

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAZZ PHARMACEUTICALS, INC., Plaintiff, v. AVADEL CNS PHARMACEUTICALS, LLC, Defendant.	C.A. No. 21-691-GBW
JAZZ PHARMACEUTICALS, INC., et al., Plaintiffs, v. AVADEL CNS PHARMACEUTICALS, LLC, Defendant.	C.A. No. 21-1138-GBW
JAZZ PHARMACEUTICALS, INC., et al., Plaintiffs, v. AVADEL CNS PHARMACEUTICALS, LLC, Defendant.	C.A. No. 21-1594-GBW

**NOTICE OF WITHDRAWAL OF AVADEL’S MOTION FOR SUMMARY JUDGMENT
NO. 3 REGARDING NON-INFRINGEMENT**

WHEREAS, Avadel CNS Pharmaceuticals, LLC (“Avadel”) filed its Motion for Summary Judgment No. 3 (Non-Infringement Under Avadel’s Claim Construction) on the basis of its proposed claim constructions for the terms “gamma-hydroxybutyrate” and “oxybate”;

WHEREAS, after Avadel filed its Motion for Summary Judgment No. 3, the Court did not adopt those constructions (*see* D.I. 419, C.A. No. 21-691); and

WHEREAS, for purposes of appeal, Avadel respectfully maintains that its proposed

constructions of “gamma-hydroxybutyrate” and “oxybate” would be dispositive of non-infringement for all asserted patents for the reasons articulated in its Motion for Summary Judgment No. 3;

NOW, THEREFORE, PLEASE TAKE NOTICE THAT, Defendant Avadel CNS Pharmaceuticals, LLC’s Motion for Summary Judgment No. 3 (Non-Infringement Under Avadel’s Claim Construction) and supporting papers (*see e.g.*, D.I. Nos. 399, 405, C.A. No. 21-691 / D.I. Nos. 288, 294, C.A. 21-1138 / D.I. Nos. 285, 292, C.A. No. 21-1594) are withdrawn. Accordingly, Avadel’s forthcoming Omnibus Reply Brief on its Motions for Summary Judgment and to Exclude Expert Testimony, which is due to be filed on December 22, 2023, will not address Avadel’s Motion for Summary Judgment No. 3. Avadel’s withdrawal of its Motion for Summary Judgment No. 3 is without waiver of Avadel’s ability to appeal the Court’s December 15, 2023 claim construction opinion and order (D.I. 419).

For clarity, Avadel’s Motion for Summary Judgment No. 1, Motion for Summary Judgment No. 2, Motions to Exclude Expert Testimony of Jazz’s Experts and supporting papers are not affected by this Notice and those motions remain pending.

Dated: December 22, 2023

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