EXHIBIT B

December 6, 2017

To all counsel of record via ECF

Re: Jazz Pharmaceuticals, Inc. v. Amneal Pharmaceuticals LLC, et al.
Civil Action No.: 13-391 (ES) (JAD)

Dear Counsel:

This will address Defendants Lupin Limited, Lupin Pharmaceuticals, Inc., and Lupin Inc.'s (collectively "Lupin") informal application to compel Plaintiffs Jazz Pharmaceuticals, Inc. and Jazz Pharmaceuticals Ireland Limited (collectively "Jazz"), to produce certain documents related to its settlements with certain former defendants. (ECF Nos. 354, 363-66). The Court resolves Lupin's application without oral argument pursuant to Federal Rule of Civil Procedure 78. For the reasons set forth below, Lupin's request is **GRANTED IN PART**.

Lupin seeks documents related to settlement and license agreements (including drafts, term sheets, and communications related to the negotiation of such agreements) that Jazz entered into with Roxane Laboratories, Inc. ("Roxane), Wockhardt Bio AG / Workhardt Limited / Wockhardt USA, LLC (collectively "Wockhardt"), and Sun Pharmaceutical Industries Limited / Ohm Laboratories Inc. / Ranbaxy Inc. (collectively "Ranbaxy") concerning Xyrem®, the drug at issue in the above-referenced matter. (See generally Lupin's May 26, 2017 Letter, ECF No. 354). Lupin contends that those documents are relevant to its invalidity defenses, as the terms of the settlement / license agreements may provide information on the commercial success of the patented features

harm has occurred or will occur." (Id.).

Jazz opposes Lupin's request. (See generally Jazz's June 13, 2017 Letter, ECF No. 363). Jazz argues that the settlement / license agreements and related documents are irrelevant with regard to both Lupin's invalidity defenses and its own claims for injunctive relief. (Id. at 2-4). With regard to Lupin's invalidity defenses, Jazz argues that it will not be relying on licensing to demonstrate Xyrem's® commercial success, as traditional measures, such as sales figures are sufficient to do so. (Id. at 2). Jazz further contends that it has only raised "commercial success" arguments with regard to "one subgroup of the patents-in-suit", and publicly available information (i.e., the agreed "launch dates" for Roxane, Wockhardt and Ranbaxy's products) reflects that each of those patents will expire years before Roxane, Wockhardt or Ranbaxy will enter the market and begin paying royalties to Jazz. (Id. at 2-3). Therefore, "the license and royalty cannot be tied to those patents." (Id. at 3). Jazz also claims that it is not making "commercial success" arguments with regard to any of the later-expiring patents. (Id.). "Thus, to the extent Lupin argues the non-public, confidential information may disclose whether the specific royalty rates or other financial terms are tied to particular patents or patent families, that information is not relevant." (Id.). With regard to its claims for injunctive relief, Jazz contends that the settlement-related documents are irrelevant, as "an injunction hearing, if necessary at all, may not be initiated until many years from now", (id. at 4), given Roxane's statutorily mandated period of exclusivity. (Id. at 3-4). Jazz also argues that Lupin's requests for documents concerning Jazz's settlement negotiations (i.e., as

production should be designated as "Highly Confidential – Attorneys' Eyes Only"; and (3) any recipient of the documents in question should "be barred from participating in settlement negotiations between Lupin and Jazz." (Id. at 4). Roxane and Wockhardt join in Jazz's opposition. (ECF Nos. 364-65).

In their reply submission, Lupin contends, primarily, that Jazz has failed to rebut Lupin's relevancy arguments. (Lupin's June 20, 2017 Letter at 1-4). Lupin also argues that it is not required to meet a heightened standard to obtain discovery of settlement negotiation materials, but advises that it "would be willing to forego production of the underlying settlement negotiation documents at this time, if Jazz agrees to produce the settlement and license agreements themselves, with the understanding that Lupin would not be prejudiced from later seeking the underlying negotiation documents if necessary." (Id. at 4-5). Lupin is not averse to Jazz designating the settlement materials under the Discovery Confidentiality Order in this matter, but argues that Jazz lacks any legal basis for requesting that the Court bar Lupin attorneys who receive the settlement documents from participating in settlement discussions between Lupin and Jazz. (Id. at 2). Lupin contends that Jazz must demonstrate an "exceptional need" for such relief. (Id.).

Lupin's request turns largely on the relevancy of the information in question. Federal Rule of Civil Procedure 26(b)(1), which governs the scope of discovery, provides, in pertinent part:

The parties disagree on whether the settlement-related documents are relevant to any of their claims or defenses. The Court finds that those documents do have some relevance to in this matter. Even assuming, without deciding, that the agreements are not relevant to Jazz's invalidity defenses for the reasons Jazz sets forth in its June 13, 2017 letter, (ECF No. 363 at 2-3), it appears that they are relevant to Jazz's claims for injunctive relief. Jazz does not actually argue otherwise, instead pointing out that "an injunction hearing, if necessary at all, may not be initiated until many years from now." (Id. at 4). The fact that a hearing on a particular issue may take place in the distant future, or even ultimately be unnecessary, does not render information related to that issue irrelevant. Moreover, regardless of the timing of any injunction hearing, the parties and the Court do not have years to let that process run its course. The deadline for fact discovery, adjourned multiple times due to the pendency of various disputes, runs on January 26, 2018. It is therefore appropriate that Jazz produce the agreements now. The Court notes, however, that, unlike the settlement / license agreements themselves, Lupin has not sufficiently demonstrated how documents related to the negotiation of those agreements might be relevant.

Taking all of the foregoing into account, the Court finds that Jazz shall produce its settlement / license agreements (not documents related to underlying negotiations) with Roxane, Wockhardt and Ranbaxy to Lupin and, when doing so, shall designate them as "Highly Confidential" under the Discovery Confidentiality Order in this matter. (See ECF No. 335). Moreover, as the agreements contain confidential information from Roxane, Wockhardt and Ranbaxy, only Lupin's outside counsel shall have access to them, in accordance with Paragraph

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