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Docket No. 2023-09745
Case No. 2020-1069-MTZ

GRANTED WITH MODIFICATIONS

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SHAREHOLDER REPRESENTATIVE)
SERVICES LLC, solely in its capacity)
as representative of the Securityholders,)

Plaintiff / Counterclaim-Defendant,)

v.)

C.A. No. 2020-1069-MTZ)

ALEXION PHARMACEUTICALS,)
INC.,)

Defendant / Counterclaim-Plaintiff.)

**[PROPOSED] ORDER GRANTING PLAINTIFF’S EXPEDITED MOTION
TO STRIKE THE EXPERT REPORT AND MOTION *IN LIMINE* TO
PRECLUDE EXPERT TESTIMONY FROM YOGESH BAHL**

Plaintiff Shareholder Representative Services LLC (“SRS”) having filed its Expedited Motion to Strike the Expert Report and Motion *In Limine* to Preclude Expert Testimony from Yogesh Bahl (the “Motion”), and after consideration of the Motion and any response thereto, and for good cause shown,

IT IS HEREBY ORDERED this ___ day of _____, 2023, that:

1. The Motion is GRANTED.
2. The Expert Report of Yogesh Bahl (the “Expert Report”) is hereby stricken from the record and Yogesh Bahl is precluded from providing testimony at deposition or trial.

Vice Chancellor Zurn

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Morgan Zurn

**File & Serve
Transaction ID:** 69236914

Current Date: Mar 23, 2023

Case Number: 2020-1069-MTZ

Case Name: CONF ORD - Shareholder Representative Services, LLC v. Alexion Pharmaceuticals Inc.

Court Authorizer: Morgan Zurn

**Court Authorizer
Comments:**

The Court ordered the parties to provide “Identification of Opening Expert Witnesses and general subject matter of expert testimony” by December 23, 2022. D.I. 162. As permitted, the parties amended that date to January 20, 2023, and both sides disclosed experts and the subject matter of their testimony on that day. Mot. Exs. 2, 3. On January 26, without seeking leave from SRS or the Court, Alexion “provisionally disclose[d] Yogesh Bahl as Alexion’s expert witness” and provided SRS Mr. Bahl’s CV. Mot. Ex. 6. Alexion did not disclose the subject matter on which Mr. Bahl might testify. See *id.* (I do not understand how Alexion’s opposition can imply it did disclose that subject matter in good faith. See Opp. P 13.) Alexion served an opening expert report from Mr. Bahl on the amended deadline of February 16, and Alexion asserts the theory in that report was teased or disclosed in its interrogatory responses. Neither matters: Alexion blew the January 20 disclosure deadline.

Rule 6(b) states “[w]hen . . . by prior agreement of the parties, or by order of Court an act is required or allowed to be done at or within a specified time, the Court for good cause shown may . . . in its discretion” enlarge the period if requested before it expires, or “upon motion made after the expiration of the specified period . . . where the failure to act was the result of excusable neglect.” Alexion did not seek an extension before January 20 or move for an extension after. It has not tried to show excusable neglect.

Whether fact discovery was still ongoing does not matter. That Alexion does not believe SRS would not be prejudiced (it would be) does not matter. Deadlines matter, and Alexion missed the deadline for identifying Mr. Bahl and the subject matter of his testimony. Alexion’s position that this Court has never stricken an expert report for being late is false. See *Encite LLC v. Soni*, 2011 WL 1565181 (Del. Ch. Apr. 15, 2011). SRS’ motion to strike is GRANTED.

/s/ Judge Morgan Zurn