IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AMARIN PHARMACEUTICALS IRELAND LIMITED, Plaintiff, v. OMTHERA PHARMACEUTICALS, INC. and ASTRAZENECA PHARMACEUTICALS LP, Defendants.	C.A. No. 14-279-GMS

PLAINTIFF AMARIN PHARMACEUTICALS IRELAND LIMITED'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

Plaintiff Amarin Pharmaceuticals Ireland Limited ("Amarin") is moving to amend its Complaint to address the purported deficiencies raised by Defendants Omthera Pharmaceuticals, Inc. and AstraZeneca Pharmaceuticals LP's (collectively, "Defendants") in Defendants' motion to dismiss (D.I. 9), which will render the motion moot. *Gammino v. Am. Telephone and Telegraph Co.*, C.A. No. 12-666-LPS, 2013 WL 6154569, at *3 (D. Del. Nov. 22, 2013) (denying motions to dismiss an original complaint as moot after the filing of an amended complaint because "the proposed Amended Complaint [is] the operative Complaint").

Defendants' motion to dismiss is predicated on the fact that, at the time Amarin filed its Complaint, Defendants' EPANOVA™ product and the labeling for that product had not yet been approved by the FDA. (*See, e.g.*, D.I. 9 at 5-6, 11-12.) On May 6, 2014, the FDA approved EPANOVA™ as an adjunct to diet to reduce triglyceride levels in adult patients with severe (≥ 500 mg/dL) hypertriglyceridemia, consistent with the allegations set forth in Amarin's

Complaint. (D.I. 1; Coletti Declaration[1] at Ex. A.) Amarin's original Complaint satisfies the requirements for pleading indirect infringement and demonstrates the presence of a case or controversy sufficient for this Court to exert declaratory jurisdiction. (D.I. 1.) However, to avoid burdening the Court with resolving Defendants' motion to dismiss, and to avoid further delays, Amarin is moving this Court to amend its Complaint to incorporate the facts set forth in EPANOVA™'s FDA-approved label. Counsel for Amarin has provided the proposed Amended Complaint to Defendants' counsel, and Defendants do not oppose Amarin's motion to amend.[2]

For the reasons stated herein, Amarin respectfully requests that the Court deny Defendants' motion to dismiss as moot.

Dated: May 12, 2014

FISH & RICHARDSON P.C.

By: */s/ Susan M. Coletti*

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[1] The declaration of Susan M. Coletti in Support of Plaintiff Amarin Pharmaceuticals Ireland Limited's Response to Defendants' Motion to Dismiss, filed concurrently herewith, will be referred to herein as "Coletti Declaration."

[2] Although Defendants' counsel has reviewed Amarin's Amended Complaint and told Amarin that it will not oppose its filing, (Coletti Declaration at Ex. B), Amarin and Defendants are currently finalizing a stipulation related to the filing of the Amended Complaint. Amarin expects that stipulation to be on file with the Court shortly.

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