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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ASTELLAS PHARMA INC.; ASTELLAS US LLC; ASTELLAS PHARMA US, INC.; MEDIVATION LLC; MEDIVATION PROSTATE THERAPEUTICS LLC, Plaintiffs, v. ZYDUS PHARMACEUTICALS (USA) INC.; ZYDUS LIFESCIENCES LTD., Defendants.	Civil Action No. 3:24-09748 (MAS) (RLS) *Document Electronically Filed* **DEFENDANTS ZYDUS PHARMACEUTICALS (USA) INC. AND ZYDUS LIFESCIENCES LIMITED'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS TO PLAINTIFFS' AMENDED COMPLAINT**

Defendants Zydus Pharmaceuticals (USA) Inc. ("Zydus USA") and Zydus Lifesciences Limited ("Zydus Lifesciences") (collectively, "Zydus") for their Answer, Affirmative Defenses, and Counterclaims to the Amended Complaint of Astellas Pharma Inc., Astellas US LLC., Astellas Pharma US, Inc., Medivation LLC, and Medivation Prostate Therapeutics LLC (collectively, "Plaintiffs") state as follows:

All averments not expressly admitted are denied.

THE PARTIES

1. Plaintiff API is a corporation organized and existing under the laws of Japan having its principal place of business at 2-5-1, Nihonbashi-Honcho, Chuo-Ku, Tokyo 103-8411, Japan.

ANSWER: Zydus lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1 and therefore denies them.

2. Plaintiff AUS is a limited liability company organized and existing under the laws of the State of Delaware having its principal place of business at 2375 Waterview Drive, Northbrook, Illinois 60062, United States.

ANSWER: Zydus lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2 and therefore denies them.

3. Plaintiff APUS is a corporation organized and existing under the laws of the State of Delaware having its principal place of business at 2375 Waterview Drive, Northbrook, Illinois 60062, United States.

ANSWER: Zydus lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 3 and therefore denies them.

4. Plaintiff Medivation LLC is a limited liability company organized and existing under the laws of the State of Delaware having its principal place of business at 66 Hudson Boulevard East, New York, New York 10001-2192, United States.

ANSWER: Zydus lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 4 and therefore denies them.

5. Plaintiff MPT is a limited liability company organized and existing under the laws of the State of Delaware having its principal place of business at 66 Hudson Boulevard East, New York, New York 10001-2192, United States.

ANSWER: Zydus lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 5 and therefore denies them.

6. On information and belief, Defendant Zydus USA Inc. is a corporation organized and existing under the laws of the State of New Jersey having a principal place of business at 73 Route 31 North, Pennington, New Jersey 08534.

ANSWER: Admitted.

7. On information and belief, Zydus USA Inc., by itself and/or through its affiliates and agents, is in the business of among other things, manufacturing, marketing, importing, preparing, and selling generic pharmaceutical products that it distributes in the State of New Jersey and throughout the United States.

ANSWER: Zydus admits that Zydus USA sells pharmaceutical products, including generic pharmaceutical products, in the United States. Zydus denies all other allegations in paragraph 7.

8. On information and belief, Defendant Zydus Ltd. is a corporation organized and existing under the laws of India having a principal place of business at Zydus Corporate Park, Scheme No. 63, Survey No. 536, Khoraj (Gandhinagar), Nr. Vaishnodevi Circle, Ahmedabad 382481, India.

ANSWER: Zydus admits that Zydus Lifesciences is an entity organized and existing under the laws of India and that Zydus Lifesciences has a place of business at Zydus Corporate Park, Scheme No. 63, Survey No. 536, Khoraj (Gandhinagar), Nr. Vaishnodevi Circle, S.G. Highway, Ahmedabad 382 481, India. Zydus denies all other allegations in paragraph 8.

9. On information and belief, Zydus Ltd., by itself and/or through its affiliates and agents, is in the business of among other things, manufacturing, marketing, importing, preparing, and selling generic pharmaceutical products that it distributes in the State of New Jersey and throughout the United States.

ANSWER: Zydus admits that Zydus Lifesciences develops and manufactures pharmaceutical products, including generic pharmaceutical products. Zydus denies all other allegations in paragraph 9.

10. On information and belief, Zydus USA Inc. is a wholly-owned subsidiary and the U.S. division of Zydus Ltd.

ANSWER: Zydus admits that Zydus USA is a wholly owned subsidiary of Zydus Lifesciences. Zydus denies all other allegations in paragraph 10.

11. On information and belief, Zydus USA Inc. and Zydus Ltd. are agents of each other with respect to the development, regulatory approval, marketing, sale, and/or distribution of generic products. On information and belief, the acts of Zydus USA Inc. and Zydus Ltd. complained of herein were done with the cooperation, participation, and assistance of, and at least in part for the benefit of, each other.

ANSWER: The allegations in paragraph 11 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus admits that Zydus USA is a wholly owned

subsidiary of Zydus Lifesciences and that Zydus USA sells generic pharmaceutical products, including generic pharmaceutical products manufactured by Zydus Lifesciences. Zydus denies all other allegations in paragraph 11.

12. On information and belief, Defendants Zydus USA Inc. and Zydus Ltd. have cooperated and assisted in the preparation and filing of Zydus's Abbreviated New Drug Application ("ANDA") No. 217322 and will be involved in the manufacture, importation, marketing, and sale of the drug that is the subject of ANDA No. 217322 if it is approved.

ANSWER: The allegations in paragraph 12 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus admits that Zydus USA submitted Abbreviated New Drug Application ("ANDA") No. 217322 to FDA seeking approval to engage in the manufacture, use, sale, and importation in or into the United States of enzalutamide tablets, 40 mg and 80 mg, as described in ANDA No. 217322. Zydus further admits that Zydus USA submitted a supplement to ANDA No. 217322 to FDA seeking approval to engage in the manufacture, use, sale, and importation in or into the United States of enzalutamide tablets, 120 mg and 160mg, as described in ANDA No. 217322 (together with the 40 mg and 80 mg strengths, "Zydus's Proposed ANDA Product"). Zydus further admits that ANDA No. 217322 identifies Zydus Lifesciences as the manufacturer of Zydus's Proposed ANDA Product. Zydus denies all other allegations in paragraph 12.

NATURE OF THE ACTION

13. This is a civil action for the infringement of United States Patent Nos. 11,839,689 ("the '689 patent") and 12,161,628 ("the '628 patent") (collectively, the "Xtandi® patents") under the Patent Laws of the United States, 35 U.S.C. § 100 et seq., arising from Zydus's filing of ANDA No. 217322 with the United States Food and Drug Administration ("FDA") seeking approval to market generic versions of the pharmaceutical products Xtandi® tablets, 40 and 80 mg, before the expiration of Plaintiffs' patents covering Xtandi® tablets and their use.

ANSWER: The allegations in paragraph 13 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus admits that the Amended Complaint purports to be a civil action alleging infringement of U.S. Patent Nos. 11,839,689 ("the '689 patent") and

12,161,628 ("the '628 patent") under Title 35 of the United States Code, § 100 *et seq.* Zydus further admits that Zydus USA submitted ANDA No. 217322 to FDA seeking approval to engage in the manufacture, use, sale, and importation in or into the United States of Zydus's Proposed ANDA Product. Zydus further admits that ANDA No. 217322 was amended to include a certification pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV) ("Paragraph IV Certification") with respect to the '689 patent. Zydus denies all other allegations in paragraph 13.

JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338.

ANSWER: The allegations in paragraph 14 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus does not contest subject matter jurisdiction in this Court solely for purposes of Plaintiffs' claims against Zydus in this case and solely as they apply to Zydus's Proposed ANDA Product described in ANDA No. 217322. Zydus denies all other allegations in paragraph 14.

15. This Court has personal jurisdiction over Zydus by virtue of the fact that, *inter alia*, Zydus has committed the tortious act of patent infringement pursuant to 35 U.S.C. § 271(e)(2)(A) that has led to foreseeable harm and injury to Plaintiffs in the State of New Jersey and throughout the United States.

ANSWER: Denied.

16. This Court has personal jurisdiction over Zydus by virtue of the fact that Zydus is at home in New Jersey as reflected by the fact that, on information and belief, it regularly does or solicits business in New Jersey, engages in other persistent courses of conduct in New Jersey, and/or derives substantial revenue from services or things used or consumed in New Jersey, including by selling its pharmaceutical products in New Jersey and, therefore, can reasonably expect to be subject to jurisdiction in the New Jersey courts. Among other things, on information and belief, Zydus conducts marketing and sales activities in the State of New Jersey, including but not limited to, distribution, marketing, and sales of pharmaceutical products to New Jersey residents that are continuous and systematic. On information and belief, if Zydus's ANDA No. 217322 is approved, it will market and sell its generic versions of Xtandi® tablets in New Jersey.

ANSWER: The allegations in paragraph 16 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus does not contest personal jurisdiction in this Court solely for purposes of Plaintiffs' claims against Zydus in this case and solely as they apply to Zydus's Proposed ANDA Product described in ANDA No. 217322. Zydus admits that Zydus USA is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in the State of New Jersey. Zydus further admits that Zydus USA sells pharmaceutical products, including generic pharmaceutical products. Zydus further admits that Zydus USA submitted ANDA No. 217322 to FDA seeking approval to engage in the manufacture, use, sale, and importation of Zydus's Proposed ANDA Product described in ANDA No. 217322 in or into the United States. Zydus denies all other allegations in paragraph 16.

17. This Court has personal jurisdiction over Zydus USA Inc. On information and belief, Zydus USA Inc. is a New Jersey corporation having a principal place of business in New Jersey.

ANSWER: The allegations in paragraph 17 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus USA does not contest personal jurisdiction in this Court solely for purposes of Plaintiffs' claims against Zydus USA in this case and solely as they apply to Zydus's Proposed ANDA Product described in ANDA No. 217322. Zydus admits that Zydus USA is a corporation organized and existing under the laws of the State New Jersey with its principal place of business in New Jersey. Zydus denies all other allegations in paragraph 17.

18. This Court also has personal jurisdiction over Zydus USA Inc. and Zydus Ltd. (formerly known as Cadila Healthcare Ltd.) by virtue of the fact that each previously submitted to the jurisdiction of this Court and availed itself of this Court by consenting to this Court's jurisdiction and asserting counterclaims in civil actions initiated in this jurisdiction including, but not limited to, *e.g.*, *American Regent, Inc. v. Zydus Pharms. (USA) Inc.*, No. 2:24-cv-07812 (D.N.J.); *AbbVie Inc. v. Zydus Pharms. (USA) Inc.*, No. 3:24-cv-04603 (D.N.J.); *Astellas Pharma Inc. v. Zydus Pharms. (USA) Inc.*, No. 2:22-cv-04499 (D.N.J); *Fresenius Kabi USA, LLC v. Zydus Pharms. (USA) Inc.*, No. 3:22-cv-01702 (D.N.J.); *Supernus Pharms., Inc., v. Zydus Pharms. (USA) Inc.*, No. 3:21-cv-17104 (D.N.J.); *Almirall, LLC v. Zydus Pharms. (USA) Inc.*, No. 3:20-cv-00343

(D.N.J.); *Takeda Pharm. Co. v. Zydus Pharms. (USA) Inc.*, No. 3:18-cv-11792 (D.N.J.); *Shionogi Inc. v. Zydus Pharms. (USA) Inc.*, No. 3:18-cv-12898 (D.N.J.); *Valeant Pharms. N. Am., LLC v. Zydus Pharms. (USA) Inc.*, No. 2:18-cv-13635 (D.N.J.); and *Takeda Pharm. Co. v. Zydus Pharms. (USA) Inc.*, No. 3:18-cv-01994 (D.N.J.). On information and belief, Zydus USA Inc. has previously submitted to the jurisdiction of this Court and has availed itself of the legal protections of the State of New Jersey by having filed suit in this jurisdiction. *See, e.g.*, *Zydus Pharms. (USA) Inc. v. Novartis Pharms. Co.*, No. 2:19-cv-21259 (D.N.J.); *Zydus Pharms. (USA) Inc. v. Eli Lilly & Co.*, 2:10-cv-05584 (D.N.J.).

ANSWER: The allegations in paragraph 19 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus does not contest personal jurisdiction in this Court solely for purposes of Plaintiffs' claims against Zydus in this case and solely as they apply to Zydus's Proposed ANDA Product described in ANDA No. 217322. Zydus admits that in *American Regent, Inc. v. Zydus Pharms. (USA) Inc.*, No. 2:24-cv-07812 (D.N.J.), Zydus USA stated "[Zydus USA] does not contest personal jurisdiction in this Court solely for the limited purpose of Plaintiff's claims against [Zydus USA] in this case and solely as those alleged claims apply to Zydus's Proposed ANDA Product described in ANDA No. 219322;" that in *AbbVie Inc. v. Zydus Pharms. (USA) Inc.*, No. 3:24-cv-04603 (D.N.J.), Zydus stated "Defendants do not contest personal jurisdiction in this Court solely for the limited purpose of Plaintiffs' claims against Defendants in this case and solely as those alleged claims apply to Zydus's Proposed ANDA Product;" that in *Astellas Pharma Inc. v. Zydus Pharms. (USA) Inc.*, No. 2:22-cv-04499 (D.N.J), Zydus stated "Zydus does not contest personal jurisdiction in this Court solely for purposes of Plaintiffs' claims against Zydus in this case and solely as they apply to Zydus's Proposed ANDA Products described in ANDA No. 217322;" that in *Fresenius Kabi USA, LLC v. Zydus Pharms. (USA) Inc.*, No. 3:22-cv-01702 (D.N.J.), Zydus USA stated "[Zydus USA] does not contest personal jurisdiction in this Court solely for the limited purpose of Plaintiff's claims against [Zydus USA] in this case and solely as they apply to Zydus's Proposed ANDA Products described in ANDA No. 217066;" that in *Supernus Pharms., Inc., v. Zydus Pharms. (USA) Inc.*, Civil Action

No. 3:21-cv-17104 (D.N.J.), Zydus stated "Defendants do not contest personal jurisdiction in this Court for the limited purpose of Plaintiffs' claims against Defendants in this case and solely with respect to the proposed product described in ANDA No. 216167;" that in *Almirall, LLC v. Zydus Pharms. (USA) Inc.*, Civil Action No. 3:20-cv-00343 (D.N.J.), Zydus USA stated "Zydus USA does not contest personal jurisdiction in this Court solely for purposes of Plaintiff's claims against Zydus USA in this case and solely as they apply to the dapsone gel, 7.5% that is the subject of ANDA No. 214019;" that in *Takeda Pharm. Co. v. Zydus Pharms. (USA) Inc.*, Civil Action No. 3:18-cv-11792 (D.N.J.), Zydus stated "[f]or the purpose of this case, Defendants do not contest personal jurisdiction in the District of New Jersey;" that in *Shionogi Inc. v. Zydus Pharms. (USA) Inc.*, Civil Action No. 3:18-cv-12898 (D.N.J.), Zydus USA stated "[Zydus USA] does not contest personal jurisdiction in this Court solely for purposes of Plaintiffs' claims against [Zydus USA] in this case and solely as they apply to the proposed product described in ANDA No. 211903;" that in *Valeant Pharms. North America LLC v. Zydus Pharms. (USA) Inc.*, Civil Action No. 2:18-cv-13635 (D.N.J.), Zydus stated "Zydus does not contest personal jurisdiction in this Court solely for purposes of Plaintiffs' claims against Zydus in this case and solely as they apply to the proposed product described in ANDA No. 212178;" that in *Takeda Pharm. Co. v. Zydus Pharms. (USA) Inc*., Civil Action No. 3:18-cv-01994 (D.N.J.), Zydus stated "[f]or the purpose of this case, Defendants do not contest personal jurisdiction in the District of New Jersey." Zydus further admits that Zydus USA filed a complaint in *Zydus Pharms. (USA) Inc. v. Novartis Pharms. Co.*, No. 2:19-cv-21259 (D.N.J.) and in *Zydus Pharms. USA, Inc. v. Eli Lilly & Co.*, 2:10-cv-05584 (D.N.J.). Zydus denies all other allegations in paragraph 18.

19. Alternatively, assuming that the above facts do not establish personal jurisdiction over Zydus Ltd., this Court may exercise jurisdiction over Zydus Ltd. pursuant to Federal Rule of Civil Procedure 4(k)(2) because (a) Plaintiffs' claims arise under federal law; (b) Zydus Ltd. is a foreign defendant not subject to general personal jurisdiction in the courts of any state; and (c)

Zydus Ltd. has sufficient contacts with the United States as a whole, including but not limited to manufacturing and/or selling pharmaceutical products distributed throughout the United States, such that this Court's exercise of jurisdiction over Zydus Ltd. satisfies due process.

ANSWER: The allegations in paragraph 19 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus Lifesciences does not contest personal jurisdiction in this Court solely for purposes of Plaintiffs' claims against Zydus Lifesciences in this case and solely as they apply to Zydus's Proposed ANDA Product described in ANDA No. 217322. Zydus Lifesciences admits that it is an entity organized and existing under the laws of India with its principal place of business in India. Zydus denies all other allegations in paragraph 19.

20. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

ANSWER: The allegations in paragraph 20 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus does not contest venue in this Court solely for purposes of Plaintiffs' claims against Zydus in this case and solely as they apply to Zydus's Proposed ANDA Product described in ANDA No. 217322. Zydus denies all other allegations in paragraph 20.

21. Venue is proper in this judicial district for Zydus USA Inc. because, among other things, on information and belief, Zydus USA Inc. is a New Jersey corporation having a principal place of business in New Jersey.

ANSWER: The allegations in paragraph 21 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus USA does not contest venue in this Court solely for purposes of Plaintiffs' claims against Zydus USA in this case and solely as they apply to Zydus's Proposed ANDA Product described in ANDA No. 217322. Zydus admits that Zydus USA is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in the State of New Jersey. Zydus denies all other allegations in paragraph 21.

22. Venue is proper in this judicial district for Zydus Ltd. because, among other things, Zydus Ltd. is a foreign corporation not residing in any United States district and may be sued in any judicial district.

ANSWER: The allegations in paragraph 22 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus Lifesciences does not contest venue in this Court solely for purposes of Plaintiffs' claims against Zydus Lifesciences in this case and solely as they apply to Zydus's Proposed ANDA Product described in ANDA No. 217322. Zydus admits that Zydus Lifesciences is an entity organized and existing under the laws of India with its principal place of business in India. Zydus denies all other allegations in paragraph 22.

23. Venue is further proper as to Zydus because, among other things, Zydus has committed, or aided, abetted, contributed to, and/or participated in the commission of acts of patent infringement that will lead to foreseeable harm and injury to Plaintiffs, which manufacture Xtandi® for sale and use throughout the United States, including within the State of New Jersey.

ANSWER: Denied.

THE XTANDI® TABLET NDA

24. APUS filed New Drug Application ("NDA") No. 213674 for Xtandi® (enzalutamide) tablets, 40 mg and 80 mg. The FDA approved NDA No. 213674 for Xtandi® 40 mg and 80 mg tablets on August 4, 2020, for the treatment of patients with castration-resistant prostate cancer and metastatic castration-sensitive prostate cancer. On November 16, 2023, the FDA approved an expanded indication for the use of Xtandi® 40 mg and 80 mg tablets to treat patients with non-metastatic castration-sensitive prostate cancer with biochemical recurrence at high risk for metastasis. Xtandi® tablets are sold and co-promoted by APUS and Pfizer Inc. in the United States.

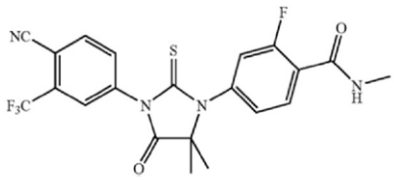
ANSWER: Zydus admits that the FDA's *Approved Drug Products with Therapeutic Equivalence Evaluations* ("Orange Book") lists in connection with New Drug Application ("NDA") No. 213674: "ASTELLAS PHARMA US INC" as Applicant Holder," "Aug 4, 2020" as Approval Date, "XTANDI" as Proprietary Name, "ENZALUTAMIDE" as Active Ingredient, "TABLET; ORAL" as the Dosage Form and Route of Administration, respectively, and "40MG" and "80MG" as Strength. Zydus further admits that Drugs@FDA: FDA-Approved Drugs lists "Efficacy-New Indication" as Supplemental Categories or Approval Type and "11/16/2023" as

Action Date in connection with NDA No. 213674. Zydus further admits on information and belief that the prescribing information for XTANDI®, revised 11/2023, states, in part:

> **1 INDICATIONS AND USAGE**
>
> XTANDI® is indicated for the treatment of patients with:
>
> - castration-resistant prostate cancer (CRPC)
> - metastatic castration-sensitive prostate cancer (mCSPC)
> - non-metastatic castration-sensitive prostate cancer (nmCSPC) with biochemical recurrence at high risk for metastasis (high-risk BCR)

Zydus lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 24 are therefore denies them.

25. Enzalutamide is a compound that can be referred to by any of several chemical names, including 4-{3-[4-cyano-3-(trifluoromethyl)phenyl]-5,5-dimethyl-4-oxo-2-sulfanylideneimidazolidin-1-yl}-2-fluoro-N-methylbenzamide, 4-{3-(4-cyano-3-(trifluoromethyl)phenyl)-5,5-dimethyl-4-oxo-2-thioxoimidazolidin-1-yl}-2-fluoro-N-methylbenzamide, 4-[3-[4-cyano-3-(trifluoromethyl)phenyl]-4-keto-5,5-dimethyl-2-thioxo-imidazolidin-1-yl]-2-fluoro-N-methyl-benzamide, and 4-[3-[4-cyano-3-(trifluoromethyl)phenyl]-5,5-dimethyl-4-oxo-2-sulfanylidene-1-imidazolidinyl]-2-fluoro-N-methylbenzamide, and which has the following chemical structure:

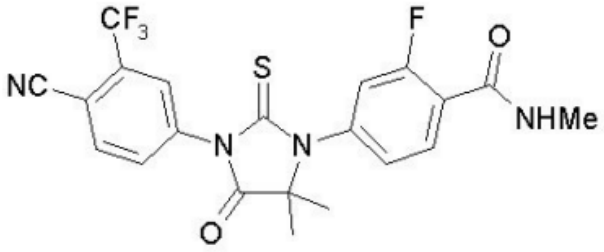


ANSWER: Zydus admits on information and belief that the prescribing information for XTANDI®, revised 11/2023, states, in part:

11 DESCRIPTION

Enzalutamide is an androgen receptor inhibitor. The chemical name is 4-{3-[4-cyano-3-(trifluoromethyl)phenyl]-5,5-dimethyl-4-oxo-2-sulfanylideneimidazolidin-1-yl}-2-fluoro-*N*-methylbenzamide.

The molecular weight is 464.44 and molecular formula is $C_{21}H_{16}F_4N_4O_2S$. The structural formula is:



Zydus lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 25 are therefore denies them.

THE PATENT-IN-SUIT

26. On December 12, 2023, the '689 patent, entitled "Formulations of Enzalutamide," was duly and legally issued to API and MPT. A true and correct copy of the '689 patent is attached hereto as Exhibit A.

ANSWER: The allegations in paragraph 26 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus admits that, on information and belief, what purports to be a copy of the '689 patent is attached to the Amended Complaint as Exhibit A. Zydus admits that Exhibit A lists December 12, 2023 as the "Date of the Patent," is titled "Formulations of Enzalutamide," and that "Astellas Pharma Inc." and "Medivation Prostate Therapeutics LLC" are listed as the Assignees. Zydus denies all other allegations in paragraph 26.

27. In accordance with 21 U.S.C. § 355(b)(1) and 21 C.F.R. § 314.53, the '689 patent is listed in the Orange Book for Xtandi® 40 mg and 80 mg tablets.

ANSWER: The allegations in paragraph 27 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus admits that the FDA's Orange Book lists in connection with New Drug Application ("NDA") No. 213674: "XTANDI" as Proprietary Name, "TABLET; ORAL" as the Dosage Form and Route of Administration, respectively, "40MG" and

"80MG" as Strength, and the '689 patent in "Patent and Exclusivity Information." Zydus denies all other allegations in paragraph 27.

28. Pursuant to an agreement, as amended, entered into between API, AUS, Medivation, Inc., and Medivation Prostate Therapeutics, Inc., API was granted an exclusive license to the '689 patent.

ANSWER: Zydus lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 28 and therefore denies them.

29. Pursuant to an agreement, as amended, entered into between API and AUS, AUS was granted a sublicense to the '689 patent.

ANSWER: Zydus lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 29 and therefore denies them.

30. Pursuant to an agreement entered into between AUS and APUS, APUS was granted a sublicense to the '689 patent.

ANSWER: Zydus lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 and therefore denies them.

31. On September 28, 2016, Pfizer Inc. acquired Medivation, Inc. and its wholly owned subsidiary Medivation Prostate Therapeutics, Inc.

ANSWER: Zydus lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 and therefore denies them.

32. On August 28, 2017, Medivation, Inc. filed a Certificate of Conversion with the Delaware Secretary of State, in which Medivation, Inc. converted from a corporation to a limited liability company and changed its name to Medivation LLC.

ANSWER: Zydus lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 32 and therefore denies them.

33. On August 28, 2017, Medivation Prostate Therapeutics, Inc. filed a Certificate of Conversion with the Delaware Secretary of State, in which Medivation Prostate Therapeutics, Inc. converted from a corporation to a limited liability company and changed its name to Medivation Prostate Therapeutics LLC.

ANSWER: Zydus lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 33 and therefore denies them.

34. On December 10, 2024, the '628 patent, entitled "Combination Therapy," was duly and legally issued to API and MPT. A true and correct copy of the '628 patent is attached hereto as Exhibit B.

ANSWER: The allegations in paragraph 34 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus admits that, on information and belief, what purports to be a copy of the '628 patent is attached to the Amended Complaint as Exhibit B. Zydus admits that Exhibit B lists December 10, 2024 as the "Date of the Patent," is titled "Combination Therapy," and that "Astellas Pharma Inc." and "Medivation Prostate Therapeutics LLC" are listed as the Assignees. Zydus denies all other allegations in paragraph 34.

35. In accordance with 21 U.S.C. § 355(b)(1) and 21 C.F.R. § 314.53, the '628 patent will be timely listed in the Orange Book for Xtandi® 40 mg and 80 mg tablets.

ANSWER: Zydus lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 35 and therefore denies them.

CLAIMS FOR RELIEF – PATENT INFRINGEMENT

36. Before issuance of the '689 patent, APUS received a notice letter from Zydus dated May 26, 2022 (the "First Zydus Notice Letter"), advising APUS that Zydus submitted ANDA No. 217322 to the FDA seeking approval to manufacture, use, or sell enzalutamide 40 mg and 80 mg tablets prior to the expiration of U.S. Patent No. 7,709,517 ("the '517 patent"). The '517 patent, entitled "Diarylhydantoin Compounds," claims, *inter alia*, the compound, and pharmaceutical compositions of, enzalutamide. It is listed in the Orange Book for Xtandi® 40 mg and 80 mg tablets.

ANSWER: Zydus admits that Zydus USA transmitted a letter dated May 26, 2022 ("First Notice Letter") to Astellas Pharma US, Inc., notifying it that Zydus USA submitted ANDA No. 217322 to the FDA under 21 U.S.C. § 355(j), seeking approval to engage in the manufacture, use, sale, or offer to sell within, and/or importation in or into the United States of enzalutamide tablets, 40 mg and 80 mg, as described in ANDA No. 217322. Zydus further admits that ANDA No. 217322 included a Paragraph IV Certification with respect to U.S. Patent No. 7,709,517 ("the

'517 patent"). Zydus further admits that the '517 patent is titled "Diarylhydantoin Compounds." Zydus further admits that the FDA's Orange Book lists in connection with New Drug Application ("NDA") No. 213674: "XTANDI" as Proprietary Name, "TABLET; ORAL" as the Dosage Form and Route of Administration, respectively, "40MG" and "80MG" as Strength, and the '517 patent in "Patent and Exclusivity Information." Zydus denies all other allegations in paragraph 36.

37. Plaintiffs brought suit against Zydus in this judicial district on July 8, 2022, alleging infringement of the '517 patent. *See Astellas Pharma Inc. v. Zydus Pharms. (USA) Inc.*, No. 2:22-cv-04499 (D.N.J).

ANSWER: Admitted.

38. In that lawsuit, Plaintiffs and Zydus stipulated that all claims and defenses asserted by the parties against each other would be dismissed without prejudice. The Joint Stipulation and Order of Dismissal was entered on April 17, 2023. *See Astellas Pharma Inc. v. Zydus Pharms. (USA) Inc.*, No. 2:22-cv-04499 (D.N.J), D.I. 36.

ANSWER: Admitted.

39. By a letter dated September 3, 2024 (the "Second Zydus Notice Letter"), Zydus advised APUS, API, and MPT that it had submitted ANDA No. 217322 to the FDA seeking approval to manufacture, use, or sell enzalutamide 40 mg and 80 mg tablets prior to the expiration of the '689 patent. The '628 patent will expire after the '689 patent.

ANSWER: Zydus admits that Zydus USA transmitted a letter dated September 3, 2024 ("Second Notice Letter") to Astellas Pharma US, Inc., Astellas Pharma Inc., and Medivation Prostate Therapeutics, LLC, notifying them that Zydus USA submitted ANDA No. 217322 to the FDA under 21 U.S.C. § 355(j), seeking approval to engage in the manufacture, use, sale, or offer to sell within, and/or importation in or into the United States of enzalutamide tablets, 40 mg and 80 mg, as described in ANDA No. 217322. Zydus further admits that ANDA No. 217322 was amended to include a Paragraph IV Certification with respect to the '689 patent. Zydus lacks knowledge or information sufficient to form a belief as to the truth of the allegation in the second sentence of paragraph 39 and therefore denies it. Zydus denies all other allegations in paragraph 39.

40. By a letter dated December 27, 2024 (the "Third Zydus Notice Letter"), Zydus advised APUS, API, and MPT that it had submitted a supplement to ANDA No. 217322 seeking approval to manufacture, use or sell enzalutamide 120 mg and 160 mg tablets (together with its enzalutamide 40 mg and 80 mg tablets, "Zydus's Generic Products") prior to the expiration of the '689 patent.

ANSWER: Zydus admits that Zydus USA transmitted a letter dated December 27, 2024 ("Third Notice Letter") to Astellas Pharma US, Inc., Astellas Pharma Inc., and Medivation Prostate Therapeutics, LLC, notifying them that Zydus USA submitted a supplement to ANDA No. 217322 to the FDA under 21 U.S.C. § 355(j), seeking approval to engage in the manufacture, use, sale, or offer to sell within, and/or importation in or into the United States of enzalutamide tablets, 120 mg and 160 mg, as described in ANDA No. 217322. Zydus further admits that ANDA No. 217322 was amended to include a Paragraph IV Certification with respect to the '689 patent. Zydus denies all other allegations in paragraph 40.

41. On information and belief, Zydus submitted ANDA No. 217322 to the FDA under § 505(j) of the Federal Food, Drug, and Cosmetic Act ("FDCA"), seeking approval to engage in the commercial manufacture, use, and sale of Zydus's Generic Products as generic versions of Xtandi® 40 mg and 80 mg tablets.

ANSWER: Zydus admits that Zydus USA submitted ANDA No. 217322 to the FDA under 21 U.S.C. § 355(j), seeking approval to engage in the manufacture, use, sale, or offer to sell within, and/or importation in or into the United States of Zydus's Proposed ANDA Product described in ANDA No. 217322. Zydus further admits that ANDA No. 217322 identifies XTANDI® (enzalutamide), 40 mg and 80 mg tablets, as the Reference Listed Drug. Zydus denies all other allegations in paragraph 41.

42. On information and belief, ANDA No. 217322 seeks FDA approval of Zydus's Generic Products for the indications of treatment of castration-resistant prostate cancer, metastatic castration-sensitive prostate cancer, and non-metastatic castration-sensitive prostate cancer with biochemical recurrence at high risk for metastasis.

ANSWER: Zydus admits that ANDA No. 217322 includes proposed prescribing information that complies with applicable law. Zydus denies all other allegations in paragraph 42.

43. The Second and Third Zydus Notice Letters also advised APUS, API, and MPT that Zydus's ANDA submission included a certification under 21 U.S.C. § 355(j)(2)(A)(vii)(IV) that, in Zydus's opinion, certain claims of the '689 patent are invalid, unenforceable, and/or not infringed.

ANSWER: Admitted.

44. The Second and Third Zydus Notice Letters do not allege invalidity of claims 2-7 of the '689 patent.

ANSWER: Zydus denies that the allegations in paragraph 41 accurately and completely recite the statements in Zydus USA's Second and Third Notice Letters and therefore denies them. Zydus admits that Exhibit A of Zydus USA's Second and Third Notice Letters states that "Zydus does not waive, and expressly reserves, the right to raise additional defenses and arguments concerning noninfringement, invalidity, and unenforceability of the '689 patent in any ensuing litigation or other proceeding that may result from receipt of this letter. *See Abbott Labs, Inc. v. Apotex Inc.*, 725 F. Supp. 2d 724, 727 (N.D. Ill. 2010) (refusing to strike defense theories not raised in defendant's notice letter because an ANDA filer is 'not limited to the invalidity and noninfringement theories raised in its paragraph IV notice letters'); *Astra Aktiebolag v. Kremers Urban Dev. Co.*, No. 99 Civ. 8928 (BSJ), 2000 U.S. Dist. LEXIS 2511, *4 (S.D.N.Y. Mar. 6, 2000) ('There is no language in the relevant statutory provisions, legislative history or cases barring [an ANDA filer] from raising defenses and counterclaims not noticed in [its] ANDA.')." Zydus denies all other allegations in paragraph 44.

45. By not identifying invalidity defenses for claims 2-7 of the '689 patent in the Second and Third Zydus Notice Letters, Zydus admits these claims are valid.

ANSWER: Denied.

46. The Second and Third Zydus Notice Letters do not allege invalidity under 35 U.S.C. §§ 101, 102, or 112, or unenforceability of any claim of the '689 patent.

ANSWER: Zydus denies that the allegations in paragraph 43 accurately and completely recite the statements in Zydus USA's Second and Third Notice Letters and therefore denies them.

Zydus admits that Exhibit A of Zydus USA's Second and Third Notice Letters states that "Zydus does not waive, and expressly reserves, the right to raise additional defenses and arguments concerning noninfringement, invalidity, and unenforceability of the '689 patent in any ensuing litigation or other proceeding that may result from receipt of this letter. *See Abbott Labs, Inc. v. Apotex Inc.*, 725 F. Supp. 2d 724, 727 (N.D. Ill. 2010) (refusing to strike defense theories not raised in defendant's notice letter because an ANDA filer is 'not limited to the invalidity and noninfringement theories raised in its paragraph IV notice letters'); *Astra Aktiebolag v. Kremers Urban Dev. Co.*, No. 99 Civ. 8928 (BSJ), 2000 U.S. Dist. LEXIS 2511, *4 (S.D.N.Y. Mar. 6, 2000) ('There is no language in the relevant statutory provisions, legislative history or cases barring [an ANDA filer] from raising defenses and counterclaims not noticed in [its] ANDA.')." Zydus denies all other allegations in paragraph 46.

47. By not identifying invalidity defenses under 35 U.S.C. §§ 101, 102, or 112, or unenforceability defenses for the '689 patent in the Second and Third Zydus Notice Letters, Zydus admits the claims of the '689 patent are valid under 35 U.S.C. §§ 101, 102, and 112, and are enforceable.

ANSWER: Denied.

48. There is an actual, real, immediate, and justiciable controversy between Plaintiffs and Zydus regarding the infringement, validity, and enforceability of the Xtandi® patents.

ANSWER: The allegations in paragraph 48 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus admits that Plaintiffs' Amended Complaint against Zydus purports to be a civil action alleging infringement of the '689 and '628 patents. Zydus denies all other allegations in paragraph 48.

49. Plaintiffs commenced this action within 45 days of receiving the Second Zydus Notice Letter pursuant to 21 U.S.C. § 355(j)(5)(B)(iii).

ANSWER: The allegations in paragraph 49 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus admits that Plaintiffs Astellas Pharma US,

Inc., Astellas Pharma Inc., and Medivation Prostate Therapeutics, LLC received Zydus USA's Second Notice Letter on September 4, 2024, and that Plaintiffs filed their original Complaint on October 11, 2024. Zydus denies all other allegations in paragraph 49.

COUNT I
(Infringement of the '689 Patent)

50. Plaintiffs incorporate each of the preceding paragraphs 1 to 49 as if fully set forth herein.

ANSWER: Zydus repeats and re-alleges its answer to each of the preceding paragraphs 1-49, as if fully set forth herein.

51. By submitting ANDA No. 217322 to the FDA to obtain approval under the FDCA to engage in the commercial manufacture, use, offer for sale, sale, and/or importation of Zydus's Generic Products throughout the United States, including New Jersey, prior to expiration of the '689 patent, Zydus committed an act of infringement of the '689 patent under 35 U.S.C. § 271(e)(2)(A).

ANSWER: Denied.

52. The '689 patent claims, *inter alia*, pharmaceutical compositions of enzalutamide. Claim 1 recites "a pharmaceutical composition comprising a solid dispersion consisting essentially of amorphous enzalutamide and hydroxypropyl methylcellulose acetate succinate" ("HPMCAS"). Certain dependent claims specify that the formulation is a tablet.

ANSWER: The allegations in paragraph 52 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus denies that the allegations in paragraph 52 accurately and completely recite the claims of the '689 patent and therefore denies them. Zydus denies all other allegations in paragraph 52.

53. The formulation of Xtandi® tablets, 40 and 80 mg, contains a pharmaceutical composition comprising a solid dispersion consisting essentially of amorphous enzalutamide and HPMCAS. The formulation of Xtandi® tablets, 40 and 80 mg, is covered by the '689 patent.

ANSWER: Zydus lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 53 and therefore denies them.

54. The Second and Third Zydus Notice Letters do not dispute that Zydus's Generic Products are tablets or that those tablets contain a solid dispersion of enzalutamide, amorphous enzalutamide, or HPMCAS.

ANSWER: Zydus denies that the allegations in paragraph 54 accurately and completely recite the statements in Zydus USA's Second and Third Notice Letters and therefore denies them. Zydus admits that Exhibit A of Zydus USA's Second and Third Notice Letters states that "Zydus does not waive, and expressly reserves, the right to raise additional defenses and arguments concerning noninfringement, invalidity, and unenforceability of the '689 patent in any ensuing litigation or other proceeding that may result from receipt of this letter. *See Abbott Labs, Inc. v. Apotex Inc.*, 725 F. Supp. 2d 724, 727 (N.D. Ill. 2010) (refusing to strike defense theories not raised in defendant's notice letter because an ANDA filer is 'not limited to the invalidity and noninfringement theories raised in its paragraph IV notice letters'); *Astra Aktiebolag v. Kremers Urban Dev. Co.*, No. 99 Civ. 8928 (BSJ), 2000 U.S. Dist. LEXIS 2511, *4 (S.D.N.Y. Mar. 6, 2000) ('There is no language in the relevant statutory provisions, legislative history or cases barring [an ANDA filer] from raising defenses and counterclaims not noticed in [its] ANDA.')." Zydus denies all other allegations in paragraph 54.

55. On information and belief, Zydus copied the claimed invention of the '689 patent.

ANSWER: Denied.

56. On information and belief, Zydus was not required to copy the claimed invention of the '689 patent or the Xtandi® tablets formulation.

ANSWER: Zydus does not understand the allegations in paragraph 56. Accordingly, Zydus lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 56 and therefore denies them.

57. On information and belief, Zydus's Generic Products, if approved by the FDA, will contain a pharmaceutical composition comprising a solid dispersion consisting essentially of amorphous enzalutamide and HPMCAS, which will constitute infringement of claims of the '689 patent.

ANSWER: Denied.

58. On information and belief, Zydus's manufacture, use, sale, offer for sale, and/or importation into the United States of Zydus's Generic Products prior to the expiration of the '689 patent, including any applicable exclusivities or extensions, will directly infringe the '689 patent under 35 U.S.C. § 271(a) either literally or under the doctrine of equivalents. Zydus will infringe one or more of the claims of the '689 patent.

ANSWER: Denied.

59. On information and belief, Zydus was aware of the existence of the '689 patent and its listing in the Orange Book as demonstrated by Zydus's reference to the '689 patent in the Second and Third Zydus Notice Letters.

ANSWER: The allegations in paragraph 59 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus admits that ANDA No. 217322 was amended to include a Paragraph IV Certification with respect to the '689 patent. Zydus denies all other allegations in paragraph 59.

60. On information and belief, Zydus knows or should know that its commercial manufacture, use, offer for sale, sale, and/or importation of Zydus's Generic Products prior to patent expiry will infringe one or more claims of the '689 patent.

ANSWER: Denied.

61. On information and belief, Zydus's statement of the factual and legal bases for its opinions regarding non-infringement and invalidity of the '689 patent is devoid of an objective good faith basis in either the facts or the law. This case is exceptional.

ANSWER: Denied.

62. Plaintiffs will be substantially and irreparably harmed by the infringing activities described above unless those activities are precluded by this Court. Plaintiffs have no adequate remedy at law.

ANSWER: Denied.

COUNT II
(Infringement of the '628 Patent)

63. Plaintiffs incorporate each of the preceding paragraphs 1 to 62 as if fully set forth herein.

ANSWER: Zydus repeats and re-alleges its answer to each of the preceding paragraphs 1-62, as if fully set forth herein.

64. Zydus, by filing the Second and Third Zydus Notice Letters, has indicated its intent to engage in the commercial manufacture, use, offer for sale, sale, marketing, distribution, and/or importation of Zydus's Generic Products prior to the expiration of the '689 patent, and therefore prior to the expiration of the '628 patent.

ANSWER: The allegations in paragraph 64 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus admits that ANDA No. 217322 was amended to include a Paragraph IV Certification with respect to the '689 patent. Zydus denies all other allegations in paragraph 64.

65. Zydus has been aware of the '628 patent since at least December 11, 2024, when it was notified by Plaintiffs' counsel.

ANSWER: The allegations in paragraph 65 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus admits that on December 11, 2024, outside counsel for Plaintiffs wrote outside counsel for Zydus regarding the issuance of the '628 patent on December 10, 2024. Zydus denies all other allegations in paragraph 65.

66. The submission of Zydus's ANDA seeking approval to engage in the commercial manufacture, use, offer to sell, or sale of Zydus's Generic Products, prior to the expiration of the '628 patent, constitutes infringement of one or more of the claims of the '628 patent under 35 U.S.C. § 271(e)(2)(A).

ANSWER: Denied.

67. On information and belief, Zydus intends to engage in the commercial manufacture, use, offer for sale, sale, marketing, distribution, and/or importation of Zydus's Generic Products with the proposed labeling immediately and imminently upon final approval of Zydus's ANDA No. 217322.

ANSWER: The allegations in paragraph 67 are legal conclusions to which no answer is required. To the extent an answer is required Zydus admits that Zydus USA submitted ANDA No. 217322 to the FDA under 21 U.S.C. § 355(j), seeking approval to engage in the manufacture, use, sale, or offer to sell within, and/or importation in or into the United States of Zydus's Proposed ANDA Product described in ANDA No. 217322. Zydus denies all other allegations in paragraph 67.

68. The '628 patent claims, *inter alia*, methods of treating prostate cancer in patients to whom rifampin is administered. Claim 1 recites a "method of treating prostate cancer in a patient to whom rifampin is administered, comprising co-administering to the patient a daily dose of 240 mg of enzalutamide."

ANSWER: The allegations in paragraph 68 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus denies that the allegations in paragraph 68 accurately and completely recite the claims of the '628 patent and therefore denies them. Zydus denies all other allegations in paragraph 68.

69. On information and belief, Zydus's manufacture, use, sale, offer for sale, and/or importation into the United States of Zydus's Generic Products prior to the expiration of the '628 patent, including any applicable exclusivities or extensions, will actively induce infringement of at least Claim 1 of the '628 patent under 35 U.S.C. § 271(b). Zydus will aid another in the infringement of one or more of the claims of the '628 patent.

ANSWER: Denied.

70. On information and belief, Zydus's Generic Products will have instructions for use that substantially copy the instructions for Xtandi® tablets, which disclose and encourage the practice of all the elements of Claim 1 of the '628 patent. Upon information and belief, the proposed labeling for Zydus's Generic Products will direct the use of Zydus's Generic Products for the following indications: treatment of patients with castration-resistant prostate cancer, treatment of patients with metastatic castration-sensitive prostate cancer, and treatment of patients with non-metastatic castration-sensitive prostate cancer with biochemical recurrence at high risk for metastasis. On information and belief, the proposed labeling for Zydus's Generic Products will identify rifampin as a strong CYP3A4 inducer that decreases plasma concentrations of enzalutamide and its active metabolite and direct the co-administration of Zydus's Generic Products at a dose of 240 mg orally once daily in patients who are receiving rifampin.

ANSWER: Zydus denies the allegations in the first sentence of paragraph 70. The allegations in the second and third sentences of paragraph 70 do not accurately and completely recite the contents of the proposed prescribing information contained in ANDA No. 217322 and therefore Zydus denies them. Zydus denies all other allegations in paragraph 70.

71. On information and belief, Zydus's Generic Products, if approved by the FDA, will be prescribed and administered to human patients to treat castration-resistant prostate cancer, metastatic castration-sensitive prostate cancer, and/or non-metastatic castration-sensitive prostate cancer with biochemical recurrence at high risk for metastasis, who are also receiving rifampin, at a daily dose of 240 mg/day, which will constitute infringement of at least Claim 1 of the '628 patent.

ANSWER: Denied.

72. On information and belief, this directly infringing use will occur with Zydus's specific intent and encouragement and will be a use that Zydus knows or should know will occur.

ANSWER: Denied.

73. On information and belief, Zydus copied the claimed invention of the '628 patent.

ANSWER: Denied.

74. On information and belief, Zydus will actively induce, encourage, aid, and abet this prescription and administration, with knowledge and specific intent that this use will be in contravention of Plaintiffs' rights under the '628 patent.

ANSWER: Denied.

75. On information and belief, Zydus's acts will be performed with knowledge of the '628 patent and with intent to encourage infringement prior to patent expiry.

ANSWER: Denied.

76. Plaintiffs will be substantially and irreparably harmed by the infringing activities described above unless those activities are precluded by this Court. Plaintiffs have no adequate remedy at law.

ANSWER: Denied.

COUNT III
(Declaratory Judgment of Infringement of the '628 Patent Under 35 U.S.C. § 271(b))

77. Plaintiffs incorporate each of the preceding paragraphs 1 to 76 as if fully set forth herein.

ANSWER: Zydus repeats and re-alleges its answer to each of the preceding paragraphs 1-76, as if fully set forth herein.

78. On information and belief, Zydus intends to engage in the commercial manufacture, use, offer for sale, sale, marketing, distribution, and/or importation of Zydus's Generic Products with the proposed labeling immediately and imminently upon final approval of Zydus's ANDA No. 217322 and prior to the expiration of the '628 patent. Therefore, a case or controversy exists between Defendants and Plaintiffs as to infringement of the '628 patent.

ANSWER: The allegations in paragraph 78 are legal conclusions to which no answer is required. To the extent an answer is required Zydus admits that Zydus USA submitted ANDA No. 217322 to the FDA under 21 U.S.C. § 355(j), seeking approval to engage in the manufacture, use, sale, or offer to sell within, and/or importation in or into the United States of Zydus's Proposed ANDA Product described in ANDA No. 217322. Zydus denies all other allegations in paragraph 78.

79. Zydus has been aware of the '628 patent since at least December 11, 2024, when it was notified by Plaintiffs' counsel.

ANSWER: The allegations in paragraph 79 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus admits that on December 11, 2024, outside counsel for Plaintiffs wrote outside counsel for Zydus regarding the issuance of the '628 patent on December 10, 2024. Zydus denies all other allegations in paragraph 79.

80. The '628 patent claims, *inter alia*, methods of treating prostate cancer in patients to whom rifampin is administered. Claim 1 recites a "method of treating prostate cancer in a patient to whom rifampin is administered, comprising co-administering to the patient a daily dose of 240 mg of enzalutamide."

ANSWER: The allegations in paragraph 80 are legal conclusions to which no answer is required. To the extent an answer is required, Zydus denies that the allegations in paragraph 80 accurately and completely recite the claims of the '628 patent and therefore denies them. Zydus denies all other allegations in paragraph 80.

81. On information and belief, Zydus's manufacture, use, sale, offer for sale, and/or importation into the United States of Zydus's Generic Products prior to the expiration of the '628 patent, including any applicable exclusivities or extensions, will actively induce infringement of at least Claim 1 of the '628 patent under 35 U.S.C. § 271(b). Zydus will aid another in the infringement of one or more of the claims of the '628 patent.

ANSWER: Denied.

82. On information and belief, Zydus's Generic Products will have instructions for use that substantially copy the instructions for Xtandi® tablets, which disclose and encourage the practice of all the elements of Claim 1 of the '628 patent. Upon information and belief, the proposed labeling for Zydus's Generic Products will direct the use of Zydus's Generic Products for the following indications: treatment of patients with castration-resistant prostate cancer, treatment of patients with metastatic castration-sensitive prostate cancer, and treatment of patients with non-metastatic castration-sensitive prostate cancer with biochemical recurrence at high risk for metastasis. On information and belief, the proposed labeling for Zydus's Generic Products will identify rifampin as a strong CYP3A4 inducer that decreases plasma concentrations of enzalutamide and its active metabolite and direct the co-administration of Zydus's Generic Products at a dose of 240 mg orally once daily in patients who are receiving rifampin.

ANSWER: Zydus denies the allegations in the first sentence of paragraph 82. The allegations in the second and third sentences of paragraph 82 do not accurately and completely recite the contents of the proposed prescribing information contained in ANDA No. 217322 and therefore Zydus denies them. Zydus denies all other allegations in paragraph 82.

83. On information and belief, Zydus's Generic Products, if approved by the FDA, will be prescribed and administered to human patients to treat castration-resistant prostate cancer, metastatic castration-sensitive prostate cancer, and/or non-metastatic castration-sensitive prostate cancer with biochemical recurrence at high risk for metastasis, who are also receiving rifampin, at a daily dose of 240 mg/day, which will constitute infringement of at least Claim 1 of the '628 patent.

ANSWER: Denied.

84. On information and belief, this directly infringing use will occur with Zydus's specific intent and encouragement and will be a use that Zydus knows or should know will occur.

ANSWER: Denied.

85. On information and belief, Zydus copied the claimed invention of the ’628 patent.

ANSWER: Denied.

86. On information and belief, Zydus will actively induce, encourage, aid, and abet this prescription and administration, with knowledge and specific intent that this use will be in contravention of Plaintiffs’ rights under the ’628 patent.

ANSWER: Denied.

87. On information and belief, Zydus’s acts will be performed with knowledge of the ’628 patent and with intent to encourage infringement prior to patent expiry.

ANSWER: Denied.

88. Plaintiffs will be substantially and irreparably harmed by the infringing activities described above unless those activities are precluded by this Court. Plaintiffs have no adequate remedy at law.

ANSWER: Denied.

PRAYER FOR RELIEF

Zydus specifically denies that Plaintiffs are entitled to the general or specific relief requested against Zydus, or to any relief whatsoever, and prays for judgment in favor of Zydus dismissing this action with prejudice, and awarding Zydus its reasonable attorney’s fees pursuant to 35 U.S.C. § 285, interest, and costs of this action, and such other or further relief as this Court may deem just and proper.

AFFIRMATIVE DEFENSES

Without prejudice to the denials set for in its Answer and without admitting any allegations of the Amended Complaint not otherwise admitted, Zydus avers and asserts the following Affirmative Defenses to Plaintiffs’ Amended Complaint.

FIRST AFFIRMATIVE DEFENSE
(Noninfringement of U.S. Patent No. 11,839,689)

Plaintiff will not and cannot meet the burden of proof required to show that the submission of Zydus's ANDA No. 217322 and/or the manufacture, use, sale, or offer to sell within, and/or importation into, the United States of Zydus's Proposed ANDA Product will directly or indirectly infringe, either literally or under the doctrine of equivalents, any valid claim of the '689 patent.

SECOND AFFIRMATIVE DEFENSE
(Invalidity of U.S. Patent No. 11,839,689)

On information and belief, the claims of the '689 patent are invalid for failure to comply with one or more of the provisions of Title 35 of the United States Code, including, but not limited to, §§ 101, 102, 103, and/or 112, and/or obviousness-type double patenting.

THIRD AFFIRMATIVE DEFENSE
(Noninfringement of U.S. Patent No. 12,161,628)

Plaintiff will not and cannot meet the burden of proof required to show that the submission of Zydus's ANDA No. 217322 and/or the manufacture, use, sale, or offer to sell within, and/or importation into, the United States of Zydus's Proposed ANDA Product will directly or indirectly infringe, either literally or under the doctrine of equivalents, any valid claim of the '628 patent.

FOURTH AFFIRMATIVE DEFENSE
(Invalidity of U.S. Patent No. 12,161,628)

On information and belief, the claims of the '628 patent are invalid for failure to comply with one or more of the provisions of Title 35 of the United States Code, including, but not limited to, §§ 101, 102, 103, and/or 112, and/or obviousness-type double patenting.

RESERVATION OF DEFENSES

Defendant hereby reserves any and all defenses that are available under the Federal Rules of Civil Procedure and the U.S. Patent Laws and any other defenses, at law or in equity, that may now exist or become available later as a result of discovery and further factual investigation during this litigation.

COUNTERCLAIMS

Zydus Pharmaceuticals (USA) Inc. ("Zydus USA"), and Zydus Lifesciences Limited ("Zydus Lifesciences") (collectively, "Defendants" or "Counterclaimants"), by their attorneys, allege the following counterclaims against Plaintiffs/Counterclaim Defendants Astellas Pharma Inc., Astellas US LLC., and Astellas Pharma US, Inc., Medivation LLC, and Medivation Prostate Therapeutics LLC (collectively, "Counterclaim Defendants").

THE PARTIES

1. Zydus USA is a corporation organized and existing under the laws of the State of New Jersey with its primary place of business at 73 Route 31 N., Pennington, New Jersey 08534.

2. Zydus Lifesciences is an entity organized and existing under the laws of India, having a principal place of business at Zydus Corporate Park, Scheme No. 63, Survey No. 536, Khoraj (Gandhinagar), Nr. Vaishnodevi Circle, S. G. Highway, Ahmedabad 382 481, India.

3. Upon information and belief, Astellas Pharma Inc. is a corporation organized and existing under the laws of Japan, having its principal place of business at 2-5-1, Nihonbashi-Honcho, Chuo-Ku, Tokyo 103-8411, Japan.

4. Upon information and belief, Astellas US LLC is a limited liability company organized and existing under the laws of the State of Delaware having its principal place of business at 2375 Waterview Drive, Northbrook, Illinois 60062, United States.

5. Upon information and belief, Astellas Pharma US, Inc. is a corporation organized and existing under the laws of the State of Delaware having its principal place of business at 2375 Waterview Drive, Northbrook, Illinois 60062, United States.

6. Upon information and belief, Medivation LLC is a limited liability company organized and existing under the laws of the State of Delaware having its principal place of business at 66 Hudson Boulevard East, New York, New York 10001-2192, United States.

7. Upon information and belief, Medivation Prostate Therapeutics LLC is a limited liability company organized and existing under the laws of the State of Delaware having its principal place of business at 66 Hudson Boulevard East, New York, New York 10001-2192, United States.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of these counterclaims under 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202, 35 U.S.C. § 1 *et seq*., 21 U.S.C. § 355(j)(5)(C)(i) and 35 U.S.C. § 271(e)(5).

9. This Court has personal jurisdiction over Counterclaim Defendants because Counterclaim Defendants commenced and continue to maintain this action against Defendants in this district.

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c), 21 U.S.C. § 355(j)(5)(C)(i)(II) and because Counterclaim Defendants commenced and continue to maintain this action against Defendants in this district.

REGULATORY FRAMEWORK

11. Under the Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. §§ 301 *et seq.*, as amended by the Drug Price Competition and Patent Term Restoration Act, Pub. L. No. 98-417, 98 Stat. 1585 (1984) (codified as amended at 21 U.S.C. § 355 and 35 U.S.C. § 271) (the

"Hatch-Waxman Act"), and the Medicare Prescription Drug, Improvement, and Modernization Act, Pub. L. No. 108-173, 117 Stat. 2066 (2003) (codified as amended at 21 U.S.C. § 355 and 35 U.S.C. § 271), a pharmaceutical company seeking approval from the U.S. Food and Drug Administration ("FDA") to sell a new drug must file a New Drug Application ("NDA"), which includes specific data concerning the safety and effectiveness of the drug referenced in the NDA, i.e., the reference-listed drug or RLD.

12. The Hatch-Waxman Act provides that NDA holders shall submit to FDA the patent number and expiration date of any patent that the NDA holder believes "claims the drug for which the applicant submitted the [NDA] . . . and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the [NDA] owner engaged in the manufacture, use, or sale of the drug." 21 U.S.C. § 355(b)(1). FDA lists the patent number(s) and expiration date(s) in its publication entitled *Approved Drug Products with Therapeutic Equivalence Evaluations* ("Orange Book").

ORANGE-BOOK-LISTED PATENTS FOR XTANDI®

13. Upon information and belief, Astellas Pharma US Inc. is the holder of NDA No. 213674 on XTANDI® (enzalutamide) oral tablets, 40 mg and 80 mg.

14. United States Patent No. 11,839,689 ("the '689 patent"), titled "Formulations of Enzalutamide"—a copy of which Counterclaim Defendants purported to attach to its Amended Complaint as Exhibit A—was issued on December 12, 2023. According to the United States Patent and Trademark Office's ("PTO") Patent Assignment Search database, Reel No. 065382, Frame No. 0523, and Reel No. 065383, Frame No. 0835, the '689 patent is assigned to Astellas Pharma Inc. and Medivation Prostate Therapeutics, LLC. FDA's Orange Book (accessed November 25, 2024) lists the expiration date of the '689 patent as September 11, 2033.

15. Upon information and belief, Astellas Pharma US Inc. submitted on December 19, 2023, the '689 patent to FDA for listing in the Orange Book with respect to NDA No. 213674 for XTANDI® (enzalutamide) oral tablets. Accordingly, Astellas Pharma US Inc. maintains and has affirmatively represented that the '689 patent claims the approved drug XTANDI® or a method of using that drug. Therefore, any ANDA applicant, including Zydus USA, attempting to sell enzalutamide tablets before the expiration of the '689 patent has a reasonable apprehension of suit with respect to the '689 patent.

16. United States Patent No. 12,161,628 ("the '628 patent"), titled "Combination Therapy"—a copy of which Counterclaim Defendants purported to attach to its Amended Complaint as Exhibit B—was issued on December 10, 2024. According to the PTO Patent Assignment Search database, Reel No. 069516, Frame No. 0435, Reel No. 069516, Frame No. 0398, and Reel No. 069495, Frame No. 0311, the '628 patent is assigned to Astellas Pharma Inc. and Medivation Prostate Therapeutics, LLC.

17. Upon information and belief, Astellas Pharma US Inc. will submit the '628 patent to FDA for listing in the Orange Book with respect to NDA No. 213674 for XTANDI® (enzalutamide) oral tablets. Accordingly, Astellas Pharma US Inc. will maintain and will affirmatively represent that the '628 patent claims the approved drug XTANDI® or a method of using that drug. Therefore, any ANDA applicant, including Zydus USA, attempting to sell enzalutamide tablets before the expiration of the '628 patent has a reasonable apprehension of suit with respect to the '628 patent.

ZYDUS USA'S ANDA

18. On April 15, 2022, Zydus USA submitted to FDA ANDA No. 217322 ("Zydus USA's ANDA") under 21 U.S.C. § 355(j), seeking FDA approval to engage in the commercial manufacture, importation, use, or sale of enzalutamide tablets, 40 mg and 80 mg.

19. Because Zydus USA seeks FDA approval to engage in the commercial manufacture, importation, use, or sale of the proposed product described in ANDA No. 217322 before the expiration of the '689 patent, ANDA No. 217322 was amended to include a certification pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV) ("Paragraph IV Certification") with respect to the '689 patent.

20. Zydus USA sent a letter dated September 3, 2024, notifying Astellas Pharma US, Inc., Astellas Pharma Inc., and Medivation Prostate Therapeutics, LLC that Zydus USA submitted to FDA ANDA No. 217322 under 21 U.S.C. § 355(j), seeking approval to engage in the commercial manufacture, importation, use, or sale of enzalutamide tablets, 40 mg and 80 mg, and that ANDA No. 217322 was amended to include a certification pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV) with respect to the '689 patent.

21. Zydus USA sent a letter dated December 27, 2024, notifying Astellas Pharma US, Inc., Astellas Pharma Inc., and Medivation Prostate Therapeutics, LLC that Zydus USA submitted to FDA a supplement to ANDA No. 217322 under 21 U.S.C. § 355(j), seeking approval to engage in the commercial manufacture, importation, use, or sale of enzalutamide tablets, 120 mg and 160 mg, and that the supplement to ANDA No. 217322 included a certification pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV) with respect to the '689 patent.

COUNT I
(Declaratory Judgment of Noninfringement of U.S. Patent No. 11,839,689)

22. Defendants repeat and reallege the allegations in paragraphs 1-21 above as though fully set forth herein.

23. By asserting their claim against Defendants for infringement of the '689 patent, Counterclaim Defendants have created a case or controversy regarding the noninfringement of the '689 patent.

24. The manufacture, use, sale, or offer to sell within, and/or importation into, the United States of the proposed enzalutamide oral tablets that are the subject of ANDA No. 217322 would not and will not directly or indirectly infringe, either literally or under the doctrine of equivalents, any valid claim of the '689 patent.

COUNT II
(Declaratory Judgment of Invalidity of U.S. Patent No. 11,839,689)

25. Defendants repeat and reallege the allegations in paragraphs 1-24 above as though fully set forth herein.

26. By asserting their claim against Defendants for infringement of the '689 patent, Counterclaim Defendants have created a case or controversy regarding the validity of the '689 patent for failure to comply with one or more of the provisions of Title 35 of the United States Code, including, but not limited to, §§ 101, 102, 103 and/or 112, and/or obviousness-type double patenting.

27. The claims of the '689 patent are invalid for failure to comply with one or more of the provisions of Title 35 of the United States Code, including, but not limited to, §§ 101, 102, 103 and/or 112.

COUNT III
(Declaratory Judgment of Noninfringement of U.S. Patent No. 12,161,628)

28. Defendants repeat and reallege the allegations in paragraphs 1-27 above as though fully set forth herein.

29. By asserting their claim against Defendants for infringement of the '628 patent, Counterclaim Defendants have created a case or controversy regarding the noninfringement of the '628 patent.

30. The manufacture, use, sale, or offer to sell within, and/or importation into, the United States of the proposed enzalutamide oral tablets that are the subject of ANDA No. 217322

would not and will not directly or indirectly infringe, either literally or under the doctrine of equivalents, any valid claim of the ’628 patent.

COUNT II
(Declaratory Judgment of Invalidity of U.S. Patent No. 12,161,628)

31. Defendants repeat and reallege the allegations in paragraphs 1-30 above as though fully set forth herein.

32. By asserting their claim against Defendants for infringement of the ’628 patent, Counterclaim Defendants have created a case or controversy regarding the validity of the ’628 patent for failure to comply with one or more of the provisions of Title 35 of the United States Code, including, but not limited to, §§ 101, 102, 103 and/or 112, and/or obviousness-type double patenting.

33. The claims of the ’628 patent are invalid for failure to comply with one or more of the provisions of Title 35 of the United States Code, including, but not limited to, §§ 101, 102, 103 and/or 112.

PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully request that the Court enter judgment against Counterclaim Defendants as follows:

A. A declaration that Defendants have not and will not directly or indirectly infringe, either literally or under the doctrine of equivalents, any valid claim of the ’689 patent and the ’628 patent;

B. A declaration that the claims of the ’689 patent and the ’628 patent are invalid for failure to comply with one or more of the provisions of 35 U.S.C. §§ 100 *et seq.*, including §§ 101, 102, 103 and/or 112, and/or obviousness-type double patenting;

C. A declaration that Counterclaim Defendants take nothing by their Amended Complaint;

D. A dismissal of Counterclaim Defendants' Amended Complaint with prejudice;

E. An award to Defendants of their reasonable costs and attorneys' fees incurred in this action pursuant to 35 U.S.C. § 285; and

An award of any other and further relief that this Court may deem just and proper.

Dated: January 16, 2025

By: *s/ Theodora McCormick*

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LOCAL CIVIL RULE 11.2 CERTIFICATION

Pursuant to Local Civil Rule 11.2 and 40.1, I hereby certify that, to the best of my knowledge, the matter in controversy is not the subject of any other pending or anticipated litigation in any court or arbitration proceeding, except that the same Plaintiffs have asserted the patents in this case in the following pending matter in this Judicial District: *Astellas Pharma Inc., et al. v. Haimen Pharma Inc., et al.*, Case No. 3:24-cv-09403 (MAS).

Defendants are not aware of any other action pending in any court or any pending arbitration or administrative proceeding related to this matter.

By: *s/ Theodora McCormick*
Theodora McCormick

Dated: January 16, 2025

LOCAL CIVIL RULE 201.1 CERTIFICATION

I hereby certify that the above-captioned matter is not subject to compulsory arbitration in that the parties seek, *inter alia*, declaratory relief in their respective pleadings.

I hereby certify under penalty of perjury that the foregoing is true and correct.

By: *s/ Theodora McCormick*
Theodora McCormick

Dated: January 16, 2025

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of Defendants' Answer, Affirmative Defenses, and Counterclaims was filed via ECF and served on all counsel of record by ECF on January 16, 2025.

By: *s/ Theodora McCormick*
Theodora McCormick

Dated: January 16, 2025