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February 22, 2017

Hon. Paul A. Crotty
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 735
New York, NY 10007

Re: *Kowa Company, Ltd. et al. v. Amneal Pharmaceuticals LLC, et al.*,
Case Nos. 14-cv-2758 (PAC); 14-cv-7934 (PAC).

Your Honor:

On behalf of Defendants Amneal and Apotex, we write to object to Plaintiffs' attempt to add new testimony to the trial record in their post-trial filings of last night. We refer specifically to the Declaration of Jennifer L. Dereka. *See* Case 1:14-cv-02758-PAC, D.I. 142.

Exhibits A–D to Ms. Dereka's declaration are deposition transcript excerpts of Drs. Zusman (whom Plaintiffs examined at trial), Palmieri (whom Plaintiffs examined at trial), Roush (whom Plaintiffs elected not to call at trial), and Sessler (whom Plaintiffs examined at trial). (*Id.*) Plaintiffs rely on these excerpts in both their Post-Trial Memorandum and Proposed Findings of Fact and Conclusions of Law, despite the undisputed fact that the excerpts are not part of the official trial record. *See* Case No. 14-cv-2758, D.I. 141 and Case No. 14-7934, D.I. 94 at 5 n.1, 44 and n.15; Case No. 14-cv-2758, D.I. 93 and Case No. 14-7934, D.I. 140 at ¶¶ 59–60, 283, 428, 464.

This is wholly improper. Plaintiffs had every right to elicit whatever relevant and admissible testimony they wished from these witnesses *at trial*. They had no right, however, simply to insert snippets of these witnesses' deposition testimony into the record *after trial*.

Finally, if Plaintiffs had believed that these deposition excerpts were played at trial but mistakenly not captured in the record, they could have and should have sought to correct the purported errors at that time. At the very least, Plaintiffs could have contacted Amneal and Apotex about any testimony that Plaintiffs thought to be incorrectly omitted from the trial record. But Plaintiffs did none of these things. Instead, without any notice, Plaintiffs simply filed and cited four deposition transcript excerpts that plainly are not within the trial record. As such, Plaintiffs' post-trial Exhibits A–D and all references thereto should be disregarded or stricken.

Respectfully submitted,



Steven A. Maddox

cc: All counsel of record in C.A. Nos.:
14-cv-2758 (PAC) and 14-cv-7934 (PAC)