

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

THERAPEUTICSMD, INC.,

Plaintiff,

v.

TEVA PHARMACEUTICALS USA, INC.
and TEVA PHARMACEUTICALS
INDUSTRIES LTD.,

Defendants.

Civil Action No. 20-11087 (BRM/ESK)

Filed Electronically

**STIPULATION OF DISMISSAL OF COMPLAINT AS TO DEFENDANT TEVA
PHARMACEUTICAL INDUSTRIES LTD. AND AMENDMENT OF CAPTION**

Plaintiff TherapeuticsMD, Inc. (“TherapeuticsMD” or “Plaintiff”) and Defendants Teva Pharmaceuticals USA, Inc. (“Teva USA”) and Teva Pharmaceutical Industries Limited (“Teva Ltd.”) hereby stipulate, subject to approval of the Court, to dismiss the Complaint filed by Plaintiff against Teva Ltd. in the above-captioned action (“Action”) pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) and (ii). The Action will continue against Teva USA. The parties further stipulate that this dismissal is without prejudice and is subject to the following conditions:

1. Without conceding that it is a proper party to this litigation, Teva Ltd. stipulates to be bound by any Judgment, Order, or decision in this Action, or any appeal thereof.

2. Defendants stipulate that all of Teva Ltd.’s documents, witnesses, and information are in Teva USA’s possession, custody, and control for purposes of this lawsuit, subject to Paragraph 4. To be clear, Teva Ltd. agrees that it will search for and provide discovery in response to discovery requests and deposition notices served on Teva USA in the Action as if the discovery were Teva USA's own, subject to any objections, privilege

assertions, or other grounds to oppose discovery pursuant to FRCP or rules or orders of this Court.

3. Pursuant to paragraph 2 above, Defendants agree that any discovery requests directed to Teva USA, including Deposition Notices, Production Requests, Admission Requests, and Interrogatories, will be understood and interpreted as seeking discovery from Teva USA and Teva Ltd. Teva USA will respond to discovery requests for information in the possession, custody, or control of Teva USA and Teva Ltd., including requests for deposition testimony, and will not raise issues of documents or witnesses being in the possession, custody, or control of only Teva Ltd. as a basis for not producing them.

4. If the parties agree that a Teva Ltd. employee is a necessary fact witness, the witness will be made available for deposition in the United States, subject to any governmental travel restrictions due to the COVID-19 global pandemic or other health-related travel restrictions that may exist for any particular witness, upon notice to Teva USA without the need for: (a) service of a subpoena; or (b) if the witness is located outside of the United States, adherence to the procedures of the Hague Convention or other methods of foreign service/discovery. Teva USA will accept Rule 30(b)(6) deposition notices containing topics directed to information that may be held by Teva Ltd., and the witness presented in response thereto shall investigate information in the possession, custody, or control of Teva Ltd. if necessary to prepare for the noticed topics. If the parties disagree as to whether the Teva Ltd. employee is a necessary fact witness, then the parties shall present the matter to the Court for resolution. Teva USA will not use as a basis for objecting to any deposition notice served by Plaintiff the fact that: (i) an individual is an employee of Teva Ltd.; (ii) Teva Ltd. is not a party to this Action; (iii) Plaintiff failed to serve a third-party subpoena for the noticed individual or

entity; (iv) Plaintiff failed to adhere to the procedures of the Hague Convention or other methods of foreign service/discovery; or (v) the Court lacks personal jurisdiction over Teva Ltd. subject to the provisions of paragraph 7 below. In the event that the Court orders that the deposition of the Teva Ltd. employee shall be taken, then the Teva Ltd. employee will be made available for deposition in the United States, subject to any governmental travel restrictions due to the COVID-19 global pandemic or other health-related travel restrictions that may exist for any particular witness, pursuant to the Court's Order without requiring that Plaintiff adhere to the procedures of the Hague Convention or other methods of foreign service/discovery.

5. None of the foregoing shall be interpreted to limit Plaintiff's rights to discovery of Teva Ltd. or Teva USA.

6. This Stipulation and Order does not constitute a waiver of any objection or defense to, or any privilege or immunity from, the provision of discovery otherwise available to parties to an Action under the Federal Rules of Civil Procedure, the Federal Rules of Evidence, or any other applicable authority.

7. The Court retains jurisdiction over Teva Ltd. for the limited purpose of enforcing the terms of this Stipulation and Order and to adjudicate or resolve any disputes regarding its terms, interpretation, application, or requirements. Except as otherwise provided in this Stipulation and Order, Teva Ltd. does not waive and expressly retains its right to argue that the Court lacks personal jurisdiction over Teva Ltd..

8. The case caption should be amended to read: "TherapeuticsMD, Inc. v. Teva Pharmaceuticals USA, Inc., Civil Action No. 20-11087 (BRM/ESK)".

Dated: September 3, 2020

SO STIPULATED:

s/William C. Baton

William C. Baton
Sarah A. Sullivan
Alexander L. Callo
SAUL EWING ARNSTEIN & LEHR LLP
One Riverfront Plaza, Suite 1520
Newark, NJ 07102
(973) 286-6700

OF COUNSEL:

Edgar H. Haug
Nicholas Giove
Anna N. Lukacher
HAUG PARTNERS LLP
745 Fifth Avenue
New York, NY
(212) 588-0888

*Attorneys for Plaintiff
TherapeuticsMD, Inc.*

s/Liza M. Walsh

Liza M. Walsh
Christine I. Gannon
William T. Walsh, Jr.
WALSH PIZZI O'REILLY FALANGA LLP
Three Gateway Center
100 Mulberry Street, 15th Floor
Newark, NJ 07102
(973) 757-1100

OF COUNSEL:

George C. Lombardi
Michael K. Nutter
WINSTON & STRAWN LLP
35 W. Wacker Drive
Chicago, IL 60601-9703
(312) 558-5600

*Attorneys for Defendants
Teva Pharmaceuticals USA, Inc. and
Teva Pharmaceuticals Industries Ltd.*

IT IS SO ORDERED this 8th day of Sept., 2020:



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