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By Email

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Re: *Regeneron Pharmaceuticals, Inc. v. Celltrion Inc.*, No. 23-cv-89-TSK (N.D. W. Va.)

Dear Counsel:

I write in response to your February 19, 2024 letter regarding Regeneron's Objections and Responses to Celltrion's First Set of Requests for Production ahead of our meet and confer scheduled for Thursday, February 29, 2024.

While I address each of Celltrion's criticisms below to the extent they can be understood, it bears noting at the outset that Celltrion's correspondence reveals a troubling asymmetric vision of discovery. To be clear, Regeneron has more than satisfied its production obligations. Regeneron has produced more than 66,000 documents, totaling more than 800,000 pages. This stands in stark contrast to the mere 1,046 documents produced by Celltrion, most of which represent only Celltrion's statutorily required production of its BLA. Celltrion's purported concerns regarding Regeneron's written responses and production ring particularly hollow in view of their own discovery practices. We will address further the deficiencies in Celltrion's production in separate correspondence.

Beginning with Celltrion's request for an explanation regarding the degree to which Regeneron's First Set of Responses differed from the Amended First Set of Responses, we are happy to provide you with a redline version of the First Set of Responses that indicates the minor differences.

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Page 2**I. Regeneron cannot unilaterally produce documents containing third-party confidential information.**

Regarding the first concern raised in your letter, Regeneron disagrees with the notion that we have failed to adhere to the Court-imposed scheduling order.¹ Although not included in the February 2, 2024 production, we reiterate that Regeneron will produce the Mylan Litigation Written Discovery, the Mylan Litigation Trial Demonstratives, the Mylan Litigation Deposition Materials, and the Mylan Litigation Expert Reports, as defined in Regeneron's Responses and Objections to Celltrion's First Set of RFPs, upon confirmation by Mylan that these documents do not contain Mylan's confidential information or as redacted by Mylan to remove Mylan confidential information. As you know, Regeneron is bound under a protective order in the Mylan litigation and must therefore take steps to protect Mylan's confidential information. Regeneron is not at liberty to unilaterally produce documents containing such information, nor is it in a position to make independent determinations about what information Mylan regards as confidential, particularly given a history of disagreements between Mylan and Regeneron regarding such issues.

Regeneron has communicated with Mylan multiple times over the past several weeks, including as recently as yesterday, in an effort to obtain these documents. Specifically, Regeneron has identified documents falling within the above categories and has requested that Mylan review the identified documents and either provide versions with Mylan's confidential information redacted or confirm they do not contain Mylan confidential information. Counsel for Mylan has confirmed it is reviewing the materials requested, and Regeneron has been in contact with Mylan about steps to expedite that review. Regeneron's good faith attempts to produce documents in response to Celltrion's sweeping discovery requests while complying with its protective order obligations have been more than reasonable.

II. Regeneron did not use impermissible boilerplate objections in its Responses and Objections to Celltrion's First Set of RFPs.

Regeneron disagrees with Celltrion's assertion that Regeneron's responses include impermissible general (boilerplate) objections. The cases you cite in your letter stand for the proposition that "general objections", *i.e.* boilerplate objections, are impermissible "because they cannot be applied with sufficient specificity to enable courts to evaluate their merits." *Hager v. Graham*, 267 F.R.D. 486, 498 (N.D.W. Va. 2010) (citing *Convertino v. U.S. Dept. of Justice*, 565 F. Supp. 2d 10, 13 (D.D.C. 2008)). They do not stand for the proposition that all General

¹ We do not understand Celltrion's complaint that Regeneron stated that it "will produce" certain documents "without any date certain by which it will complete its production." Regeneron produced the documents that we indicated we would produce on February 2, 2024. For the documents that we indicated Regeneron would produce at a date later than February 2, 2024, we provided a clear explanation for when those documents would be produced and why they would be produced at that time. For example, we indicated in our February 2, 2024 production letter that we were forced to exclude certain commercial documents and stated that "Regeneron anticipates it will be able to promptly supplement its productions with these additional documents upon entry of a protective order"— which we did on Monday, February 26, 2024 the same day that the protective order was entered in this case.

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Objections, *i.e.*, generally applicable objections, are blanketly impermissible. The objections listed under the “General Objections” heading in Regeneron’s Responses and Objections to Celltrion’s First Set of Requests contain sufficient specificity to enable courts to evaluate their merits, and are set forth with *more* detail than the generally-applicable objections listed under the “Initial Matters” heading in Celltrion’s own Responses and Objections to Regeneron’s Requests for Production, which are just “General Objections” by another name.

Celltrion requested that Regeneron “confirm that Regeneron has not withheld any documents solely on the basis of such [General] objections.” However, as explained in detail in Regeneron’s Response and Objections to Celltrion’s First Set of Requests, Regeneron has been very specific about what documents were withheld pursuant to General Objections ¶¶ 14, 15, 18, 21. Regeneron has not withheld documents solely on the basis of any other General Objection.

To the extent Celltrion is concerned about Regeneron’s objections to particular Requests, Regeneron disagrees that its specific objections are “boilerplate.” Regeneron included as much specificity in each of these objections as it was able given the breadth and facial irrelevance of much of the information requested, identifying where possible the particular language of Celltrion’s Requests that presented an issue. To the extent Celltrion has questions regarding any particular objections, Regeneron is happy to discuss those issues during tomorrow’s meet and confer. I again note, however, that Regeneron’s specific objections provide at least as much detail as those included in Celltrion’s responses to Regeneron’s Requests.

III. Regeneron offered to meet and confer with Celltrion to determine the production and form of privilege logs at an appropriate time.

Regeneron disagrees that its objection to providing a privilege log during the preliminary injunction phase of this matter is improper.

As made clear in its Objections and Responses, Regeneron has not simply refused to provide a privilege log to Celltrion. Rather, Regeneron expressly stated that “[i]t is willing to meet and confer with Celltrion regarding the production and form of any logs at an appropriate time.” The parties presently are engaged in expedited preliminary injunction proceedings, making the preparation and production of detailed privilege logs impractical at this juncture, and the Court’s scheduling order does not contemplate the exchange of such logs at this time. ECF 61 at 3. Indeed, Celltrion itself appears to share this understanding given its own failure to produce any privilege logs at the time of its Court-ordered January production or in the weeks since.

Sincerely,

/s/Teagan James Gregory
Teagan James Gregory