

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

---

	<b>Case Nos.</b>
<b>SHERYL MCCALL and DAVID MCCALL,</b>	: <b>3:20-cv-08074; 3:20-cv-12605;</b>
	: <b>3:20-cv-07758; 3:20-cv-07756;</b>
	: <b>3:20-cv-09530; 3:20-cv-10080;</b>
<i>Plaintiffs,</i>	: <b>3:20-cv-07753; 3:20-cv-12328;</b>
	: <b>3:20-cv-11913; 3:20-cv-11912;</b>
<i>v.</i>	: <b>3:20-cv-12608; 3:20-cv-07079;</b>
	: <b>3:20-cv-10341; 3:20-cv-11921;</b>
<b>JANSSEN PHARMACEUTICALS, INC., et al.,</b>	: <b>3:20-cv-12421; 3:20-cv-10342;</b>
	: <b>3:20-cv-07750; 3:20-cv-12547;</b>
<i>Defendants.</i>	: <b>3:20-cv-10966; 3:20-cv-11919;</b>
	: <b>3:20-cv-10968; 3:20-cv-12264;</b>
	: <b>3:20-cv-13596; 3:20-cv-06070;</b>
<i>This Document Relates to All Cases<sup>1</sup></i>	: <b>3:20-cv-10960</b>

**JUDGE BRIAN R. MARTINOTTI  
JUDGE ZAHID N. QURAIISHI**

---

<sup>1</sup> The served cases are: (1) *Rebecca Anthony and Carlie Anthony v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-12605-BRM-ZNQ; (2) *Lynn Brewer and William Brewer v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-07758-BRM-ZNQ; (3) *Harriet Comstock v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-07756-BRM-ZNQ; (4) *Sherry Dobbins and James Dobbins v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-09530-BRM-ZNQ; (5) *Carol Dubois v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-10080-BRM-ZNQ; (6) *Deborah Edwards v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-07753-BRM-ZNQ; (7) *Margaret Emmons v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-12328-BRM-ZNQ; (8) *Marilyn J. Evans v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-11913-BRM-ZNQ; (9) *Iris Groudan v. Janssen Pharmaceuticals Inc., et al.*, 3:20-cv-11912-BRM-ZNQ; (10) *Carol Hardy and Roger Hardy v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-12608-BRM-ZNQ; (11) *Valerie Hull and Edward Hull v. Teva Pharmaceuticals, Inc., et al.*, 3:20-cv-07079-BRM-ZNQ; (12) *Clara Johns v. ALZA Corp., et al.*, 3:20-cv-10341-BRM-ZNQ; (13) *Tiffany Kotz v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-11921-BRM-ZNQ; (14) *Elizabeth Lafave v. Teva Branded Pharmaceutical Products R&D, Inc., et al.*, 3:20-cv-12421-BRM-ZNQ; (15) *Shirley Ruth Levy v. ALZA Corp., et al.*, 3:20-cv-10342-BRM-ZNQ; (16) *Barbara Mayou and Keith Mayou v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-07750-BRM-ZNQ; (17) *Sheryl McCall and David McCall v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-08074-BRM-ZNQ; (18) *Loretta Reid v. Janssen Pharmaceutical, Inc., et al.*, 3:20-cv-12547-BRM-ZNQ; (19) *Maria A. Rodgers v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-10966-BRM-ZNQ; (20) *Michelle Scott v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-11919-BRM-ZNQ; (21) *Heather Shaffer v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-10968-BRM-ZNQ; (22) *Cynthia Vescio v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-12264-BRM-ZNQ; (23) *Deborah F. Weiner v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-13596-BRM-ZNQ; (24) *Becky Worden v. Janssen*

## Case Management Order No. 5 Regarding Dismissal of Bayer Defendants

Plaintiffs in the above captioned case as well as those with cases pending in the District of New Jersey before Judge Brian Martinotti<sup>2</sup> and Defendants Janssen Pharmaceuticals, Inc., Ortho-McNeil Pharmaceuticals, Janssen Pharmaceutica, Inc., Janssen Research and Development, LLC (f/k/a Johnson & Johnson Pharmaceutical Research and Development), Janssen Ortho LLC, and Johnson & Johnson (collectively “**Named Janssen Defendants**”) and Bayer Corporation, Bayer HealthCare LLC, Bayer HealthCare Pharmaceuticals Inc. (f/k/a Bayer Pharmaceuticals Corporation), and Bayer U.S. LLC (collectively “**Named Bayer Defendants**”), having met and conferred, jointly respectfully request that the Court dismiss the Named Bayer Defendants from those cases where they are named<sup>3</sup> as follows:

### **I. INVOLVEMENT OF NAMED BAYER DEFENDANTS IN ELMIRON® LITIGATION**

1. The cases brought by Plaintiffs concern the prescription medication ELMIRON® (the “ELMIRON® Litigation”), which was approved by the FDA in September 1996 to treat the pain and discomfort associated with interstitial cystitis.
2. The Named Janssen Defendants and the Named Bayer Defendants represent and warrant to the Court and to the undersigned Plaintiffs that none of the Named Bayer Defendants (including, but not limited to, any corporate parent, subsidiary or affiliate), were involved in developing, designing, or testing ELMIRON®, and none of the Named Bayer Defendants (including, but not limited to, any corporate parent, subsidiary or affiliate), has ever held the ELMIRON New Drug Application (“NDA”) since the product was approved by the FDA in 1996.

---

*Pharmaceuticals, Inc., et al.*, 3:20-cv-06070-BRM-ZNQ; (25) *Ronna York v. Janssen Pharmaceuticals, Inc., et al.*, 3:20-cv-10960-BRM-ZNQ.

<sup>2</sup> All cases served and currently pending before Judge Brian Martinotti are identified in footnote 1.

<sup>3</sup> The Clerk of the Court is hereby directed to dismiss the Named Bayer Defendants from the following served cases: (1) *Clara Johns v. ALZA Corporation, et al.*, 3:20-cv-10341-BRM-ZNQ; (2) *Elizabeth Lafave v. Teva Branded Pharmaceutical Products R&D, Inc., et al.*, 3:20-cv-12421-BRM-ZNQ; (3) *Shirley Ruth Levy v. ALZA Corporation, et al.*, 3:20-cv-10342-BRM-ZNQ.

3. In October 2005, Bayer Pharmaceuticals Corporation and Ortho-McNeil Pharmaceutical, Inc. entered into a limited co-promotion agreement related to ELMIRON® (the “Agreement”). Under the Agreement, which terminated in 2011, certain of the Named Bayer Defendants were given the right to market and promote ELMIRON® to certain prescribers in the United States.

## **II. AGREEMENT BETWEEN PLAINTIFFS AND THE JANSSEN DEFENDANTS**

1. The Named Janssen Defendants agree that, pursuant to the terms of the Agreement, they have agreed to defend, indemnify and hold harmless the Named Bayer Defendants (including, but not limited to, any corporate parent, subsidiary or affiliate), for any claims related to the Named Bayer Defendants’ promotion, marketing, or sale of ELMIRON® during the time the Agreement was in effect.
2. The Named Janssen Defendants agree that they will not assert any position *in judicio*, affirmative defense, cross claim, or counter claim, against any party alleging that they are not liable for claims arising from the sales, marketing, or promotional activity undertaken by the Named Bayer Defendants during the time the Agreement was in effect. The Named Janssen Defendants agree that, for purposes of the ELMIRON® Litigation and as between the Named Janssen Defendants and Plaintiffs, they shall not argue that the Named Bayer Defendants are at fault or that the Named Janssen Defendants are not responsible for claims arising from the sales, marketing, or promotional activity undertaken by the Named Bayer Defendants during the time the Agreement was in effect.
3. In support of the representations made herein, the Named Janssen Defendants further agree to a one-time deposition of a person most knowledgeable on the sole subject of the limited co-promotion agreement set forth in Paragraph I.3 and their related representations regarding defense of these matters as set forth in Paragraphs II.1 and II.2.
4. Nothing contained herein will be relied upon by any party or used by any party to establish the propriety of Johnson & Johnson as a defendant in the ELMIRON® Litigation, and Johnson & Johnson reserves all rights to make future arguments relative to its inclusion in this Litigation.

### III. AGREEMENT BETWEEN PLAINTIFFS AND THE BAYER DEFENDANTS

1. Plaintiffs hereby dismiss without prejudice (subject to the limitations identified in Section III.3 below) the named Bayer Defendants (including, but not limited to, any corporate parent, subsidiary, or affiliate), from any cases pending in the District of New Jersey in which they have been named to date.
2. Plaintiffs hereby agree that they will not name or bring suit against any of the Named Bayer Defendants, or other defendants within the Bayer corporate family (including, but not limited to, any corporate parent, subsidiary, or affiliate), in future cases filed in the ELMIRON® Litigation absent the limited circumstances discussed in Paragraph III.3 below.
3. Plaintiffs maintain the right to re-file dismissed claims against the Named Bayer Defendants or bring new claims against the Named Bayer Defendants only if evidence arises during the ELMIRON® Litigation that is sufficient to support a claim against any one or all of the Named Bayer Defendants that is not covered by the Named Janssen Defendants' indemnification obligations. The Named Janssen Defendants and the Named Bayer Defendants represent and warrant to the Court and to Plaintiffs that, as of the date of this Order and to the best of their knowledge, no such evidence exists.
4. Any claims that Plaintiffs may have against the Named Bayer Defendants, to the extent timely as of the date the respective plaintiff's action was filed in this Court, are tolled for statute of limitation purposes as of the date of this Order. This tolling provision applies not only to currently filed Plaintiffs but also those Plaintiffs who in the future file a claim in the ELMIRON® Litigation and do not name as party-defendants any of the Named Bayer Defendants.
5. Plaintiffs' potential claims against the Named Bayer Defendants in any given case shall remain tolled until thirty (30) days following the date that all of Plaintiffs' claims against the Named Janssen Defendants are dismissed or are otherwise resolved provided that any new action, asserting the same or fewer claims naming the Named Bayer Defendants (subject to the limitations set forth in Section III.3 above), is filed in this Court.
6. The Named Bayer Defendants agree that they are and will continue to preserve ESI and other materials consistent with their obligations under the law, including the Federal Rules of Civil Procedure and applicable case law. The Named Bayer Defendants further agree that they will cooperate with the Named Janssen Defendants in providing all information responsive to Plaintiffs' Discovery Requests to Defendants in the possession of the Named Bayer Defendants through Rule 34 document requests without the necessity of a Rule 45

subpoena to a non-party and for such purposes remain subject to the jurisdiction of this Court with respect to such obligations notwithstanding the dismissals discussed herein.

The Clerk of the Court is hereby directed to dismiss the Named Bayer Defendants from the following served cases: (1) *Clara Johns v. ALZA Corporation, et al.*, 3:20-cv-10341-BRM-ZNQ; (2) *Elizabeth Lafave v. Teva Branded Pharmaceutical Products R&D, Inc., et al.*, 3:20-cv-12421-BRM-ZNQ; (3) *Shirley Ruth Levy v. ALZA Corporation, et al.*, 3:20-cv-10342-BRM-ZNQ.

SO ORDERED, this 15th day of October, 2020

  
\_\_\_\_\_

The Hon. Brian Martinotti, U.S.D.J.