

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY



CV 1999-009334

09/03/2003

HON. PAUL A KATZ

CLERK OF THE COURT

B. Navarro

Deputy

SEP 10 2003

FILED: \_\_\_\_\_

ALLAN WACHTER, et al.

DAVID C TIERNEY

v.

JOHN LEZDEY, et al.

DAVID BROOKS

FINANCIAL SERVICES-CCC  
MCSO-DIS  
DOUGLAS J ROVENS  
ROVENS LAMBS LLP  
660 S FIGUEROA ST  
STE 1910  
LOS ANGELES CA 90017  
DARREN LEZDEY AND  
JARETT LEZDEY  
148 MARCDALE BLVD  
INDIAN ROCKS BEACH FL 33785

**UNDER ADVISEMENT RULING**

This Court having conducted an Evidentiary Hearing on Plaintiff Allan Wachter's ("Dr. Wachter") Third Application for Contempt which was filed with the Court on August 16, 2002, and was supplemented on September 6, 2002 and May 7, 2003, which said hearing concluded on July 8, 2003; having considered the evidence presented during the course of the Evidentiary Hearing; having considered the pre-hearing and post-hearing memoranda submitted by the parties as regards this petition; having reviewed the court file, including the contempt citations issued by the Honorable Edward O. Burke on November 22, 2000 and January 15, 2002; and good cause appearing, hereby finds as follows:

1. John Lezdey has failed to purge the two contempt citations previously issued by this Court against him and has failed to pay a penny of the \$125,000.00 in court fines imposed as sanctions against him. (This Court's Order of February 26, 2002 provides an additional sanction

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of \$1,000.00 per month beginning March 15, 2002 for each month that the \$75,000.00 sanction from the first contempt citation of October 12, 2002 remains unpaid which to date is \$17,000.00). This Court finds and believes that this Defendant has had the ability to pay these fines and to comply with the Preliminary Injunction entered against him by Judge Burke on February 2, 2000. John Lezdey is and remains in willful violation of this Court's Preliminary Injunction and the subsequent enforcement orders issued incident thereto.

2. John Lezdey has acted and purported to speak for Sonoran in the Amgen-Sonoran patent interference proceeding before the United States Patent and Trademarks Office. This action by John Lezdey is in violation of the February 2, 2000, Preliminary Injunction against him and was protested as early as June 2, 2002 by Dr. Wachter. John Lezdey willfully continued, and with the active help of Attorney Douglas Rovens during the last months, has been threatening Dr. Wachter with suit if Dr. Wachter did not accede to actions that John Lezdey took in the Amgen-Sonoran proceedings. John Lezdey's actions are in violation of this Court's February 2, 2000 Preliminary Injunction. The appearance by John Lezdey in the Amgen-Sonoran patent interference proceedings was done without Dr. Wachter's consent, and was continued despite Dr. Wachter's express requests that John Lezdey desist. These actions by John Lezdey are in violation of this Court's February 2, 2000 Preliminary Injunction.

3. John Lezdey has appeared in and filed a brief pro-per in the European Court of Patent Appeals, although on February 22, 2002, this Court found him in contempt for his contacting that European Court of Patent Appeals. Accordingly, it is clear that John Lezdey willfully has again violated this Court's February 2, 2000 Preliminary Injunction as regards his further and continuing contacts with the European Court of Patent Appeals after February 22, 2002. The John Lezdey brief in the European Court of Patent Appeals was done without Dr. Wachter's consent. These actions by John Lezdey are in violation of this Court's February 2, 2000 Preliminary Injunction.

4. John Lezdey contacted a group of investors in Arriva Pharmaceuticals, Inc. (FKA AlphaOne Pharmaceuticals, Inc.) through Dr. Mascioli, and as the August 30, 2002 e-mail identified in the deposition reveals, John Lezdey tried to damage Arriva's business relations with its investors. This contact with MPM Investors by John Lezdey was done without Dr. Wachter's consent. These actions by John Lezdey are in violation of this Court's February 2, 2000 Preliminary Injunction.

5. On March 19, 2003 and on May 7, 2003, through Attorney Douglas Rovens, John Lezdey filed a certain Counterclaim on behalf of Sonoran Desert Chemicals, LLC. ("Sonoran") in the Federal District Court (Northern District of California) without Dr. Wachter's consent. This action by John Lezdey is in violation of this Court's February 2, 2000 Preliminary Injunction.

6. Further, willful civil contempt has again occurred as is stated herein above and Defendant John Lezdey remains unrepentant, and is once again claiming an inability to attend

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these proceedings while continuing to actively violate this Court's February 2, 2000 Preliminary Injunction and has repeatedly delayed the immediate proceedings by bad faith attempts to remove this matter to the U.S. District Court for the District of Arizona and the filing of personal bankruptcy proceedings.

Now, therefore,

**IT IS ORDERED** holding Defendant John Lezdey in civil contempt of court for the willful violations of this Court's orders of the February 2, 2000 Preliminary Injunction and this Court's subsequent contempt orders of October 12, 2000 and February 26, 2002.

**IT IS FURTHER ORDERED** that John Lezdey surrender himself to the custody of the Maricopa County Sheriff's Office by reporting to the Maricopa County Jail, Estrella Facility at 2939 W. Durango, Phoenix, AZ, no later than **12:00 p.m. on October 28, 2003** to begin serving an indeterminate jail sentence until such time as he has purged said contempt citations as specifically set forth below. Prior to reporting to the jail, John Lezdey shall obtain a copy of his Confinement Order and Self-Surrender Instructions from the Deputy Clerk of this Court Division (Old Courthouse, 125 W. Washington, 1<sup>st</sup> Floor, Ste. 101, Phoenix, AZ) which he shall take with him to the jail at the time of his surrender.

A. On or before **October 8, 2003**, John Lezdey shall make the first payment toward the \$143,000.00 fine (as of September 15, 2003) previously levied by Judge Burke to the Clerk of this Court in an amount not less than \$50,000.00, and shall, on or before the first day of each month thereafter, pay an additional sum of \$50,000.00 to the Clerk of this Court until this full fine amount has been satisfied.

B. John Lezdey shall withdraw from the Amgen-Sonoran patent interference proceedings as he has been - - and is appearing there in violation of this Court's February 2, 2000 Preliminary Injunction. This item of contempt will be considered purged upon John Lezdey's filing with this Court a certified copy of an Order confirming his withdrawal from those Amgen-Sonoran proceedings, and his proof of having cooperated with Dr. Wachter to permit other counsel to succeed John Lezdey in those proceedings, and to notify Judges Gardner Lane and Torczon of this ruling.

C. John Lezdey shall withdraw his brief and his appearance from the European Court of Patent Appeals by documents approved as to form by the patent attorney for Arriva/Baxter in those proceedings, and this item of contempt will be considered purged upon proof of the withdrawal having been filed in the European proceedings, and proof of that filing (certified by attorneys for Arriva/Baxter) has been filed with this Court (and approved as to form by Wachter's counsel in this case).

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D. By certified letter, John Lezdey informs Dr. Mascioli that he (John Lezdey) retracts all statements, which he has made to Mascioli, and Dr. Mascioli confirms receipt of such letter, and such confirmation has been filed with this Court.

E. John Lezdey (and Attorney Douglas Rovens, who is before this Court having been admitted *pro hac vice*) shall dismiss without prejudice the Counterclaim which has been filed in U.S. District Court in California, and a certified copy of such dismissal is filed in this Court.

F. John Lezdey is ordered to resign as attorney-in-fact for Sonoran and Protease Sciences, Inc. ("Protease") on all patents referred to in the 1993 Assignment, and to inform the U.S. PTO and European PTO and each and every foreign representative of that resignation and to inform each such representative that they are to report to and take instructions from Dr. Allan Wachter, the substitute attorney-in-fact, or his designee. John Lezdey shall sign any documents necessary to accomplish the above and shall turn over all files related to the said patents.

**IT IS FURTHER ORDERED** that if John Lezdey has met the six conditions to purge his contempt as is set forth in Paragraphs A through F above on or before the date of his self-surrender to the Maricopa County Jail, he shall present an affidavit with supporting documents to this Court verifying, under oath or affirmation, that he has fully complied with these six conditions for the purging of his contempt.

**IT IS FURTHER ORDERED** that once these initial six conditions have been met, Defendant John Lezdey shall monthly submit an affidavit and supporting documents to this Court indicating that he has continued to make his monthly \$50,000.00 purge payments.

**IT IS FURTHER ORDERED** that in complying with this Court's purge orders B through F, inclusive, John Lezdey, his attorneys, agents or assigns shall not take any steps to jeopardize the interests of Dr. Allan Wachter, Sonoran, Protease, or any licensees of Sonoran or Protease in any United States or foreign patents which are the subject matter of this litigation.

**IT IS FURTHER ORDERED** that John Lezdey shall fully cooperate with Dr. Wachter, Sonoran, Protease and their attorneys to do whatever is necessary to allow them to substitute patent agents or attorneys for purposes of defending or continuing to defend the patents of Sonoran, Protease and their licensees in any of the patents which are the subject matter of this litigation.

**IT IS FURTHER ORDERED** that Plaintiff Dr. Wachter and Defendant John Lezdey shall keep each other notified of any events or activities that they may become aware of that might adversely affect the rights of one another, Sonoran, Protease or their licensees in connection with these patents and the rights flowing therefrom so that all of the parties' interests in this intellectual property may be properly protected.

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This Court further finds that any interests that John Lezdey has in the patents, which are the subject matter of this litigation, is through his shareholder interests in Sonoran and Protease and he is reminded that he is not authorized to act on behalf of either of these companies without the express permission and consent of their respective Boards of Directors or orders of this Court.

Defendant's failure to purge his contempt or surrender by October 28, 2003 will result in the issuance of a warrant for his arrest.

**IT IS FURTHER ORDERED** signing this Minute Entry as a formal order of the Court.

FILED: Exhibit Worksheet; Hearing Worksheet

ISSUED: Order of Confinement; Self-Surrender Instructions



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JUDICIAL OFFICER OF THE SUPERIOR COURT

The foregoing instrument is a full, true and correct copy of the original on file in this office.

Attest Oct. 4 2004  
MICHAEL K. JEANES, Clerk of the Superior Court of the State of Arizona, in and for the County of Maricopa.

By L. Johnson Deputy