc: Steve.Scheve@bakerbotts.com; PAUL.FEHLNER@bakerbotts.com;
Jeffrey.Sullivan@bakerbotts.com; linda.glover@bakerbotts.com;
Lisa.Chiarini@bakerbotts.com; sipz25@aol.com
Subject: Elan Pharma International Limited vs Abraxis BioScience Inc.

On behalf of Stephen E. Scheve, attached please find the above
referenced letter.

Thank you.

Lori Druckenbrodt
Legal Secretary to:
Stephen E. Scheve, Partner
Linda M. Glover, Associate
Cheri Thomas, Associate
Jacqueline Lowe, Paralegal

Baker Botts LLP
910 Louisiana, One Shell Plaza
Houston, Texas 77002
phone: (713) 229-2059
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EXHIBIT R

REDACTED IN ITS ENTIRETY

EXHIBIT S

From: PAUL.FEHLNER@bakerbotts.com [mailto:PAUL.FEHLNER@bakerbotts.com]
Sent: Monday, July 16, 2007 5:38 PM
To: Kruze, Diana B.
Cc: Lisa.Chiarini@bakerbotts.com; linda.glover@bakerbotts.com; Steve.Scheve@bakerbotts.com; sipz25@aol.com; Evans, Emily A.; Jacobs, Michael A.; Walters, Eric S.; Jennifer.Cozeolino@bakerbotts.com
Subject: Re: Elan vs. Abraxis/Depositions

Diana:

Thanks for your email. As you note, we have already discussed Desai. We are on board at this point for the depositions of Louie, Tao, and Ci as outlined below, pending confirmation the Abraxis has produced the notebooks without redaction.

Also, per Emily's call of late this afternoon, we will examine Dr. Selvaraj on the 27th, presumably also at Morrison & Foerster's offices in LA.

Best regards,

Paul

----- Original Message -----
From: Kruze, Diana B. <DKruze@mofo.com>
To: Fehlner, Paul F.
Cc: Chiarini, Lisa; Glover, Linda; Scheve, Steve; sipz25@aol.com <sipz25@aol.com>; Evans, Emily A. <EEvans@mofo.com>; Jacobs, Michael A. <MJacobs@mofo.com>; Walters, Eric S. <EWalters@mofo.com>
Sent: Mon Jul 16 15:07:00 2007
Subject: Elan vs. Abraxis/Depositions

Hi Paul,

I am writing to confirm dates and locations for the remaining Abraxis witnesses noticed by Elan. You confirmed this weekend that Elan will be taking Dr. Desai's deposition this Thursday. We will make Leslie Louie, Chunlin Tao, and Sherry Ci available for deposition on the dates noticed by Elan. The dates are as follows:

Neil Desai July 19

Leslie Louie July 26

Chunlin Tao July 27

Sherry Ci July 30

All these depositions will take place at Morrison & Foerster's Los Angeles office.

Please let me know immediately if Elan will not proceed with any of these depositions. Thanks so much.

Best regards,

Diana

Diana Kruze
Morrison & Foerster, LLP
755 Page Mill Road
Palo Alto, CA 94304-1018
Telephone: 650.813.5649
Facsimile: 650.494.0792
dkruze@mofo.com <http://www.mofo.com>

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EXHIBIT T

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

- - -

ELAN PHARMA INTERNATIONAL LIMITED,	:	Civil Action
Plaintiff,	:	
v.	:	
ABRAXIS BIOSCIENCE INC.,	:	
Defendant.	:	No. 06-438-GMS

- - -

Wilmington, Delaware
Monday, July 16, 2007
4:00 p.m.
Telephone Conference

- - -

BEFORE: HONORABLE GREGORY M. SLEET, Chief Judge

APPEARANCES:

JOHN G. DAY, ESQ.
Ashby & Geddes
-and-
PAUL FEHLNER, ESQ., and
LINDA GLOVER, ESQ. (Houston, Texas)
Baker Botts LLP
(New York, New York)

Counsel for Plaintiff

ELENA C. NORMAN, ESQ.
Young Conaway Stargatt & Taylor, LLP
-and-
MICHAEL A. JACOBS, ESQ., and
EMILY A. EVANS, ESQ.
Morrison & Foerster
(San Francisco, California)

Counsel for Defendant

THE COURT: Good afternoon, counsel. Counsel, who is on the line for the plaintiff?

MR. DAY: Good afternoon, Your Honor. On behalf of plaintiff Elan Pharma you have John Day from Ashby & Geddes locally. With me on the line from Baker & Botts in Texas, Linda Glover, and from Baker & Botts in New York, Paul Fehlner.

UNIDENTIFIED SPEAKER: Good afternoon, Your Honor.

UNIDENTIFIED SPEAKER: Good afternoon, Your Honor.

THE COURT: For the defendant.

MS. NORMAN: For defendants, Your Honor, Elena Norman from Young Conaway locally. With me are Emily Evans and Michael Jacobs from Morrison & Foerster in California.

UNIDENTIFIED SPEAKER: Good afternoon, Your Honor.

THE COURT: Good afternoon.

I am taking this call, counsel, because I understand that there are pending depositions scheduled for Thursday and Friday. Is that correct?

UNIDENTIFIED SPEAKER: That's correct, Your Honor.

THE COURT: As promised, I think reflected in an oral order that is on the docket, I had referred the matter

elsewhere for discovery disputes. That was going to be to a discover master. In the interim, it has developed that our new Magistrate Judge will be sworn in effective August the 6th. Future disputes will be referred to Judge Stark.

So let's go ahead and find out what's going on.

MR. FEHLNER: Paul Fehlner for plaintiff Elan, Your Honor.

There are two issues facing us in the depositions that are scheduled for this week. One is a designation by Abraxis of documents relating to their manufacturing process as secret manufacturing process documents. As part of an interim order following the last conference concerning discovery problems, we agreed to review documents on an online system in order to ascertain or confirm their relevance to our case. The defendants at this time are trying to push the interim order to be the controlling basis for using these documents. As a consequence, our lead trial counsel, who plans to take these depositions, would actually be denied access to important documents, including the notebooks of Dr. Neil Desai, the deponent scheduled for Thursday, as well as manufacturing process details.

In addition, Your Honor, at significant expense, Elan went to two locations, one in Los Angeles, one in Chicago, to review notebooks and identify relevant

responsive information from the notebooks. Abraxis did make those notes available to us. But when we received the materials that we had identified from the notebooks, it wasn't whole notebooks, Your Honor. It was selected packages. We have found that substantial portions of these notebooks have been redacted.

Your Honor, these are laboratory notebooks. We have been told the redactions are related to privilege, and we simply can't understand it. We have significant redactions in notebooks of Neil Desai and Sherry Ci. Ms. Ci, or Dr. Ci, I can't remember which, is scheduled, potentially scheduled to be deposed on Friday. We were waiting for confirmation of that.

This is our problem.

THE COURT: Let's deal with the easy thing first. Is the other side prepared to confirm Dr. Ci's availability for Friday?

MS. EVANS: Actually, that was a possibility, Your Honor, we had raised. And we are sending an e-mail today that will make her available on the date the plaintiffs noticed her, which was July 30th.

THE COURT: I don't have a calendar in front of me. Is that a no?

MS. EVANS: Not this Friday, Your Honor. The notice date, July 30th. We originally thought she might be

available earlier, but we are not going to be able to provide her then.

THE COURT: Was that Mr. Fehlner or Ms. Glover speaking?

MR. FEHLNER: That was Ms. Evans, Dr. Evans.

THE COURT: Who just outlined Elan Pharma's position?

MR. FEHLNER: Mr. Fehlner, Your Honor.

THE COURT: Is that going to be satisfactory?

MR. FEHLNER: We would have no problem with examining Dr. Ci on Monday, the 30th, Your Honor. We still have the issue with respect to Dr. Desai on Thursday.

THE COURT: I understand that. Counsel, are we now confirmed for Dr. Ci for Monday, the 30th, counsel for Abraxis?

MS. EVANS: Yes, sir.

THE COURT: All right. Let's get your response, whoever is going to handle it, to Mr. Fehlner's concerns regarding Dr. Desai.

MR. JACOBS: Your Honor, I will take it on. Emily Evans will pick up on some of the other aspects of it.

Let's break it down. The question of Mr. Scheve's access to secret information, this is one of the evolutions of the issue of our manufacturing documents that were so sensitive and you ordered us to produce based on

representations from Elan that they could live with more limited access to these documents. So they proposed three attorneys having access to these documents on the call with you. They did that twice, it's in the transcript twice.

Then when it came time to negotiate the interim protective order, they had asked for more, and we agreed on five attorneys having access to these materials. But they never made Mr. Scheve one of those five.

So we just reached our limit on this, Your Honor. We could not agree to make it six when we were already so flexible.

That is the issue of Mr. Scheve's access.

We had a work-around for the deposition that we thought would work. It was a work-around in which Mr. Scheve would do the deposition on all but the portion that related to secret information, and then somebody on the list of five would handle that portion. A departure from the usual rule on one attorney taking a deposition, but we thought that was what would work. And we had other work-arounds to deal with the restriction on access to that material. That was our counterproposal. We think it is reasonable on that question.

THE COURT: Okay. Mr. Fehlner.

MR. FEHLNER: Thank you, Your Honor.

With respect to three attorneys-five attorneys,

we had offered to have three attorneys review the material back in March. By the time we got access to these materials, it was the middle of June and we were approaching the end of the discovery period, and consequently, having three attorneys with access simply wouldn't have done. Even at that time we wanted to have attorneys to have access who would be in a position to undertake review of the documents, but I would add that the documents are not conveniently located.

They were not produced to us for review nor were we allowed to inspect them. Instead, they have been posted on a secure website, which is incredibly inconvenient. But nevertheless, we understood their concern and agreed to this interim provision.

Your Honor, we are not aware of any basis for restricting counsel from a firm where there is no sort of conflict of interest or other basis for walling somebody off, and that's not the case here. In particular, we are surprised that defendants believe that we would not want our lead trial counsel to be able to review and have access to the documents his more junior attorneys have identified as relevant.

THE COURT: The only basis that I could imagine, one of the bases, apparently, was agreement, in responding to your observation, Mr. Fehlner, that you know of no basis

for walling off. And you may be right about that. But it sounds like there was agreement as to number. Having said that, I want to get Mr. Jacobs to respond to your point regarding Mr. Scheve -- who is lead, as I understand it. Is that correct, Mr. Fehlner?

MR. FEHLNER: That is correct, Your Honor.

THE COURT: -- perhaps substituting him in lieu of one of the more junior counsel. Maybe that is a possible suggestion. I cannot imagine that we are on this call simply because there is a concern about the number.

Mr. Jacobs.

MR. JACOBS: It is a number to some degree, Your Honor, in the sense that this is another lawyer in another location in another firm. Our concern from the beginning has been the proliferation of access --

THE COURT: Understood.

MR. JACOBS: -- to these materials. To review the bidding on this, we told you --

THE COURT: Please, don't review the bidding.

MR. JACOBS: So I think that we do have a concern about number and we have a concern about this constant sort of rationing out.

THE COURT: What about Mr. Scheve's status as lead trial counsel?

MR. JACOBS: I don't think that changes

anything, Your Honor. Their proposal was three, then five, and they didn't say five plus lead trial counsel.

THE COURT: Mr. Fehlner, are you prepared to substitute someone, to move one off your list and put Mr. Scheve on?

MR. FEHLNER: Your Honor, indeed, we made that proposal, and the defendants rejected it.

THE COURT: Why would you reject that, Mr. Jacobs, if the concern is proliferation?

MR. JACOBS: Because the people have already been involved. They already have access. They already have the materials, Your Honor.

THE COURT: Counsel, I am not going to play this game. Mr. Scheve is to have access to the materials in order that he can be permitted to conduct a meaningful deposition. So that is an order of this Court. Is that clear?

MR. JACOBS: Yes, Your Honor, it is an order.

MS. GLOVER: Your Honor --

THE COURT: I just want to make sure so we don't have to visit this again. That is the end of the discussion on that. Who was that that was just attempting to speak?

MS. GLOVER: Your Honor, Linda Glover for Elan as well.

One of the other issues that we face is that

Abraxis has refused to provide us with any hard-copy document of the material that is posted on the website. As Your Honor may know, it's pretty difficult to prepare for a deposition without hard-copy documents. We have asked for one hard-copy document to be provided to us in advance of the depositions. And they have countered with one hard-copy document to be provided at the deposition site. We would like prior access.

THE COURT: Is that request unreasonable in your view, Mr. Jacobs?

MR. JACOBS: Your Honor, yes, it is. Our counterproposal is reasonable, Your Honor. They can have access electronically until they actually show up. There is no reason they can't have electronic access.

THE COURT: What is the difficulty, Ms. Glover? I do in a sense commiserate, but this is in the abstract, with your observation about reading on a computer screen. I don't know the nature of the documents, the extent in terms of volume and quality of presentation, those kinds of things.

Maybe it would be helpful for me to understand that.

MS. GLOVER: Right. For one thing, Your Honor, some of the documents on the website are not fully visible. So we were having difficulty with that. We believe we have

corresponded with Abraxis about that. That is one of the issues.

Also, as you might understand, you know, it's helpful to, in preparing for deposition, to have the document in front of you so you can highlight those portions about which you want to ask questions so you are not delaying the deposition or badgering the witness while you look for it.

THE COURT: Right. What is your proposal, counsel? Have you discussed -- this is addressed to you, Ms. Glover and Mr. Jacobs, have you discussed -- let me ask you, Ms. Glover: Have you discussed or offered a solution to address the concern that I suspect is inherent in the objection to providing hard copy at least not until you arrive? Have you proposed something?

MS. GLOVER: We had proposed they send us one hard-copy document that would be in the possession of one attorney and that we would make copies just for that deposition, and that immediately after the deposition any documents that were not offered as exhibits would be destroyed.

THE COURT: Mr. Jacobs, the representations of your fellow attorneys who are officers of this Court are insufficient in this regard?

MR. JACOBS: We have been trying to do

everything we can to, on the one hand, protect our client's most sensitive information, and, on the other hand, make it possible for them to proceed.

On the access to the documents, for example, that Ms. Glover complained about, we have confirmed that access is available, and it must be a technical issue on their side.

THE COURT: Ms. Glover's point resonates with me just in terms of how human beings work and lawyers work in preparing for depositions in order to effectively engage the deponent. I am sure you will agree that it is much easier and more efficient for a lawyer to have available a paper document so that they can work, if need be, from that document.

MR. JACOBS: What we have tried to do, Your Honor, is ask the question, if we were on the other side could we live with this. Not would we be happy, not would it be convenient.

THE COURT: Let me interrupt again, because quite frankly, Mr. Jacobs, I think it is your client's, what I am going to -- I am trying to think of the words -- characterize as I think being overly concerned. I understand a reasonable level of concern about one's proprietary information. But in this instance, this tail is not going to wag this dog, if you will pardon the

colloquialism. There has been an effort to have exactly that happen ever since you first raised this issue with the Court in numerous previous discussions. I have just had it with it.

So provide a copy, one copy, so that they can use it to prepare for this deposition.

MR. JACOBS: We understand your order, Your Honor.

THE COURT: Anything else?

MR. FEHLNER: Yes, Your Honor. Paul Fehlner again for Elan.

Your Honor, I mentioned earlier when I was talking that the notebooks that we reviewed after requesting that review from Abraxis on location and identified the portions of notebooks that we would like copied and produced have either been produced in redacted form or in some cases into that website where they are accessible only to the limited number of individual attorneys.

I would add that a number of pages that have been produced into that restricted website clearly have nothing to do with secret manufacturing processes. Consequently, we are hamstrung again in our ability because of the location of these documents.

More importantly, Your Honor, we have reviewed these documents and identified pages as being relevant, and

the defendants have nevertheless produced them to us with redactions. Now, with one exception, that is the notebooks of Dr. Neil Desai, where there may have been a small amount of privileged information, we did not see anything that struck us as privileged. We understand the rules. We aren't trying to assert a waiver or anything like that, Your Honor, because we appreciated the opportunity to look at the notebooks. But we are really amazed that after seeing the notebooks they are still redacted.

We would ask for unredacted documents in order to prepare for these depositions.

THE COURT: Mr. Jacobs.

MR. JACOBS: I will turn this over to Ms. Evans.

THE COURT: Ms. Evans.

MS. EVANS: Yes, Your Honor. I have people at the office right now re-reviewing all the redactions to confirm that they are in fact due to attorney-client privilege, Your Honor. We will promptly produce anything that was over-redacted. We are also checking right now for things that -- and will produce in restricted confidential version anything that doesn't have the secret manufacturing information.

I should say that one reason Mr. Fehlner is seeing a lot of pages that don't have it is we produced entire documents that have been previously redacted so they

would see the secret information in context, for example, in the FDA documents. So they are produced in redacted, confidential form, then the full version in secret form online. We thought that would be helpful to them.

THE COURT: Counsel?

MR. FEHLNER: Your Honor, I understand Ms. Evans' point on the comparison of the manufacturing process redactions. The issue that I am really speaking to here, sir, is the notebooks. First of all, this is a matter -- of course, laboratory notebooks are not usually regarded as significant repositories of privileged information.

THE COURT: Point taken.

MR. FEHLNER: And then we looked at these notebooks, Your Honor. We suspected that perhaps they were redacting from the perspective of relevance. But we had the opportunity to look at them. We identified the material that on our review was relevant and responsive. Yet it has not been provided to us. I would just add, we did this at our expense, and it was no small dedication of time and our client's money to get this done.

THE COURT: How would you characterize the extent of the redactions?

MR. FEHLNER: Your Honor, from one review in Los Angeles, we identified 39 separate either notebooks or segments of notebooks. Some designations would be multiple

pages or sections of pages from the same notebook. We asked for 39 let's call them sub-documents. Your Honor, of those 39, only eight of them were produced to us in the form in which we expected to receive them. That is all the pages that we marked without any redactions. The other 31 were redacted partially and in many cases completely. We have, Your Honor, notebooks that have the cover page, so we know they have been provided to us, but we don't have the information from the notebooks.

In addition, some stuff they gave us was unidentifiable.

So we have, in some cases, requested material from notebooks and have nothing to show for it. It's quite possible that some of the redactions that were essentially blank pages when they got to us were from those notebooks, but we would have no way to correlate that.

In any event, Your Honor, it just seemed absurd, to say the least.

THE COURT: Ms. Evans and Mr. Jacobs, I am going to --

MS. EVANS: Your Honor, please may I address this?

THE COURT: Go ahead.

MS. EVANS: Thank you.

We just got the letter from Mr. Fehlner listing

all the documents that he thinks he didn't have. I have had people working on it this morning checking it. He is just wrong, Your Honor. He needs to check the production we gave him. Of the notebooks in his letter, he has every single one.

I don't know what the problem is. We produced the cover pages. I had my people check. They confirmed they have all the pages. There is only one notebook that we are still looking into all the pages that were produced. Every single other one that he has mentioned they have. It's just people haven't looked carefully enough.

THE COURT: That is a different point.

Mr. Fehlner.

MR. FEHLNER: Your Honor, we looked very carefully. I haven't heard this particular issue. Your Honor, I notified Dr. Evans Friday afternoon that they may see substantial redactions from the notice that were provided to us. And she replied there were redactions for privilege. This is the first we heard we actually got everything we requested. We did go through the effort of categorically looking at -- we prepared a log when we were onsite. We did not take notes, per our agreement with the defendants, about the documents we were reviewing, but we had a log of all the pages that we requested.

I will sit down with the attorney who reviewed

this production and compared it to our log and make sure he shows me all these redactions.

But, Your Honor, this is a very capable and qualified attorney. I have no doubt that he knows what he is talking about.

Ms. Evans' point is taken. We will confirm that in fact they did redact substantial portions of the notebooks that they produced.

MS. EVANS: We will provide a letter with the Bates numbers of all the pages (inaudible) today. We are putting final touches on that. We have been working on that.

THE COURT: Okay. So then that leaves one notebook that you are reviewing.

MS. EVANS: I understand there is one notebook that we are still looking for the Bates numbers of all the pages of. If we haven't produced that, we will get that out right away.

THE COURT: All right. I will leave the rest of this, the notebook issue to counsel then. It sounds like there is not disagreement. There may be, at least I will say this, it seems that Abraxis agrees that, it says it has already produced the pages in question, Mr. Fehlner, and if it hasn't, I accept counsel at her word that she is going to go back and take another look.

MR. JACOBS: Your Honor, we are in principled agreement. That is, our only intent was to redact for privilege. If there were over-redactions, we will fix it.

THE COURT: Okay.

MR. JACOBS: Do it right away.

THE COURT: That may be in the eye of the beholder, the fix, that is, I understand that. But I want to keep everyone mindful of the Court's concern here, so that there not be over-redaction. I have tried to make myself clear on that point, the underlying point.

MR. JACOBS: We hear Your Honor.

THE COURT: All right. Anything else from either party?

MS. GLOVER: Your Honor, just one point I would like to make. That is that the discovery deadline is July 30th, which is right around the corner. Elan has submitted a motion to the Court seeking an extension of the deadline, for reasons that should be obvious.

THE COURT: That's probably exactly the way that I don't want to have that kind of issue raised with me, because it's a motion. It's not going to be attended as quickly as I have tried to share my preference. My requirement is that issues of this nature be raised in the same manner as you raise discovery dispute matters, so we can attend them quickly. A motion is not going to be

addressed quickly, as quickly as a TC. Go ahead.

MR. DAY: Your Honor, the reason that we did it in the form of a motion is that I wasn't sure how Your Honor would prefer. And I called and asked a member of your staff, and she told me to do it in the form of a motion.

THE COURT: That is understandable. But that's why I try -- I guess maybe I have to make everything patent in the scheduling order, because I know that I said words more or less to the effect that matters that involve this type of thing need to be raised orally through TC, through TC request, with the Court. Otherwise, we are going to get bogged down.

A motion requires -- or at least there is an entitlement to a response. I am not going to act on a motion, unless there is a stipulation that involves agreement and an explanation for the agreement, as quickly as I can react to a request for a TC. So I understand why my staff would have told you exactly what they told you.

Are counsel in concurrence that you need additional time?

MS. GLOVER: No, Your Honor. Abraxis did file a response, and they are opposed to our motion.

THE COURT: How much additional time is being requested?

MS. GLOVER: I believe we asked until September

30th, Your Honor.

THE COURT: What is the reason for that?

MS. GLOVER: Well, there are three reasons, Your Honor. The first being the very late production of these laboratory notebooks, which in a pharmaceutical patent case go to the very heart of the issues between the parties.

The second was that Abraxis only recently produced 260,000 pages of responsive documents. Most of these were responsive to the requests that we issued or propounded in November of 2006. And, Your Honor, most of these documents were produced in response to your order of May 3rd.

Finally, while I am recalling there was a third reason, now I can't remember exactly what it was. But those were certainly two of the reasons that we set forth in our motion.

THE COURT: Perhaps you will get the third reason when counsel responds.

MS. GLOVER: I hope so, Your Honor.

THE COURT: Counsel for Abraxis, who is going to do this?

MR. JACOBS: I will do this a bit, Your Honor, on some of the scheduling issues, and I will turn it over to Ms. Evans.

Our response, Your Honor, is to revisit how we

got to where we did, which is the following.

We had a scheduling conference with Your Honor in which you set out the case schedule. We actually asked for a longer period. Elan objected and asked for a shorter period. In that discussion, I was representing Abraxis, Your Honor, and I pointed out that the only way this case prolongs is if somehow we were, to mix the merits a little bit, Your Honor, given the fact that Abraxane is an amorphous drug, in order for them to allege a crystalline claim they were going to be chasing a lot of rabbits and therefore the discovery period would take longer.

Elan said, no, we want a short period.

You entered an order with a short period. And there is this little exchange in the transcript in which I observed that Your Honor likes to keep to the deadlines you set and that we would do everything we could to meet whatever deadline you set, which is what we have done.

The history on timing is hard to capture in this oral context, Your Honor. We have largely been in step with Elan. So where Elan's electronic production has been forthcoming, our electronic production has been forthcoming. Where their notebooks have been produced, our notebooks have been produced. More recently, we have been ahead of Elan. We have said, look, the deadline is coming, here are the depositions, here are dates that people are available, even

before you have given us dates on your end, so that we could meet the discovery cutoff. And that's what we have been trying very, very hard to do.

We have a large team of people on the case. We have hired additional people to do the document production. It's costing our client about a million dollars a month. And we would like to cut it off with the end of the discovery cutoff.

Might there be some trailing issues we have to clean up a little bit thereafter? There usually are after a discovery cutoff. But we would like Your Honor to enforce the deadline that Elan asked for and that you entered.

THE COURT: Mr. Jacobs, could you address the contention that at least in part, if not completely, the reason, the impetus for the request is really Abraxis's recent productions or late productions.

MR. JACOBS: I think I will turn over, on the exact mechanics of what was done, I better turn it over to Ms. Evans.

MS. EVANS: As to the notebooks, Your Honor, we produced all our notebooks for inspection to settle all the disputes with them about what we have produced and what we considered responsive. And after the inspection, Elan selected a total of less than three boxes worth of notebooks. Many of them are overlapping with what we had

already produced. Some of them are duplicative. It is not very voluminous. It shouldn't delay anything.

That is the notebooks, Your Honor.

As to the 260,000 pages, Your Honor, those were entirely e-documents, those were produced six weeks before the discovery cutoff. And we have gotten now 55,000 documents from Elan last week, 70,000 documents from Elan the week before, much after that. We are having trouble digesting that, too. But we are very serious about this discovery cutoff, and we are going to suck it in and deal with it and take our depositions and finish by the discovery cutoff.

In terms of the 260,000, Your Honor, the e-documents, we had talked to Elan previously about having earlier cutoffs for production of e-documents. Elan didn't want to do it. As it turned out, we produced ours weeks before they produced theirs.

I don't think this is anything that is unusual in a big patent case. I don't think it is anything that should delay living with the schedule that Your Honor set.

THE COURT: Counsel for Elan.

MS. GLOVER: Your Honor, first, if I may speak to something that counsel for Abraxis said, which is that Elan only recently produced its notebooks. In fact, Elan produced all of its laboratory notebooks by March 15. Those

notebooks again, Your Honor, go to the heart of the issues in this case. Abraxis, however, produced its laboratory notebooks less than 30 days before the cutoff of discovery. Abraxis produced its manufacturing information to us less than 30 days before the cutoff of discovery.

This is information that we need time to digest, in addition to the 260,000 pages of documents, that we need time to digest and analyze before we can even say, all right, these are the people that we need to depose.

THE COURT: Were the e-mails, I guess that is the subject of the 260,000 pages, were they produced six weeks before?

MS. GLOVER: The e-mails were produced, the 260,000 pages were produced on June 14th, 2007. That is less than 30 business days before the currently scheduled fact discovery deadline. And, Your Honor, if I can make a point --

THE COURT: I am sorry. Hold on just a second. They were produced when?

MS. GLOVER: On June 14.

THE COURT: The cutoff is the 30th.

MS. GLOVER: Yes, sir.

THE COURT: That is more than a month.

MS. GLOVER: Yes. Your Honor, that constitutes 50 percent, over 50 percent of Abraxis's production.

Whereas our production of late is minimal in comparison.

THE COURT: What is the subject matter of these e-mails? What is this electronic production?

MS. EVANS: Your Honor, were you addressing me?

THE COURT: Either one of you.

MS. EVANS: I will take it, I guess.

Mostly it's drafts of clinical trials, drafts of articles, lots of journal articles, advertising, you know, materials, communications, safety communications with doctors. Just your general electronic document production. The parties had agreed on electronic custodians. And we searched their files and produced -- it is very repetitive, Your Honor. A lot of it is extremely repetitive, having reviewed some of it myself. A lot of it is not -- we used the search terms that we had agreed on with the other side. But much of it is not particularly significant.

Also, Your Honor, I do want to point out that we did produce what we consider to be the relevant lab notebooks back in March and the manufacturing information except as to the precise details back in March. I wanted to clarify that as well.

THE COURT: Ms. Glover, do you disagree with Mr. Jacobs's earlier observation that the Court acceded to a schedule that was advanced by Elan?

MS. GLOVER: Absolutely not, Your Honor. We did

advocate for that schedule. But, quite frankly, we thought that both parties would produce in accordance with the Federal Rules of Civil Procedure. Instead, we have faced many battles, as you know, in order to receive responsive documents. And that has been problematic for us. To receive everything at the tail-end of discovery has created substantial difficulties for us.

THE COURT: The main thing that I have heard today that might be somewhat concerning is the production, and I am not going to characterize it as late production or production that was made outside of the Federal Rules. I don't know. Mr. Jacobs, I think, correctly points out that it's just too difficult to reconstruct orally the timing of things here. My main concern is that the plaintiff have an adequate opportunity -- I will tell you right now I am not going to give you until the end of September to review the electronic production. So you need to give me a better sense of what it's going to take to complete that enterprise.

MR. JACOBS: Your Honor, if I might just refocus slightly. I think if I were in their shoes -- the electronic production, we both have been basically on the same schedule. So I think Elan as the plaintiff really had a responsibility to press the whole document production issue forward on a more aggressive pace themselves and we

would have kept pace with them. We were largely tracking them.

On the notebook issue, I think there is a more substantive point there. There was one aspect of it that we have litigated very aggressively, as Your Honor has noted, because it's been such a big concern of our clients. But the total volume is still pretty small. That's why we have not felt we were, if you will, jamming, quote-unquote, by insisting that the discovery schedule be maintained. It is just not that much material.

Is it dense scientifically? Probably. Does it require analysis? Almost certainly. But we are doing the same thing on our end as we keep track with them in anticipation of the depositions that are coming up, we are doing our preparation.

Elan is the plaintiff here. They brought this lawsuit. We have told you along the way why we don't think it has any merit. We will get to that. At the very least, they should have moved the case along at a pace consistent with their own discovery schedule. It is just costing us a fortune.

THE COURT: Elan.

MS. GLOVER: Your Honor, in response to that I would remind the Court, and I am sure it's fully aware, that we have sought -- this is our fourth discovery

teleconference before Your Honor. And we had sought another one in between the May 3 one and today. We have attempted to push the issues as much as we possibly can. We know --

THE COURT: I understand that. But those issues have had to do with the whole issue of proprietary information -- not completely. I would like to have you react to Mr. Jacobs's statement or statements that both of you have been tracking one another in the production of certain of the documents, I think specifically he is talking about the e-production.

MS. GLOVER: I would agree that we have probably tracked each other to an extent on the e-production. However, I would not agree with him, and I would strongly disagree with him, on the laboratory notebooks or the more technical information.

THE COURT: But both of your opponents make the observation that in terms of the laboratory notebooks we are not talking about that much information.

MS. GLOVER: It is scientifically dense, Your Honor. It takes quite a bit of time to analyze it. In addition to which I would disagree with Dr. Evans's characterization of the electronic data as being, you know, as she described it, sort of peripheral information. That is not the case that we are finding. We are finding presentations. We are finding technical data that has been

transferred by e-mail. And it takes quite a bit of time to decipher that information, to put it in perspective, analyze it and prepare for depositions, go forward with depositions on it.

MR. FEHLNER: Your Honor, if I might add one thing. We believe the notebooks have been redacted. We will go back and check that. Abraxis does not believe they have redacted notebooks. However, it leaves us in a very tenuous position to push forward with discovery, scheduling depositions and deposing witnesses with the gnawing suspicion in the back of our minds that something is missing and it might be important. That has been a factor.

Dr. Evans pointed out, and Mr. Jacobs, also, that they have set up the proposed schedules for certain deponents and asked us to identify witnesses and times to depose them. And until we have been confident that we have the documents that are important -- and this is primarily laboratory notebooks -- we have been reluctant to use up our depositions. So that has clearly been a factor here and continues to be from our perspective.

THE COURT: That shouldn't continue to be a factor going forward. I think I have been heard on that point by Abraxis. I cannot imagine that would continue to be an issue.

MR. FEHLNER: We agree, Your Honor. It is just

that it is July 16th. So some enlargement of time would be appropriate in view of the fact that we have simply not had confidence that the full production of the requested documents has been made by the defendants.

THE COURT: So making the request and putting a more realistic proposal before the Court, Mr. Fehlner, Ms. Glover, what would you like to ask for? Because I am not giving you till the end of September.

MS. GLOVER: Well, Your Honor, would 45 days be acceptable to the Court?

THE COURT: Mr. Jacobs, from your perspective, what would be a reasonable amount of time? I know your immediate answer would be none.

MR. JACOBS: Right.

THE COURT: In the spirit of compromise here -- and I do understand that this is costing dollars, real dollars -- what would you counter-propose?

MR. JACOBS: Let me tell you my answer and give you two sentences why. I think if they had two weeks, we could get this all done. The reason I say two weeks is we actually have a schedule lined up --

THE COURT: You have read my mind. That's what I am going to order at this stage of this discussion.

I will give you an additional two weeks, Elan.

MS. GLOVER: Thank you, Your Honor.

MR. DAY: Your Honor, one last thing. In the interest of completeness here, the third point that was raised in our motion was a limitation placed by Abraxis on our experts' access to the documents that are posted on the secure website.

THE COURT: That is a new substantive issue. I didn't understand that to be --

MR. DAY: That was the third issue Ms. Glover couldn't remember, Your Honor.

THE COURT: That had to do with the request for additional time. That is not going to impact my decision, Mr. Day.

MR. DAY: I wanted to get it on the table.

THE COURT: You have got it.

MR. JACOBS: Your Honor, Mr. Day's comments indicate properly that there are probably a half-dozen, six to nine other outstanding issues between the companies on various discovery issues. We are in various stages of trying to work those out or having reached impasse. I understood your first comment about reference to the Magistrate Judge to be that we should await that appointment. I don't think any of us want to be cross-wise with Your Honor's procedure about raising issues.

THE COURT: You are not going to have access to anyone until the Magistrate Judge is installed, and the

installation date, that is the date that he will be sworn in, is August the 6th. And I shouldn't think that you would need to have access, given the fact that we have met today, to him before that time.

UNIDENTIFIED SPEAKER: Your Honor, if I could interpose. Mr. Day's issue, though, about the expert access to the secret Abraxis manufacturing process does pose an issue for us in preparing depositions in that -- first of all, we are having trouble with Abraxis in designating our expert to review these --

THE COURT: Isn't there a confidentiality agreement in place in this case?

UNIDENTIFIED SPEAKER: Your Honor, they are not satisfied with the level of protection that the confidentiality agreement -- sorry, the protective order provides. We have been going back and forth on an amended protective order that includes a third designation, the secret manufacturing process information. But their intention is to limit our experts to reviewing that information at Morrison & Foerster offices in the United States, not having hard copies of it, and if we care to discuss it with them, it would have to be in Morrison & Foerster's offices.

I appreciate that they will promise that we will have a secure room and nobody will be listening. But it's

certainly an interesting, very convenient proposal on --

THE COURT: Mr. Jacobs and Ms. Evans, the spirit of my comments has to begin to take hold a little bit with your client. I perceive this to be a client issue, not an attorney issue. I am going to leave it there. But in terms of these upcoming discussions, I want to offer that bit of guidance.

Is that too obtuse or vague?

MR. JACOBS: No, Your Honor. We appreciate that.

THE COURT: I guess, just to put a finer point on it, I should hope that Judge Stark wouldn't have to address this particular issue that has been previewed by Elan. Okay?

MR. JACOBS: Understood, Your Honor.

THE COURT: Anything else?

UNIDENTIFIED SPEAKER: No. Thank you, Your Honor.

MR. JACOBS: Your Honor, one tail end. I am getting kind of frantic e-mails about one aspect of the ruling on the manufacturing documents in the deposition preparation and how those will be handled, which is that we would like to get those documents back after the deposition or get a certification that they have been destroyed. We didn't want multiple copies floating around.

THE COURT: Seems reasonable. Is there any difficulty with that, Elan?

MS. GLOVER: Your Honor, are we allowed to maintain one copy, but any copies we make for deposition would be destroyed and at the end of the litigation we would return our one copy?

THE COURT: Counsel, I will leave that for you all to resolve. Take care.

MR. JACOBS: Your Honor, we will see you on Tuesday for the claim construction hearing.

THE COURT: Next Tuesday, you mean?

MR. JACOBS: Yes.

THE COURT: I was confusing that with a tutorial I am about to have that I don't know why I agreed to in the first place.

MR. JACOBS: We will be concise, Your Honor.

THE COURT: Thank you. Take care, counsel.

(Telephone conference concluded at 4:47 p.m.)

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Reporter: Kevin Maurer

EXHIBIT U

From: PAUL.FEHLNER@bakerbotts.com [mailto:PAUL.FEHLNER@bakerbotts.com]
Sent: Tuesday, July 17, 2007 4:56 PM
To: Evans, Emily A.; Jacobs, Michael A.; Kruze, Diana B.
Cc: Steve.Scheve@bakerbotts.com; sipz25@aol.com; Jeffrey.Sullivan@bakerbotts.com; linda.glover@bakerbotts.com; Lisa.Chiarini@bakerbotts.com; Jennifer.Cozeolino@bakerbotts.com; Robert.Riddle@bakerbotts.com; SBalick@ashby-geddes.com; jday@ashby-geddes.com
Subject: Elan v. Abraxis: Desai Deposition
Importance: High

Counsel:

As I sit here at 7:50 pm EDT on July 17, Elan is not in possession of the complete set of documents necessary to prepare for the deposition of Dr. Neil Desai, currently scheduled for July 19.

- Despite assurances made by Abraxis' counsel before Judge Sleet, Abraxis has not produced all of the notebook pages Elan's counsel inspected in Los Angeles. Many of the documents were uploaded to Intralinks, despite Abraxis's assurances that the LA notebook inspection would not include "Secrete Abraxane Manufacturing Information." Moreover, on receipt of Dr. Evan's letter dated July 16, 2007 identifying the Bates ranges of the missing documents, we found that those numbers were not uploaded to Intralinks. We have had no chance to review these documents, much less prepare excerpts for examination of Dr. Desai. The specific deficiencies are identified in a separate letter.
- At the hearing on Monday, July 16, 2007, Judge Sleet ordered that Steve Scheve be granted access to all of the designated Secret Abraxane Manufacturing Information material on Intralinks. Despite Judge Sleet's order, that access has not yet been granted. Consequently, Mr. Scheve has not been able to review the documents identified by other attorneys as relevant, much less have the paper copies that are necessary to prepare for a deposition, as Judge Sleet himself recognized.
- Abraxis has not provided a copy of the following Desai notebooks: unnumbered notebook (see Inspection Log of Robert Riddle entry no. 110); 0006 (see Id. at entry no. 100); Temp-5719 (see Id. at entry no. 97).
- In a telephone conference in which I participated, Abraxis agreed to send as many Secrete Abraxane Manufacturing Information documents as possible for delivery this morning to make it possible to proceed with Dr. Desai's deposition. However, only redacted Desai notebooks were received by Elan's counsel this

morning. Elan has not been provided with unredacted CMC pages from the NDA for Abraxane or unredacted or Abraxane Manufacturing pages.

- Abraxis has assured Elan that it will provide all of the Secret Abraxane Manufacturing Information material by 9 am Central time tomorrow to our Houston office. Even if Abraxis is able to keep its promise, and if Elan were to ignore the deficiencies and insufficiencies of the production today, and the insufficient posting of documents on Intralinks, Abraxis's promise presents an impossible dilemma: Elan would be required to simultaneously select and review documents for use at the deposition and travel to Los Angeles for the deposition. This is not reasonable or even possible.

For these and similar reasons, Elan plans to reschedule Dr. Desai's deposition from July 19, 2007 to an alternative date before the close of fact discovery on August 13, 2007. Please provide alternative dates for Dr. Desai's deposition and please get us the unredacted documents that Abraxis promised to provide. We know that Abraxis has redacted information that is not privileged and if Abraxis persists, we will ask for in camera review of the redacted pages and appropriate relief from the court.

Best regards,

Paul

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EXHIBITS V-X

REDACTED IN THEIR ENTIRETY