UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

IN RE: TESTOSTERON REPLACMENT THERAPY PRODUTS LIABILITY LITIGATION	MDL No. 2545
This Document Relates to All Cases	Master Docket Case No. 1:14-cv-01748 Hon. Judge Matthew F. Kennelly

JOINT STATUS REPORT
FOR APRIL 13, 2016 CASE MANAGEMENT CONFERENCE

The Court directed counsel to file this joint report regarding the status of the parties' discussions, agreements and disagreements on the proposed agenda items for the April 13, 2016 case management conference.

I. Report on Bellwether Process:

A. Bellwether Discovery

1. ***AbbVie's Position:***

While substantial progress has been and continues to be made to meet the schedule for core fact discovery set out in CMO 14, it is clear now that some extension of that schedule will be required. Plaintiffs complain below that they have not had proper notice of the need to change the schedule and that a motion should have been filed. In fact, these issues were flagged in the proposed agenda for this CMC, discussed with counsel over the weekend and laid out in the drafts that were exchanged yesterday. AbbVie is, of course, fully prepared to make a motion but believes it was essential to table the issue right away in light of the current deadline for core bellwether discovery.

Nor is parsing the details covered in the PSC's many accusations necessary to productively discuss the issue tomorrow. As set forth briefly below, there are three principal factors which drive the need for more time, none of them being due to a lack of diligence. The

three factors are (1) the volume and timing of medical record collection and review, which were not produced by plaintiffs; (2) the growing scope of sales representative discovery and the requirement of many plaintiffs that the production of sales representatives' files (and, in some cases the actual sales rep depositions) be completed before the related prescriber is deposed; and (3) the difficulty of coordinating schedules with doctors, many of whom reside in locations that are not easy to reach conveniently.

The following captures progress made to date:

- Medical Record Collection: The bellwether discovery pool was finalized on November 20, 2015. The first step in the bellwether discovery process was to seek the medical records for all 32 plaintiffs since minimal records were provided by plaintiffs. AbbVie identified 276 healthcare providers/facilities who provided care, treatment and or dispensed prescription drugs to the bellwether plaintiffs. The collection process is substantially complete, but records remain outstanding for 54 providers/facilities. The PSC's argument below that the time taken to collect records is all AbbVie's fault because it could have collected all of the medical records for all of the pool in advance is meritless – not only would that have been a complete waste of time but we would still be at it today.

- Plaintiff depositions: In order to avoid delay, AbbVie did not wait for the completion of medical record collection and started requesting plaintiff depositions in early February. The first plaintiffs were deposed in early March. By April 13, 2016, 12 of the 32 plaintiffs will have been deposed. Another 15 are currently scheduled to occur in April and May. In one case dates have been exchanged but not yet confirmed and the parties are working on scheduling the remaining 2 plaintiffs (possibly in conjunction with other depositions in the same location).[1]

- Prescriber/Treater depositions: Of the 276 providers noted above, AbbVie has now firmed up an estimate of *at least* 75 of them that will need to be deposed in order to propose representative trial bellwether cases. Of those 75 doctors, 13 have been confirmed for depositions starting in late April. In addition, AbbVie was only permitted to start contacting the doctors directly for scheduling last month with the entry of CMO 27.

- Sales representative discovery: Based upon information provided in initial Plaintiff Fact Sheets, 62 sales representatives have been identified as having called on prescribers in the bellwether cases. Of those 62, AbbVie has custodial files for 42 representatives. AbbVie has compressed the schedule for production of those files so that production can be

[1] In two cases, plaintiffs are surviving spouses of decedent AndroGel users. AbbVie has elected not to schedule the depositions of the surviving spouses in this first round of discovery.

completed by April 22. To date, Plaintiffs have requested depositions of 42 sales representatives and based on the file production date, AbbVie has started to offer dates for these depositions in individual cases.

Under the current CMO schedule, this means *at least* approximately 42 custodial files need to be produced and 135 depositions need to be taken between mid-April and late May. As noted below, these numbers are only likely to increase. This task, which drew concern last month, has reached the point of being impossible. To be clear, AbbVie took steps from the beginning of the bellwether discovery process to assemble the additional attorney resources necessary to conduct multitrack discovery. It assumes that the PSC and other plaintiffs' counsel have done the same. Beyond the volume and timing of medical record collection noted above, the following are the specific issues which have affected the pace of discovery to date, but might be addressed by the Court in order to make better progress going forward. AbbVie will be prepared at the Case Management Conference to provide further, detailed, case-specific information if the Court wishes to consider it.

a. <u>Scheduling Prescriber/Treater Depositions</u>:

The doctors have been somewhat difficult to schedule for several reasons.

- Both AbbVie and Plaintiffs (as they have reported to us in several cases), have had difficulty even obtaining dates from the doctors. AbbVie is aware of efforts to contact at least 30 doctors to date.

- As Plaintiffs stated at last month's CMC, they want to obtain the custodial files of the sales representatives before they take the prescriber depositions. Some Plaintiffs' counsel have stated that they will not go forward with the depositions of prescribers until after the depositions of the sales representatives. AbbVie's position is that doctor and sales representative depositions should be scheduled independently and based solely on the availability of the witness and counsel.

- Because these cases are spread out all over the country and not necessarily local to either AbbVie's counsel or Plaintiffs' counsel, all parties have been interested in scheduling multiple doctors in a single trip, possibly in conjunction with plaintiffs and/or sales representatives.

- Net result: Most doctor depositions (at least 75 prescribers and treaters) are essentially pushed off to not even begin until May.

- Response to Plaintiffs' Statement: Plaintiffs fail to acknowledge the number of cases in which they have represented to AbbVie the unavailability or non-cooperative nature of the doctors. Nor does the PSC identify that plaintiffs have already advised of at least 2 instances where the doctors' only availability is after the May 23rd deadline. The PSC was adamant at the last CMC that prescriber depositions could not go forward until after the sales representative files were produced and they have been aware of that schedule for production for weeks and that that has had the most significant impact on scheduling.

b. Discovery of Sales Representatives:

- Custodial Files: As discussed at the last CMC, AbbVie has focused its document review and production resources to get the files of the sales representatives produced as quickly as possible. Last month AbbVie anticipated it could produce 21 files by April 8th and that if plaintiffs wanted the additional 21 files of the sales representatives of which we were then aware, it would take an additional 4 weeks. The Court asked the parties to discuss whether all representative files requested were necessary, how they could prioritize the files needed, and identify opportunities to compress that schedule. Plaintiffs continue to request all 42 representative files. However, AbbVie is attempting to compress the time needed to review and produce the files and currently is on target to have at least 41 of the 42 sales representative files produced by April 22nd.[2] For these 41 files, AbbVie has had to review approximately 300,000 documents.

- Non-Custodial Documents Relating to Prescribers/Sales Reps: Plaintiffs also requested several other non-custodial documents related to the 62 sales representatives and 41 prescribing physicians in the bellwether cases. More specifically: (1) sales representatives' expense reports, (2) additional information on financial payments to prescribers, (3) information regarding prescribers' attendance at or speaking at AbbVie speaker programs related to AndroGel and/or hypogonadism, (4) sales representatives' manager's field trip reports, and (5) IMS prescription data for prescribers. All of this information was produced by April 8th.

- Additional Call Notes/Prescribers: The numbers referenced above are only continuing to grow.

  - Since the last CMC, and based on amended Plaintiff Fact Sheets, an additional 38 sales representatives and 7 prescribers have been identified as potentially relevant to 4 of the 32 discovery bellwether cases. AbbVie is currently

[2] There is one representative whose file could not be collected because she has been on maternity leave and will likely not be processed in time to meet the April 22nd date.

collecting the available files for those representatives (approximately 13 of the 38 identified).

- In addition, further investigation led AbbVie to identify an additional source of call notes related to AndroGel from the legacy Solvay era. AbbVie collected those call notes and produced them to plaintiffs on April 8th. It appears that production of calls notes includes notes from an additional 63 sales representatives. Since these are legacy Solvay call notes, it is unknown whether these additional sales representatives are or ever were AbbVie employees. AbbVie currently is investigating.

- Response to Plaintiffs' Statement: The identifying of new sales reps has largely been due to newly identified prescribers and newly identified call notes from 2002-2007 from a predecessor company. That call note system was not one ever used by AbbVie and it was only through continued investigation by AbbVie that these notes were found and quickly produced to Plaintiffs. The notes are from a remote time and in almost all cases years before plaintiffs used AndroGel and/or suffered their alleged injuries. Further productions of files for these sales reps is one of the issues that needs to be addressed with the Court.

AbbVie's Proposal: Given the amount of discovery that remains to be conducted, AbbVie proposes that the May 23 initial discovery deadline should be suspended and would like an opportunity to discuss with the Court an appropriate and realistic extension. AbbVie further requests that the Court order that prescriber depositions not be contingent on the production of custodial files for newly identified sales representatives and not contingent on any sales representative depositions. Further, while AbbVie believes there may be some benefits to scheduling multiple witnesses in single locations at the same time, that practice cannot be the reason for delay in deposition scheduling.

1. *Plaintiffs' Position:*

The PSC submits their position following receipt from AbbVie of its section on this topic that was more akin to a motion and supporting brief seeking more time be added to the existing schedule. Indeed, while the PSC had originally planned to provide the Court with an

approximately a one-page update, AbbVie inserted approximately four pages of arguments and facts that can all be challenged. The PSC has requested that AbbVie pull down, what we believe is an inappropriate submission for a joint report, particularly when it was provided late on Monday, and when the proper place to make these points is in a motion with briefing. AbbVie rejected the PSC's suggestion and instead stands by its fundamentally flawed submission in the Joint Status Report on the bellwether topic. Left with an unfair amount of time to properly and fully respond, and not believing that a Joint Status Report is the proper format for such quasi-motion practice and argument, the PSC will simply respond with the factual history and posture of the bellwether process. Of note, if AbbVie elects to make a formal motion (which we believe they should do), to extend the time for discovery, the PSC would respectfully request an opportunity to submit opposition and or more fully respond to any such motion.

Notwithstanding, the facts of the bellwether process to date are as follows:

The bellwether discovery program is moving forward as contemplated and the Plaintiffs are fully prepared to meet the current deadlines. The PSC and AbbVie continue to meet-and-confer over issues as they arise. These issues include the following:

(1) The PSC and AbbVie have identified four cases where previously unidentified sales representatives did in fact detail the prescribing doctors. One case was due to new prescribing doctors being added to a supplemental PFS, the other three cases were missed and excluded by AbbVie but detected by plaintiffs' counsel. Notwithstanding, AbbVie is now producing the relevant materials for these representatives. AbbVie has couched this issue as plaintiff identifying new sales representatives, this is simply not true.

(2) On April 7th AbbVie first advised the PSC that AbbVie failed to produce call notes for many (if not all) of bellwether cases (the scope of the problem was never disclosed to the PSC), as required by the agreement and Court Order, claiming that they just discovered a full cache of call notes of which they were previously unaware. The Plaintiffs have just received the first of this production last week.

(3) To date, nine plaintiff depositions have been taken (with an additional two scheduled for today and one for tomorrow) and nine plaintiff depositions have been adjourned.

Of note, eight of the requests for adjournment were at AbbVie's request and one was adjourned mutually by both parties due to weather and the inability of counsel for either side to get to the deposition city (Denver). Additionally, AbbVie appears not to have even requested the depositions of plaintiffs in three cases yet.

(4) As stated in the last Joint Status Report, the parties continue to work together to schedule doctor depositions with no current issues to report to the Court.

(5) The PSC is hopeful to begin scheduling the depositions of AbbVie's sales representatives, but to date, AbbVie has confirmed only one sales representative deposition date, and has in some cases, requested that plaintiff counsel forego these depositions until after cases are picked for trial. The Plaintiffs have opposed this request, and maintain, that these sales representative depositions have always been contemplated. Indeed, CMO 14 - despite its various amendments - has always provided for four depositions per side. Indeed, even when AbbVie last sought to extend the bellwether discovery schedule to its present timeline, the parties were confident that they could conduct the four depositions they each were entitled to within this time. The PSC remains confident in the Plaintiffs' ability to conduct these depositions within the current deadlines, but simply needs AbbVie to (a) complete the production of the files and (b) to provide dates on which it will produce its sales representatives. The alternative would be to have the bellwether counsel in each case will simply notice the requested depositions on dates that the individual bellwether counsel deem appropriate with regard to AbbVie's witness or their counsel's schedule simply because available dates are not being provided. The PSC remains hopeful these depositions can be scheduled at mutually convenient dates and times with AbbVie's counsel and taken before the close of the of bellwether discovery on May 23, 2016.

With regard to AbbVie's sudden request for an extension of the bellwether schedule, the PSC does not presently agree that another extension of the schedule is warranted because these dates and the amount of work required to complete both the core bellwether work-up and generic discovery were known to both parties and the Court at the time the schedule was recently amended/extended.[3] Notwithstanding, should AbbVie seek an extension, they should make a motion, rather than haphazardly submit contested and questionable facts and arguments into a joint report that they belatedly dropped on the PSC on the 11th hour without ample time for the PSC to truly respond.

[3] The Plaintiffs have the resources and commitment to complete the necessary work on the current schedule. The log-jam is being caused by AbbVie's inability or unwillingness to properly staff the litigation, and diligently and timely perform the tasks required of them to move this process forward. Indeed, each and every difficulty cited to by AbbVie as a reason to extend the discovery schedule is either not in fact a substantial hurdle, and/or a product of their own doing.

The first reason cited to by AbbVie is the volume and timing of medical record collection and review. The simple fact, however, is that AbbVie has been in possession of the PFS's containing the information on the relevant health care providers for the bellwether cases from even before the 32 bellwethers were finalized on November 20, 2015 (approximately five months ago). Although supplemental PFS's were requested, and provided in some cases, as of the March status conference, Plaintiffs' counsel had complied with all outstanding requests. Furthermore, in many instances, Defendants were provided with a copy of the medical records in possession of the Plaintiffs at the time the PFS was submitted.[4]

In addition, the PSC is prepared to document how AbbVie and its new counsel at the time upended all discovery to secure medical records and medical authorizations for all plaintiffs who would be eligible for a bellwether pool, but then months later notified co-lead counsel and the Court that AbbVie was in fact ***not*** collecting records by virtue of the medical authorizations it fought so hard to secure on an expedited basis. Yet now, AbbVie returns to us and the Court claiming they are lacking medical records and cannot proceed without all the records. Moreover, this was not a concern for AbbVie a few weeks ago at the last Case Management Conference and the Joint Report submitted at that time on medical record retrieval efforts. *See* Parties Joint Report for March 10, 2016, Case management Conference at Section I.D. [DKT 1215]

[4]Contradicting their own contention that medical record and collection is a cause for delay, AbbVie nonetheless states that the medical records collection process is *substantially completed* with records for only 54 out of 276 providers who have been identified in the Plaintiff Fact Sheets remaining outstanding. AbbVie further states that of the 276 providers who have been identified, it only intends to depose 75 of them. Although AbbVie has not disclosed how many of the 54 outstanding sets of medical records pertain to the 75 providers it actually intends to depose, it stands to reason that because AbbVie has already obtained the vast majority of records, and only intends to depose a limited number of providers, that AbbVie does in fact possess substantially all records necessary to proceed with plaintiff and doctor depositions that will be taken, and any purported delay in obtaining medical records is not a valid reason to delay the bellwether discovery schedule.

Therefore, any delay in obtaining medical records has been caused solely by AbbVie themselves, and should not be used as a self-serving excuse for AbbVie to delay the discovery timeline.

The second reason cited by AbbVie for seeking an extension of the discovery timeline is the growing scope of sales representative discovery, and purported requests by Plaintiffs that the sales representative file production/deposition precede the doctor deposition. Any expansion of the scope of discovery pertaining to sales reps is the result of AbbVie's failure to conduct adequate searches at the time that they provided the DFS for each of the bellwether cases.

AbbVie states that 38 additional sales reps have been identified since the last status conference. However, a large number of new sales reps that are being identified due to AbbVie's own incomplete searching as opposed to prescribers being newly identified by Plaintiffs. For example, in three cases where AbbVie initially said that there were no sales reps, upon further review by AbbVie or the PSC, at least a dozen sales reps were identified. Because the addition of newly identified sales representative has been caused in large part by AbbVie's own inadequate searching at the beginning of this process, and should not result in a delay of the discovery schedule. Lastly, as noted above, any claims about the burden of sales representative depositions is specious. These depositions have always been contemplated since the inception of CMO 14, and its requested amendments. And like the medical record collection, that was seemingly not a problem at the last CMC, the parties both recognized that scheduling these depositions like scheduling doctor depositions would require great work and the parties to work cooperatively. Unfortunately, AbbVie has only scheduled one sales representative deposition so far. A far cry from "the parties expect to work cooperatively to schedule these depositions". *See* Parties Joint Report for March 10, 2016, Case management Conference at Section I.D. [DKT 1215]

Furthermore, AbbVie is not accurate in stating that requests by Plaintiffs to have the sales representative depositions precede the doctor depositions is delaying the scheduling of the doctor depositions. To our knowledge this request has only been made by one or two bellwether firms; a far cry from a trend, and one of those bellwether firms had already scheduled the doctor deposition and was under the impression that AbbVie had no objection to this sequence.

AbbVie's third reason for seeking a discovery extension is a purported difficulty coordinating schedules with doctors. Contrary to AbbVie's contentions, the scheduling of doctor depositions is proceeding well, despite the seemingly fickle schedules of AbbVie's counsel, and their repeated adjournments. To date, approximately 13 doctor depositions have been scheduled mostly due to efforts by Plaintiffs' counsel to secure dates from the doctors. Any impediment there has been to scheduling doctor depositions has been repeated adjournments by AbbVie's counsel, with two doctor depositions having been adjourned by Defendants and one by plaintiff (which was due to AbbVie's failure to produce documents relative to that doctor's speaking engagements with AbbVie).

In sum, while AbbVie has sought to throw the proverbial "kitchen sink" of reasons it cannot comply with the Court's current schedule into a Joint Status Report and essentially turn a report into a motion to extend the discovery schedule, a schedule that the PSC submits that absent premeditated and purposeful delays by AbbVie, is fine. Further, "AbbVie's Proposal" on extending bellwether discovery underscores that this is nothing more than a veiled effort at a motion to extend discovery. Further, the relief they request is not even premised on accurate facts and circumstances; underscoring further why a formal motion should be made and the PSC ample opportunity (albeit not long) to respond to blatant mischaracterizations. As such the PSC's response to "AbbVie's Proposal" is that a motion to extend should be filed and the he PSC

would respectfully request the opportunity to submit competing facts and opposition, including the likely ripple effect such delays would have on the prosecuting of the other cases in this MDL, as well as state-federal cooperation that has to date become a smooth matter because the MDL has hit its stride.

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B. Other TRT Usage in Bellwether Cases:

***1. AbbVie's Position*:**

At the August 8, 2015 CMC hearing on bellwether selection, AbbVie argued and the Court agreed that this initial bellwether pool should not include cases where the plaintiff has been treated with other, non-AndroGel testosterone therapy, given the added complexity with such additional products. AbbVie relied upon Plaintiffs' verified responses in the Plaintiff Fact Sheets at that time.

Since then, however, through the process of collecting medical records not previously provided by Plaintiffs, AbbVie has learned that *at least* 8 of the 32 bellwether plaintiffs have used other TRT products prior to their alleged injuries. With only one exception, which was inadvertently overlooked during the selection process, the fact of other TRT use was not revealed in Plaintiffs' verified responses in the Plaintiff Fact Sheets. The below chart provides a high-level summary of that other, non-AndroGel usage:

Plaintiff	Other TRT Usage/Dates	Dates of AG Use	Claimed Injury &Date	Defense or Plaintiff Pick
Agard	Testim/Nov. 2010	Dec. 2010-Present	MI on 12/06/12 Clot on 2/12/13	Defense
Camp	Testosterone/2006, 2009 and 2015 records	Aug. 2011- July 2014	DVT on 3/13/13 and 7/24/14	Defense
Cripe	Over-the-counter supplement/unidentified	Feb. 2011	Spinal Stroke on 2/19/2011	Plaintiff

Deel	Androderm/Feb.-Aug. 2008	Aug. 2008- Dec. 2013	MI on 1/17/14	Plaintiff
Friedel	Injection /May 2012 (Per PFS)	May-Aug 2012	PE on 8/27/12	Plaintiff
Guy	Injection /"1990s"	May 2010-Jan. 2014	Stroke on 11/30/13	Plaintiff
Palmer	Testim/April 2008-Dec. 2009 Injection/and post-injury	May 2010-May 2014	MI on 11/29/11	Defense
Staton	Injection/April-Dec. 2011	Dec. 2011-Dec. 2013	Retinal Stroke on 2/1/13	Plaintiff

AbbVie believes that this issue should be addressed now before more discovery proceeds. AbbVie proposes to exclude these plaintiffs from the bellwether process, consistent with this Court's prior ruling, and defers to the Court on whether these excluded plaintiffs should be replaced given that such replacement would also impact the case schedule.

Plaintiffs' argument below that AbbVie created this problem turns on the preposterous notion that AbbVie knows more about the Plaintiffs and their records than they do. The simple fact is that Plaintiffs' counsel knew that the bellwether pool was not to include cases involving use of non-Androgel TRTs but they failed to conduct the necessary due diligence (a) when the PFSs were filled out, (b) when the 100 member bellwether pool was defined, (c) when the 32 bellwethers were selected, and (d) when supplemental PFSs were requested. It is AbbVie that should be complaining about the unnecessary costs, burdens, and delays relating to this history.

2. *Plaintiffs' Position:*

AbbVie claims to have identified 8 mixed usage cases based on additional medical record review. With the exception of one case, the use of a TRT product other than AndroGel is extremely remote from the date of Plaintiff's injury, involving a matter of years, not months (the shortest is approximately one year, and the longest about 5 years). Given the extremely long period of time separating the purported mixed use from the date of the injury no reasonable argument can be made that the prior TRT use may have caused the Plaintiff's injury.

The one exception is the *Friedel* case, which AbbVie acknowledges this plaintiff used a non-AbbVie testosterone product in May 2012, but was allowed into the pool.

Further, analyzing this issue must begin with how the pool of cases was created at the outset of this process. Which cases were eligible for the pool was determine by AbbVie, not the PSC. AbbVie had in its possession not only Plaintiffs' Fact Sheets for all eligible cases, but also medical records authorizations for all cases. AbbVie elected not to collect any records (including pharmacy records) in identifying which cases would constitute the pool of cases from which the 32 cases would be selected. Now, many months down the road and many hours of work into these cases, AbbVie wants a "do-over" because of its own failure to eliminate cases from the pool that it has the ability to identify at the outset. Such self-manufactured delay should not be encouraged by the Court.

The PSC respectfully submits that there is no prejudice in keeping these cases in the pool at this time. Indeed, the proper place to challenge their representativeness (which the PSC wholly disputes), is not now, but rather when the final case are selected by the Court for trial. Moreover, one might even suggest or surmise this issue was tacked on to lend support for AbbVie's blunderbuss position and submission on requesting an extension to the bellwether schedule

II. Report on Other AbbVie Discovery Issues

A. Custodial Files and Corporate Witness Depositions

1. AbbVie's Position:

Productions To Date: To date, AbbVie has review 217,000 documents from all the non-custodial files that Plaintiffs have requested and produced 162,000 documents (2.8 million pages). Further, AbbVie has produced 55 custodial files for Plaintiffs' Tier A and Tier B Custodians, and supplemented the productions for 10 of those witnesses (and will continue to

supplement the production to the extent such witnesses' depositions are requested). AbbVie reviewed 2.5 million documents for those custodial files and produced 500,000 documents (13.5 million pages). Put another way, AbbVie has reviewed **2.7 million documents and produced 662,000 documents (16.3 million pages) to date** (not including the documents AbbVie reviewed and produced (or soon will) for sales representative-related discovery).

Supplemental Productions: Starting in November 2015, Plaintiffs began identifying its Tier C Custodians (12 to date). It was originally anticipated that Tier C would begin after Tier B was completed in January. In late December, however, Plaintiffs requested that the files for all corporate witnesses currently scheduled for deposition be supplemented with their 2015 documents. All depositions then scheduled for January and February were adjourned. AbbVie began collection of those supplemental files in January as it was completing its review and production of the Tier B witnesses. AbbVie completed those initial 2015 supplements in early March and the parties worked together to reschedule all of the depositions. Since then Plaintiffs continue to request supplementation.

Current Competing Requests: As the Court is aware from prior reports, AbbVie substantially expanded its team of document reviewers last Fall. This team has enabled AbbVie to finish the 2015 supplements for the initial witnesses and then turn its full review and production resources to the 42 sales representative custodial files (and related additional case-specific requests) which Plaintiffs asked be produced by April.

Upon completion of those sales representative files, the following outstanding and competing document production requests will remain:

- 12 Tier C Custodians
- 2015 supplements for additional corporate witnesses requested for deposition (currently 4)

- Additional sales representative files (currently 13) and related case-specific requests

AbbVie has spoken to the PSC about the need to prioritize which files it wants next with an understanding that a focus on the corporate files will delay additional sales representative files and vice versa. AbbVie believes a discussion of the competing demands should be had in the context of the overall bellwether discovery schedule.

Corporate Witness Depositions: To date, Plaintiffs have deposed 12 AbbVie corporate witnesses. There are 8 additional depositions scheduled between now and early June. Plaintiffs have requested an additional 6 witnesses for deposition. One witness is a Tier C witness whose file has not yet been produced. Plaintiffs have requested supplemental productions before proceeding with four witnesses. The only witness who does not require a document production is a former employee of Solvay. She left Solvay in 2001 and has never worked directly for AbbVie. AbbVie is attempting to locate this witness to see if she is willing to voluntarily appear for a deposition.

2. ***Plaintiffs' Position:***

a. ***Status of production of AbbVie Custodial Files***: The PSC has continued to identify custodial files for AbbVie to produce and in the past the parties had agreed that AbbVie would supplement the custodial files with 2015 content for witnesses who are going to be deposed. Unfortunately, the pace of the updates has slowed dramatically, as noted below in the following section.

b. ***Scheduling of AbbVie Deponents***–While to date, the parties have been working cooperatively to schedule depositions (including the rescheduling of several depositions recently in order to accommodate the witness' schedule), including the cooperation

of the Cook County litigation in scheduling, the scheduling of corporate depositions has come to a virtual halt as a result of AbbVie's need to update the custodial files of the witnesses that the PSC requested during March and their inability or unwillingness to produce those files at the same time they are producing the files for the sales representatives in the 32 bellwether cases that are being worked up. The tension between these two productions has resulted in 6 depositions that are still awaiting dates (though one deposition, which was requested at the end of March, is of a former employee for whom there is no need to update a file); 4 depositions in April, only 1 deposition in May, and only 2 depositions in June. So far, 12 depositions have been taken without the updated files, which will have information concerning the FDA-required study that is underway as well as the May 2015 label change (including both internal communications and communications with the FDA concerning that label change). With regard to the 6 requested by yet to be scheduled depositions, AbbVie has refused to provide to the PSC any proposed dates because they refuse to make the previously agreed supplemental productions for these custodial files until after they complete the sales representative productions based on a claim of the burden of meeting their bellwether discovery obligations (which they have always known about would occur). AbbVie should not be able to put the PSC in the position of needing to make a Hobbesian choice of delaying the schedule or taking depositions without the relevant documents. This is especially true when this schedule (and its competing tracks) have been known to the Parties since the schedule was set and the fact that the schedule was designed in this fashion (*e.g.*, to have both generic corporate discovery conducted at the same time as case-specific bellwether discovery on this size pool of cases).

B. Production of Pharmacovigilence Data

The parties are continuing to discuss Plaintiffs' request for the production of additional pharmacovigilance data from AbbVie. Should the meet-and-confer process not be successful, Plaintiffs may seek judicial intervention for production of these materials.

III. Update on Defendant Pfizer

On November 9, 2015, the Court granted the motion to dismiss filed by the Pfizer Defendants ("Pfizer") and Auxilium and held that Plaintiffs' claims against those Defendants in the Master Complaint relating to Depo-Testosterone and Testopel are preempted. Plaintiffs moved to reconsider or clarify that order. On March 7, 2016, the Court granted in part and denied in part Plaintiffs' motion and held that certain claims in the Plaintiffs' Master Complaint against Pfizer and Auxilium relating to Depo-Testosterone and Testopel are not preempted to the extent they are based on allegations of fraudulent off-label promotion. While Pfizer and Auxilium believe those remaining claims also are preempted, they do not intend to seek reconsideration at this time. While the Plaintiffs believe the failure-to-warn and other claims the Court held to be preempted are not, they do not intend to seek interlocutory appeal at this time.

The parties have met and conferred regarding the discovery that Plaintiffs have requested from Pfizer in light of the Court's orders and the discovery Pfizer already has produced to date. Contrary to some of the allegations in the Master Complaint, Pfizer claims that it did not: (1) employ a sales force to promote Depo-Testosterone; (2) engage in any direct-to-consumer advertising (other than potentially making available to physicians a very small number of patient brochures, which Pfizer claims it did not ultimately distribute to any physicians); or (3) communicate with physicians or patients regarding the symptoms of low testosterone or the symptomatic benefits of raising testosterone. Pfizer further claims that the only specific statements identified in the Master Complaint and in Pfizer's discovery responses to date relate

to certain statements made: (1) on web sites operated by Pfizer, or (2) in brochures or emails sent to physicians. Pfizer further claims it only made the web sites and brochures available beginning in December 2013.

The parties dispute whether the statements made by Pfizer in its marketing materials are fraudulent or off-label as a matter of law. Aside from disputing whether the statements were off-label or fraudulent, Pfizer believes that many of the Plaintiffs in the litigation will not be able to establish that their prescribing physicians saw and relied on the statements before prescribing Depo-Testosterone in light of the narrow distribution of the brochures and the very limited time period during which Pfizer made the statements. On those bases, Pfizer intends to move for summary judgment against some or all of the remaining Plaintiffs asserting claims against it.

Plaintiffs believe they need additional discovery to determine the scope of Pfizer's marketing of Depo-Testosterone, and to oppose Pfizer's anticipated motion for summary judgment on their remaining claims. In order to focus discovery on the remaining claims against Pfizer, the parties have agreed that: (1) Pfizer will produce custodial files for three witnesses whom Pfizer previously disclosed as being involved in marketing and/or regulatory review of marketing materials; (2) after receiving those custodial files, Plaintiffs will meet and confer with Pfizer with respect to whether deposition(s) of those witnesses in their individual capacity (or of a witness designated pursuant to Rule 30(b)(6)) is or are warranted; and (3) after any such deposition(s) are complete, the parties will meet and confer with respect to whether any other discovery is necessary before Pfizer files a motion for summary judgment. In setting forth this sequence for the Court's information, Plaintiffs do not concede that Pfizer's motion for summary judgment is proper or will be ripe after this marketing-focused discovery is complete, and Pfizer

does not concede that any further discovery will be warranted (nor does either side intend to concede its preemption positions).

IV. Besins Jurisdictional Discovery

The parties continue to negotiate the production of documents related to the jurisdictional issues involving the Besins defendants.

V. Briefing logistics with respect to Defendants' Motion to Dismiss Third Amended Complaint

Dated: April 12, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2016, the foregoing document was filed via the Court's CM/ECF system, which will automatically serve and send email notification of such filing to all registered attorneys of record.

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