



FILED 24050564

ALAMEDA COUNTY

JUN 02 2021

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CLERK OF THE SUPERIOR COURT

FOR THE COUNTY OF ALAMEDA

By [Signature]

Deputy

COORDINATION PROCEEDING SPECIAL
TITLE (Rule 3.550)

JCCP NO. 5150

RANITIDINE PRODUCTS CASES

**[PROPOSED]
PRETRIAL ORDER NO. 1**

THIS DOCUMENT RELATES TO:

**APPOINTMENT OF PLAINTIFFS'
LIAISON COUNSEL AND EXECUTIVE
COMMITTEE**

ALL CASES

Pursuant to Rule 3.541 of the California Rules of Court, having considered the written submission of the parties, the Court hereby appoints the below listed counsel to the following leadership positions in *RANITIDINE PRODUCT CASES*, JCCP No. 5150:

I. PLAINTIFFS' LEADERSHIP

A. Plaintiffs' Liaison

Jennifer A. Moore

MOORE LAW GROUP, PLLC
1473 South 4th Street
Louisville, KY 40208
Tel: (502) 717-4080
Fax: (502) 717-4086
jennifer@moorelawgroup.com

R. Brent Wisner

BAUM, HEDLUND, ARISTEI & GOLDMAN, P.C.
10940 Wilshire Blvd., Suite 1600
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Fax: (310) 820-7444
rbwisner@baumhedlundlaw.com

The duties of Plaintiffs' Liaison are generally to coordinate and oversee all activities for the plaintiffs in the *In Re Ranitidine Product Cases*, JCCP No. 5150. Specifically, Plaintiffs' Liaison have the authority and duty to:

1. Determine, based upon consultation with other members of Plaintiffs' Executive Committee, and present in the most efficient and reasonable fashion, to the Court and

1 opposing parties, the position of Plaintiffs on all matters arising during pretrial
2 proceedings;

- 3 2. Propose agenda items for case management conferences and appear at case management
4 conferences and hearings;
- 5 3. Draft case management orders for the orderly and efficient litigation of this action;
- 6 4. Initiate and coordinate all pretrial discovery on behalf of Plaintiffs in actions coordinated
7 with JCCP 5150, including developing and proposing to the Court schedules for
8 commencement, execution, and completion of all discovery on behalf of Plaintiffs;
- 9 5. Cause to be issued for Plaintiffs all motions, discovery requests, and subpoenas pertaining
10 to any witness and documents needed to properly prepare for the pretrial of relevant
11 issues found in the pleadings of this litigation;
- 12 6. Initiate proposals, suggestions, schedules or joint briefs, and any other appropriate
13 matter(s) pertaining to pretrial proceedings;
- 14 7. Submit and argue verbal and/or written motions presented to the court on behalf of
15 Plaintiffs and oppose motions submitted by Defendants or other parties;
- 16 8. Submit, if appropriate, additional counsel and/or committees for designation by the Court;
- 17 9. Delegate specific tasks to other counsel in an effective and efficient manner that ensures
18 the pretrial preparation for Plaintiffs is conducted efficiently, effectively, and
19 economically;
- 20 10. Enter into stipulations with opposing counsel necessary for the advancement and conduct
21 of this litigation, which will be submitted to the Court for approval;
- 22 11. Maintain adequate files of pretrial matters, establishing and maintaining document or
23 exhibit depository, and ensuring those documents are available under reasonable terms
24 and conditions for examination by all JCCP plaintiffs and/or their respective counsel;
- 25 12. Explore, develop, and pursue all settlement options pertaining to any claim or portion
26 thereof of any case instituted in this litigation;
- 27 13. Act as spokesperson for Plaintiffs at case management conferences and pretrial
28 proceedings, and in response to any inquiries by the Court, subject to the right of any

- 1 Plaintiffs' counsel to present non-repetitive individual or differing positions;
2 14. Establish protocols for common benefit billing and disbursements and maintain records of
3 any billing and disbursements advanced; and
4 15. Perform any task necessary and proper to accomplish efficient and effective coordination
5 of Plaintiffs' pretrial proceedings or authorized by further order of this Court.

6 **B. Plaintiffs' Executive Committee**

7 **Steven J. Brady**
8 BRADY LAW GROUP
9 1015 Irwin Street,
10 San Rafael, CA 94901
11 Phone: (415) 459-7300
12 Fax: (415) 459-7303.
13 stevebrady@bradylawgroup.com

14 **Cynthia L. Garber**
15 ONDERLAW, LLC
16 12 Corporate Plaza Dr., Suite 275
17 Newport Beach, CA 92660
18 Phone: (949) 456-0037
19 Fax: (314) 963-1700
20 garber@onderlaw.com

21 **Behram V. Parekh**
22 DALIMONTE RUEB STOLLER LLP
23 515 S. Figueroa Street, Suite 1550
24 Los Angeles, California 90071
25 Phone: (619) 821-2305
26 Fax: (855) 203-2035
27 behram.parekh@drlawllp.com

28 **Emily Roark**
BRYANT LAW CENTER
P.O. Box 1876
Paducah, KY 42002-1876
Phone: (270) 442-1422
Fax: (270) 443-8788
emily.roark@bryantpsc.com

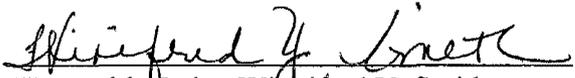
Plaintiffs' Executive Committee (PEC) will work closely with Plaintiffs' Liaison Counsel regarding management of the litigation, including assisting in organizing subcommittees and delegating tasks to subcommittees. The PEC will also assist in scheduling meetings for Plaintiffs'

1 counsel, keeping minutes and/or records of Plaintiffs' counsel meetings, and any other administrative
2 functions as necessary.

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IT IS SO ORDERED.

Dated: June 2, 2021


Honorable Judge Winnifred Y. Smith



24050565

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ALAMEDA COUNTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA JUN 02 2021

FOR THE COUNTY OF ALAMEDA **CLERK OF THE SUPERIOR COURT**

By [Signature] Deputy

COORDINATION PROCEEDING SPECIAL
TITLE (Rule 3.550)

JCCP NO. 5150

RANITIDINE PRODUCTS CASES

[PROPOSED]
PRETRIAL ORDER NO. 2

CONFIDENTIALITY ORDER

THIS DOCUMENT RELATES TO:

ALL CASES

I. INTRODUCTION

1. The Court issues the following Confidentiality Order relating to the parties' proprietary and confidential information to be produced herein that may be subject to protection.

2. Discovery in this Litigation, including any appeal, may involve the production of information containing trade secrets, proprietary commercial or business information, or financial information, personal identifying or personal health related information, and/or information subject to one or more U.S. or foreign data privacy laws or regulations, or other sensitive and confidential information for which special protection from public disclosure and from use for any purpose other than this proceeding is warranted.

3. This Order shall govern all hard copy and electronic documents, the information contained therein, and all other information produced or disclosed during this Litigation, whether revealed in a document, deposition, other testimony, discovery responses or otherwise.

4. Third parties who so elect may avail themselves of, and agree to be bound by, the terms and conditions of this Order and thereby become a Producing or Receiving Party for purposes of this Confidentiality Order.

5. The entry of this Order does not prevent any party from seeking a further order of this Court pursuant to California Code of Civil Procedure ("CCP") §§ 2016.010 *et seq* ("Civil Discovery Act").

6. Nothing in this Order shall be construed to affect in any manner the admissibility at trial

1 or any other court proceeding of any document, testimony or other evidence.

2 7. Nothing contained in this Order shall preclude any Producing Party from using its own
3 Confidential Information or Highly Confidential Information in any manner it sees fit, without prior
4 consent of any party or the Court.

5 8. It is expressly understood by and among the parties that in producing Confidential
6 Information and/or Highly Confidential Information in this proceeding, the parties shall be relying
7 upon the terms and conditions of this Order.

8 **II. DEFINITIONS**

9 1. This "Litigation," as used herein, means JCCP No. 5150, any actions remanded
10 therefrom, and any appeals thereof.

11 2. "Document," as used herein, shall have the full meaning ascribed to it by the California
12 Code of Civil Procedure, the Civil Discovery Act, and California Evidence Code.

13 3. "Producing Party," as used herein, means any party to this Litigation or any nonparty
14 who produces or provides materials or testimony containing Confidential Information and/or Highly
15 Confidential Information.

16 4. "Receiving Party," as used herein, means any party to the Litigation or any nonparty
17 that receives materials or testimony containing Confidential Information and/or Highly Confidential
18 Information.

19 5. "Third Party," as used herein, covered by this Order is intended to include third parties
20 who respond to discovery requests initiated by the parties or the Court.

21 6. "Confidential Information," as used herein, means information of any type, kind or
22 character that the Producing Party believes in good faith constitutes, reflects, discloses, or contains:
23 (1) information that the Producing Party reasonably believes constitutes a trade secret under
24 applicable statutory and case law; or (2) information that the Producing Party reasonably believes
25 constitutes such highly sensitive technical or proprietary business information of such Producing Party
26 that its disclosure might result in an unfair competitive, financial or commercial advantage to the
27 Receiving Party or competitors or disadvantage to the Producing Party; or (3) Protected Health
28 Information, as defined herein; or (4) personal identifying information, personal data, sensitive

1 personal data, or other data a party believes in good faith to be subject to federal, state, or foreign data
2 protection laws; or (5) any other sensitive information or tangible things (regardless of how they are
3 generated, stored or maintained) that requires protection under applicable California law.¹

4 “Confidential Information” can apply to information contained within a document, revealed during a
5 deposition or other testimony, revealed in a written discovery response, or otherwise revealed. Any
6 transcript of an *in camera* hearing shall be treated as confidential pursuant to this Order. This Order
7 shall be understood to encompass not only those items or things that are expressly designated as
8 Confidential, but also Confidential Information contained in copies, excerpts, and summaries thereof,
9 testimony, oral communications, and other work product.

10 7. “Highly Confidential Information,” including “Highly Confidential Information –
11 Outside Counsel’s Eyes Only,” (collectively referred to as “Highly Confidential Information” unless
12 specifically states otherwise) as used herein, means Confidential Information that the Producing Party
13 believes in good faith would, if disclosed, cause a substantial risk of a significant competitive or
14 commercial disadvantage to the Producing Party, including but not limited to information that reflects:
15 the Producing Party’s competitiveness in the market; sales or marketing strategies; research and
16 development materials; or non-public dealings with or internal deliberations concerning any
17 regulatory body such as the FDA or other authority.²

18 8. “Protected Health Information,” as used herein, shall have the same definition as set
19 forth in 45 CFR § 160.103.

20 9. “Competitor,” as used herein, means, with regard to any Defendant, any prior or current
21 manufacturer or seller of ranitidine-containing products other than the Producing Party, which may
22 include, but is not limited to, other Defendants in this Litigation.

23 **III. DESIGNATION PROCESS**

24 1. In designating materials as “Confidential Information” or “Highly Confidential
25 Information” the Producing Party shall do so in good faith, consistent with the provisions of this

26 _____
27 ¹ Nothing described in this definition shall be used by any Party to support or oppose the de-designation of a document
deemed confidential by a Producing Party. The propriety of a Confidential designation shall be determined by the Court
under applicable law, not any definition used in this paragraph.

28 ² Nothing in this definition is intended to prevent a party from challenging the confidentiality of information, including
information that falls into one or more of the categories described in this paragraph.

1 Order. Nothing contained herein shall be construed to allow global designations of all materials or
2 documents as “Confidential Information” or “Highly Confidential Information.”

3 2. Specific documents and discovery responses produced by a Producing Party may be
4 designated as containing Confidential Information by marking each page of the documents with the
5 words “Confidential Information - Subject to Protective Order,” “Highly Confidential Information –
6 Attorneys’ Eyes Only – Subject to Protective Order,” or “Highly Confidential Information – Outside
7 Counsel’s Eyes Only – Subject to Protective Order,” as appropriate (hereinafter, collectively
8 “Confidentiality Designation”), without obscuring any part of the text, where reasonably practicable.
9 Such Confidentiality Designation shall subject the document and its contents to this Order. In lieu of
10 marking the original of a document, the Producing Party may mark the copies that are produced or
11 exchanged.

12 3. To the extent that information stored or recorded in the form of electronic or other
13 media is produced in such form, the Producing Party may designate such information as Confidential
14 Information or Highly Confidential Information by cover letter generally referring to such
15 information, or by including “Confidential” or “Highly Confidential,” as appropriate, in the file or
16 directory name, or by affixing the appropriate Confidentiality Designation to the media containing the
17 information (e.g., CD-ROM, DVD, Hard Drive).

18 4. The Receiving Party shall mark any storage medium containing such Confidential
19 Information or Highly Confidential Information with the appropriate Confidentiality Designation as
20 designated by the Producing Party. Whenever any Receiving Party reduces any such information to
21 hard copy form and intends to use that hard copy in this litigation (subject to the terms of this Order),
22 the receiving party must prominently mark the hard copy form with the appropriate Confidentiality
23 Designation as designated by the Producing Party.

24 5. No person shall attend depositions (or portions of depositions) during which
25 Confidential or Highly Confidential Information is disclosed unless such person is authorized under
26 the terms of this Protective Order. If, during the course of a deposition, the response to a question
27 would require the disclosure of Confidential or Highly Confidential Information, the witness may
28 refuse to answer or the Producing Party or Party whose Confidential or Highly Confidential

1 Information would be disclosed may instruct the witness not to answer or not to complete his answer,
2 as the case may be, until any persons not authorized to receive Confidential or Highly Confidential
3 Information leave the room. If all persons in the room are authorized to receive Confidential or
4 Highly Confidential Information, no objection shall be interposed at deposition directing a party not to
5 answer based on the fact that an answer would elicit Confidential or Highly Confidential Information.
6 At the time of deposition or within thirty (30) days after receipt of the final (signed or unsigned)
7 deposition transcript from the Court reporter, a party may designate as Confidential or Highly
8 Confidential Information specific portions of the transcript that contain confidential matters under the
9 standards set forth above. This designation shall be in writing and served upon all counsel present for
10 the deposition . Transcripts will be treated as confidential until the expiration of this time period. Any
11 portions of a transcript designated Confidential or Highly Confidential shall thereafter be treated as
12 confidential in accordance with this Order. The original and all copies of transcripts containing
13 Confidential or Highly Confidential Information shall be marked with the appropriate Confidentiality
14 Designation.

15 6. This Order is HIPAA-compliant pursuant to 45 C.F.R. § 164.512 (e)(1)(v). The parties
16 agree that a Receiving Party (or any other person who receives Confidential Information or Highly
17 Confidential Information from a Receiving Party) may use Confidential Information and Highly
18 Confidential Information only for the purposes of the Litigation, including documents that contain
19 Protected Health Information (PHI) and individually identifiable health information that is protected
20 from unauthorized disclosure by the Health Insurance Portability and Accountability Act of 1996
21 (“HIPAA”), codified in 45 C.F.R. §§ 160, 164. The Receiving Party must return or destroy all
22 documents containing Protected Health Information to the Producing Party (including all copies
23 made) at the end of the litigation pursuant to Section K of this Order.

24 **IV. PERMISSIBLE USE AND DISCLOSURE OF CONFIDENTIAL AND HIGHLY**
25 **CONFIDENTIAL INFORMATION**

26 1. Except with the prior written consent of the Producing Party, Confidential Information
27 or Highly Confidential Information, or any portion thereof, may not be disclosed to any person or
28 entity, except as set forth below.

1 2. Any document or other material that is designated Confidential Information or Highly
2 Confidential Information, or the contents thereof, may be disclosed and used as necessary only for the
3 purpose of this Litigation, or appeal therefrom.

4 3. Information designated as Confidential Information pursuant to this Order may be
5 shown and delivered to the following people within this Litigation as necessary:

6 i. a party to the Litigation, or an officer, director, employee, partner, conservator,
7 guardian, trustee or executor of a party;

8 ii. inside and outside counsel for a party, including counsel's clerical, secretarial,
9 and other staff employed or retained by such counsel;

10 iii. judges, court reporters, court personnel, special masters, referees, other court-
11 appointed officials, or videographers present at trial, conferences, hearings, arguments, or depositions
12 held in this Litigation, including any appeals related thereto;

13 iv. insurers, reinsurers, auditors or other third parties who may view or inspect a
14 party's files or records in the ordinary course of that party's business;

15 v. employees of third-party contractors retained by a party or outside counsel for a
16 party, involved in one or more aspects of discovery tasks, copying, organizing, filing, coding,
17 converting, storing, reviewing or retrieving data or designating programs for handling data connected
18 with the Litigation, including the performance of such duties in relation to a computerized litigation
19 support system;

20 vi. a Receiving Party, to the extent they are not a named party to the Litigation, and
21 any corresponding support staff, including eDiscovery vendors, trial/jury consultants, and
22 graphics/visual-effect vendors;

23 vii. testifying or consulting experts retained by a party to this Litigation for purposes
24 of assisting the party and its attorneys of record in the preparation and/or presentation of its claims or
25 defenses;

26 viii. any deponent, provided either: (1) the Receiving Party has a good-faith basis to
27 believe the witness authored (in whole or in part), received, or had authorized access to the
28 Confidential Information or Highly Confidential Information prior to the deposition; and (2) the

1 witness agrees to be bound by the terms of this Confidentiality Order on the record at deposition; or
2 ix. any other person, if consented to in writing in advance by the Producing Party,
3 or by court order.

4 4. Notwithstanding the foregoing, counsel may disclose Confidential or Highly
5 Confidential Information while on the record during a deposition provided that: (i) counsel believes in
6 good faith that the witness has knowledge of or relevant testimony related to the matters contained in
7 the Confidential or Highly Confidential Information; and (ii) counsel in good faith deems it necessary
8 for the prosecution or defense of the action to show the Confidential or Highly Confidential
9 Information to the deponent. The deponent shall sign the "Attestation" attached this Order before the
10 Highly Confidential Information is disclosed. Prior to presenting the Highly Confidential Information
11 to the deponent, the party wishing to use the information shall show the information to counsel for the
12 Producing Party. If a dispute arises, the counsel present at the deposition shall meet and confer in an
13 attempt to resolve the dispute. If the parties are unable to resolve the dispute, the Highly Confidential
14 Information shall not be disclosed to the deponent until such time that the Court, or its designee, can
15 resolve the dispute.

16 5. If a deponent has not authored (in whole or in part), received, or had authorized access
17 to Confidential Information or Highly Confidential Information and refuses to be bound to this
18 Confidentiality Order, the party seeking to use the Confidential Information or Highly Confidential
19 Information with the deponent may seek relief from the Court by:

20 i. Filing a motion with the Court, not to exceed five (5) pages, specifying the
21 deponent, the date of the deposition (if scheduled), the purpose of the deposition, identity of the
22 Confidential Information or Highly Confidential Information, why the use of Confidential Information
23 or Highly Confidential Information is needed for the deposition, and whether the deponent should be
24 subjected to the terms of the Confidentiality Order. The Confidential Information or Highly
25 Confidential Information intended to be used with the deponent shall be attached to the motion and
26 submitted *in camera*. The motion shall be served on the Defendants and the deponent, but the
27 Confidential Information or Highly Confidential Information intended to be used at the deposition
28 will only be disclosed to the Court. If the motion contains Confidential Information or Highly

1 Confidential, or portions thereof, the motion will be filed under seal in accordance with the local
2 rules.

3 ii. The Defendants and/or the Deponent will have seven (7) days to respond to the
4 motion in a brief not to exceed five (5) pages.

5 iii. No replies will be permitted.

6 iv. The Court will rule on the motion and either proscribe the use of Confidential
7 Information or Highly Confidential Information at the deposition or order that the deponent will be
8 subjected to the terms of this Confidentiality Order.

9 6. Information designated as Highly Confidential Information pursuant to this Order may
10 be shared only with the persons listed in paragraphs 3(ii)-(ix) above.

11 7. Information specifically designated as “Highly Confidential Information – Outside
12 Counsel’s Eyes Only – Subject to Protective Order” may be shared only with (i) Plaintiffs’ attorneys
13 of record in the Litigation, including clerical, secretarial, and other staff employed or retained by
14 Plaintiffs’ counsel, (ii) outside counsel for a party, including counsel’s clerical, secretarial, and other
15 staff employed or retained by such counsel and (iii) the persons listed in paragraphs 3(iii)-(ix) above.

16 8. Persons listed in paragraphs 3(i), (v)-(ix) above, to whom sharing or disclosure of
17 Confidential Information or Highly Confidential Information (if appropriate) is made, must sign the
18 Attestation attached hereto as Exhibit A unless such permission for such disclosure has been granted
19 by the Court. Counsel providing access to Confidential Information or Highly Confidential
20 Information shall retain copies of the executed Attestation(s) and provide them to another party as
21 requested.

22 9. Counsel for a party may give advice and opinions to his or her client solely relating to
23 the Action based on his or her evaluation of Highly Confidential material, provided that such advice
24 and opinions shall not reveal the content of such Highly Confidential material except by prior written
25 agreement of counsel for the parties, or by Order of the Court.

26 10. This Order shall not affect or modify any Defendant’s ability to review and report
27 produced information to any applicable regulatory agencies.

28 11. The terms of this Order shall in no way affect the right of any person withhold

1 production of privileged information or information subject to the work product protection.

2 **V. NON-PRIVILEGE REDACTION**

3 1. Any Producing Party may redact from the documents and information it produces any
4 matter that the Producing Party claims is subject to attorney-client privilege, work product immunity,
5 a legal prohibition against disclosure, or any other privilege or immunity. The following information
6 may also be redacted:

7 i. information about other non-competing products or compounds not at issue in
8 this Litigation to the extent that information is not relevant to the Litigation³;

9 ii. information about competing products when not used in comparison to
10 ranitidine;

11 iii. notwithstanding Section C.6, Protected Health Information (“PHI”), including
12 information presented in adverse event reports, product experience reports, consumer complaints, and
13 other similar data;

14 iv. personal identifying information, personal data, sensitive personal data, or other
15 data a party believes in good faith to be subject to federal, state, or foreign data protection laws⁴; and

16 v. such other redactions as may now or hereafter be provided for by law or
17 permitted by Order of this Court.

18 2. The producing party shall clearly note when a document has been redacted for the
19 above reasons only, what information has been redacted, and provide the basis for the redaction. The
20 basis for each redaction must be specified on the face of the document, and may additionally be
21 specified in the metadata, or in a log. Redactions based on privilege will be governed by the
22 governing privilege order.

23 **VI. INADVERTENT FAILURE TO MAKE CONFIDENTIALITY DESIGNATION**

24 1. Inadvertent production, mistaken production, or *in camera* review of any document or
25 information without the appropriate Confidentiality Designation, or with the incorrect Confidentiality
26 Designation, will not be deemed to waive a later claim to its Confidential or Highly Confidential

27 ³ This provision does not permit the redaction of references to other H2 blockers or products that directly competed with
28 ranitidine (i.e., proton-pump inhibitors) or any Nitrosamine (of which N-Nitrosodimethylamine is one) that otherwise
appear in a responsive document.

1 nature or preclude the Producing Party from designating said document or information as Confidential
2 Information or Highly Confidential Information at a later date.

3 2. A Producing Party may designate as Confidential Information or Highly Confidential
4 Information or withdraw such a designation from any material that it has produced by serving written
5 notice to the Receiving Party within thirty (30) days following the discovery of the inadvertent
6 production with incorrect designation or without designation. The Producing Party shall produce
7 corrected versions of the materials to conform the document to the appropriate designation within
8 fourteen (14) days of the date they notified the Receiving Party of the inadvertent production. Upon
9 receipt of the notice, the Receiving Party shall: treat such document or information with the noticed
10 level of protection from the date such notice is received as Confidential or Highly Confidential
11 pursuant to the terms of this Order; take reasonable steps to notify any persons known to have
12 possession of such material of such re-designation under this Order; promptly endeavor to procure all
13 copies of such materials from persons known to have possession of such material who are not entitled
14 to receipt of it pursuant to this Order; and destroy or return any copies of the undesignated or
15 incorrectly designated materials. It is understood that the Receiving Party's good faith efforts to
16 procure all copies may not result in the actual return of all copies of such materials.

17 3. The production of any unredacted information that would otherwise be subject to
18 redaction under this Order shall not be deemed a waiver, in whole or in part, of any party's claim to
19 the Confidential or Highly Confidential nature of such information. To the extent any party discovers
20 the production of such information subject to redaction, the provisions of Paragraph F and G shall
21 apply.

22 4. The inadvertent production of attorney-client privileged information, or information
23 subject to the work product protection, or other privilege will be governed by a separate pretrial order.

24 **VII. CHALLENGE TO CONFIDENTIALITY DESIGNATION**

25 1. A Receiving Party may challenge a Producing Party's designation of Confidential
26 Information or Highly Confidential Information by notifying the Producing Party, in writing, of its
27 good faith belief that the designation was not proper. The written notification shall specifically
28 identify each designated document or other material that is the subject of the Receiving Party's

1 challenge.

2 2. After receipt of this written notification, the Producing Party will have an opportunity to
3 review the designated material, to reconsider the circumstances, and, if no change in designation is
4 offered, to explain, in writing within twenty-one (21) days of receiving such a challenge, the basis of
5 the designation. If the Receiving Party does not receive a response within 21 days it will notify the
6 Producing Party via e-mail that the deadline has passed. If the Producing Party does not respond in
7 two business days the confidentiality designation for the challenged document(s) is automatically
8 waived.

9 3. If that does not resolve the dispute over the designation:

10 i. The Receiving Party must file a Notice of Challenged Information identifying
11 by Bates number the specific documents being challenged, with a short
12 description of the document. The challenging party will use its best efforts to
13 consolidate challenges into as few motions as practicable to save resources both
14 for the Parties and the Court.

15 ii. Within fourteen (14) days of the Notice of Challenged Information, the
16 Producing Party must file a Motion to Protect Confidentiality and specify, if
17 appropriate, which documents are no longer being maintained as confidential.
18 This motion will be filed as a discovery motion and a hearing date will be
19 requested at the earliest allowable date.

20 iii. Within seven (7) days of the Motion for Protect Confidentiality, the Receiving
21 Party must file an opposition and specify, if appropriate, which documents are no longer being
22 challenged as confidential.

23 4. Within seven (7) days, the Producing Party must file a reply and specify, if appropriate,
24 which documents are no longer being maintained as confidential. This procedure shall also govern
25 any challenges related to whether Highly Confidential Information should be designated Confidential
26 Information.

27 5. The burden of proof as to a designation of Confidential Information or Highly
28 Confidential Information rests on the Producing Party to demonstrate that such designation is proper.

1 The document or information that is subject of the filing shall be treated as originally designated
2 pending resolution of the dispute.

3 **VIII. CONFIDENTIAL INFORMATION OR HIGHLY CONFIDENTIAL INFORMATION**
4 **OFFERED AS EVIDENCE**

5 1. The use of Confidential Information or Highly Confidential Information at trial or other
6 proceeding shall not be governed by this Confidentiality Order.

7 2. A party who seeks to introduce Confidential Information or Highly Confidential
8 Information at a hearing shall advise the Producing Party prior to publishing the information in Court.
9 If the Producing Party requests the protection be continued, the Court will review the information, *in*
10 *camera*, to determine if the information is entitled to continued protection.

11 3. Any pleading, brief, memorandum, motion, letter, affidavit, exhibit, or other document
12 filed with the Court that discloses, summarizes, describes, characterizes, or otherwise communicates
13 Confidential Information or Highly Confidential Information must be filed with the Court under seal,
14 in accordance with California Rules of Court Rule 2.551, *et seq.* If any party fails to file Confidential
15 or Highly Confidential material under seal, any party, including the designating party or third party,
16 may request that the Court place such filing under seal.

17 **IX. SUBPOENA BY OTHER COURTS OR AGENCIES**

18 1. If another court or an administrative agency subpoenas or otherwise orders production
19 of materials containing Confidential Information or Highly Confidential Information that a person has
20 obtained under the terms of this Order, the person to whom the subpoena or other process is directed
21 shall promptly notify the Producing Party in writing by providing a copy of the subpoena.
22 Confidential Information or Highly Confidential Information should not be produced prior to the
23 receipt of written notice by the Producing Party and a reasonable opportunity to object unless
24 otherwise compelled by law or court order.

25 **X. STORAGE OF CONFIDENTIAL INFORMATION OR HIGHLY CONFIDENTIAL**
26 **INFORMATION AND DATA SECURITY**

27 1. The recipient of any Confidential Information or Highly Confidential Information that
28 is provided under this Order shall maintain such information in a reasonably secure and safe manner,

1 including reasonable administrative, technical, and physical safeguards designed to protect the
2 security and confidentiality of such information against unauthorized access and any other reasonably
3 anticipated threats or hazards, and that ensures that access is limited to the persons authorized under
4 this Order, and shall further exercise the same standard of due and proper care with respect to the
5 storage, custody, use, and/or dissemination of such information as is exercised by the recipient with
6 respect to its own proprietary information.

7 2. Confidential Information or Highly Confidential Information in electronic form shall be
8 maintained in a secure litigation support site that applies standard industry practices regarding data
9 security, including but not limited to, application of access control rights to those persons entitled to
10 access the information under this Order. A list of current and former authorized users of the
11 Receiving Party's litigation support site shall be maintained while this Litigation, including any
12 appeal, is pending.

13 3. Confidential Information or Highly Confidential Information downloaded from the
14 litigation support site in electronic format shall be stored or shipped only on devices or media (e.g.,
15 laptop, tablet, smartphone, USB drive) that are encrypted with access limited to persons entitled to
16 access any information subject to this Order.

17 4. Confidential Information or Highly Confidential Information in paper format shall be
18 maintained in the Receiving Party's counsel's law offices or comparably secure location, with access
19 reasonably limited to persons entitled to access the information under this Order.

20 5. Electronic delivery of Confidential Information or Highly Confidential Information
21 shall be by secure File Transfer Protocol or encrypted email addressed only to persons entitled to
22 access the information under this Order.

23 6. Physical shipments of Confidential Information or Highly Confidential Information
24 shall be securely sealed and addressed only to persons entitled to access the information under this
25 Order.

26 7. If a Receiving Party or authorized recipient discovers any loss of Confidential
27 Information or Highly Confidential Information or a breach of security, including any actual or
28 suspected unauthorized access, relating to another party's Confidential Information or Highly

1 Confidential Information, the Receiving Party or authorized recipient shall: (1) promptly provide
2 written notice to Producing Party of such breach; (2) investigate and make reasonable efforts to
3 remediate the effects of the breach, and provide Producing Party with assurances reasonably
4 satisfactory to Producing Party that such breach shall not recur; and (3) provide sufficient information
5 about the breach that the Producing Party can reasonably ascertain the size and scope of the breach.
6 The Receiving Party or authorized recipient agrees to cooperate with the Producing Party or law
7 enforcement in investigating any such security incident. In any event, the Receiving Party or
8 authorized recipient shall promptly take all necessary and appropriate corrective action to terminate
9 the unauthorized access.

10 **XI. DISPOSITION OF MATERIALS AFTER LITIGATION**

11 1. The provisions of this Order shall not terminate at the conclusion of this Litigation.
12 This Order shall remain in full force and effect and each person subject to this Order shall continue to
13 be subject to the jurisdiction of Superior Court of the State of California, Alameda County, for the
14 purposes of enforcement of the confidentiality terms of this Order.

15 2. Within forty-five (45) days after conclusion of this Litigation, including any appeals
16 related thereto, at the written request of the Producing Party, such attorney and any person to whom
17 he/she disclosed Confidential Information and/or Highly Confidential Information shall, including any
18 experts and consultants, at the Receiving Party's option, either (a) destroy or (b) return and surrender
19 all Confidential Information and/or Highly Confidential Information produced pursuant to this Order,
20 to the Producing Party. If returning the materials, such persons shall return any Confidential
21 Information and/or Highly Confidential Information and any and all copies (electronic or otherwise),
22 summaries, notes, compilations, and memoranda related thereto (excluding privileged
23 communications, attorney work product, and documents filed with the Court, but such documents
24 shall remain subject to the terms of this Order). Upon the return of all such Confidential Information
25 and/or Highly Confidential Information the Receiving Party shall certify in writing that reasonable,
26 good faith efforts were made to assure that all such Confidential Information and/or Highly
27 Confidential Information and any and all copies (electronic or otherwise), summaries, notes,
28 compilations and memoranda related thereto have been delivered to the Producing Party in

1 accordance with the terms of this Order. In lieu of returning the materials described in this paragraph
2 (including copies, summaries, notes, compilations and memoranda related thereto) the Receiving
3 Party may destroy the materials in a manner that will protect the Confidential Information and/or
4 Highly Confidential Information and the destroying party shall certify by affidavit that it has done so.

5 **XII. VIOLATION OF ORDER**

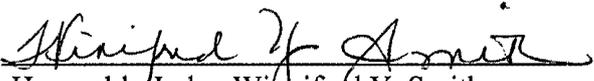
6 1. In the event a Producing Party reasonably anticipates that its Confidential Information
7 or Highly Confidential Information may be improperly disclosed, including for failure to
8 appropriately file under seal, it may apply to the Court to obtain appropriate relief. In the event that
9 the aggrieved Producing Party seeks injunctive relief, it must petition the Judge for such relief, which
10 may be granted at the sole discretion of the Judge. Any intentional violation of this Order shall
11 constitute contempt of Court, shall be punishable as such, and shall subject any offending parties to
12 such sanctions and remedies as the Court may deem appropriate. The parties and any other persons
13 subject to the terms of this Order agree that this Court shall retain jurisdiction over it and them for the
14 purpose of enforcing this Order.

15 **XIII. MODIFICATION OF PROTECTIVE ORDER**

16 1. By written agreement of the parties, or upon motion and Order of this Court, the terms
17 of this Order may be modified. This Order shall continue in force until amended or superseded by
18 express order of the Court, and shall survive and remain in effect after the termination of this
19 proceeding.

20 **IT IS SO ORDERED.**

21 Dated: June 2, 2021


Honorable Judge Winnifred Y. Smith



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FILED

SUPERIOR COURT OF THE STATE OF CALIFORNIA

ALAMEDA COUNTY

FOR THE COUNTY OF ALAMEDA JUN 02 2021

COORDINATION PROCEEDING SPECIAL
TITLE (Rule 3.550)

JCCP NO. 5150 **CLERK OF THE SUPERIOR COURT**

By [Signature]
Deputy

RANITIDINE PRODUCTS CASES

~~[PROPOSED]~~
PRETRIAL ORDER NO. 3

THIS DOCUMENT RELATES TO:

**PROTOCOL FOR TREATMENT OF
PRIVILEGED AND WORK PRODUCT
MATERIALS**

ALL CASES

I. PRIVILEGE LOG PRODUCTION

1. The parties shall comply with the California Code of Civil Procedure, the Civil Discovery Act and, to the extent they do not conflict with the provisions of this Order, the Local Rules of the Alameda County Superior Court, regarding the production of privilege logs, as set forth more fully below. With the exception of those materials described in paragraph 2 that need not be logged, any document falling within the scope of any request for production or subpoena that is withheld on the basis of a claim of privilege, work product, or any other legal privilege is to be identified by the Producing Party in a privilege log, which the Producing Party shall produce in an electronic format (i.e., Excel format) that allows text searching, sorting, and organization of data. The documents that are produced with redactions based on a claim of privilege shall be Bates numbered using the same Bates numbering format agreed to by the parties for regular document productions, and shall be listed on the Producing Party's privilege log in Bates order as further described in Section 2 below. The documents withheld from production based on a claim of privilege will have a unique identifying number assigned to each document on the privilege log. The Producing Party shall produce a privilege log within forty-five (45) days after the production of documents that contain documents that were withheld based on an assertion of privilege. A Party shall produce a master privilege log in a searchable and sortable format (e.g., Excel or CSV) that shall be updated as necessary following a document production. The log shall have a field that contains the date of the production (or

1 Production Number) to which the individual log entry relates. Privilege logs need not be produced in
2 native format provided they are produced in a searchable and sortable format.

3 2. No privilege log entries shall be required as to the following categories of materials, and
4 any applicable privilege or protection shall be preserved even if such materials are not listed on a

5 Producing Party's privilege log:

- 6 i. Attorney-client communications between a defendant and its Counsel after the start of
7 Litigation as to that defendant. For purposes of this Order only, the Litigation is deemed to
8 have started on September 13, 2019;
- 9 ii. Attorney-client communications between a plaintiff and their Counsel after the date on
10 which a retention agreement related to the Zantac litigation was executed;
- 11 iii. Attorney work-product created after September 13, 2019, for defense counsel, or after
12 counsel was retained by the plaintiff, for plaintiffs' counsel.
- 13 iv. Internal communications within (i) a law firm or (ii) a legal department of a party;
- 14 v. Documents and communications between outside counsel or outside counsel and in-house
15 counsel for Parties after the start of the Litigation; and
- 16 vi. Documents and communications between and/or among outside counsel that has been
17 retained by a Party in this Litigation and the Party, litigation technology consultants or
18 providers, any non-testifying experts, and testifying experts.

- 19 i. Privilege redactions made on the face of produced documents, provided that any such
20 documents have been identified on the "Redacted Documents Not Requiring Detailed
21 Logging" listing that the Producing Party provides, as set forth more fully in Section

22 3. For each document to which a Producing Party asserts that a privilege applies and
23 inclusion on a privilege log is required, the Producing Party must include in the privilege log the
24 following information to the extent there is no conflict with the provisions of this Order, the Local
25 Rules of this Court and other identifying information, including, as to documents other than those
26 described in Section II.2.g above:

- 27 i. the nature of the privilege (including work product) that is being claimed;
- 28 ii. the Bates number(s) of the document claimed to be privileged if produced in a redacted form,

- 1 and a unique identifying number for documents withheld on a claim of privilege (e.g., a Bates
2 number or privilege log reference number);
- 3 iii. a description of the nature of the document, communication or tangible thing that is sufficient
4 to understand the subject matter of it, not disclosed or produced in a manner that, without
5 revealing information itself privileged or protected, will enable other parties to assess the
6 claim;
- 7 iv. the date of the document, if available, or, for communications, the date sent and date received,
8 if available;
- 9 v. the subject/title and document type, unless the subject/title itself contains privileged
10 information in which case a reasonably objective “substitute” subject/title will be provided
11 in a manner that, without revealing information itself privileged or protected, will enable
12 other parties to assess the claim; and
- 13 vi. the identity of its author, addressee(s), and any other recipient(s), including in a separate
14 column any individuals carbon copied and blind carbon copied;
- 15 vii. indication (e.g., with an asterisk) of which individual(s) (authors and recipients) are attorneys,
16 paralegals, or legal assistants; and
- 17 viii. information identifying the source of the withheld document (e.g., the relevant custodial file).
18 This provision does create an obligation to update the source field of the document if a
19 duplicate document is later identified; and
- 20 ix. whether the document is withheld or redacted.

21 The log will contain two components, one listing documents withheld from production or redacted
22 and requiring logging (“Fully Logged Documents”), and meeting the requirements of subparts (a)
23 through (h) of this section, and one as to documents described in Section II.2.g (where privilege
24 redactions, branded as such, are made on the face of produced documents and the unredacted portion
25 of the document provides the information sufficient to allow the Receiving Party to assess the claim of
26 privilege) (“Redacted Documents Not Requiring Detailed Logging”). As to Redacted Documents Not
27 Requiring Detailed Logging, the Producing Party shall provide for each document: Beginning Bates,
28 End Bates, and Date of Production. Should the Receiving Party reasonably believe that the

1 unredacted portions of the document do not provide the information sufficient to allow the privilege
2 claim to be assessed, it may request, and the Producing Party shall promptly provide, additional
3 information, consistent with this section, to enable the privilege claim to be assessed.

4 4. A Party need include only one entry on the log to identify withheld privileged emails
5 that constitute an uninterrupted dialogue between or among individuals; provided, however, that
6 disclosure must be made that the emails are part of an uninterrupted privileged dialogue and include
7 the Bates range for the entire uninterrupted dialogue. Moreover, the date and time of the latest-in-time
8 email must be disclosed, in addition to other requisite privilege log disclosure referenced above,
9 including the names of all of the authors and recipients (including carbon copied and blind carbon
10 copied recipients) of the uninterrupted dialogue. For purposes of this section, the term “uninterrupted
11 dialogue” shall mean a chain of emails reflecting multiple communications taking place over a
12 reasonably short time period and involving a common subject matter, such that, were each email to be
13 separately logged, the qualitative information necessary to assess each claim of privilege would be
14 essentially the same for each email.

15 5. Notwithstanding the assertion of a privilege objection, any purportedly privileged
16 document containing non-privileged matter must be disclosed with the purportedly privileged portion
17 redacted, with the redacted portion indicated on the document itself and listed on the privilege log in a
18 manner consistent with Section II.3.

19 6. To assist in the prompt resolution of disputed claims of privilege, upon request by the
20 Court, the Producing Party shall submit to the Court under seal, un-redacted copies of all documents
21 for which it asserts a privilege.

22 **II. LIST OF INDIVIDUALS IDENTIFIED ON PRIVILEGE LOGS**

23 1. At the time it produces any privilege log, the Producing Party shall also produce a
24 separate list of individuals identified on the privilege log. This list shall include: a) in alphabetical
25 order (by last name, then first name) all individuals identified on the privilege log, b) any aliases for
26 such individuals known to the Producing Party, c) the job title of each individual listed, if known to
27 the Producing Party, d) department they work within, if applicable, and if known to the Producing
28 party and e) the employer of each individual at the time of the privileged communication, if known to

1 the Producing Party. This list shall be produced by the Producing Party in an electronic format (e.g.,
2 excel format) that allows text searching, sorting, and organization of data, and shall be produced in a
3 cumulative manner, so that each subsequent list includes individuals from prior lists. The Producing
4 Party will honor subsequent reasonable requests to identify whether a specific individual is not
5 currently employed by the same employer as reflected on the log pertaining to employment at the time
6 of the communication.

7 **III. PRODUCTION OF PRIVILEGED MATERIALS**

8 2. If a Producing Party produces (or discloses) to a Receiving Party any documents or
9 information subject to a claim of privilege or immunity from discovery (the “subject materials”)
10 (including but not limited to attorney-client privilege, work product, and immunities created by state
11 statute or regulation), such production (or disclosure) shall not be deemed a waiver in whole or in part
12 of the Producing Party’s claim of privilege or immunity from discovery , either as to specific
13 documents and information produced (or disclosed) or on the same or related subject matter, either in
14 this case or in any other federal or state action, investigation, or proceeding.

15 3. In the event that a Producing Party discovers that it produced (or disclosed) to a
16 Receiving Party any documents or information subject to a claim of privilege or immunity from
17 discovery, the Producing Party shall, promptly within twenty (20) days after its actual discovery of the
18 production or disclosure, notify (a “clawback” notice) the Receiving Party in writing of the production
19 or disclosure of materials protected by any privilege or immunity. The Producing Party shall provide
20 or supplement a privilege log with a description of the subject materials at the same time of providing
21 its written notice.

22 4. Upon such notice, the Receiving Party shall immediately sequester all copies of the
23 document, including any copies in the possession of counsel and retained consultants or experts. The
24 Receiving Party shall inform the Producing Party within 10 days if it intends to challenge the
25 designation of the document or if it agrees the document is properly designated as privileged.

26 5. If the Receiving Party intends to challenge the privilege designation, it shall continue to
27 sequester all copies of the document, including any copies in the possession of counsel and retained
28 consultants or experts, pending Court resolution of the challenge, and shall not make any further use

1 of the document.

2 6. If the Receiving Party agrees that the document is properly designated as privileged, the
3 Receiving Party shall promptly refrain from further copying or distribution of the subject materials,
4 return or destroy all copies of the document including reasonable steps to retrieve all copies that have
5 been distributed to counsel or non-parties, and destroy the portion of any work product that describes
6 or contains the content of the subject materials.

7 7. Where the parties agree, or the Court orders that, an inadvertently produced document is
8 protected by the attorney-client, work product, or other privilege, and such document was originally
9 produced in electronic format on media containing production materials that are not subject to any
10 exemption from production, the Producing Party shall, to the extent necessary, promptly provide
11 replacement production media to the Receiving Party.

12 8. Nothing in this Order shall relieve any attorney's ethical responsibilities to immediately
13 refrain from examining or disclosing materials that the attorney knows or reasonably should know to
14 be privileged and to inform the Producing Party that such material has been produced or disclosed.

15 **IV. CHALLENGES TO PRIVILEGE AND/OR WORK PRODUCT CLAIMS**

16 9. If the Receiving Party has a good-faith basis for challenging a privilege designation or
17 any redaction, counsel for the Parties shall initially attempt to resolve the issue through discussions.
18 The Receiving Party must give the Producing Party an opportunity to review the withheld or redacted
19 material and meet and confer. The challenge shall concisely explain in writing the basis of the
20 challenge(s), and shall identify by Bates number or by reference to a specific privilege log entry, and
21 not by category, the redaction or privilege designation subject to the challenge. For a challenge of up
22 to 50 documents, the Producing Party shall have 14 days from receiving such written notice of the
23 challenge to either explain in writing the basis of the privilege assertion or agree to produce or
24 unredact the document. For 51-300 documents, this 14 day period is extended to 28 days. If more
25 than 300 documents are challenged within a 28 day-period, the parties will meet and confer on a
26 schedule for the Producing Party to respond. This period and number and timing of documents
27 challenged may be modified by agreement of the Parties.

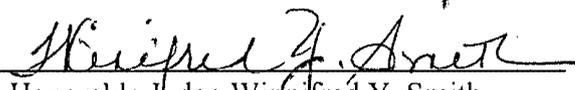
28 10. If these discussions prove unsuccessful, counsel may file a motion with the Court,

1 pursuant to any applicable pretrial order, which may require this Court's *in camera* inspection of a
2 document, on the issue of whether certain information is entitled to redaction or privilege. Before
3 filing such a motion, the parties must reach an agreed briefing schedule that allows the Producing
4 Party a reasonable amount of time to collect evidence (including affidavits) in support of its claim of
5 privilege or immunity. The party asserting privilege or making the redaction shall have the burden of
6 proof on such motion to establish the propriety of its privilege designation or redaction or, when
7 applicable, and upon sufficient allegations that the privilege has been waived, that the privilege was
8 not waived.

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IT IS SO ORDERED.

Dated: June 2, 2021


Honorable Judge Winnifred Y. Smith