

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

In re:	:	MDL No. 2067
CELEXA AND LEXAPRO MARKETING	:	Master Docket No. 09-MD-2067 (NMG)
AND SALES PRACTICES LITIGATION	:	
THIS DOCUMENT RELATES TO:	:	Judge Nathaniel M. Gorton
All Actions	:	Magistrate Judge Judith G. Dein
	:	
	:	
	:	[Proposed] PRETRIAL ORDER No. 3:
	:	STIPULATED PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court enters the following Protective Order (“Protective Order” or “Order”) limiting the disclosure of discovered information and limiting the use of such information as provided herein. IT IS HEREBY STIPULATED AND ORDERED THAT:

I. SCOPE OF ORDER

1. This Order shall govern those actions transferred to this Court by the Judicial Panel on Multidistrict Litigation (“the Panel”) pursuant to its Transfer Order of August 19, 2009, as well as all related actions originally filed in this Court or transferred or removed to this Court and assigned thereto. This order shall also govern any “tag-along” actions transferred to this Court by the Panel, subsequent to the filing of the final transfer order by the Clerk of this Court.

2. This Protective Order shall govern all documents, deposition testimony, deposition exhibits, interrogatory responses, admissions, pleadings, briefs, motions, and all other materials produced, as well as the information contained therein, and all other information produced or disclosed during the MDL proceeding, including all copies, excerpts, summaries, or

compilations thereof, whether revealed in a document, deposition, other testimony, discovery response or otherwise, by any party in connection with the MDL proceeding (the "Producing Party") to any other party or parties (the "Receiving Party").

3. This Protective Order is binding upon the parties to the MDL proceeding, including their respective corporate parents, subsidiaries and affiliates and their respective attorneys, agents, experts, consultants, representatives, officers and employees and others as set forth in this Order. This Order is also binding on any party who obtains any documents or other Confidential Information produced or disclosed in the MDL proceeding pursuant to this Protective Order, including those parties' respective family members, corporate parents, subsidiaries and affiliates and their respective attorneys, agents, experts, consultants, representatives, officers and employees and others as set forth in this Protective Order.

4. Third parties who so elect may avail themselves of, and agree to be bound by, the terms and conditions of this Protective Order by notifying counsel for all parties in writing. Upon service of such notice, such third party will become a Producing Party for purposes of this Protective Order.

5. The entry of this Protective Order does not prevent any party from seeking a further order of this Court pursuant to Federal Rule of Civil Procedure 26(c).

6. Nothing herein shall be construed to affect in any manner the admissibility at trial or any other court proceeding of any document, testimony, or other evidence.

II. DESIGNATION OF CONFIDENTIAL INFORMATION

7. "Confidential Information" as used herein means any information that the Producing Party believes in good faith constitutes, reflects, discloses, or contains information subject to protection under Federal Rule of Civil Procedure 26(c) or other applicable law, whether it is a document (electronic or otherwise), information contained in a document, information revealed during a deposition or other testimony, information revealed in an interrogatory response or information otherwise revealed.

8. Confidential Information shall not include publicly available documents or information (as long as the documents or information did not become public in violation of this or another Protective Order).

9. The Producing Party shall designate specific documents and discovery responses as "CONFIDENTIAL" by stamping or otherwise inscribing the word "CONFIDENTIAL" upon every page of the document that is asserted to contain Confidential Information, in a manner that will not interfere with its legibility, or in the case of electronic documents, pursuant to the provisions of Paragraph 11. This designation may be accompanied by information specifying the litigation in which the document was produced and indicating that the document is subject to this Order

10. In designating material as "CONFIDENTIAL," the Producing Party will make such designation only as to that material that it in good faith believes to be Confidential Information as defined herein.

11. To the extent that discovery material stored or recorded on an electronic or magnetic storage device (including information, files, databases or programs stored on any

digital or analog machine-readable device, computers, discs, or tapes) ("Electronic Material") is produced by any party in such form, the Producing Party may designate such material as confidential by cover letter referring to such matter, or by affixing (where possible) a label on the media or its casing indicating such designation, or by inserting the word "CONFIDENTIAL" into an electronic field visible in the data files provided on the media or casing on which such Material is produced. Whenever any party to whom Electronic Material designated as confidential is produced reduces such material to hardcopy form, that party shall mark the hardcopy form with the "CONFIDENTIAL" designation.

12. In order to protect against unauthorized disclosure of Confidential Information, and to comply with all applicable state and federal laws and regulations, the Producing Party may redact from produced documents, materials or other things, or portions thereof:

- a. Consistent with 21 C.F.R. §§ 20.63(a), (f) & 314.80(h), the names, addresses, Social Security or tax identification numbers, institutions, and other personally identifying information of (i) individuals who report an adverse experience; (ii) individuals who are the subject of a report of an adverse experience; and (iii) individuals who are a participant in a clinical trial. Such information shall be treated as Confidential Information regardless of whether the Producing Party redacts the information. No such person shall be contacted, either directly or indirectly, based on the information so disclosed, without the express written permission of the Producing Party. However, other general identifying information, such as patient or health care provider numbers, shall not be redacted unless required by federal law; and
- b. Highly confidential trade secrets such as those related to the formulation of Celexa and Lexapro.

13. Any material produced or provided in the MDL proceeding for inspection is to be treated by the Receiving Party as Confidential Information pending the copying and delivery of any copies of the same by the Producing Party to the Receiving Party. A party shall not be deemed to have waived any right to designate materials as confidential by allowing inspection of such material prior to a designation of such material as confidential or by inadvertently failing to mark a document as confidential prior to disclosure of the same.

14. Information disclosed at a deposition taken in connection with the MDL proceeding may be designated as Confidential Information by: (a) designating deposition testimony and/or a deposition exhibit as confidential on the record during the taking of the deposition, and/or (b) designating the portions of the transcript and/or deposition exhibits that are confidential in a letter to be served on the court reporter and opposing counsel within thirty (30) calendar days of the designating party's receipt of the transcript of a deposition. If a confidential designation is made, either on the record at the deposition or by way of written notice as described above, the court reporter shall affix the legend "Contains Confidential Information" on the cover page and the legend "CONFIDENTIAL" on all appropriate pages of the transcript and each copy thereof, and if necessary shall forward a substitute copy of each such page to counsel for the parties. Designations of transcripts will apply to audio, video, or other recordings of the testimony. The court reporter shall clearly mark any transcript released prior to the expiration of the 30-day period as "CONFIDENTIAL -- Subject to Further Confidentiality Review." Such transcripts will be treated as Confidential Information until the expiration of the 30-day period. All court reporters used to take depositions in this case will be informed of this Order and will be required to sign an agreement to operate in a manner consistent with this Order.

15. A party in the MDL proceeding may designate as Confidential Information any document or information produced by or testimony given by any other person or entity that the party reasonably believes qualifies as such party's Confidential Information pursuant to this Protective Order. If any third party produces information that any party in good faith believes constitutes its Confidential Information, the party claiming confidentiality shall designate the information as such within thirty (30) days of its receipt of such information. Any party receiving information from a third party shall treat such information as confidential during this thirty (30) day period while all parties have an opportunity to review the information and determine whether it should be designated as confidential. Any party designating third party information as confidential shall have the same rights as a Producing Party under this order with respect to such information.

III. FILING OF CONFIDENTIAL INFORMATION

16. (a) Filing Under Seal: Except as otherwise set forth in subsection 17(b), those portions of pleadings, motions, affidavits, briefs, exhibits, and other papers filed with or submitted to the Court that contain Confidential Information shall be filed separately under seal. The portion of the filing made under seal shall be separately filed in an envelope bearing the name and index number of the action, marked with the title (or general description) of its contents and the legend: "FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER IN 09 MD 2067. THIS ENVELOPE SHALL NOT BE OPENED NOR SHALL THE CONTENTS HEREOF BE DISPLAYED EXCEPT AT THE DIRECTION OF THE COURT." If filed under seal, the filing or submission shall remain under seal (i) unless otherwise ordered by the Court upon notice to the parties (and the Producing Party, if the Producing Party is not a party to the action), or (ii) unless the Producing Party who produced the subject Confidential Information

included or used in the filing consents in writing to its unsealing, in which case the contents of the filing should be unsealed to the extent of such consent.

(b) Service and Request for Consent Before Filing: To alleviate the need for filing papers with the Court under seal, a party filing or submitting to the Court portions of pleadings, motions, affidavits, briefs, exhibits, and other papers that contain Confidential Information may attempt to obtain the consent of the Producing Party prior to filing with the Court pursuant to the following procedures. A party planning to file or submit papers containing Confidential Information may, no later than four (4) business days prior to the filing deadline set forth in the Case Management Order No. 2 dated December 22, 2010 (or in any later Order, the Federal Rules of Civil Procedure, or the Local Rules, as applicable), email to the Producing Party a list of the Bates-stamp numbers of the documents or materials containing the Confidential Information contained in the filing, along with a request that the Producing Party consent to the unsealed filing of the Confidential Information. The Producing Party shall have until 6 PM (Eastern Time) on the day prior to the filing deadline to respond to the filing party's request for consent. If the Producing Party provides consent, the filing party may file the papers, including the Confidential Information, without filing under seal or otherwise following the procedures set forth in subsection 17(a). If the Producing Party declines to give consent within the allotted time, the filing party shall follow the procedures for filing Confidential Information set forth in subsection 17(a). Notwithstanding anything in this paragraph, any party may object to the designation of any material as Confidential Information in accordance with paragraph 35 of this Order

IV. USE OF CONFIDENTIAL INFORMATION

17. Confidential Information shall not be used, shown, disseminated, copied, or in any way communicated, orally or verbally, to anyone for any purpose whatsoever, other than as required for preparation and trial of actions included in this MDL, including (a) for any commercial, business, competitive, or other purpose, or (b) in or for any other judicial or administrative proceedings, disputes, or cases (except that Confidential Information that has been separately produced during discovery in the other judicial or administrative proceeding, dispute, or case may be used in or for such other matter, subject to any terms and conditions applicable in that matter).

18. No Confidential Information shall be disclosed by a Receiving Party except as provided in this Protective Order. Nothing contained in this Protective Order shall preclude any party from using its own Confidential Information in any manner it sees fit, without prior consent of any party or the Court.

V. PERMISSIBLE DISCLOSURE OF CONFIDENTIAL INFORMATION

19. Subject to the provisions of this Protective Order, Confidential Information shall not be disclosed by a Receiving Party to anyone other than the following persons (hereinafter referred to as "Qualified Persons"):

- a. Counsel for the Receiving Party, including any in-house counsel, and the attorneys, paralegals, stenographic, clerical staff, outside copying services, and other persons or agents working under counsel's supervision to whom it is reasonably necessary to disclose the Information for purposes of the litigation;

- b. Any party, which includes Named plaintiffs and any officers, directors, or employees of any defendant or its affiliate, to whom the party's counsel of record in good faith determines disclosure is necessary for the effective prosecution or defense of the litigation in this MDL;
- c. Any outside consultant or expert retained by any counsel of record for any party to whom it is reasonably necessary to disclose Confidential Information.
- d. Any witness for the purpose of conducting an examination of such witness during a deposition; provided, however, that such Confidential Information shall not lose its confidential or restricted status through such use:
- e. Stenographic employees and court reporters recording or transcribing testimony in the MDL proceeding;
- f. The Court and the Court's employees and staff (in accordance with the provisions in paragraph 17); and
- g. Any persons mutually agreed upon in writing by the parties.

20. In no event shall any disclosure of Confidential Information or materials be made to any competitor of any defendant, or to any other person, corporation, or entity who, upon reasonable and good faith inquiry, could be determined to be employees of, agents of, or consultants for a competitor of any defendant, irrespective of whether they are retained as a consultant or expert by counsel for plaintiffs. Accordingly, to the extent plaintiffs intend to disclose Confidential Information to a consultant or expert who is a current employee or agent of, or consultant for, another pharmaceutical-related company, plaintiffs shall give at least ten (10) days' advance notice in writing by providing defendants with information sufficient to permit an informed decision to be made with respect to whether the company is a competitor of any defendant. If, within the ten-day period, any defendant objects to the proposed disclosure, then plaintiffs may make a motion to compel disclosure. It shall be the burden of plaintiffs to

make the motion, but the defendant shall have the burden to demonstrate good cause for preventing such disclosure on such motion. The designated material shall continue to be treated as Confidential Information and subject to the provisions of this Protective Order during the pendency of such motion.

21. All persons receiving Confidential Information shall be bound by the terms of this Protective Order. If any person violates any of these terms, the aggrieved party may seek any appropriate relief in this Court.

22. Disclosure of Confidential Information beyond the terms of this Protective Order may be made only if the party designating the material as confidential consents in writing to such disclosure, or if the Court, after reasonable written notice to all affected parties, orders such disclosure.

VI. PROTECTION OF CONFIDENTIAL INFORMATION

23. Counsel shall take all reasonable and necessary steps to assure the security of any Confidential Information. Access to Confidential Information shall be limited to those persons designated above, and all persons given access to Confidential Information shall keep all Confidential Information and the material contained therein confidential from all other persons.

24. Prior to the first disclosure of Confidential Information to any person or entity listed in paragraphs 20(a) - (b), (excluding clerical, duplicating, or administrative personnel), counsel for the disclosing party shall deliver a copy of this Protective Order to the person or entity to whom disclosure will be made and explain its terms to such person. Counsel of record for the disclosing party shall be responsible for maintaining a list of any counsel for the party that is not of record (including any and all persons employed by such counsel, excepting clerical,

duplicating, or administrative personnel) and any such party, employee, or agent to whom disclosure of Confidential Information is made.

25. Prior to the disclosure of any Confidential Information to any person identified in paragraphs 20(c) – (e) and 20(g), each putative recipient of Confidential Information shall be provided with a copy of this Protective Order. Upon reading this Protective Order, such person shall sign an Acknowledgment, in the form annexed hereto as Exhibit A (or in another form mutually agreed upon by the parties), acknowledging that he or she has read this Protective Order and shall abide by its terms. These Acknowledgments are strictly confidential. Counsel for each party shall maintain the Acknowledgments without giving copies to the other side. For good cause shown, such Acknowledgments shall be made available for inspection by counsel for other parties upon order of the court. Persons who come into contact with Confidential Information for clerical or administrative purposes, and who do not retain copies or extracts thereof, are not required to execute Acknowledgments but must comply with the terms of this Order

26. Every person given access to Confidential Information shall not make copies, duplicates, extracts, summaries, or descriptions of such material, or any portion thereof, except for use in connection with the proceedings in the actions in this MDL, and each such copy is to be treated in accordance with the Protective Order.

27. Any party that is served with a subpoena or other notice compelling the production of discovery materials produced by another party must give written notice of such subpoena or other notice to the original Producing Party. The written notice must identify the specific information sought and enclose a copy of the subpoena or request. Such written notice

shall be provided within five (5) days of receipt of the subpoena or request, and in no event within fewer than three (3) business days prior to the deadline to object. Upon receiving such notice, the original Producing Party shall bear the burden of opposing, if it deems appropriate, the subpoena on grounds of confidentiality. The person or entity subject to the subpoena or request shall not produce any Confidential Information in response until the earlier of (a) the receipt of written consent from the Producing Party, or (b) resolution of any objection asserted by the Producing Party either by agreement or by order of the court with jurisdiction to rule on the Producing Party's objection(s).

28. All counsel shall at all times keep secure all notes, abstractions, or other work product derived from or containing Confidential Information; shall be obligated to maintain the confidentiality of such work product; and shall not disclose or reveal the contents of said notes, abstractions or other work product after the documents, materials, or other things, or portions thereof (and the information contained therein) and information are returned and surrendered.

29. If a Receiving Party learns of any unauthorized disclosure of Confidential Information, it shall immediately (a) inform the Producing Party in writing of all pertinent facts relating to such disclosure, (b) make its best efforts to retrieve all copies of the Confidential Information, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons execute the Acknowledgment that is attached hereto as Exhibit A.

30. Within thirty (30) days of the conclusion of any attorney's last case in this proceeding (or such other case in which the Receiving Party is permitted by this Order to use Confidential Information), including any appeals related thereto, at the written request and option

of the Producing Party, such attorney and any persons to whom he or she disclosed Confidential Information pursuant to this Order shall return and surrender any Confidential Information or copies thereof to the Producing Party at the Producing Party's expense. Such persons shall return or surrender any discovery materials produced by the Producing Party and any and all copies (electronic or otherwise), summaries, notes, compilations, and memoranda related thereto; provided, however, that counsel may retain their privileged communications, work product, Acknowledgments pursuant to paragraph 27, and all court-filed documents even though they contain discovery materials produced by the Producing Party, but such retained privileged communications and work product shall remain subject to the terms of this Protective Order. At the written request of the Producing Party, any person or entity having custody or control of recordings, notes, memoranda, summaries or other written materials, and all copies thereof, relating to or containing discovery materials produced by the Producing Party shall deliver to the Producing Party an affidavit certifying that reasonable efforts have been made to assure that all such discovery materials produced by the Producing Party and any copies thereof, any and all records notes, memoranda, summaries, or other written material regarding the discovery materials produced by the Producing Party (except for privileged communications, work product and court filed documents as stated above) have been delivered to the Producing Party in accordance with the terms of this Protective Order.

VII. CHANGES IN AND OBJECTIONS TO DESIGNATION OF INFORMATION

31. Inadvertent production of any document or information without a designation of confidentiality will not be deemed to waive a later claim to its confidential nature or preclude the Producing Party from designating said document or information as confidential at a later date. Any Producing Party may designate as Confidential Information or withdraw a Confidential

Information designation from any material that it has produced; provided, however, that such redesignation shall be effective only as of the date of such redesignation. Such redesignation shall be accomplished by notifying counsel for each party in writing of such redesignation. Upon receipt of any redesignation that designates material as confidential, the Receiving Party shall (i) treat such material in accordance with this Order; (ii) take reasonable steps to notify any persons known to have possession of any such material of such redesignation under this Protective Order; and (iii) promptly endeavor to procure all copies of such material from any persons known to have possession of such material who are not entitled to receipt under paragraph 17.

32. A Receiving Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed, unless a prompt challenge is necessary to avoid foreseeable substantial unfairness or prejudice. A Receiving Party that elects to initiate a challenge to a Producing Party's confidentiality designation must do so in good faith consistent with the meet-and-confer requirement of Local Rule 7.1 (or analogous provision in any District to which one of the cases is transferred). The burden of persuasion in any such challenge proceeding shall be on the Producing Party. Until the Court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation.

VIII. MISCELLANEOUS PROVISIONS

33. Entering into, agreeing to produce and/or producing Confidential Information pursuant to, or otherwise in compliance with the terms of, this Protective Order shall not:

- a. prejudice in any way the rights of any party to object to the production of documents or information that it considers not subject to discovery;
- b. prejudice in any way the rights of any party to object to the authenticity or admissibility into evidence of any document, testimony, or other information;
- c. operate as an admission by any party that any particular document or information is Confidential Information;
- d. operate as an admission by any party that the terms and procedures set forth herein constitute adequate protection of the confidentiality of any particular document or information;
- e. prejudice in any way the rights of a party to petition the Court for an order imposing additional restriction upon discovery of documents or other material (including an order that production not be had), or for relief from any provision of this Protective Order.

34. The inadvertent production of documents subject to the attorney-client privilege, the work-product privilege, or any other ground on which production should not be made (a "Privilege Claim"), will not waive such privileges or protections. If any party becomes aware that it has received documents subject to a Privilege Claim potentially as a result of inadvertent disclosure, or if a Producing Party that has inadvertently produced any document that it believes may be subject to a Privilege Claim notifies the recipient of such inadvertent disclosure, consistent with F.R.C.P. 26(b)(5)(B), the party in receipt of the document shall immediately (and, in the case of notification by the Producing Party, prior to initiating any debate with, or making any request for information to, the Producing Party concerning the basis for or validity of the Privilege Claim) return such document and any copies of it to the Producing Party and destroy all electronic copies of such document, and shall be barred from using that material, or any information derived from it, in the instant litigation or otherwise, except as follows:

- a. The party returning such material may retain one copy for the purpose of analyzing whether to move the Court for an Order compelling its production, and may use said copy as necessary to prepare and file any such matter; *provided, however,* that the party shall return the retained copy to the Producing Party immediately after deciding that a motion to compel its production will not be made.
- b. The party returning such material may move the Court for an Order compelling production of the material, which shall be filed under seal; *provided, however,* that said motion shall not assert as a ground for entering such Order the fact or circumstances of the inadvertent production.

35. The use of Confidential Information during any trial in the MDL proceeding will be addressed in a later agreement between the parties, or, if they cannot reach agreement, by further order of the Court.

36. It is expressly understood by and between the parties that in producing Confidential Information in this litigation, the parties shall be relying upon the terms and conditions of this Protective Order.

37. By written agreement of the parties, or upon motion and order of the Court, the terms of this Protective Order may be amended or modified. This Protective Order shall continue in force until amended or superseded by express order of the Court, and shall survive and remain in effect after the termination of this proceeding. Any additional party who joins or is joined in the MDL shall not have access to Confidential Information until its counsel of record has executed and filed with the Court its consent to be bound by this Protective Order.

IT IS SO STIPULATED.

Dated: April 13, 2011

Members of the Plaintiffs' Steering Committee

KOREIN TILLERY

/s/ Stephen A. Swedlow

Stephen A. Swedlow
205 North Michigan Ave, Suite 1940
Chicago, IL 60601
Phone: (312) 899-5063
sswedlow@koreintillery.com

PENDLEY, BAUDIN & COFFIN, LLP

/s/ Christopher L. Coffin

Christopher L. Coffin
P.O. Drawer 71
Plaquemine, Louisiana 70765
Phone: (225) 687-6396
ccoffin@pbclawfirm.com

Counsel for Defendants

DEBEVOISE & PLIMPTON LLP

/s/ Andrew J. Ceresney

Andrew J. Ceresney
919 Third Ave
New York, NY 10022
212-909-6000
ajceresney@debevoise.com

Subject, specifically, to the provisions of Local Rule 7.2.
PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____

4/26/11

N. M. Gorton

HON. NATHANIEL M. GORTON
U.S.D.J.

Exhibit A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

In re:	:	
	:	MDL No. 2067
CELEXA AND LEXAPRO MARKETING	:	Master Docket No. 09-MD-2067 (NMG)
AND SALES PRACTICES LITIGATION	:	
	:	Judge Nathaniel M. Gorton
THIS DOCUMENT RELATES TO:	:	Magistrate Judge Judith G. Dein
All Actions	:	
	:	
	:	
	:	

ACKNOWLEDGEMENT

I, _____, declare under penalty of perjury under the laws of the United States that:

1. I have received a copy of the Protective Order in this action signed by the Court and dated _____.
2. I have carefully read and understand the provisions of the Protective Order.
3. I will comply with and be bound by all of the provisions of the Protective Order unless and until modified by Order of the Court.
4. I will hold in confidence and will not disclose to anyone not qualified under the Protective Order and will use only for purposes of this action, any Confidential Information which is disclosed to me. I will take appropriate steps and assume full responsibility to assure that any other people, *e.g.*, clerical or secretarial personnel, working for me will abide by the Protective Order.

5. I will return all documents or other materials containing Confidential Information that come into my possession, and documents or things that I have prepared relating thereto, to counsel for the party by whom I am employed or retained when requested to do so by that counsel.

6. I declare further that I understand that if I violate the provisions of the Protective Order, I may be subject to sanctions by the Court and that any party may assert other remedies against me. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this action.

Executed on: _____

[Signature]