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FIRST JUDICIAL DISTRICT OF PA
USER I.D.: _____

JUN 8 - 2009

L. RYANT-DAVIS

IN RE DIGITEK® LITIGATION

Applicable to All Cases

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

MARCH TERM, 2009

NO. 5166

CASE MANAGEMENT ORDER NO. 3
**CONSENT ORDER REGARDING THE PRESERVATION OF DOCUMENTS AND
ELECTRONICALLY STORED INFORMATION**

This matter, having been opened to the Court by counsel for the parties, and the parties having consented, stipulated and agreed to entry of the within Consent Order, and good cause appearing therefor;

It is, on this 30th day of June, 2009, hereby **ORDERED** as follows:

I. General

This Consent Order governs the preservation of potentially relevant documents, data, and tangible things in cases filed in or consolidated before this Court as components of *In re: Digitek® Litigations*, Philadelphia Court of Common Pleas, March Term, 2009, No. 5166 and to every action that is or will in the future become a part thereof (collectively “the Litigation”).

II. Definitions

A. As used herein, “Documents, Data, and Tangible Things” shall be interpreted broadly to include electronically stored information (“ESI”)¹ on hard drives, USB or thumb drives, databases, computers, handheld devices, floppy disks, CD-ROM, magnetic tape, optical disks, or other devices for digital data storage or transmittal.

¹ ESI includes but is not limited to voice and video recordings including but not limited to voice-mail communications.

B. As used herein, “Preservation” shall be interpreted broadly to accomplish the goal of maintaining the integrity of documents, data, and tangible things and shall include taking reasonable steps to prevent the partial or full destruction, alteration, shredding, or deletion of such materials. Except where necessary to comply with the provisions set forth in paragraphs IV, V, VI, and VII below, and provided that reasonable steps have otherwise been taken to preserve potentially relevant materials in accordance with this Consent Order, the parties may continue the practice of rewriting backup tapes and media.

III. General Preservation Obligations – All Parties

A. All Parties shall take reasonable steps, including the dissemination of Legal Hold Notices to all individuals, personnel, and/or departments likely to possess information relating to Digitek® and the claims at issue in this action, to ensure the preservation of all documents, data, and tangible things that are reasonably likely to be the subject of discovery in the Litigation.

IV. Actavis Defendants’ Obligations

A. The Court finds that the preservation activities set forth below satisfy the preservation obligations of the Defendants in the Litigation who are related to or affiliated with any of the Actavis entities (collectively “Actavis Defendants”) and orders the Actavis Defendants to take the following measures to preserve information:

- (1) Preserve any and all hard copy documents created after January 1, 1998 that relate to or reflect the manufacture, testing, inspection, sale, distribution, and recall of any drug manufactured at the Actavis Totowa Little Falls, New Jersey facility;
- (2) Preserve any and all copies of hard drives and ESI that relate to or reflect the manufacture, testing, inspection, sale, distribution, and recall of any drug manufactured, that previously was collected in preparation for this and other litigation related to Actavis Totowa’s

Little Falls facility and that is currently being preserved by the Actavis Defendants' counsel; and,

- (3) Preserve all ESI, documents, and/or tangible things that relate to FDA inspections, FDA reports, FDA audits, notices of violation, or notices of non-compliance with best/good manufacturing practices concerning the Actavis Totowa facility at Little Falls, New Jersey from January 1, 1998 to the present date.

V. Mylan Defendants' Obligations

A. The Court finds that the preservation activities set forth below satisfy the preservation obligations of the Defendants in this matter who are related to or affiliated with any of the Mylan entities (collectively "Mylan Defendants") and orders the Mylan Defendants to take the following measures to preserve information.

- (1) Preserve any and all hard copy documents created after January 1, 1998 that relate to or reflect the distribution and sale of Digitek®, including documents related to the recall of Digitek®; and,
- (2) Preserve any and all copies of hard drives and Digitek® ESI that previously was collected in preparation for this and other litigation related to the distribution and sale of Digitek® (including materials related to the recall of Digitek®) that is currently being preserved by the Mylan Defendants' counsel.

VI. Plaintiffs' Obligations

A. The Court finds that the preservation activities set forth below satisfy the preservation obligations of the Plaintiffs in the Litigation and orders the Plaintiffs to take the following measures to preserve information:

- (1) Preserve all potentially relevant tangible things in their possession, including, but not limited to, all Digitek® tablets and any Digitek® labels, bottles, vials, containers, or packaging of any kind; provided that, to the extent any testing was done on any tablets prior to the entry of this Order or is done after entry of this Order, counsel shall preserve all documents, data, and tangible things regarding the testing, including chain of custody proofs and all test results. Defendants reserve the right to challenge the

propriety of any such testing and/or challenge the results of any such testing in appropriate circumstances.

- (2) Preserve the contents of the hard drives of those Plaintiffs, or those under their control, who may reasonably possess potentially relevant ESI or documents. This obligation does not require subsequent copies of hard drives, if copied, for preservation purposes.
- (3) Preserve potentially relevant ESI on any removable media; and,
- (4) Preserve any newly created potentially relevant ESI or documents.

VII. Acceptable Methods of Preservation

The following methods of preserving Documents, Data, and Tangible things shall satisfy a Party's duty to preserve in the Litigation.

A. Email

The Parties shall preserve potentially relevant e-mail communications (including associated attachments) of employees and/or departments receiving a Legal Hold Notice by either:

- (1) Preserving and maintaining one set of back-up tapes for implicated servers;
- (2) Creating and preserving an electronic snapshot of implicated servers; or,
- (3) Preserving such emails, within an electronic archive not subject to a deletion schedule.

To the extent subparagraphs (1) – (3) are not feasible, individual Plaintiffs shall preserve any documents, data, and tangible things that may be in electronic form in native format, along with associated attachments. These steps should be completed no later than fourteen (14) days from the entry of this Order.

B. Databases

The Parties shall preserve potentially relevant data held in databases by either:

- (1) Preserving such data in accessible electronic systems not subject to deletion schedule;
- (2) Creating and preserving an electronic snapshot of relevant database servers;
- (3) Preserving and maintaining one set of back-up tapes for relevant database servers; or,
- (4) Enabling an audit trail to allow for rolling back any transaction and recording the date, prior value, and user identification of any person who made any changes.

C. Electronic documents contained in Shared or Home Directories

Where potentially relevant electronic documents (e.g., word processing documents, spreadsheets, PowerPoint presentations, and voicemails) are subject to a deletion or overwrite schedule, the parties shall preserve potentially relevant documents contained in shared and home directories by either:

- (1) Preserving such directories and files contained therein in accessible electronic systems not subject to deletion schedule;
- (2) Creating and preserving an electronic snapshot of relevant shared drive or home directory servers; or,
- (3) Preserving and maintaining one set of back-up tapes for relevant servers.

VIII. Reservation of Rights

A. The Parties do not concede that any of the information subject to this Consent Order is discoverable, relevant, or admissible, and the Parties expressly reserve the right to challenge any specific discovery request concerning any such information. The Parties also reserve the right to challenge the competency, relevance, materiality, privilege, and/or

admissibility into evidence of such documents, information, or material in these or any subsequent proceedings or at the trial of these or any other actions, in this or any other jurisdiction.

IT IS SO ORDERED.



Honorable Sandra Mazer Moss