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Via Email

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Re: ***Regeneron Pharmaceuticals, Inc. v. Celltrion Inc.***, Civil No. **1:23-cv-00089**
Good Faith Letter on Regeneron's Amended Responses to First Set¹

Dear Counsel:

We, on behalf of Celltrion Inc., write regarding *Regeneron Pharmaceuticals, Inc.'s Amended Objections and Responses to Celltrion Inc.'s First Set of Requests for the Production of Documents and Things to Regeneron (Nos. 1-32)*, which were sent on February 2, 2024 ("Amended First Set Responses"),² and the deficiencies in Regeneron's document production to date. Pursuant to the Local Rules of Civil Procedure, this letter reflects our good faith effort to resolve more pressing concerns and issues, but we reserve the right to address other matters in due course of the litigation.

¹ In addressing Regeneron's deficiencies, Celltrion does not waive any objections or defenses, specifically objections and defenses based on the lack of personal jurisdiction and/or improper venue. See ECF No. 68.

² Defendants served the Amended First Set Responses after serving *Regeneron Pharmaceuticals, Inc.'s Objections and Responses to Celltrion Inc.'s First Set of Requests for the Production of Documents and Things to Regeneron (Nos. 1-32)* ("First Set Responses"). However, contrary to the common practice in this District, the Amended First Set Responses did not explain or indicate in what manner or to what degree the Amended First Set Responses differed from or supplemented the First Set Responses. We ask that you provide such explanation both with respect to the Amended First Set Responses and when further responding to discovery in this matter. Despite that divergent practice, we will address the Amended First Set Responses.

Counsel for Regeneron Pharmaceuticals, Inc.

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First, it is now weeks after the Court-imposed deadline for Regeneron to complete its document production (a deadline that Regeneron proposed to the Court). While we recognize that Regeneron has produced documents responsive to Celltrion's requests, it appears that Regeneron's production related to these PI proceedings is still vastly incomplete. And Regeneron has given no indication when it will complete its production. With one exception, Regeneron has responded to every request with the representation that it "will produce" certain documents and materials, but without any date certain by which it will complete its production.

For example, and most egregiously, based on our review of Regeneron's production, Regeneron still has not produced all materials from the *Mylan* litigation, including expert reports and marked trial exhibits. Regeneron relies upon its alleged need to seek confirmation from Mylan that certain materials do not contain Mylan confidential information, but that does not justify its delay to produce documents that clearly were not prepared by Mylan or do not contain Mylan confidential information.

Given the currently compressed timeframe for the preliminary injunction proceedings that Regeneron sought from this Court, needlessly delaying the production of responsive documents that are clearly in Regeneron's possession and have already been identified, collected, and reviewed is inexcusable, and highly prejudicial to Celltrion, particularly given Regeneron has made it clear it intends to heavily rely on the *Mylan* proceedings in its PI motion. No later than February 20, please complete Regeneron's document production. At the same time, please delineate your efforts to reach agreement with Mylan with respect to documents containing Mylan confidential information, and your timeline for producing such documents. Celltrion reserves all rights to seek appropriate relief in view of Regeneron's failure to comply with the scheduling order.

Second, nearly every, if not every, Regeneron response includes general, boilerplate objections. In this District, such objections, without proper support, "do not satisfy the burden of" responding to discovery under the rules. *Hager v. Graham*, 267 F.R.D. 486, 498 (N.D.W. Va. 2010). To say the least, they are "disfavored" in this District. *Phoenix Drilling, Inc. v. E. Res., Inc.*, No. 1:11CV08, 2012 WL 847277, at *3 (N.D.W. Va. Mar. 13, 2012). And there is no dispute that Regeneron relied on such disfavored "general objections" — indeed, it *titled* most of its objections "General Objections." Please confirm that Regeneron has not withheld any documents solely on the basis of such objections.

Third, in most of Regeneron's responses, it objects based on an assertion of privilege. However, Regeneron, in its "General Objections" asserts that it "will not produce any privilege logs at this time." And it didn't. That objection directly contradicts the Federal Rules of Civil Procedure and the Local Rules. *See* Fed. R. Civ. P. 26(b)(5); L.R.N.D.W. Va. 26.04(a). That information must be provided in writing at the time of the relevant response. *See id.* Regeneron's deliberate refusal to comply with the clear dictates of the rules is plainly improper. Please comply with the rules.

In order to avoid the need for discovery motions concerning Regeneron's insufficient responses, **please provide sufficient responses and production by no later than February 20, 2024.** As you are aware, this matter is moving expeditiously, and it does not benefit your client, my client, or the Court to needlessly force us to file discovery motions to compel proper and sufficient responses to discovery.

Counsel for Regeneron Pharmaceuticals, Inc.

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We reserve the right to further address or take appropriate action with respect to these and other inappropriate or insufficient responses by Regeneron, including others contained within the Amended First Set Responses that are not addressed herein.

I look forward to receiving your responses. As always, you are more than welcome to call me to discuss.

Sincerely,

/s/ Max C. Gottlieb

Max C. Gottlieb