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VIA TELECOPIER AND VIA CM/ECF

March 31, 2016

The Honorable Cathy L. Waldor
United States Magistrate Judge
M.L. King, Jr. Fed. Bldg. & Cthse.
50 Walnut Street - Room 4040
Newark, New Jersey 07102

Re: ***AM. BD. OF INTERNAL MED. V. JAIME SALAS RUSHFORD, M.D.***
Civil Action No. 2:14-cv-06428-KSH-CLW

Dear Magistrate Judge Waldor:

This firm represents plaintiff/counterclaim defendant, the American Board of Internal Medicine and third-party defendants, Richard Baron, M.D., Christine K. Cassel, M.D., Lynn O. Langdon, Eric S. Holmboe, M.D., David L. Coleman, M.D., Joan M. Feldt, M.D. and Naomi P. Ogrady, M.D. (collectively, "ABIM"), in the above-referenced case. We write, pursuant to L.Civ.R. 7.1(d)(6) and 37.1, to request leave to file a sur-reply in response to the March 30, 2016 reply filed by defendant/counterclaim plaintiff/third-party plaintiff Jamie A. Salas Rushford ("defendant"). A sur-reply would be of aid to the Court for the following reasons.

Defendant's principal contention for his request for leave to file a reply brief was his representation that his "reply brief will address misrepresentations made by both ABIM and Dr. Arora that need to be clarified for the record[.]" [D.E. No. 80.] That cavalierly made representation is untrue: defendant's reply completely lacks any facts demonstrating that ABIM made any misrepresentations whatsoever in its opposition to defendant's motion to compel.

Also notably absent from defendant's reply is any support for his unsubstantiated assertions that the confidential settlement agreement between ABIM and Dr. Arora somehow is relevant to this action. The facts of the litigation against Dr. Arora in the Eastern District of Pennsylvania are known to defendant, as are the conditions imposed on Dr. Arora in the injunction entered in that litigation; those are all in the public record. Yet, even with those facts in hand and after having been granted two separate opportunities to demonstrate the

oft-touted-but-never-shown relevance of the confidential settlement agreement to this action, defendant has failed to do so. Needless to say, merely asserting that a document is relevant to a statute of limitations, estoppel, or issue preclusion defense in some unspecified way does not make it so. Likewise, the fact that defendant's infringing conduct was discovered as a result of the seizure of Dr. Arora's documents in the Dr. Arora litigation is not, as defendant breezily claims, "itself . . . enough to show" [D.E. No. 84, p. 5] that the confidential settlement agreement is relevant.

Moreover, defendant's contention that ABIM's opposition to producing an irrelevant and confidential document is somehow "per se, [a] clear demonstration" of relevance [D.E. No. 84, p. 2.] is twisted logic. If defendant is right, Rule 26(b)(1)'s requirement of relevance is rendered meaningless: in defendant's ersatz view, any objection to production on relevance grounds *ipso facto* is to be construed as an admission of relevance. That simply cannot be.

Further, defendant's reply does nothing to address -- much less allay -- ABIM's very real concern that, if he obtains it, defendant will make the confidential settlement agreement publicly available on his website.

In the end, defendant's reply adds nothing substantive to his moving brief, and it fails to satisfy the very standard of relevance defendant acknowledges he must meet before a confidential settlement agreement will be disclosed. Defendant has not demonstrated that the confidential settlement agreement between ABIM and Dr. Arora is relevant to this action for a rather simple reason: he cannot.

For the foregoing reasons, ABIM respectfully requests leave to file a sur-reply along the lines set forth in this letter request.

Trusting the Court will view this request with favor, I remain,

Respectfully yours,

BALLARD SPAHR LLP

By:
Roberto A. Rivera-Soto

cc: Andrew L. Schlafly, Esq. ***(VIA ELECTRONIC MAIL AND VIA CM/ECF)***