

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

FEDERAL TRADE COMMISSION,

Petitioner,

v.

Misc. No. 3:14-mc-00005-REP

**RECKITT BENCKISER
PHARMACEUTICALS, INC.,**

Respondent.

**SUPPLEMENT TO SECOND INTERIM REPORT
AND RECOMMENDATIONS OF SPECIAL MASTER**

On February 9, 2016, the undersigned submitted the Second Interim Report and Recommendations of the Special Master ¹ On that same date, an order issued directing the parties to take steps to clarify their positions on certain matters raised in the Second Interim Report. (Doc. No. 70) The parties have complied with the order, and this supplemental report provides the final recommendations of the Special Master with regard to the two tranches of documents that are the subject of the Second Interim Report.

I. Items Listed on Appendix 3 to the Second Interim Report

Appendix 3 listed a group of documents that, in the view of the Special Master, did not qualify in their entirety for the protection of the attorney-client privilege. However, it was not self-evident that the subject matter of the documents listed on Appendix 3 fell within the scope of the specifications in the Civil Investigative Demand

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issued by the Federal Trade Commission. The parties were directed to meet and confer, and to determine whether they could

A. Documents to Be Conformed to Initial Recommendations

RBP identified certain redactions that, in the view of the Special Master, had already been recommended. These redactions appear on the master set of redacted documents retained by the Special Master, but as a result of clerical error may not have been similarly redacted on the document set delivered to RBP (and perhaps the set delivered to the Court). The Special Master hereby confirms that the following documents identified by RBP were intended to be redacted in the precise manner suggested by RBP: SM_03282, SM_03062, SM_03263, SM_03475, SM_01899, and SM_03644.

The Special Master will schedule a convenient time to visit chambers and ensure

B. Comparison Document Not Recommended for Redaction

Similar to the instances just described, RBP recommends that five documents, SM_02463, SM_02883, SM_03300, SM_03664, and SM_03673, be redacted to be consistent with document SM_02603. The redaction to SM_02603 located and reported by RBP was not recommended by the Special Master, and is not found in the set of control documents retained by the Special Master. The redaction to SM_02603 that appears in the set of documents delivered to RBP is a clerical error. Thus, the Special Master recommends (1) that no changes be made to the original proposed redactions of documents SM_02463, SM_02883, SM_03300, SM_03664, and SM_03673; and (2) that the redaction to SM_02603 found in the RBP set of documents be disregarded. The

to ensure

that the communication is not designated for redaction, rendering SM_02603 consistent with the other five documents in the group.

C. Proposed Redactions That Are Non-Substantive in Nature

Many of the redaction inconsistencies identified by Respondent are non-substantive content such as salutations or closings to email correspondence.²

Specifically, the following documents are noted: SM_02020, SM_02160, SM_02219, SM_02288, SM_02673, SM_02861, SM_03001, SM_03421, SM_03449, SM_03468, SM_03476, SM_0

correspondence); SM_02047, SM_02284, SM_02324, SM_02541, SM_03361

ondence); SM_02629,

(1) RBP identified inconsistencies in the content designated for redaction within a family of documents containing content found in document SM_02680. The Special Master initially categorized document SM_02680 as privileged and subject to withholding by RBP in its entirety. Given the designation of SM_02680 as an entirely privileged document, RBP proposes that all other documents containing the same content as SM_02680 be designated for

initial determination of privilege was not based

on the content of SM_02680, but on the fact that document SM_02680 contains

forwarded that particular message inadvertently prior to its completion. Upon further consideration, the Special Master has determined that the recommendation to withhold SM_02680 was incorrect, as the same content was communicated repeatedly in other documents that were not the subject of an inadvertent transmission. The Special Master recommends that SM_02680 be produced in redacted form consistent with the proposed redactions designated on the family of documents identified by RBP as Group 0011. Corrections to the appendices reflecting this recommendation appear on the table attached as Exhibit A to this supplemental report. The Special Master will supplement the

that conforms to

these recommendations.

(2) RBP recommends corrections to documents SM_01236, SM_01486, and SM_01660, in order for the content designated for redaction on those documents to be consistent with document SM_01802. The Special Master previously

identified documents SM_01236, SM_01486, SM_01660 on Appendix 2 as privileged and subject to withholding in their entirety. No changes are required to these documents. The Special Master recommends that SM_01802 be corrected and designated for redaction to render it consistent with the treatment of SM_01236, SM_01486, and SM_01660. The Special Master will supplement

(3) RBP recommends corrections to documents SM_00268, SM_00670, SM_00973, SM_01048, SM_01434, and SM_01817 to conform the content recommended for redaction to the treatment of document SM_01409. The Special Master previously placed document SM_01409 on Appendix 2, reflecting the recommendation that it be withheld as privileged in its entirety, and placed documents SM_00268, SM_00670, SM_00973, SM_01048, SM_01434, and SM_01817 on Appendix 3, as non-privileged documents that reveal no nexus with the subject matter of the Citizen Petition or the Shared REMS process. As noted above in Part I of this supplemental report, the parties have since determined that all documents identified on Appendix 3 are responsive to the Civil Investigative Demand. The Special Master therefore recommends (1) that document SM_01409 be redacted to render it consistent with SM_00268, SM_00670, SM_00973, SM_01048, SM_01434, and SM_01817; and (2) that the redacted version of document SM_01409 be produced along with the items listed on Appendix 3. The necessary corrections to the appendices are noted on Exhibit A to this supplemental report. The Special Master will provide both RBP and the Court with a corrected copy of document SM_01409.

(4) RBP recommends corrections to documents ~~SM_0234~~ and SM_02959 to render them consistent with the treatment of document SM_02098. The Special Master previously identified document SM_02098 on Appendix 2 as privileged and subject to withholding in its entirety. Upon review, the Special Master recommends that SM_02098 be produced in a form consistent with SM_02334 and SM_02959. The required corrections to the appendices are noted on Exhibit A to this supplemental report.

(5) RBP recommends corrections to documents ~~SM_0149~~ and SM_00370 to render them consistent with the treatment of document SM_01149. The Special Master previously placed document SM_01149 on Appendix 2 as privileged in its entirety and documents SM_00048 and SM_00370 on Appendix 3, as non-privileged documents that reveal no nexus with the subject matter of the Citizen Petition or the Shared REMS process. The parties have since determined that all documents identified on Appendix 3 are responsive to the IJC Investigative Demand. The Special Master recommends the production of document SM_01149 along with the other items listed on Appendix 3. Necessary corrections to the appendices are noted on Exhibit A.

redactions: SM_00145, SM_00570, SM_00931, SM_01734, SM_00132, SM_00528, SM_01036, SM_01097, SM_01132, SM_01242, SM_01383, SM_01565, SM_01609, SM_01748, SM_01922, and SM_02003. A second group of documents in this category includes documents produced by RBP in redacted form, or withheld entirely. The Special Master recommends that they be redacted to conform to the recommendations set forth in the Second Interim Report. SM_03481, SM_02205, SM_02971, SM_03107, SM_02677, SM_02113, SM_03089, SM_01868, SM_02085. To ensure consistent categorization of these documents, the Special Master clarifies the appendix entries as noted on Exhibit A to this supplemental report. The Special Master

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March 2016, I will electronically file the foregoing Supplement to Second Interim Report and Recommendations of the Special Master with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) via email to the following:

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SM_01409	2	3	Remove SM_01409 from Appendix 2, pg. 3, and add SM_01409(R) to pg. 5 of Appendix 3 email transmitting draft of correction to the reply to Amneal	SM_01409 recommended for production in redacted format consistent with SM_00268
SM_01868	1	18	Replace SM_01868 with SM_01868(R)	SM_01868 recommended for production in redacted format consistent with SM_00165(R)
SM_02085	1	51	Replace SM_02085 with SM_02085(R)	SM_02085 recommended for production in redacted format consistent with SM_02473(R)

SM_02971	1	50	Replace SM_02971 with SM_02971(R)	SM_02971 recommended for production in redacted format consistent with SM_03355(R)
SM_03089	1	43	Replace SM_03089 with SM_03089(R)	SM_03089 recommended for production in redacted format consistent with SM_02921(R)