

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SUPERNUS PHARMACEUTICALS, INC.,	.	
Plaintiff,	.	
vs.	.	Case No. 25-cv-12183
APPCO PHARMA LLC, et al.,	.	
Defendants.	.	Newark, New Jersey
	.	December 17, 2025

SUPERNUS PHARMACEUTICALS, INC.,	.	
Plaintiff,	.	
vs.	.	Case No. 25-cv-12184
APOTEX INC.,	.	
Defendant.	.	

SUPERNUS PHARMACEUTICALS, INC.,	.	
Plaintiff,	.	
vs.	.	Case No. 25-cv-12186
AUROBINDO PHARMA LIMITED, et al.,	.	
Defendants.	.	

SUPERNUS PHARMACEUTICALS, INC.,	.	
Plaintiff,	.	
vs.	.	Case No. 25-cv-12188
ZYDUS LIFESCIENCES GLOBAL FZE, et al.,	.	
Defendants.	.	

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MICHAEL A. HAMMER
UNITED STATES MAGISTRATE JUDGE

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	SUPERNUS PHARMACEUTICALS,	.
2	INC.,	.
	Plaintiff,	. Case No. 25-cv-13201
3	vs.	.
	CREEKWOOD PHARMACEUTICALS,	.
4	LLC,	.
	Defendant.	.
5	_____	.
	SUPERNUS PHARMACEUTICALS,	.
6	INC.,	.
	Plaintiff,	.
7	vs.	. Case No. 25-cv-13204
	MSN PHARMACEUTICALS INC.,	.
8	Defendant.	.
9	_____	.
	SUPERNUS PHARMACEUTICALS,	.
10	INC.,	.
	Plaintiff,	.
	vs.	. Case No. 25-cv-13207
11	ZENARA PHARMA PRIVATE	.
	LIMITED, et al.,	.
12	Defendants.	.
13	_____	.
	SUPERNUS PHARMACEUTICALS,	.
14	INC.,	.
	Plaintiff,	.
	vs.	. Case No. 25-cv-15399
15	MACLEODS PHARMACEUTICALS	.
	LTD., et al.,	.
16	Defendants.	.
17	_____	.
18		.
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1 (Commencement of proceedings)

2

3 THE COURT: Okay. Good afternoon, everyone.

4

5 We are on the record in Supernus Pharmaceuticals
6 for a series of cases that I suspect will soon be
7 consolidated. So for purposes of the record, it's Supernus
8 Pharmaceuticals versus Appco Pharma and Somerset Therapeutics
9 in Civil No. 25-12183; defendant Apotex in 25-12184;
10 Aurobindo in 25-12186; Zydus in 25-12188; Creekwood
11 Pharmaceuticals in 25-13201; MSN Pharmaceuticals in 25-13204;
12 Zenara and Biophore Pharma in 25-13207; and Macleods
13 Pharmaceuticals and Macleods Pharma in 25-15399.

14 So let's take appearances.

15 I'll start with Supernus's counsel.

16 Mr. Baton, I see you're on. Why don't you do the
17 introductions.

18 MR. BATON: Good afternoon, Your Honor. Bill Baton
19 of the Saul Ewing law firm, New Jersey counsel for Supernus.

20 With me today from Haug Partners are Nicholas Giove
21 and Richard Kurz.

22 MR. GIOVE: And, Your Honor, we also have my
23 partner Andrew Wasson and associate Annie Bolton on the line,
24 also from Haug Partners.

25 THE COURT: Great. Thank you and welcome.

And how about for Appco? Somerset?

1 MS. ESCANLAR: Good afternoon, Your Honor.
2 Katherine Escanlar with Saiber LLC for Appco and Somerset
3 defendants.

4 And I will let my co-counsel introduce himself.

5 THE COURT: Great. Thank you.

6 MR. FRESE: Good afternoon, Your Honor. This is
7 Bradford Frese from the firm ArentFox Schiff.

8 Also with me on the line is my client
9 representative --

10 THE COURT: Great. Thank you. And welcome.

11 How about for Apotex?

12 MS. CONROY: Good afternoon, Your Honor. It's
13 Rebekah Conroy from Stone Conroy for Apotex.

14 And with me is Andrew Koopman from the Buchanan law
15 firm.

16 THE COURT: All right. Thank you very much.

17 How about for Aurobindo?

18 MR. EKINER: Good afternoon, Your Honor. Kaan
19 Ekiner from Cozen O'Connor. And we represent Aurobindo.

20 And we're joined this afternoon on the line by my
21 colleagues Aaron Lukas and Geng Hua.

22 THE COURT: I'm sorry. Tell me the last one. I
23 have Aaron Lukas, and what was the other one?

24 MR. EKINER: Geng Hua, H-u-a is the last name.

25 THE COURT: Great. Thank you.

1 Zyodus?

2 MS. COOPER: Good afternoon, Your Honor. Lauren
3 Cooper from the law firm of Baker Donelson.

4 And with me is my colleague Nina Vachhani, from the
5 Buchanan Ingersoll firm.

6 THE COURT: All right. Thank you --

7 (Simultaneous conversation)

8 MS. COOPER: And, Your Honor, with me today is also
9 Jacob Britz, also from Buchanan.

10 THE COURT: Got it. All right. Thank you very
11 much and welcome.

12 Creekwood?

13 MS. BUTLER: Good afternoon, Your Honor. This is
14 Kristine Butler from Hill Wallack. And I have with me
15 co-counsel from Rakoczy Molino, Katie Boda and Adrienne Rose.

16 THE COURT: All right. Thank you and welcome.

17 And how about MSN?

18 MR. GONZALEZ: Good afternoon, Your Honor. This is
19 Tim Gonzalez from Rivkin Radler.

20 I'm joined by my colleague Mark Remus from Crowell
21 & Moring.

22 THE COURT: Great. Thank you very much.

23 How about for Zenara and Biophore?

24 MR. SHELHOFF: Dmitry Shelhoff from Shelhoff
25 Canfield & Chin.

1 THE COURT: Great. Thank you very much.

2 And last but certainly not at least, for Macleods.

3 MR. RICHTER: Good afternoon, Your Honor. James

4 Richter of Midlige Richter on behalf of Macleods.

5 And with me today is my colleague Corey Weinstein

6 from the Wiley Rein firm.

7 THE COURT: All right. Thank you very much. I

8 appreciate it.

9 Is there anybody that I missed? No?

10 Okay. Terrific.

11 All right. So let's dive right in. Let's start

12 with consolidation. This seems to be an area wherever agrees

13 that consolidation, at least for pretrial purposes, makes a

14 lot of sense.

15 I know Supernus proposes to consolidate for all

16 purposes, including trial.

17 I don't know that that's a particular issue that we

18 need to decide today because obviously there's a lot of

19 pretrial work to be done. But if Supernus has a strong

20 opinion about being heard on that issue today, I'm happy to

21 hear you.

22 MR. GIOVE: Your Honor, Nick Giove for Supernus.

23 I agree. I think this case will evolve as we

24 progress through fact, expert discovery, and it may look very

25 different by the time we get to a point where we would have

1 to make that decision.

2 THE COURT: Right.

3 MR. GIOVE: So I think it's something we can
4 certainly table for now.

5 In fact, I think you'll find, not to short-circuit
6 this, but I think you'll find that a lot of the, you know,
7 quote/unquote, disputes in this joint discovery plan are
8 items that can be taken up when they become relevant. And
9 other things, you know, I defer to Your Honor on that.

10 But I will say that, maybe somewhat atypically, we
11 do have a completely agreed schedule, which is something
12 that --

13 THE COURT: -- was impressed. I have to say kudos
14 to all of you.

15 MR. GIOVE: Yes.

16 THE COURT: I've had, as I'm sure -- I know many of
17 you as veteran patent litigators; so, perhaps, you were as
18 pleasantly surprised as I was that there are quite a number
19 of -- we've all had cases where there are a lot of disputes,
20 even in scheduling. I was really pleasantly surprised, this
21 is not one of them.

22 So my compliments to counsel.

23 MR. GIOVE: Yeah, I think parties are working well
24 together.

25 And, again, I'm happy to take up any individual

1 | dispute, but I think for the most part, we're on the same
2 | page with consolidation and the schedule, which is more than
3 | half the battle. And then for anything -- happy to deal with
4 | it now.

5 | THE COURT: Yeah, I mean, as we go through this, I
6 | know that there are some issues concerning, for example,
7 | invalidity contentions, you know, with consolidation or not,
8 | of those, of the expert reports, number of depositions -- we
9 | can talk about those as we approach them.

10 | But, obviously, if any counsel believes that it's
11 | worth waiting and addressing that another day as discovery
12 | takes shape, by all means, please just let me know --
13 | because, obviously, all cases evolve and change over time.

14 | All right. So what I would ask on the -- I assume
15 | there's -- well, does anybody object to consolidation for
16 | pretrial purposes?

17 | No? Right?

18 | Okay. Can I impose on counsel, then, to prepare
19 | and circulate a proposed consent order of consolidation under
20 | Rule 44(a) for pretrial purposes without prejudice to make
21 | application later to consolidate for trial purposes?

22 | MR. GIOVE: Sure, Your Honor. Plaintiff will take
23 | the first shot at drafting something.

24 | THE COURT: Terrific. Terrific. Okay.

25 | For what it's worth too, in the interests of moving

1 | things along -- well, I don't have an issue with the
2 | schedule. I think the schedule is fair.

3 | Obviously, the 30-month stay, even under the
4 | extended period of time, still we have to be mindful, the NCE
5 | exclusivity period is still October 2nd, 2028; so we still
6 | want to be mindful of those deadlines so that we're not
7 | running into a situation where it's, you know, mid-2028 and
8 | we're scrambling.

9 | But I don't have any issues with the schedule per
10 | se, understanding that we need to talk about some issues
11 | involving consolidation of reports, number of
12 | interrogatories -- well, actually you folks don't have a
13 | fight about interrogatories -- RFAs, things like that.

14 | In terms of the schedule itself, does anybody have
15 | any concerns or points they wish to raise?

16 | No. Okay. Very efficient group. I'm glad for
17 | that.

18 | So the schedule's fine. We'll embody in the
19 | pretrial scheduling order.

20 | And then my intention is just now to work through
21 | the joint discovery plan to resolve any disputes that the
22 | parties agree need to be resolved now.

23 | So unless I missed something, I'm up to page 16,
24 | which is the invalidity contentions. This is Footnote 3 --
25 | because obviously those are going to be served not today but

1 | in the next four months or so.

2 | Go ahead, Plaintiff's Counsel.

3 | MR. GIOVE: Yeah, so, Your Honor, we had a
4 | Rule 26(f), and it became clear to us that maybe the issue
5 | wasn't so much an outright refusal to coordinate on
6 | invalidity or validity but just a function of the fact that
7 | the defendant -- there's eight defendants, they have to deal
8 | with each other and clients --

9 | THE COURT: Right.

10 | MR. GIOVE: -- and stuff like that.

11 | So I got the sense, in fact, I think someone who --
12 | someone may have represented that they do expect to have some
13 | degree or coordination. That's kind of where we -- so as
14 | plaintiffs, we were just -- you know, we're consolidating
15 | this case in an effort to create efficiencies here; right?

16 | THE COURT: Right.

17 | MR. GIOVE: And the -- having the Court or
18 | plaintiffs deal with eight invalidity experts all saying much
19 | of the same thing didn't seem to make a lot of sense.

20 | But I feel like there will be coordination. It
21 | just couldn't be legislated in this joint discovery plan on
22 | the deadlines that we had.

23 | And I'll let the defendants speak for themselves,
24 | but if that's the case, plaintiffs are fine, again, letting
25 | this develop and dealing with this at the appropriate time as

1 we approach expert discovery.

2 THE COURT: Okay. I appreciate that.

3 Any defense counsel wish to be heard on this? If
4 so, just -- if you could -- if you don't mind, just state
5 your name and your client, just for purposes of the record.

6 MR. FRESE: Certainly, Your Honor. This is
7 Bradford Frese for Appco and Somerset.

8 And I think Mr. Giove's right. We do anticipate
9 coordinating on invalidity contentions and expert reports.
10 But that's not always a given.

11 THE COURT: Right.

12 MR. FRESE: Every once in a while there is an
13 outlier defendant who wants to promote their own invalidity
14 theory through a separate set of contentions. They may have
15 done some confidential work to develop their invalidity
16 theories that they want to keep confidential, whether it's
17 experimental work to show something like inherent
18 anticipation or they've done some -- developed some other
19 confidential evidence that might be used to invalidate the
20 patents. And they may just want to keep -- they may want to
21 keep that from the other defendants to put themselves in a
22 better settlement position.

23 I've seen this happen.

24 There are sometimes instances where one defendant
25 is hard-set, insisting on retaining their own experts and

1 | having control of those experts. Sometimes defendants can't
2 | agree on experts, and thus they can't, you know, jointly
3 | propose experts or expert reports in a case.

4 | So this is something that I expect will develop
5 | over time. It may not be an issue at all. We may be
6 | perfectly aligned on invalidity, and we may all come in with
7 | the same invalidity theories. It's just we can't be beholden
8 | to that at this point in time, and we don't think that the
9 | joint discovery plan is the appropriate place to set a
10 | hard-and-fast rule for that.

11 | THE COURT: Okay.

12 | Any other defense counsel wish to be heard?

13 | No. All right.

14 | So the invalidity contentions are due March 3.
15 | What I had thought, what I had contemplated -- because I can
16 | certainly understand the points defense counsel just raised,
17 | but everybody's going to see each other's invalidity
18 | contentions; right? And, obviously, the whole purpose is to
19 | put plaintiff on notice as to what they are so the parties
20 | can formulate their discovery and strategy on notice.

21 | What I had contemplated was a comment -- and I'm
22 | floating this idea. I want to hold off and see if the
23 | parties can work it out -- great -- was because I do also
24 | want to keep in mind, from a case management standpoint under
25 | Rule 16 and just manageability of -- and it's really not

1 | eight separate defendants because it could be more -- I don't
2 | know, for example, the corporate relationship between Appco
3 | and Somerset or Zenara and Biophore, so could even
4 | theoretically be more defendants -- but trying to sort of
5 | keep the case as manageable as possible for the parties and
6 | the Court, what I had contemplated was the defendants
7 | serving -- it may be the case, as Mr. Frese said, where a
8 | defendant has separately developed some invalidity theory
9 | that they want to try and keep to themselves as best they
10 | can, keeping in mind your notice and discovery obligations.

11 | But at the same time, there's likely to be a very
12 | substantial overlap among the defendants' invalidity
13 | contentions.

14 | So what I had contemplated was a system whereby the
15 | defendants would serve a common set of invalidity contentions
16 | without prejudice, of course, to any defendant who believed
17 | that they had a unique contention, to serve those as well.
18 | In other words, as much as anything, to separate the
19 | common -- or the overlap from anything that's unique.

20 | That's at least just a concept. Perhaps the thing
21 | to do right now is to leave that issue alone, see if the
22 | parties can work it out, and then the parties can raise it
23 | with the Court if they think there's still a dispute.

24 | But at least you see, right now, what my thinking
25 | is.

1 Does anybody have any reaction or comment to that?

2 MR. GIOVE: Counsel for Supernus.

3 I think that's fine, Your Honor.

4 I also -- I have been in cases where that has been
5 an approach before. And I'll also add that we're going to
6 get to -- we're dealing now, I guess, specifically with
7 contentions.

8 THE COURT: Right.

9 MR. GIOVE: But I think the same concepts should
10 apply to expert reports, and I think that probably is what we
11 were all assuming.

12 But I would want to make that clear too, that there
13 should be at least some coordination to keep things
14 manageable.

15 THE COURT: Yeah.

16 MR. GIOVE: And to avoid duplication. That's the
17 real issue is avoiding duplication.

18 THE COURT: Right. Exactly.

19 And, look, expert reports I'm a little less
20 concerned about because we don't hit those until 2027,
21 whereas the invalidity contentions themselves, you know,
22 likely could come up -- very likely, because I've got a long
23 trial in February -- before our next conference.

24 So if we can get at least as far enough to
25 resolve -- to the extent it's an issue -- regarding the

1 | invalidity contentions themselves, I'd like to do that.

2 | But any other counsel have thoughts and responses?

3 | MR. FRESE: Your Honor, just to state a couple of
4 | things -- first -- oh, this is Bradford Frese for Appco and
5 | Somerset.

6 | THE COURT: Yup.

7 | MR. FRESE: I think that's what happens organically
8 | anyway is that we will coordinate on a single set of
9 | contentions, and then any defendants who have separate
10 | contentions as to separate patents, we'll put those forward
11 | individually. There's no need for repetition --

12 | THE COURT: Right.

13 | MR. FRESE: No need for putting forward redundant
14 | invalidity theories that are already set forth somewhere
15 | else.

16 | With expert reports, it's a little bit more
17 | concerning to me because I think -- you know, I don't think
18 | we can agree necessarily at the outset to serve a
19 | consolidated set of expert reports because there's no
20 | obligation or no way that the Court can force the defendants
21 | to coalesce around a single expert.

22 | THE COURT: Right. You get into some wonky issues
23 | there.

24 | MR. FRESE: And so I think that will work out.

25 | There's certainly incentives for us to coordinate on expert

1 reports on invalidity. Obviously, we don't want to be
2 wasting trial time by having four different experts come up
3 and spout the exact same invalidity theory.

4 But I do expect -- you know, we can't be -- we
5 don't know how this case is going to evolve. We don't know
6 how the politics of all of this are going to work out between
7 the defendants.

8 THE COURT: Sure.

9 Also, if any of you has ever tried a case before
10 Judge Farbiarz, you'll know that redundancy is not something
11 he's going take warmly to. Mr. Richter is nodding.

12 Judge Farbiarz is extraordinarily efficient.

13 But in any event, I think we all see, at least
14 enough for today, see eye to eye.

15 The expert issue is for down the road. The one
16 concern that I have -- because I think's undeniable
17 efficiencies from consolidation, but you do run into a very
18 difficult issue is parties don't all coalesce around the same
19 expert. But that's not an issue we need to resolve today.
20 That's an issue that can wait.

21 It sounds like the parties have -- if you -- are
22 very likely to make the issue about the invalidity
23 contentions themselves a nonissue.

24 If it still is, what I'd ask is that you let me
25 know by February 13th. Okay? I'm just trying to think

1 forward to that March 3rd date, and we'll resolve that. I
2 don't think that's likely to happen, though, and I don't
3 think that's a very difficult issue.

4 Okay. We have agreement on interrogatories.

5 Fact depositions. What I'm curious to know is --
6 look, two thoughts about this. One, you folks are probably
7 at least eight months away from taking fact depositions,
8 after which -- or by which you'll already had the benefit of
9 substantial written discovery, which might elucidate this
10 issue. Two, the parties always -- whatever the Court puts on
11 it -- so, of course, the default under Rule 30 is 10 per
12 side. But the parties always have leave to show good cause
13 as to why they need more than 10 depositions.

14 I'm happy to talk about this issue now. I'm happy
15 to put numbers out now, understanding that the numbers I put
16 out in terms of maximum per side are going to be still
17 subject to a party making an application and showing good
18 cause that we absolutely need this, whatever, additional
19 deposition or additional two depositions.

20 Is this something that we should take up today?

21 MR. GIOVE: So, Your Honor, Nick Giove for
22 plaintiff.

23 I don't feel strongly about whether we take this up
24 today or down the road.

25 I just -- I do feel strongly that the idea of

1 | having a complex Hatch-Waxman patent infringement action in
2 | which plaintiffs are limited to three 30(b)(1) depositions to
3 | prove their case is entirely unworkable and unprecedented, in
4 | fact.

5 | I'm fine with Your Honor putting numbers, but the
6 | idea that we would be limited to three is not something that
7 | we could -- that we could work with.

8 | And on the flip side of that, like you said, the
9 | plaintiffs, as the brand, the plaintiff's fact witnesses are
10 | all going to be talking at things like the development of the
11 | branded drug and maybe some commercial and regulatory issues.

12 | But there's really no justification for exceeding
13 | the default of 10 depositions that we would have and -- that
14 | we would have of our witnesses; right? Of course, with the
15 | application if there's a special need and you needed to take
16 | 12 and they could show that, that's fine.

17 | But both ends of defendants' proposal here are
18 | truly problematic for us, especially limiting us to three.
19 | We have two types of patents in this case: method of
20 | treatment and formulation, which means, off the top of my
21 | head, I can tell you in terms of functional categories, we're
22 | going to need, you know, four to seven of each defendant.
23 | And Your Honor knows the difference between a 30(b)(6)
24 | witness and a 30(b)(1). These 30(b)(6) witnesses are
25 | packaged and curated and prepared. They're much less useful

1 | than an actual witness who has actual relevant
2 | contemporaneous facts.

3 | So the number three is a problem for us. And if we
4 | want to defer this to another time, that's fine, but I did
5 | want to emphasize that issue for plaintiff, for at least.

6 | THE COURT: All right. I appreciate that.

7 | How about for defendants? Who wants to take the
8 | first shot?

9 | MR. SHELHOFF: Dmitry Shelhoff from Shelhoff
10 | Canfield and Chin.

11 | So I take issue with the characterization that
12 | three depositions is, quote/unquote, unprecedented, I would
13 | say -- it's rather routine. So I'd use the word "routine."

14 | So -- in this case, plaintiffs would need a little
15 | bit more.

16 | But in terms of saying it is unprecedented, this is
17 | just not accurate.

18 | THE COURT: Okay. All right.

19 | Any other defendants?

20 | MR. FRESE: Your Honor, Bradford Frese, again, for
21 | Appco and Somerset.

22 | I will also offer that this case is something of a
23 | unique factual circumstance in that the molecule that's at
24 | issue here, viloxazine has been used extensively since the
25 | 1980s as an antidepressant in Europe. And so there's a large

1 amount of prior art out there. There are number of doctors
2 who have used it. There are a number of patients who have
3 had experience with it. And there's a possibility that we
4 can demonstrate, through diligent fact discovery, some public
5 use and other defenses that might be useful in terms of
6 developing our obviousness case.

7 So I do foresee that this may be a fact-intensive
8 case and, thus, you know, 12 depositions may be warranted.

9 On the other hand, we are willing to let this
10 develop and see what we learn in terms of the parties'
11 contentions and the parties' positions and whether or not,
12 you know, going beyond the maximum of 10 is necessary.

13 THE COURT: All right. I appreciate that.

14 Anybody else want to be heard on the defense side?

15 No? All right.

16 I want to at least put some numbers on --

17 (Interruption in proceedings)

18 THE COURT: Sorry. I thought somebody was
19 speaking.

20 I do emphasize if -- as may be the case, any party
21 who believes it has a real identifiable and articulable need
22 to take additional depositions may do so, keeping in mind
23 what Mr. Giove said about that there are two issues here;
24 right? One is method of treatment; one is formulation -- and
25 that they may be -- are likely to be separate -- or separate

1 witnesses for each of those, I'm going to allow the plaintiff
2 to take a maximum of six depositions of each defendant.

3 I will allow the defendants to take a maximum of 10
4 depositions. These are just the 30(b)(1), 30(b)(6) witnesses
5 of course -- a maximum of 10 depositions of the plaintiff.

6 But I again reiterate the parties may make an
7 application for additional depositions on a showing of good
8 cause. Okay?

9 So that's six for plaintiff for each defendant and
10 10 total for the defense.

11 The RFAs, my guess is this is something we do want
12 to address now because you're likely to be serving that with
13 your discovery requests; right?

14 So if I understand it, just to tee the issue up,
15 plaintiff proposes to serve a total of 40 on each defendant
16 and that the defendants can jointly serve 20 on the plaintiff
17 and each defendant serve 20 on the plaintiff.

18 The defendants propose that the plaintiff can serve
19 20 on each defendant and 10 common requests on all
20 defendants, and that under the defendants' proposal, they
21 could serve joint 20 on plaintiff and individually serve 10,
22 which is, interestingly, fewer -- 10 fewer than what the
23 plaintiffs would have allowed the defense to serve, if I
24 understand that correctly --

25 (Simultaneous conversation)

1 MR. GIOVE: Your Honor.

2 THE COURT: Yeah, go ahead, Mr. Giove.

3 MR. GIOVE: So on this issue, two important points.
4 The federal rules don't put a limit on RFAs, and they don't
5 put a limit on --

6 THE COURT: But judges do.

7 MR. GIOVE: But for good reason because RFAs are
8 used to narrow and -- narrow the issues in the case; you
9 know, admit things out that don't need to be dealt with.

10 Now, I'm absolutely fine putting limits on these --
11 on these numbers.

12 But common RFAs are of very little use to
13 plaintiff. I can't, off the top of my head think of any that
14 I would be inclined to serve at this time.

15 THE COURT: Right.

16 MR. GIOVE: So I am not really interested in common
17 RFAs.

18 Now, I can see, since there are common issues of
19 validity, why defendants might have occasion to agree on and
20 serve common RFAs on me; right?

21 But the reverse is just not true. So I don't think
22 any order should incorporate common RFAs for us to serve, for
23 plaintiff to serve.

24 And I would just say, listen, I don't feel all that
25 strongly about this. If we have to prove something up

1 | because we've run out of RFAs, then that's just going to make
2 | more work for everyone. It does streamline the trial when
3 | you have -- you know, 80 patent claim limitations and you
4 | have RFAs on 60 of them; you don't have to deal with them at
5 | trial.

6 | But, again, I just -- if we're going to put numbers
7 | to these, I don't -- I don't need common RFAs on my side, at
8 | least.

9 | THE COURT: Fair enough.

10 | MR. GIOVE: Okay.

11 | THE COURT: -- defense side?

12 | MR. KOOPMAN: Your Honor, this is Andy Koopman of
13 | Buchanan on behalf of Apotex.

14 | The main differences here are just -- you know, 40
15 | total in plaintiff's proposal. 30 total in defendants'
16 | proposal.

17 | I don't think there's a significant distinction
18 | between those two numbers, frankly.

19 | THE COURT: Not really.

20 | MR. KOOPMAN: Taking what -- you know, taking what
21 | plaintiffs have said regarding common RFAs, defendants'
22 | proposal had common RFAs for both sides. Plaintiff's
23 | proposal only imposed that limitation on defendants.

24 | If they want to throw out the idea of common RFAs,
25 | I think there's middle ground here to allow the defendants to

1 each have their own complete set of RFAs and thus not impose
2 that limitation on either side of the case.

3 THE COURT: So, then, what would your numbers look
4 like on the defense side, Mr. Koopman?

5 MR. KOOPMAN: It seems to me that a compromise
6 position here would be each party can serve, you know, let's
7 say 35 between -- right between 40 and 30. And none of the
8 parties are required to rely on common RFAs. So each
9 defendant could serve 35 on plaintiffs, and plaintiff can
10 serve 35 on each defendant.

11 MR. GIOVE: Yeah, but the plaintiffs and the
12 defendants are not similarly situated here. The plaintiffs
13 have -- are dealing with the same issue, validity; right? So
14 you're going to ask things about the development and the
15 validity and this and that.

16 The RFAs that are going the other way, i.e., from
17 plaintiffs to defendants, are all necessarily different
18 because we have different generic products, different
19 abbreviated new drug applications.

20 So I don't think it's quite fair to analogize the
21 usefulness of common RFAs from plaintiffs and common RFAs
22 from defendants.

23 THE COURT: Okay. I appreciate the parties'
24 positions.

25 This is what I'm going to allow. I'm going to

1 allow -- I agree with -- I agree with Mr. Giove that for the
2 plaintiff, on this area, there's probably not a lot of
3 purpose and value in common RFAs because in contrast to one
4 sole plaintiff where the defendants are all going to be
5 getting presumably the same response to the same or
6 substantially similar requests to admit, here, the plaintiff
7 has a duty to make inquiry and conduct discovery as to each
8 of the defendants.

9 So I'm going to allow the plaintiff to serve a
10 total of 40 RFAs, which I don't regard in and of itself an
11 unreasonable number, although Mr. Giove's correct that
12 Rule 36 does not put a limit on them. We've all done
13 litigation enough to see what parties abuse -- not you; not
14 the lawyers in this case -- but in other cases abused Rule 36
15 to serve an oppressive or unreasonable number of requests to
16 admit and served, you know, hundreds of them, and then the
17 Court is in a position of substantially limiting them.

18 I do think RF As have, particularly in a more
19 complicated case like this where it's going to be -- at some
20 point going to be particularly useful to separate out that
21 which is in dispute from that which is not in dispute, I
22 think the RFAs have a salutary purpose of more efficiently
23 getting to the point of identifying what's really in dispute.

24 So I'm going to allow the plaintiff to serve 40
25 RFAs on each defendant.

1 I'm going to allow the defendants to serve 20
2 individual RFAs each on the plaintiff and 20 joint RFAs on
3 the theory that a lot of the defendants' inquiry is going to
4 be common among the defendants. And so there's little to be
5 served by -- or accomplished by having each defendant serving
6 various iterations of the same RFA.

7 But I'm still also allowing the 20 individual
8 requests to admit as to each defendant. If they do have a
9 particularized inquiry, they have a full and fair opportunity
10 to develop that as well. Okay?

11 So it'll be 40 on the plaintiff's side, and for the
12 defendants, 20 joint, 20 individual.

13 I think that resolves that.

14 A couple of other issues. I have every confidence
15 that the parties can also submit an appropriate discovery
16 confidentiality order.

17 And I've already -- you've already had an
18 e-discovery conference; right? You just -- you're working on
19 the joint e-discovery stipulation?

20 MR. GIOVE: Nick Giove for plaintiff.

21 We have had a Rule 26(f) conference --

22 THE COURT: Okay.

23 MR. GIOVE: -- various things.

24 We have not circulated a draft proposed ESI plan,
25 but I believe it's in the schedule.

1 THE COURT: Let me go back to that.

2 I'm sorry. January 9. Right.

3 MR. GIOVE: So we will absolutely adhere to that.

4 Assuming this is the schedule Your Honor enters, we'll adhere
5 to that ESI date.

6 THE COURT: That's fine.

7 All right. A few other issues that -- I am not
8 sure -- I'll let you folks tell me whether we have an actual
9 dispute here. I don't think we do.

10 Remote depositions, I know the plaintiff
11 proposed -- Supernus proposes, well, we'll discuss and
12 address on a case-by-case basis.

13 Defendants, I think, at least at this point, seem
14 to suggest a more black-and-white approach where any witness
15 outside of the United States will be deposed remotely. I
16 know this is not an issue that we really need to address
17 today, and I don't think we should address it today unless
18 any counsel wants to try and persuade me otherwise.

19 But I can't rule out of hand that there might be an
20 out of -- I'm sensitive to efficiency and not running into a
21 situation where we're trying to scramble to get a witness
22 from overseas or to get all counsel in this case overseas to
23 the witness. That could delay a case and unnecessarily
24 inflate costs.

25 But at the same time, I can't foreclose out of hand

1 | the possibility that there might be some witness who is so
2 | critical or whose testimony is so critical that, for whatever
3 | reason I can't anticipate right now, an in-person deposition
4 | is appropriate and a remote deposition is not an adequate
5 | substitute.

6 | So if either side wants to address that now, I'm
7 | happy to address it. But otherwise I'm content to let that
8 | issue await resolution as necessary.

9 | MR. GIOVE: Plaintiff is fine letting this --
10 | dealing with this at a later date.

11 | THE COURT: Anybody on the defense side?

12 | Okay.

13 | Production of ANDA product research and production
14 | of ANDA product samples, I just don't see a dispute here
15 | that's worth addressing today. And if there were a dispute,
16 | obviously I would want a much more substantive analysis from
17 | each side before I dip my toe in the sample production arena
18 | or product research.

19 | Does anybody disagree with that?

20 | MR. GIOVE: Nick Giove for plaintiff.

21 | No, Your Honor. We haven't even served Rule 34
22 | production requests.

23 | THE COURT: Right.

24 | MR. GIOVE: That will necessarily be percolated up
25 | through that process. So...

1 THE COURT: That's fine.

2 Any defense counsel disagree?

3 No. All right. Well, good, this is actually a
4 natural segue to one of the things that I did want to discuss
5 with the parties.

6 So I know a number of you have appeared in front of
7 me -- Mr. Baton, Mr. Richter, Ms. Butler have appeared of
8 me -- and certainly Ms. Conroy -- in other patent litigation
9 cases, but I also think a number of you have not.

10 And I think it's always important to --
11 particularly with discovery disputes and the like, to be as
12 efficient as possible when you're up against a 30-month stay.

13 So if there are issues that arise in written
14 discovery or, you know, product sampling discovery, in terms
15 of addressing -- and this will all be spelled out in the
16 scheduling order that will issue today, I do not want motion
17 practice. I think motion practice tends to just expand and
18 delay the resolution of these issues.

19 What I would like would be a joint discovery
20 dispute letter from the parties. I assume in a lot of these,
21 if there are discovery disputes in the case, while we may
22 have some disagreement or variation among the defendants, I
23 suspect it won't be by much. If there is, it can be noted.

24 But generally what I want to know is what is the
25 dispute at bottom? What is the position of the side who is

1 | either seeking the discovery or claiming that the discovery
2 | they've gotten thus far is insufficient? Or raising some
3 | other objection, what your position is, any compromises that
4 | you offered in the meet and confer process.

5 | And then same thing for the other side. All right?

6 | It's so much easier -- and I'd like it on an
7 | issue-by-issue basis because it's so much easier to identify
8 | what the issue is, understand the parties' positions, and
9 | then make a decision and do that on a very fast turnaround if
10 | it's presented in that manner as opposed to, you know -- and
11 | I'm sure you've dealt with this from adversaries sometimes,
12 | there's so much fluff or fingerpointing, which is never
13 | helpful, in there that half the battle is separating that out
14 | from what the actual substantive dispute is -- because once
15 | you can identify most discovery fights what the substantive
16 | dispute is, you can resolve that fairly efficiently. And,
17 | again, to me, I think there's a real premium on that when
18 | you're up against 30-month stay deadlines, because, as you
19 | folks know all too well, every delay in getting something
20 | done has a domino effect with regard to all of the other
21 | deadlines. So wherever we can avoid that, it's good to do
22 | so.

23 | Does anybody have any questions or objections about
24 | my plan for raising written discovery disputes?

25 | MR. GIOVE: None from plaintiff, Your Honor.

1 THE COURT: No? Great. Terrific.

2 I'll start with plaintiff, anything else that we
3 should discuss today?

4 MR. GIOVE: No. Thank you for your time.

5 THE COURT: Thank you very much.

6 How about among my defense counsel?

7 MS. ESCANLAR: Your Honor, this is Katherine
8 Escanlar. I just have one quick question.

9 THE COURT: Sure.

10 MS. ESCANLAR: I just noticed in the schedule there
11 is no date for a date by which to first serve the discovery
12 requests.

13 THE COURT: Oh, yes.

14 MS. ESCANLAR: And I know from other cases, you put
15 a date in there, and since it wasn't proposed, I was just
16 wondering if you were going to do that in this case or not
17 have it.

18 THE COURT: No. That's an excellent question.
19 And, actually, you just reminded me too of a separate date I
20 need to give you, which is the deadline to raise written
21 discovery disputes.

22 So what do counsel propose as the deadline to serve
23 written discovery requests?

24 MR. GIOVE: Your Honor, this is Nick Giove for
25 plaintiff.

1 I think the default rule is that once we've had the
2 Rule 26(f), we can serve it, and so -- and that date has come
3 and past. So I don't think that a date is necessary.

4 I think we can probably just get started.

5 THE COURT: Yeah, but I like to know that -- not
6 that you folks would ever do this because I know you're
7 extremely diligent, but I've had other cases where there
8 isn't a deadline and somebody's still serving written
9 discovery six months from now. Which poses all sorts of
10 other problems.

11 MR. GIOVE: Oh, you're -- are you asking for a
12 deadline after which no further discovery can be served or
13 when we can start serving discovery?

14 THE COURT: After which no further discovery can be
15 served.

16 MR. GIOVE: Oh, okay. Apologies. Then --

17 THE COURT: That's okay.

18 MR. GIOVE: I don't -- I don't have a strong
19 feeling.

20 But whatever Your Honor thinks to -- it needs to
21 deal with all the -- any disputes that arise, so maybe two
22 months or six weeks before the close of fact discovery would
23 make sense.

24 THE COURT: That's --

25 MR. GIOVE: Or what I mean --

1 (Simultaneous conversation)

2 MR. GIOVE: I don't feel strongly one way or the
3 other.

4 MR. BATON: Your Honor, Bill Baton for Supernus as
5 well.

6 We just don't want to have the situation where you
7 serve discovery and then you -- warrants further discovery
8 based on what you get back. So we just have to be careful
9 about, you know --

10 (Simultaneous conversation)

11 THE COURT: No. That's a fair point, though.

12 But that's basically follow-up or supplementation
13 as opposed to a raft of -- and I just had this in another
14 case -- thank god it wasn't a Hatch-Waxman case. It was an
15 employment dispute case where the plaintiff served two years
16 into the case, entirely new sets of requests to produce and
17 interrogatories on entirely different subjects. That's what
18 I want to avoid because that creates all sorts of case
19 management issues -- right? -- and keeps us all awake at
20 night vis-à-vis that October 2, 2028, deadline.

21 So I am not talking about follow-up. I expect --
22 and, look, you're all excellent lawyers. I expect, one, if
23 there are deficiency issues or, obviously, some unforeseen
24 change of events where supplementation is appropriate, I
25 expect the parties to resolve that. And if you can't, I'm

1 going to be extremely reasonable; certainly not hold you to
2 the written discovery service date.

3 So -- and, obviously, if there's good cause even
4 later to serve written discovery under Rule 16 and there is
5 good cause under Rule 16 and you can do so either by consent
6 of the parties or leave of the Court.

7 Why don't we say -- sorry -- I just wanted to --
8 you have a January 27, 2027, date for substantial completion
9 of document production.

10 So I'm thinking we set a date of -- and I'm open to
11 suggestion on this, but I'm thinking we set a date of
12 February 13th for -- to serve written discovery. That will
13 allow for any follow-up, and it will allow for any
14 supplementation.

15 If there is some dispute that arises about whether
16 a party has -- seeks supplementation and the other side
17 doesn't agree and thinks it's something that's entirely --
18 should have been served with the original set, we can easily
19 resolve that in time to still meet the substantial completion
20 deadline.

21 Any issues with February 13th?

22 MR. SHELHOFF: -- and that's 2027?

23 THE COURT: No. That's 2026.

24 MR. SHELHOFF: No. But do you want to cut off --
25 do you want to have a deadline to submit, like, all written

1 | discovery February of 2026, which is just a month away?

2 | THE COURT: Yeah, so serve your written discovery
3 | requests.

4 | Yeah, otherwise, how are you going to have a
5 | January 27, 2027, substantial completion deadline?

6 | MR. SHELHOFF: Well, I mean, we can start discovery
7 | now, but the cutoff for written discovery, if you set it on
8 | February 17, 2016, then it seems like --

9 | THE COURT: What are you likely to learn in, say,
10 | May, July, August that would generate -- I am not talking
11 | about supplementation or say some sort of deficiency that you
12 | and the adversary meet and confer about.

13 | An entirely new subject matter that would warrant
14 | discovery in, say, mid-to late 2026?

15 | MR. FRESE: Your Honor, Bradford Frese for Appco,
16 | Somerset.

17 | We get their responses to our validity contentions
18 | on May 13th. That's likely going to include their
19 | identification of the secondary considerations of
20 | nonobviousness upon which they're going to rely as well as
21 | that's going to prompt some discovery from us in terms of
22 | documents. So, for instance, if there's -- you know, relying
23 | on information such as praise from others, we may want to
24 | serve document requests that are directed to the relationship
25 | with the people who are praising the invention. Or if

1 they're serving -- if they're relying on commercial success,
2 we may want to bolster our document requests regarding the
3 financials of this drug, what they're doing to market it, so
4 on so forth. So that's information that may come up middle
5 of the year that might prompt some additional discovery from
6 us.

7 THE COURT: Okay.

8 MR. FRESE: That being said, I'm fine with having a
9 February 13th deadline for initial service of document
10 requests. Usually we can anticipate a lot of these issues
11 coming up as defendants. You know, we may, just given the
12 number of defendants in this case, we may ask for it to a
13 little bit longer just so that we can all coordinate and get
14 to agreement on a single set of document requests. It can be
15 a bit like herding cats.

16 THE COURT: I can make it mid-March.

17 And the other thing I'll add is in that
18 situation -- because that's a fair point that you make. One,
19 I would expect in that situation, the parties to meet and
20 confer and hopefully come to some sort of agreement; right?

21 And then if you can't, that would be a fair Rule 16
22 good cause argument once the issue's actually joined and
23 there's a little more clarity to -- and again, this assumes
24 that the parties can't reach agreement -- to come back to the
25 Court and say, you know, we just got their responses to the

1 | invalidity contentions. We need a reasonable amount of
2 | document production requests to explore this in detail.

3 | Now, I think Mr. Giove and plaintiff's counsel
4 | would probably anticipate the judge would be receptive to
5 | that argument and the parties in any event will probably
6 | resolve it in the meet and confer process.

7 | MR. GIOVE: Yeah, Your Honor. Nick Giove for
8 | plaintiff.

9 | I've been through this enough times to know that
10 | the production requests we get from defendants are going to
11 | be broad. The initial requests are going to absolutely cover
12 | indicia of nonobviousness.

13 | THE COURT: Right.

14 | MR. GIOVE: So I would imagine that anything that
15 | is -- that comes up in a -- in a response to a validity --
16 | invalidity contention will fall within the scope of something
17 | they have already served.

18 | That being said, if you want to set a mid-March
19 | date, that's fine with plaintiff. And if there is a reason
20 | to meet and confer because they need to serve new stuff after
21 | that date, we'll take it up at that time, I guess.

22 | THE COURT: That seems very reasonable to me.

23 | Does anybody have ob- -- any defendants object to
24 | March 16th? No?

25 | We'll use March 16th.

1 And then -- I'm glad you reminded me of that,
2 Ms. Escanlar. Thank you.

3 One other date that I do want to have in here is a
4 deadline to raise disputes about written discovery after the
5 parties have met and conferred and you're truly at an
6 impasse.

7 MALE SPEAKER: Your Honor, just before we get to
8 that the March 16th --

9 THE COURT: Yeah.

10 MALE SPEAKER: -- is the -- we can serve discovery
11 before that, obviously; right?

12 THE COURT: Yes. Absolutely. Absolutely --

13 (Simultaneous conversation)

14 MR. SHELHOFF: -- for initial discovery; right?

15 THE COURT: Yes. The March 16th date, yes, for
16 initial written discovery.

17 MR. SHELHOFF: Sounds good.

18 THE COURT: But I want it clear, by "initial
19 discovery," I mean, beyond that, anything that you serve is
20 either going to be by agreement of the parties or with leave
21 of the Court if there's a dispute.

22 MALE SPEAKER: Understood.

23 MR. SHELHOFF: Yeah, but I, I mean, I kind of
24 foresee that once they serve the validity contentions -- and
25 if you want to serve some additional discovery, it's in the

1 interests of plaintiffs to simply disagree. So there's going
2 to be already a dispute.

3 THE COURT: Mr. Giove, is it in the interests of
4 plaintiffs to just disagree?

5 MR. GIOVE: Absolutely not, Your Honor. Absolutely
6 not.

7 THE COURT: No, because, obviously, you still have
8 recourse to the Court, and they're just spending more money
9 to litigate an issue that they know they're going to lose on.

10 MR. SHELHOFF: Okay.

11 THE COURT: But what I'm not -- look, especially in
12 a Hatch-Waxman case, and if you think I'm being too
13 restrictive, I do apologize.

14 But, please, understand, from where the Court sees,
15 especially from where the magistrate judge sits, I want to
16 get the case moving as fast as possible and tee up any
17 discovery production and issues well before that substantial
18 completion deadline of January 2027 because obviously that's
19 going to have a significant impact on depositions, which, in
20 turn, of course, is going to have a big impact on the
21 experts. And the next thing you know, we're bumping up
22 against -- and I am not even getting into if any party wants
23 to be heard an summary judgment, but we're already getting
24 into late 2027 and early 2028, and we have to start seriously
25 thinking about trial.

1 So the idea that, you know, we could be in late
2 2026 and somebody's still serving written discovery, I think
3 is potentially very problematic --

4 (Simultaneous conversation)

5 MR. SHELHOFF: -- defendants agree and understand
6 that. Yes. We just don't want like a hard cutoff which
7 prevents any further discovery. That's all.

8 THE COURT: Okay.

9 Deadline to raise disputes concerning written
10 discovery, if we have a substantial completion deadline of
11 January 27th, it would seem to me to make a lot of sense to
12 make it some reasonable period -- not too long, but some
13 reasonable period after that; right?

14 MALE SPEAKER: Yes.

15 THE COURT: So -- and obviously that's the
16 outermost deadline. If a dispute arises between -- you know,
17 earlier than then and the parties truly can't resolve it,
18 then you're certainly free to raise it with the Court.

19 But I think I'll make that, then, February -- hold
20 on. I'm sorry. We're in 2027. We said we have a -- so why
21 don't we make that March 8th, 2027?

22 Anybody object to that?

23 MR. GIOVE: No objection from plaintiff.

24 THE COURT: Defense counsel, anybody?

25 (Simultaneous conversation)

1 MR. SHELHOFF: No objection from defendants.

2 THE COURT: All right.

3 I'll go back to plaintiff.

4 Anything else that we should address today?

5 MR. GIOVE: No, Your Honor.

6 THE COURT: How about on the defense side? No?

7 All right. So we'll get the scheduling order up.

8 That will have the date and time for the next conference.

9 And I really wish everybody a very happy, healthy
10 and safe holidays. It's a real pleasure to see all of you
11 again.

12 UNIDENTIFIED SPEAKERS: Thank you, Your Honor.

13 (Conclusion of proceedings)

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I, SARA L. KERN, Transcriptionist, do hereby certify that the 45 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

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s/ *Sara L. Kern*

December 19, 2025

Signature of Approved Transcriber

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