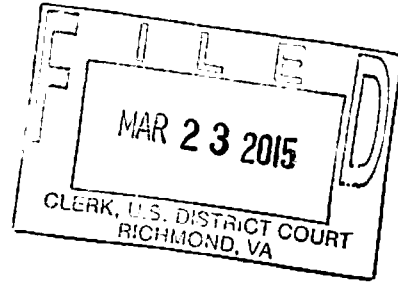


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Misc. No. 3:14mc5

RECKITT BENCKISER
PHARMCEUTICALS, INC.,

Defendant.

ORDER OF APPOINTMENT OF SPECIAL MASTER

The Court previously has determined that the most effective and efficient manner in which to resolve approximately 28,000 privilege claims is to appoint a Special Master for the purposes of investigating the claims of privilege and making recommendations respecting those claims (Docket No. 42). The parties have been informed of the candidates for Special Master nominated by the Court, and the parties have been afforded the opportunity to nominate other candidates, all of whose qualifications have been considered, as have the statements of position and the objections filed by the parties.

The Court has assessed the complexity of the task, the need for substantial resources to perform the task of Special Master in assessing the validity of some 28,000 privilege claims, and has considered the need to have the privilege claims assessed by

a Special Master with experience in litigation who also has access to resources that are sufficient to undertake, in an efficient and effective way, the difficult task of making those judgments. The Court has determined to appoint Craig T. Merritt, Esquire, an experienced trial lawyer and fellow of the American College of Trial Lawyers, as a Special Master for purposes of investigating the claims of privilege and making recommendations respecting those claims. Mr. Merritt, a partner in Christian & Barton, LLP, (the "Law Firm"), has conducted a search for potential conflicts of interest and has concluded that there are no conflicts that would preclude his accepting the assignment. The Special Master has filed the Affidavit required by Fed. R. Civ. P. 53(b)(3)(A).

Therefore, it is hereby ORDERED, pursuant to Fed. R. Civ. P. 53, that Craig T. Merritt, Esquire is appointed Special Master of the Court in the above-captioned action for the purposes of investigating the claims of privilege made by the defendant, Reckitt Benckiser Pharmaceuticals, Inc. ("Reckitt" or the "Defendant"), and making recommendations respecting those claims.

To facilitate the discharge of the Special Master's duties, it is hereby further ORDERED that:

(1) The Defendant shall deliver to the Special Master a copy of the privilege log(s) in such format(s) as the Special Master shall require;

(2) The Defendant shall deliver to the Special Master, in such format(s) as the Special Master shall require, all documents as to which claims of privilege are made;

(3) The Special Master shall address the claims of privilege made by the Defendant and shall prepare a Report and Recommendation thereon; and, in order to do so, the Special Master shall have complete access to the documents as to which any privilege is claimed;

(4) The Special Master may conduct any evidentiary hearing, and require any briefing which, in his view, will facilitate the discharge of his duties, and in connection therewith shall have, and may exercise, the Court's power to compel, take and record evidence;

(5) The Special Master may by Order impose on a party any non-contempt sanction provided by Fed. R. Civ. P. 37 or Fed. R. Civ. P. 45 and may recommend a sanction against a party or a non-party;

(6) The Special Master shall preserve and file a record of such documents, evidentiary materials, and report as he shall deem necessary and appropriate to fulfill the discharge of his duties;

(7) The Special Master shall proceed with all reasonable diligence and, after consulting with the parties and assessing the nature of the problems presented by the duties herein assigned, shall advise the Court of a reasonable time for the completion of the duties herein specified;

(8) The Special Master shall be permitted to communicate *ex parte* with the Court in respect of matters concerning the administration of his charter and the means of implementing it, and may communicate *ex parte* with a party after advising the other party that an *ex parte* communication is to take place and describing in general terms the reason therefor;

(9) The Special Master may employ the services of other lawyers in the Law Firm, provided that their identities first shall be made known to the Court and the parties. The Special Master also may use the services of legal assistants and support staff employed by the Law Firm as deemed reasonably necessary;

(10) The Special Master shall file forthwith a proposed schedule of rates to be charged by lawyers, legal assistants and support staff. Within seven (7) days after the rate schedule is filed, the parties shall state their agreement to, or their objections (if any) to the proposed rates. Thereafter, the Court will approve such rates as are reasonable;

(11) At the end of each month, the Special Master shall submit a statement for services rendered and expenses incurred

in connection with the discharge of the duties assigned herein; and within thirty (30) days thereafter, the Defendant, the party claiming the privilege, shall remit to the Special Master payment of the amount billed for fees and expenses. The Special Master shall provide the Defendant with the necessary information in order to facilitate timely payment, such as an IRS Form W-9. At the end of the litigation, the Court will assess whether to require the Plaintiffs to remit to the Defendant all, or a part, of the fees and expenses incurred by the Special Master in making the Report and Recommendation and in discharging his charter.

(12) The Special Master and his assistants (collectively, the "Special Master Team"), will review material described in the Defendant's privileged logs. The Special Master Team's review shall be in the nature of an *in camera* review, the material to be treated as confidential by the Special Master Team. The Special Master Team members who become privy to allegedly privileged information will not disclose or use any information obtained from the Defendant's documents in any matter, during the pendency of the Special Master appointment or thereafter; and

(13) Pursuant to Federal Rule of Evidence 502(d), the disclosure of any document or information by Experian to the Special Master Team which contains information that is wholly or

partially attorney-client privileged or protected by the work-product doctrine shall not waive confidentiality, protection, or the privilege either for that document (or part thereof) or for the subject matter of that protected content. Such disclosure will also not constitute a waiver in any other federal or state proceeding, including any and all arbitrations and private dispute resolution proceedings. The Court reserves a determination on whether any such documents produced are admissible on any grounds. Further, the disclosure of any document or information by the Defendant to Plaintiff in conjunction with this proceeding before the Special Master which contains information purported to be wholly or partially attorney-client privileged or protected by the work-product doctrine shall not waive confidentiality, protection, or the privilege either for that document (or part thereof) or for the subject matter of that protected content in this action or in any other federal or state proceeding but only to the extent that such claimed confidentiality, protection or privilege has not already been waived by the Defendant prior to the commencement of this proceeding before the Special Master. The Defendant's concession to any of Plaintiffs' arguments will likewise not function as a waiver of confidentiality, privilege, or protection, including the attorney-client privilege and/or

work-product protection in this action or in any other federal or state proceeding.

This ORDER OF APPOINTMENT OF SPECIAL MASTER shall be amended from time to time as may be required to assist the Special Master in the discharge of the duties herein assigned.

The Clerk is directed to send a copy of this Order to the Special Master.

It is so ORDERED.

/s/ REP
Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Date: March 23, 2015