

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

REGENERON PHARMACEUTICALS, INC.,

Plaintiff,

v.

Civil Action No. 1:23-cv-00089

CELLTRION, INC.,

Defendant.

**DEFENDANT CELLTRION, INC.'S RESPONSE TO
PLAINTIFF'S MOTION FOR ALTERNATIVE SERVICE¹**

In its Motion for Alternative Service (ECF No. 43) (the "Motion"), Regeneron Pharmaceuticals, Inc. ("Regeneron") presents an incomplete and inaccurate picture of what has occurred between the parties regarding service.² In any event, as Regeneron is aware, the Motion is moot given that Celltrion intends to file a special appearance and motion to challenge venue in mid-January. The Court thus need not address Regeneron's Motion.

Regeneron suggests that Celltrion's intent is to force Regeneron through the Hague Convention, and to otherwise make service difficult to delay commencement of the action. *See* ECF No. 43-1, at 1, 9-15. But that is not the case. Celltrion invited Regeneron on numerous occasions, both before and after it filed this Motion, to provide it with an appropriate notice and waiver request under Rule 4(d). Regeneron, however, has refused to take the simple effort of

¹ By filing this Response, Celltrion makes only a special appearance before the Court. It does not waive any objections or defenses, including any of those identified in Rule 12 of the Federal Rules of Civil Procedure, and specifically objections and defenses based on the lack of personal jurisdiction and/or improper venue. *See* Fed. R. Civ. P. 12(b)(2) & (3). In its forthcoming motion to dismiss, Celltrion will address, among other matters, the lack of personal jurisdiction over it and improper venue in this matter.

² Celltrion will be prepared to address the incomplete and inaccurate account at the upcoming scheduling conference as needed.

sending the needed forms and papers to Celltrion (a form waiver notice and request is posted to the Northern District of West Virginia's website). Leaving this critical background out of its Motion, Regeneron instead puzzlingly labors over Rule 4(f) and the Hague Convention. Yet never has Celltrion told Regeneron that it must go through the Hague Convention or some other foreign discovery process to effect service, and none of the correspondence attached to Regeneron's Motion indicates otherwise.

Regeneron's characterization of Celltrion as employing dilatory tactics could not be further from the truth. Celltrion wishes to move matters along cooperatively and efficiently so that it may present a timely motion to dismiss or change venue. To that end, and as noted above, Celltrion repeatedly told Regeneron to provide the notice and waiver form under Rule 4(d). Service under Rule 4(d) negates the need for any other form of service. Regeneron has had the ability to initiate this action for many months but chose not to do so; indeed, had Regeneron taken up Celltrion on its offers (using this District's form notice and waiver request available online), there would have been no dispute to file with the Court. Rather than insisting that Celltrion accept alternative service through email,³ Regeneron could have simply accepted this offer and followed the procedure laid out by that rule. Nothing stopped Regeneron from sending the waiver pursuant to Rule 4(d) when it filed the complaint against Celltrion on November 8, 2023, or from filing its Complaint and waiver request even earlier than November after it first received Celltrion's Notice of Commercial Marketing. *See generally*, ECF No. 1.

³ Regeneron argues that Celltrion agreed to accept service by email service and later backed away. This is also not accurate. Regeneron's own email correspondence reflects its understanding that the parties never reached this agreement. *See* ECF No. 43, at 5-6. Indeed, if that were the case, Regeneron would have already completed service by email.

Regardless, Regeneron's Motion is moot, and the Court need not address it. In order to efficiently move this matter along, Celltrion intends to file its motion to dismiss for lack of personal jurisdiction and improper venue by January 17, even though Celltrion has not been served (and no answer will be due on that date). Even if the Court grants Regeneron's motion, which it should not, Celltrion's motion will be on file before Celltrion's answering date. The issue of service therefore need not be addressed by this Court.

For similar reasons, the Motion also fails on the merits. Regeneron ignores the well-established availability of the Rule 4(d) process for properly seeking waiver of service for a foreign corporate defendant. *See* Fed. R. Civ. P. 4(d), 4(f)(1), & 4(h)(2). Celltrion invited Regeneron before, and it still invites Regeneron today, to simply follow that procedure. But rather than cooperatively resolving this process dispute under Rule 4(d), Regeneron filed its fifteen-page Motion seeking special permission to bend the rules.

Ultimately, Regeneron's requested relief for alternative service is not warranted here. The Court should therefore deny Regeneron's Motion.

Respectfully Submitted,

CELLTRION, INC., specially appearing by counsel,

/s/ Max C. Gottlieb

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CERTIFICATE OF SERVICE

The undersigned counsel does hereby certify that on the 4th day of January, 2024, he electronically filed *Defendant Celltrion, Inc.'s Response to Plaintiff's Motion for Alternative Service* with the Clerk of Court using the CM/ECF system, which will send notice of same to counsel of record.

/s/ Max C. Gottlieb
Max C. Gottlieb (WVSB #13201)