

Exhibit A

[illegible]

JURY TRIAL DEMANDED

COMES NOW, Plaintiff, Victor Connelly ("Mr. Connelly") and Defendants Takeda Pharmaceuticals America, Inc.; Takeda Pharmaceuticals U.S.A., Inc., f/k/a Takeda Pharmaceuticals North America, Inc.; and Takeda Pharmaceutical Company Limited, ("Takeda"), and files this MOTION FOR TRIAL SETTING AND ENTRY OF SCHEDULING ORDER, and would show the Court the following:

I.

1. Mr. Connelly first filed suit against Defendants on October 2, 2013 to recover legal damages for the harms and losses arising from the use of Actos and the resulting bladder cancer.

2. This matter was last set for trial for a two week period beginning April 13, 2015. This would have been the second trial setting in this case.

3. Mr. Connelly confirmed availability from the court and requested the next trial setting for September 29, 2015, this trial date was not entered by the court and this matter is not currently set for trial.

4. Defendants sought injunctive and declaratory relief in the United States District Court for the District of Montana Great Falls Division, and Mr. Connelly responded and moved to dismiss based on Defendants' failure to exhaust tribal court remedies.

5. On April 24, 2015, United States District Court Judge Brian Morris Ordered that Mr. Connelly's Motion to Dismiss is GRANTED and dismissing Takeda's Complaint, noting "[i]t is not apparent at this stage of the litigation that the Blackfeet Tribal Court 'plainly' lacks jurisdiction over this matter as to excuse Takeda from exhausting tribal court remedies", and that "[t]he orderly administration of justice will be served by allowing the Blackfeet Tribal Court to develop a factual record." *Takeda Pharmaceuticals America et al. v. Connelly*, No. 4:14-cv-00050-BMM, Doc. 59 (D. Mont., entered April 24, 2015) (Morris, B.); Exhibit A.

II.

6. Request is made that this case be reset for trial for an approximate two week

period beginning on or about February 16, 2016, if not before (schedule permitting). (Plaintiff Victor Connelly is 86 years old, has had reoccurring bladder cancer as a result of his ingestion of Actos and respectfully requests an appropriate trial setting so that he may have his day in Court).

7. Further, request is made that the Court enter a Scheduling Order to govern this case, and Mr. Connelly includes a proposed Scheduling Order for consideration as Ex. B.

III.

8. This Motion is not made for the purpose of delay or for any other improper purpose, but so that justice may be done.

WHEREFORE, PREMISES CONSIDERED Plaintiff, Victor Connelly, files this Motion for Trial Setting and Entry of Scheduling Order seeking same, and for such other relief, both at law and in equity, to which he may show himself to be justly entitled.

DATED: October 12, 2015.

Respectfully submitted,

DAX F. GARZA, P.C.

By: 

Dax Frank Garza
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River Oaks Tower
3730 Kirby Drive, Suite 250
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(713) 522-3001 Fax
(Admitted Pro-Hac Vice)

/s/ Joe J. McKay

By: _____

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Attorney at Law
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Facsimile: (406) 338-7262

THE WEBSTER LAW FIRM

/s/ Jason C. Webster

By: _____

JASON C. WEBSTER
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**ATTORNEYS FOR PLAINTIFF
VICTOR CONNELLY**

CERTIFICATE OF CONFERENCE

The issues presented by this Motion were discussed with counsel for Takeda by the undersigned counsel but no agreement could be reached so the Motion(s) are submitted to the Court for consideration.

A handwritten signature in black ink, appearing to be 'Dax F. Garza', written over a horizontal line.

Dax F. Garza

CERTIFICATE OF SERVICE

On October 12, 2015, a true and correct copy of the foregoing instrument was served upon all counsel of record in accordance with Blackfeet Tribal Law and Order Code.

Mr. Joe J. McKay Attorney at Law P.O. Box 1803 Browning, Montana 59417	<input type="checkbox"/> Messenger <input type="checkbox"/> Telephonic Document Transfer <input type="checkbox"/> Certified Mail - RRR <input type="checkbox"/> First Class Mail
Mr. Paul R. Haffeman Davis, Hatley, Haffeman & Tighe, P.C. P.O. Box 2103 Great Falls, Montana 59403	<input type="checkbox"/> Messenger <input type="checkbox"/> Telephonic Document Transfer <input type="checkbox"/> Certified Mail - RRR <input type="checkbox"/> First Class Mail
Mr. Jason C. Webster The Webster Law Firm 6200 Savoy, Suite 515 Houston, Texas 77036	<input type="checkbox"/> Messenger <input type="checkbox"/> Telephonic Document Transfer <input type="checkbox"/> Certified Mail - RRR <input type="checkbox"/> First Class Mail
Mr. Jeffrey R. Lilly Gordon & Rees 816 Congress Avenue, Suite 1510 Austin, Texas 78701	<input type="checkbox"/> Messenger <input type="checkbox"/> Telephonic Document Transfer <input type="checkbox"/> Certified Mail - RRR <input type="checkbox"/> First Class Mail



Dax F. Garza

Exhibit B

Maxon R. Davis
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Attorneys for Defendants

**IN THE BLACKFEET TRIBAL COURT
BLACKFEET TRIBE OF MONTANA**

VICTOR CONNELLY,)	
)	
PLAINTIFF,)	
)	
vs.)	CIVIL ACTION NO. 2013-CA-140
)	
TAKEDA PHARMACEUTICALS)	
AMERICA, INC.; TAKEDA)	DEFENDANTS' OBJECTION
PHARMACEUTICALS U.S.A., INC.)	TO REQUEST FOR TRIAL
F/K/A TAKEDA PHARMACEUTICALS)	<u>SETTING</u>
NORTH AMERICA, INC.; AND TAKEDA)	
PHARMACEUTICAL COMPANY)	
LIMITED,)	
)	
DEFENDANTS.)	

TAKEDA PHARMACEUTICALS U.S.A., INC. (f/k/a TAKEDA
PHARMACEUTICALS NORTH AMERICA, INC.), TAKEDA PHARMACEUTICALS
AMERICA, INC., and TAKEDA PHARMACEUTICAL COMPANY LIMITED (hereinafter
collectively "Takeda") object to Plaintiff's Motion for Trial Setting and Entry of Scheduling
Order.

I.

THIS CASE IS ON APPEAL TO THE NINTH CIRCUIT

While Plaintiff informs the Court that Takeda's declaratory judgment action in federal court was dismissed, he omits the significant fact that *the case is on appeal* to the Ninth Circuit. *Takeda Pharmaceuticals America v. Victor Connelly*, Case No. 15-35403. Indeed, Takeda already filed its brief on the merits, and Connelly's brief is due on October 28, 2015. (**Ex. A**, Ninth Circuit Time Schedule Order; **Ex. B** Streamlined Request Approving Answering Brief). The case will be submitted to the appeals court thereafter. Thus, the parties are in the midst of active federal appellate proceedings, and Takeda objects to any trial setting while the case is on appeal.

II.

THE UNITED STATES SUPREME COURT IS REVIEWING TRIBAL COURT JURISDICTION

The United States Supreme Court currently is reviewing the scope of tribal court jurisdiction. On June 15, 2015, the United States Supreme Court granted certiorari to review the question whether Indian tribal courts "have jurisdiction to adjudicate civil tort claims against nonmembers" who enter into consensual business relationships with a tribe on the reservation. *Dollar Gen. Corp. v. Miss. Band of Choctaw Indians*, No. 13-1496, 2015 U.S. LEXIS 4003 (June 15, 2015); Petitioners' Brief, *Dollar Gen. Corp. v. Miss. Band of Choctaw Indians*, No. 13-1496, 2014 U.S. S. Ct. Briefs LEXIS 2217, at *4 (June 12, 2014) (**Ex. C**). The case is set for oral argument in the Supreme Court on December 5, 2015. If the Court holds that tribal courts lack jurisdiction over non-members who do business on the reservation, Takeda certainly cannot be subject to tribal jurisdiction here for acts *outside the reservation*. Thus, the Supreme Court's decision could deprive this Court of jurisdiction over this case.

III.

THE COURT SHOULD DECLINE TO SET A TRIAL.

Takeda requests that the Court decline to set a trial at this time, until the federal appellate proceedings are completed and the United States Supreme Court has resolved the pending question about the permissible scope of tribal court jurisdiction.

IV.

A TWO WEEK TRIAL SETTING IS WHOLLY UNREALISTIC

For the reasons stated above, Takeda urges the Tribal Court to decline Plaintiff's request to set this matter for trial at this time. That said, Takeda would be derelict in its responsibilities to this court were it to fail to apprise the court about its experience in handling cases in which a plaintiff claims to have contracted bladder cancer as a result of ingesting Actos. There have been over ten such cases tried in various federal and state courts in California, Louisiana, Illinois, Maryland, Nevada and elsewhere. None of them was tried in two weeks. Most of those cases took four weeks or longer to be tried. Furthermore, those cases were all tried in courts well equipped with the equipment and logistical expertise to present complex matters to a jury.

There is no reason to believe that Mr. Connelly's claims here can be tried in any less time, particularly in a courtroom in Browning lacking in similar equipment and logistical expertise. Both sides have already filed expert disclosures which indicate that each will call multiple expert witnesses in various medical and scientific specialties. Such testimony is necessary for both sides. Further, the testimony of these experts is complicated, long and involved.


It would be an injustice to both Mr. Connelly and Takeda to only set aside two weeks for a trial and then find out that much more time was needed for the case, so as to result either in a mistrial at that point or in the other business of the tribal court grinding to an unexpected halt.

PRAYER

Takeda respectfully requests that the Court sustain these objections, and refuse to enter a trial setting at this time.

DATED this 14th day of October, 2015.

GORDON & REES, LLP
DAVIS, HATLEY, HAFFEMAN & TIGHE, P.C.

By 

Maxon R. Davis
P.O. Box 2103
Great Falls, Montana 59403-2103
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was duly served upon the following by mail, hand delivery, Federal Express, facsimile transmission or electronic transmission, as indicated, on this 14th day of October 2015:

Joe J. McKay
Attorney at Law
P.O. Box 1803
Browning, MT 59417-1803

☒ U.S. Mail
☐ Federal Express
☐ Hand Delivery
☐ Facsimile Transmission
☒ Electronic Transmission

Dax Garza
Dax E. Garza, P.C.
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Houston, TX 77098

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The Webster Law Firm
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Attorneys for Plaintiff

DAVIS, HATLEY, HAFFEMAN & TIGHE, P.C.

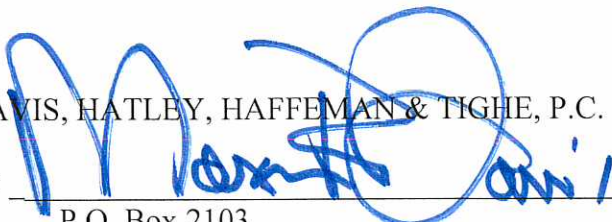
By 
P.O. Box 2103
Great Falls, MT 59403-2103

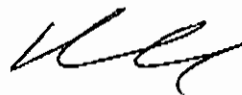
Exhibit C

IT IS FURTHER ORDERED that a Scheduling Order be entered for this above entitled and numbered cause.

IT IS SO ORDERED:

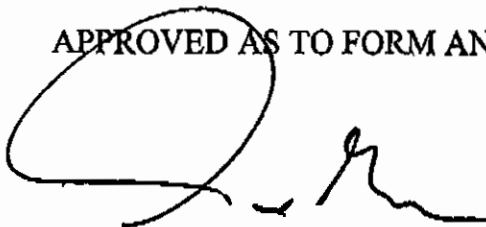
Dated this 16th day of November, 2015.

(Court Seal)



David Gordon, Judge
Blackfeet Tribal Court

APPROVED AS TO FORM AND SUBSTANCE:


10/13/15

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FILED

NOV 18 2015

BLACKFEET TRIBAL COURT



Exhibit D

Case No. 15-35403

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

TAKEDA PHARMACEUTICALS AMERICA, INC., et al.

Plaintiffs/Appellants,

vs.

VICTOR CONNELLY

Defendant/Appellee.

On Appeal from the United States District Court
For the District of Montana, Great Falls Division
Honorable Brian Morris
Case No. 4:14-cv-00050-BMM


DECLARATION OF MAXON DAVIS

I, Maxon R. Davis, declare the following under penalty of perjury:

1. I am an attorney licensed to practice in the State of Montana and this Court.
2. I am a counsel of record for Appellants in this appeal.
3. I also am counsel for the Takeda defendants in a lawsuit against Takeda pending in the Blackfeet tribal court in Browning Montana, Victor Connelly v. Takeda Pharmaceuticals America, Inc., CIVIL ACTION NO. 2013-CA-140, described in the briefing in this pending appeal.
4. On September 22, 2015, counsel for Connelly asked me to agree to an extension of time for file Appellee's brief in this appeal, and I

did so, which extended his time to file his responsive brief until October 28, 2015.

5. On October 19, 2015, I received a copy of Connelly's Motion for Trial Setting and Entry of Scheduling Order filed in the Blackfeet tribal court, herein Connelly requested that the tribal court set his case against Takeda for trial. A true and correct copy of the motion is attached to Takeda's Motion to Expedite Appeal as Exhibit A.
6. Takeda filed objections to this request for trial setting, because, among other things, this appeal was pending. A true and correct copy of Takeda's objections is attached to the Motion to Expedite Appeal as Exhibit B.
7. On November 24, 2015, Takeda first learned that the tribal court had entered an order setting the case for trial in tribal court on February 16, 2015. Takeda learned of the setting through a telephone conversation between a Takeda attorney in Dallas and one of Connelly's Houston attorneys. A true and correct copy of the tribal court's order, which I received in the mail from the clerk of the tribal court on December 1, 2015, is attached to the Motion to Expedite Appeal as Exhibit C. Contrary to the recitation in the order, there was no hearing on Connelly's Motion for Trial Setting, at least no hearing about which I received any notice.



Maxon R. Davis

Date: December 2, 2015

Exhibit E

STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

Before me, the undersigned notary, on this day, personally appeared Valerie French, a person whose identity is known to me. After administering an oath to her, upon her oath, she swore:

“My name is Valerie French. I am over the age of eighteen, have never been convicted of a felony, and am competent to make this affidavit. The facts in this affidavit are within my personal knowledge and are true and correct.

1. I am a Paralegal at the law firm of Gordon & Rees LLP.
2. Gordon Rees LLP is counsel of record for Appellant in this appeal.
3. Exhibit C attached to the Motion to Expedite Appeal is a true and correct copy of the Order Granting Motion for Trial Setting and Scheduling Order , which Gordon Rees LLP received from the Blackfeet Tribal Court via U.S. Mail on December 1, 2015.

Further affiant sayeth not.”

Valerie French

SWORN TO AND SUBSCRIBED before me on the 3rd day of December, 2015.

Janice M. Harris
Notary Public, State of Texas

