UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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Roche Diabetes Care, Inc., Roche Diabetes Care GmbH, and Hoffmann-La Roche, Inc.,

Plaintiffs,

-against-

JMD Enterprises d/b/a DKY Store USA, JMD International, Dileep Kumar Yadav, Abhishek Jain, Medical Hub_USA Store, Ratnakar Sharma, Authentic Indian Store, and Atikur Rahman,

Defendants.
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LETTER OF REQUEST TO JUDICIAL AUTHORITIES OF THE HONORABLE HIGH COURT OF DELHI AT NEW DELHI
24-CV-03625 (DG) (RML)

The United States District Court for the Eastern District of New York presents its compliments to the Honorable High Court of Delhi at New Delhi and other appropriate judicial authorities of New Delhi, India, having original and appellate jurisdiction, and requests international judicial assistance in connection with the above-captioned civil action pending before the Court, by issuance of a proper and usual *Anton Piller* search and seizure Order, being an *ex parte* order directing Dileep Kumar Yadav, JMD Enterprises d/b/a DKY Store USA ("JMD Enterprises"), and JMD International (collectively, "JMD Defendants") to provide Roche Diabetes Care, Inc., Roche Diabetes Care GmbH, and Hoffmann-La Roche, Inc. (collectively, "Plaintiffs" or "Roche") and their agents access to the locations listed below. Plaintiffs assert ten claims, including, *inter alia*, federal trademark infringement under 15 U.S.C. §§ 1114(1)(a) and (b), stemming from Plaintiffs' allegations that Defendants are India-based willful counterfeiters who sell dangerous counterfeits of Roche's Accu-Chek® medical devices to American patients through Amazon.com and other platforms.

This Court, which properly has jurisdiction over this action, requests the assistance described herein.

Plaintiffs assert that the evidence sought is necessary for trial in a civil proceeding presently pending before this Court in the above-captioned matter, and will be adduced at trial, if admissible and appropriate.

I. Persons to be Served

Dileep Kumar Yadav
Plot No. 8, 2nd floor,
Pocket 9, Rohini Sector 21,
New Delhi-110086, India

JMD Enterprises
1st floor, Plot No. 5, Shop No. 117,
CS/OCF, R.K. Plaza,
Sector 21, Rohini,
New Delhi-110086, India

JMD International
House No. 35, First Floor, Road No. 35,
Pocket 16, Rohini Sector 20,
New Delhi-110086, India

II. Plaintiffs' Evidentiary Submissions and Arguments

The Court issues this Letter of Request based on Plaintiffs' evidentiary submissions and arguments, summarized below.

A. Plaintiffs' Summary

Plaintiffs have summarized their evidentiary submissions and arguments as follows:

i. Roche's Accu-Chek® Diabetes Care Products

Plaintiffs assert that Roche has been selling Accu-Chek® products for over 40 years. (Decl. of Keith Verner, dated May 13, 2024 ("Verner Decl.") ¶ 5). Plaintiffs further assert the following:

- Accu-Chek® products are diabetes care medical devices that allow patients to monitor their blood sugar and manage their disease. (Verner Decl. ¶ 4).

- The Accu-Chek® family of products includes glucometers, blood glucose test strips, lancets, and other diabetes care medical devices. (Decl. of Debra Robinson, dated May 13, 2024 ("Robinson Decl.") ¶ 2).

- Roche manufactures and sells several different lines of blood glucose test strips under the Accu-Chek® brand, including Accu-Chek SmartView®, Accu-Chek Guide®, Accu-Chek Nano®, Accu-Chek Aviva®, and Accu-Chek Instant®. (Robinson Decl. ¶ 3).

- Roche also manufactures several different lines of lancets – specialized disposable needles used to draw blood for testing – under the Accu-Chek® brand, including Accu-Chek Softclix®. (Decl. of Patrick Barron, dated May 16, 2024 ("Barron Decl.") ¶ 5).

- All authentic Roche Accu-Chek® blood glucose test strips distributed in the United States are manufactured, according to strict and consistent specifications, in a factory on Roche's campus in Indianapolis. (Barron Decl. ¶ 5).

- Roche Accu-Chek® products are manufactured in facilities with rigorous quality controls, specialized equipment, and consistent processes to produce products that patients can rely upon to be high quality and uniform in each package. (Barron Decl. ¶¶ 4, 9, 16).

ii. Trademarks Used on Accu-Chek® Products

Plaintiffs assert that Roche is the owner of a number of well-established trademarks, all duly registered and active with the U.S. Patent and Trademark Office, that appear on the packaging of genuine Accu-Chek products (collectively, the "Accu-Chek Marks"):

- Roche Diabetes Care GmbH's "ACCU-CHEK®" trademark was registered on the Principal Register of the United States Patent and Trademark Office on November 14, 2000, as U.S. Registration No. 2,403,536.

- Roche Diabetes Care GmbH's "ACCU-CHEK SMARTVIEW®" trademark was registered on the Principal Register of the United States Patent Office on October 23, 2012, as U.S. Registration No. 4,230,563.

- Roche Diabetes Care GmbH's "ACCU-CHEK NANO SMARTVIEW®" trademark was registered on the Principal Register of the United States Patent Office on October 16, 2012, as U.S. Registration No. 4,226,844.

- Roche Diabetes Care GmbH's "SOFTCLIX®" trademark was registered on the Principal Register of the United States Patent Office on July 6, 1993, as U.S. Registration No. 1,780,139.

- Roche Diabetes Care GmbH's "ACCU-CHEK GUIDE®" trademark was registered on the Principal Register of the United States Patent Office on August 1, 2017, as U.S. Registration No. 5,256,607.

- Roche Diabetes Care GmbH's "ACCU-CHEK GUIDE ME®" trademark was registered on the Principal Register of the United States Patent Office on April 28, 2020, as U.S. Registration No. 6,042,931.

- Roche Diabetes Care GmbH's "ACCU-CHEK NANO®" trademark was registered on the Principal Register of the United States Patent Office on September 25, 2012, as U.S. Registration No. 4,214,217.

- Roche Diabetes Care GmbH's "ACCU-CHEK AVIVA®" trademark was registered on the Principal Register of the United States Patent Office on March 21, 2006, as U.S. Registration No. 3,071,846.

- Roche Diabetes Care GmbH's "ACCU-CHEK AVIVA COMBO®" trademark was registered on the Principal Register of the United States Patent Office on April 7, 2009, as U.S. Registration No. 3,602,826.

- Roche Diabetes Care GmbH's "ACCU-CHEK AVIVA CONNECT®" trademark was registered on the Principal Register of the United States Patent Office on July 8, 2014, as U.S. Registration No. 4,561,864.

- Roche Diabetes Care GmbH's "ACCU-CHEK AVIVA EXPERT®" trademark was registered on the Principal Register of the United States Patent Office on April 7, 2009, as U.S. Registration No. 3,602,825.

- Hoffmann-La Roche, Inc.'s Roche trademark was registered on the Principal Register of the United States Patent Office on December 26, 2017, as U.S. Registration Nos. 5,363,165, 5,363,167, and 5,363,168.

(Robinson Decl. ¶¶ 4-15).

Plaintiffs assert that Roche owns and uses distinctive packaging (the "Accu-Chek Trade Dress") to distinguish Accu-Chek® products in the marketplace (*Id.* ¶ 16); that Roche has used and is currently using the Accu-Chek Marks and the Accu-Chek Trade Dress in commerce and in connection with its sale of Accu-Chek® products, and plans to continue such use in the future (*Id.* ¶ 17); that Roche prominently displays the Accu-Chek Marks and the Accu-Chek Trade Dress in its advertising and promotional materials (Verner Decl. ¶¶ 9-10); and that Roche has engaged and continues to engage in activities designed to promote the Accu-Chek® brand and the

business and goodwill associated with its trademarks, and to expand the use and reputation of its trademarks, trade dress, logos, copyrights, and property throughout the United States (Robinson Decl. ¶ 18).

iii. Roche Discovers the Counterfeits Being Sold on Amazon and Makes Test Buys

Plaintiffs assert that in late March 2024, Roche received a whistleblower complaint that India-based companies, including Defendants JMD Enterprises,[1] JMD International, and Medical Hub_USA Store ("Medical Hub") were selling on Amazon, to U.S. consumers, counterfeit versions of Roche Accu-Chek SmartView® test strips. (Decl. of Kerri McAleavey, dated May 17, 2024 ("McAleavey Decl.") ¶ 13). Plaintiffs assert that in April and May 2024, Roche and its investigators, acting under the direction and control of counsel, conducted an investigation into the counterfeit strips (Decl. of Hannah Coleman, dated May 18, 2024 ("Coleman Decl.") ¶ 6); that Roche and its investigators made numerous test buys of Accu-Chek® products from India-based sellers from a number of sources, including Amazon.com (*Id.*); that from its test purchases on Amazon, Roche (through its investigators) received from JMD Enterprises, JMD International, and Medical Hub counterfeit versions of its Accu-Chek SmartView® test strips (McAleavey Decl. ¶ 13); and that Roche also received from Defendants JMD Enterprises and JMD International counterfeit versions of Accu-Chek Softclix® lancets (*Id.* ¶ 29).

iv. Roche's Initial Analysis of the Counterfeit Accu-Chek Softclix® Lancets

Plaintiffs assert that Roche experts examined the Accu-Chek Softclix® lancets purchased from JMD Enterprises and JMD International and conclusively determined that both the lancets

[1] Plaintiffs assert that JMD Enterprises owns and operates the Amazon.com storefront for DKY Store USA ("DKY") (Decl. of Hannah Coleman, dated May 18, 2024 ("Coleman Decl.") ¶¶ 10-14), and that on the DKY storefront "detailed seller information" page, JMD Enterprises appears as the "business name" for DKY (Coleman Decl. ¶ 10).

themselves and their packaging was counterfeit. (Decl. of Connor Brooks, dated May 16, 2024 ("Brooks Decl.") ¶ 2; Barron Decl. ¶¶ 7-8).

Plaintiffs also assert the following:

The Counterfeit Softclix Packaging. All Accu-Chek Softclix® products that Roche received from the Defendants had identical or near-identical counterfeit packaging that clearly attempted to replicate Roche's authentic Accu-Chek Softclix® packaging, but did so imperfectly. (McAleavey Decl. ¶ 30). The Accu-Chek Softclix® boxes sold by the Defendants misspell the name of the product: the boxes state "Accu-Chek Softclick," whereas the real product name is "Accu-Chek Softclix." (*Id.* ¶ 31). The counterfeits also erroneously use the ™ symbol after these brand names, whereas authentic Roche packaging uses the ® symbol for its registered marks. (*Id.*).

Authentic Packaging

Counterfeit Packaging

Moreover, the counterfeit Accu-Chek Softclix® lancets arrive sealed in a cloudy plastic bag inside the carton. There is no such plastic bag in authentic Softclix lancet packaging. (Brooks Decl. ¶ 8).

The Counterfeit Accu-Chek Softclix® Lancets. The supposed Accu-Chek Softclix® lancets sold by Defendants are fakes. Authentic Accu-Chek Softclix® lancets are encased in plastic, with a round cap that the patient removes prior to inserting it into the Accu-Chek Softclix® lancing device. (*Id.* ¶ 6). The plastic encasement for authentic Accu-Chek

Softclix® lancets has two small round holes through which the needle is visible; the counterfeits have three such holes in their plastic encasement. (McAleavey Decl. ¶ 6.).

Moreover, upon removing the cap of the counterfeits, the needle is noticeably shorter than an authentic Accu-Chek Softclix® lancet. (*Id.* ¶ 15).

The counterfeit Accu-Chek Softclix® lancets also show several additional signs that they are poorly made, especially as compared to authentic Accu-Chek Softclix® devices. (*Id.* ¶ 8). There are small out-jutting pieces of plastic on the cap and bottom of the plastic encasement of the counterfeits, indicating where the fakes were removed or "broken out" from plastic molding. (*Id.*). Indeed, the plastic bags containing the counterfeit lancets have loose plastic shards resting at the bottom that also appear to be remnants from the molding process. (*Id.*). And the cap of the counterfeit lancets is difficult to remove. (*Id.*).

Moreover, even within the same box, the coloring of the counterfeit lancets is inconsistent: some plastic encasements are various shades of white, while others have a noticeable blue tint. (McAleavey Decl. ¶ 33).

Initial Functionality Testing of the Counterfeits. The Defendants' counterfeit lancets do not function as intended. Using techniques that Roche uses to perform quality-assurance testing on samples of authentic Accu-Chek Softclix® lancets, Roche loaded the counterfeit lancets into an authentic Accu-Chek Softclix® lancing device and fired them into a silicone block covered with a thin layer of aluminum. (*Id.* ¶ 13-14). The Defendants' counterfeits failed this test in several ways. (*Id.*).

First, the counterfeits do not consistently "click" into the lancing device or rest securely in the device, as authentic Accu-Chek Softclix® lancets do. (Brooks Decl. ¶ 11). Next, when fired into the silicone block, authentic Accu-Chek Softclix® lancets puncture through the

aluminum and into the silicone at all depth settings, indicating they would puncture human skin. (*Id.* ¶ 14). For several depth settings, the counterfeit lancets failed to make an indentation upon the aluminum cover, let alone puncture into the silicone. (*Id.*). And finally, whereas authentic Accu-Chek Softclix® lancets eject easily after use by pushing a plunger on the lancing devices, the counterfeits tended to get stuck in the device, needing to be pried out by hand with the needle exposed. (*Id.* ¶ 12).

The Counterfeit Lancets May Not Be Sterile. It is very important that lancets are sterile: they are needles designed to puncture the blood-skin barrier and make contact with the patient's bloodstream. (Barron Decl. ¶¶ 5, 7). Authentic Accu-Chek Softclix® lancets are sterilized using gamma radiation, a process that is carefully documented and confirmed via a radiation dosimeter. (*Id.* ¶ 6). Roche's sterilization process ensures that authentic Accu-Chek Softclix® lancets remain sterile through their listed expiration date. (Barron Decl. ¶ 6).

Because the Defendants' counterfeit Accu-Chek Softclix® lancets are fakes that are not manufactured by Plaintiffs, Roche cannot vouch for the safety or sterility of the counterfeits. (*Id.* ¶ 7). Given the low and inconsistent quality of the counterfeits, their illicit nature, their failure to function as intended, and the apparent goal of the counterfeiters to create the counterfeits as cheaply as possible, there is strong reason to suspect that the counterfeit lancets are not sterile. (*Id.*).

v. Roche's Initial Analysis of the Counterfeit Accu-Chek SmartView® Test Strips

Plaintiffs assert that Roche experts also examined the Accu-Chek SmartView® test strips purchased from the Defendants and conclusively determined the packaging, vial labels, and product inserts were counterfeit, and that the counterfeits bore fake serial numbers, lot numbers, and expiration dates that concealed the fact that the strips are in fact expired or near-expired.

(McAleavey Decl. ¶¶ 11-28). Plaintiffs assert that the vials containing the test strips have a strong, chemical-like odor (*Id.* ¶ 21), and that that odor, combined with other information available to Roche, strongly suggests that the test strips have been tampered with or otherwise damaged and are not safe for use (*Id.*; Barron Decl. ¶¶ 17, 18).

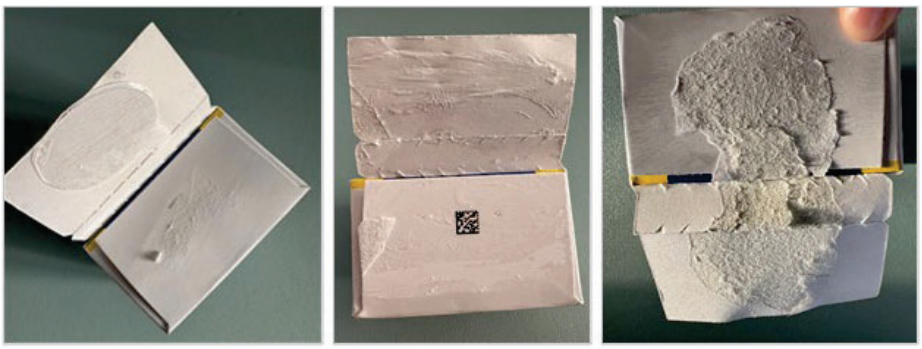
Plaintiffs also assert the following:

The Counterfeit Accu-Chek SmartView® Packaging. The packaging of the purported Accu-Chek SmartView® test strips sold by Defendants is unquestionably counterfeit. (McAleavey Decl. ¶ 14). While clearly intended to duplicate authentic U.S. packaging for Accu-Chek SmartView® strips, the counterfeit boxes have several tell-tale errors. (*Id.*). In addition to subtler differences in font and layout, the counterfeit boxes misspell the name of the manufacturer as "Roche **Diabeter** Care, Inc." (emphasis added). (McAleavey Decl. ¶ 15).

Authentic Packaging

Counterfeit Packaging

The construction of the counterfeit Accu-Chek SmartView® boxes is also different and lower quality than authentic Accu-Chek SmartView® packaging. (*Id.* ¶ 16). For example, the top flap of authentic Accu-Chek SmartView® boxes is sealed by a machine that puts precise dots of adhesive on specified areas of the flap. (*Id.*). The counterfeit boxes, in contrast, appear to be glued together by hand, with globs of adhesive that sometimes extend beyond the top flap and that cause the box to tear upon opening. (*Id.*).



Counterfeit Packaging

Moreover, all of the counterfeit Accu-Chek SmartView® boxes purchased by Roche's investigators from JMD Enterprises, JMD International, and Medical Hub were identical or nearly identical, and all of them listed the same lot numbers, expiration dates, and serial numbers. (McAleavey Decl. ¶ 18). On authentic products, serial numbers are unique identifiers for that particular box of Accu-Chek SmartView® strips: the serial numbers are not repeated across boxes. (*Id.* ¶ 19). The repeated serial number on every box of Accu-Chek SmartView® strips sold by Defendants is an unmistakable sign that they are counterfeit. (McAleavey Decl. ¶ 19).

Counterfeit Accu-Chek SmartView® packaging with identical serial numbers

Moreover, on authentic product, the applicable lot number, serial number, and expiration date for the strips are etched onto the variable-print area of the packaging through laser ablation, which leaves a slight texture; all of the counterfeits had identical information that was printed onto the box with ink. (McAleavey Decl. ¶ 20).

The Counterfeit Accu-Chek SmartView® Vial Labels. Accu-Chek SmartView® test strips are stored in airtight, desiccant-lined vials that protect the strips from exposure to air and moisture, with a label that lists the same lot number, serial number, and expiration date that appears on the box. (McAleavey Decl. ¶ 12). The vials in the counterfeit Accu-Chek SmartView® boxes appear to have once been authentic vials, but now have had their original labels removed and counterfeit labels applied in their place. (*Id*. ¶ 23). The counterfeit vial labels tend to be askew and show signs of wrinkling and bubbling. (*Id*. ¶ 24). And as with the product boxes, all of the counterfeit labels have the same serial number, lot number, and expiration dates, and the text is applied by regular ink printing, not laser ablation. (*Id*. ¶ 22).

Upon opening the counterfeit Accu-Chek SmartView® boxes, a strong, chemical-like odor emanated from the vials; that odor does not exist in authentic product. (*Id*. ¶ 21). The process of removing the label has the potential to damage the test strips inside the vial, causing the strips to give an inaccurate reading or no reading at all. (*Id.* ¶¶ 17, 18).

The Counterfeit Accu-Chek SmartView® Instructional Inserts. The instructional inserts included in the Defendants' counterfeit Accu-Chek SmartView® boxes are also counterfeits, intended to replicate authentic U.S. Accu-Chek SmartView® inserts, but with several glaring errors – including misspelling the brand name of the product as "ACCU-CHEIC" and failing to include FDA-mandated warnings. (McAleavey Decl. ¶¶ 26-27). The counterfeit inserts also provide the wrong number for Roche's U.S. consumer hotline. (*Id*.). Some of

differences between authentic inserts and the Defendants' counterfeit inserts are illustrated below:

Authentic Patient Insert

Step 2 Performing a Control Test

If the control result is NOT within the range…

Check the following list to see what may be causing the problem:

- Are the test strips or control solution past the **Use By** or discard date?
- Did you wipe the tip of the control solution bottle with a tissue before and after use?
- Were the test strip container and control solution bottle closed tightly?
- Did you use the test strip immediately after removing it from the container?
- Were the test strips and control solution stored in a cool, dry place?
- Did you follow all of the testing steps?

For more information, refer to the control solution package insert or the Owner's Booklet.

If you still have problems, call the Accu-Chek Customer Care Service Center at 1-800-858-8072.

Counterfeit Patient Insert

Step 2 Performing a Control Test

If the control result is Not within the range…

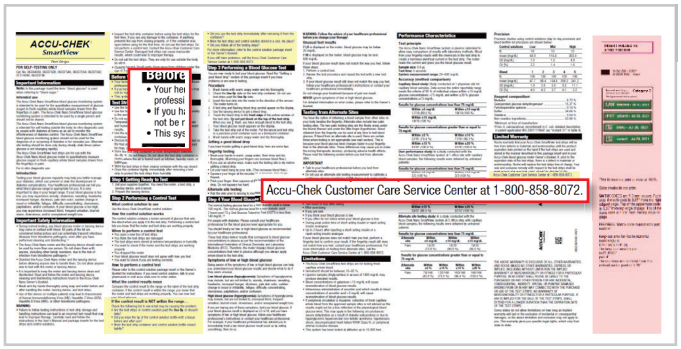
Check the following list to see what may be causing the problem:

- Are the test strips or control solution past the **Use By** or discard date?
- Did you wipe the tip of the control solution bottle with a tissue before and after use?
- Where the test strip container and control solution bottle closed tightly?
- Did you use the test strip immediately a container?
- Were the test strips and control solution stored in a cool dry place?
- Did you follow all of the testing steps?

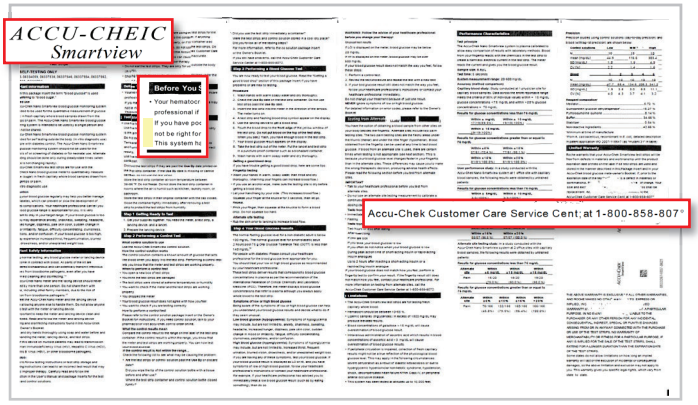
For more information, refer to the co solution package insert or the Owner's Booklet.

If you still have problems, call the Accu-Chek Customer Care Service Center at 1-800-855-8072.

Authentic Patient Insert



Counterfeit Patient Insert



Moreover, the counterfeit inserts are folded incorrectly: the counterfeiters were unable to replicate the manner in which authentic Accu-Chek SmartView® inserts are machine-folded using specialized equipment. (McAleavey Decl. ¶ 28).

The Counterfeit Accu-Chek SmartView® Test Strips Have Fake Expiration Dates and Pose a Danger to U.S. Patients. The lot numbers and expiration dates on that appear on the counterfeit boxes and vial labels are fake. (McAleavey Decl. ¶ 25). Using markings that

appear on the bottom of once-authentic vials inside the Defendants' counterfeit Accu-Chek SmartView® boxes, Roche compared the lot and expiration information on the counterfeits to its internal records, and confirmed that the test strips that were originally placed inside those vials are either at or near their expiration dates. (*Id.* ¶ 25). The fake expiration dates on the counterfeits, however, claim that the strips will not expire for over year. (*Id.*).

The active ingredients in blood glucose test strips naturally degrade over time. (Barron Decl. ¶ 10). On authentic product, the expiration dates of Accu-Chek SmartView® test strips are based on data that show the time frame in which the test strips will continue to function within set parameters. (*Id.*). As the active ingredients in the test strips continue to naturally degrade beyond the expiration date, the blood glucose readings given by the test strips will become biased, and in particular will tend to record higher levels of glucose in the blood samples than actually exist. (*Id.* ¶ 11). Diabetic patients rely on blood glucose readings to manage their disease, including by selecting when and how much insulin to self-inject. (*Id.* ¶ 12). A patient who receives an inaccurately high reading by unknowingly using expired test strips could give themselves an overdose of insulin. (*Id.*). Insulin overdose can have serious consequences for diabetic patients, including coma and death. (*Id.*). By putting fake expiration dates on expired or nearly expired test strips, the counterfeiters are putting patients' health and safety at risk. (*Id.* ¶ 13).

Moreover, blood glucose test strips must be stored at certain temperatures. (*Id.* ¶ 14). Accu-Chek SmartView® test strips must be stored at temperatures at or below 86 degrees Fahrenheit, as stated on the box and in the instructional inserts. (*Id.*). Storage above that temperature can lead to premature degrading of the active ingredients in the strips, which again can cause the strips to give inaccurate and artificially high readings. (*Id.*). Roche employees

have seen the counterfeiters storing test strips in unairconditioned rooms in New Delhi apartments, where temperatures in the summer regularly exceed 110 degrees Fahrenheit. (Decl. of Chandan Sharma, dated May 19, 2024 ("Sharma Decl.") ¶¶ 8, 12.)

Shipping test strips from India to the United States will also routinely expose the strips to temperatures exceeding 86 degrees Fahrenheit. (Barron Decl. ¶ 15). Roche ensures that its authentic Accu-Chek test strips are shipped internationally in temperature-controlled shipments, at significant expense. (*Id*.). It is unlikely that the counterfeiters pay for temperature-controlled shipping. (*Id*.).

B. Plaintiffs Have Submitted Evidence That Supports the Conclusion That Plaintiffs Would Be Entitled to an *Ex Parte* Seizure Order Under 15 U.S.C. § 1116

In determining whether to issue a Letter of Request to the Indian judicial authorities, this Court considers whether the requested seizure order would be appropriate under United States law. Plaintiffs argue that their factual submissions satisfy the criteria for an *ex parte* seizure under 15 U.S.C. § 1116, as set forth below.

i. 15 U.S.C. § 1116(d)(1)(A) Authorizes *Ex Parte* Seizure Orders

15 U.S.C. § 1116(d)(1)(A) provides, in relevant part, that in a civil action "with respect to a violation that consists of using a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services," the court may, upon *ex parte* application, grant an order "providing for the seizure of goods and counterfeit marks involved in such violation and the means of making such marks, and records documenting the manufacture, sale, or receipt of things involved in such violation."

ii. Statutory Requirements for an *Ex Parte* Seizure Order Under 15 U.S.C. § 1116

Seven statutory criteria must be met before a court can grant an *ex parte* seizure order

under 15 U.S.C. § 1116. *See* 15 U.S.C. § 1116(d)(4)(B). Plaintiffs, relying on their submissions, argue that they have met all seven criteria, as set forth below.

1. **"[A]n order other than an ex parte seizure order is not adequate to achieve the purposes of [15 U.S.C. § 1114]." 15 U.S.C. § 1116(d)(4)(B)(i).**

Plaintiffs assert that especially in light of the evidence that the counterfeits pose a threat to patient health and safety, Plaintiffs cannot effectively trace the sale or distribution of the counterfeit Accu-Chek® products without obtaining, through a seizure, computer files and other business records documenting the role of the JMD Defendants in the chain of distribution. Plaintiffs point to the evidence that the JMD Defendants' principal, Defendant Yadav, removed his name as the point of contact from one of the JMD Defendants' Amazon storefronts after a Roche employee visited one of JMD's places of business. (Sharma Decl. ¶ 9; Coleman Decl. ¶ 12). Plaintiffs further assert that the JMD Defendants have no brand equity in their stores, and can quickly abandon their current Amazon storefronts and open new ones if given notice of legal action against them.

2. **"[T]he applicant has not publicized the requested seizure." 15 U.S.C. § 1116(d)(4)(B)(ii).**

Plaintiffs assert that they have not disclosed their application to the Court to Defendants or to any third party, and that their application to the Court has been made *ex parte* and under seal.

3. **"[T]he applicant is likely to succeed in showing that the person against whom seizure would be ordered used a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services." 15 U.S.C. § 1116(d)(4)(B)(iii).**

Plaintiffs assert that they have submitted significant evidence that Defendants are selling purported Accu-Chek® products in U.S. commerce through Amazon, and that those products are counterfeits bearing counterfeit marks.

4. "[A]n immediate and irreparable injury will occur if such seizure is not ordered." 15 U.S.C. § 1116(d)(4)(B)(iv).

Plaintiffs assert that they have submitted substantial evidence that the counterfeit Accu-Chek® products consist of fake and expired medical devices that pose an immediate and significant risk of irreparable injury to American patients. Plaintiffs argue that the nature of the counterfeits, which attempt to duplicate authentic product and packaging, will cause consumer confusion and irreparable loss of goodwill.

5. "[T]he matter to be seized will be located at the place identified in the application." 15 U.S.C. § 1116(d)(4)(B)(v).

Plaintiffs assert that they have submitted evidence that their investigators have conducted a thorough investigation in India and identified three locations at which counterfeit Accu-Chek® products and/or documents and information about those counterfeits are likely to be found.

The R.K. Plaza Commercial Space. Plaintiffs assert that they have submitted evidence showing that their investigators, through public-records searching and online surveillance, identified a Food and Safety Standards of India (FSSAI) license number for JMD Enterprises (*Id.* ¶ 30); that the public records associated with that FSSAI license list JMD Enterprises's place of business as an office space in a commercial park known as R.K. Plaza: 1st floor, Plot No. 5, Shop No. 117, CS/OCF, R.K. Plaza, Sector 21, Rohini, New Delhi, India (Coleman Decl. ¶ 30.); that public records confirm that Shop No. 117 within R.K. Plaza is owned by Mr. Yadav (*Id.* ¶ 32); that there is signage for JMD Enterprises in R.K. Plaza, and Plaintiffs' investigators observed an office assistant opening the Shop No. 117 commercial space during business days, sweeping up, getting tea, and the like (*Id.* ¶¶ 27-32); and that within the past several days, Roche's investigators also noticed packages being frequently delivered to and from the R.K. Plaza commercial space, and observed Yadav visiting the location with some frequency (*Id.* ¶ 39).

The JMD Offices Run Out of a Residential Apartment. Plaintiffs assert that they have submitted evidence that public records also confirm that Defendant Yadav is the owner of two apartment units that occupy the entirety of a floor of a residential apartment building in New Delhi: House No. 35, First Floor, Road No. 35, Pocket 16, Rohini Sector 20, New Delhi, India. (*Id.* ¶ 37). Plaintiffs assert that Roche's investigators have confirmed that signage for JMD offices is visible from the street on the balconies for both apartments. (*Id.* ¶ 38).

Plaintiffs further assert that in April 2024, one of Plaintiffs' employees based in India visited this location, entered one of the apartments, and saw four individuals in the main room of the apartment, most of whom were working on computers (Sharma Decl. ¶ 7); that the individuals confirmed that they worked for JMD and sold diabetic supplies (*Id.* ¶ 9); that Plaintiffs' employee was able to see a back room of the apartment that was used as a storeroom, and saw Accu-Chek® products stored inside (*Id.* ¶ 8); and that the storage room did not have an air conditioning unit (*Id.* ¶ 12).

Plaintiffs assert that within the past several days, Roche's private investigators have observed Defendant Yadav and three other individuals entering the apartments frequently, as well as packages being delivered to and from the apartments. (Coleman Decl. ¶ 39).

JMD Enterprise's "Registered Office" and Yadav's Apartment. Plaintiffs assert that they have submitted evidence of public records showing that Defendant Yadav also owns a residential apartment at Plot No. 8, 2nd floor, pocket 9, Rohini Sector 21, New Delhi, 110086. (*Id*. ¶ 32). Plaintiffs assert that Roche's private investigators have observed signage identifying this address as the "registered off." of JMD Enterprises. (*Id*. ¶ 31). Plaintiffs further assert that in the past several days, Roche's investigators maintained surveillance on this location and observed Defendant Yadav frequently entering and exiting the location. (*Id*. ¶ 44).

6. **"[T]he harm to the applicant of denying the application outweighs the harm to the legitimate interests of the person against whom seizure would be ordered of granting the application." 15 U.S.C. § 1116(d)(4)(B)(vi).**

Plaintiffs assert that they have submitted evidence that the counterfeits at issue pose an immediate risk to patient health and safety, and Plaintiffs argue that Defendants have no legitimate interest in selling counterfeits.

7. **"[T]he person against whom seizure would be ordered, or persons acting in concert with such person, would destroy, move, hide, or otherwise make such matter inaccessible to the court, if the applicant were to proceed on notice to such person." 15 U.S.C. § 1116(d)(4)(B)(vii).**

Plaintiffs argue that they have met this criterion. Plaintiffs assert that they have submitted evidence that Defendant Yadav removed his name from one of the JMD Defendants' Amazon storefronts after a Roche investigator visited its place of business. Plaintiffs assert that they have also submitted evidence that the Defendants' counterfeiting is willful, including that all of the counterfeits have identical serial numbers, which are supposed to be unique. Plaintiffs further argue that Defendants can easily open and close Amazon storefronts and open new storefronts under new names; that the counterfeit products at issue are small and easily moved or concealed; and because their business is online, that JMD Defendants' records are electronic and can be deleted with the push of a button.

* * *

Based on Plaintiffs' evidentiary submissions and arguments, discussed above, it appears that Plaintiffs would be entitled to an *ex parte* seizure order under 15 U.S.C. § 1116.

III. Evidence to Be Obtained

This Court requests that you issue by your proper and usual process an *Anton Piller* Order, being an *ex parte* order directing the JMD Defendants to provide Plaintiffs and their

agents access to the JMD Defendants' premises at the following three locations: (i) Plot No. 8, 2nd floor, Pocket 9, Rohini Sector 21, New Delhi-110086, India; (ii) 1st floor, Plot No. 5, Shop No. 117, CS/OCF, R.K. Plaza, Sector 21, Rohini, New Delhi-110086, India; and (iii) House No. 35, First Floor, Road No. 35, Pocket 16, Rohini Sector 20, New Delhi-110086, India, to inspect the following documents, whether in tangible or electronic form, whether on a computer, telephone or remote cloud storage, and to remove items required to be preserved as evidence that relate to the manufacture, sale or distribution of counterfeit Accu-Chek® products including the following:

A. All products bearing any of the Accu-Chek Marks;

B. All items used in the manufacture of any product bearing any of the Accu-Chek Marks including without limitation equipment, machinery, materials, printing plates, and packaging materials;

C. All business records, invoices, correspondence, e-mails, text messages, WhatsApp messages or any other electronic communications, bank records, cancelled checks, wire transfers, books of account, receipts, or other documentation relating or referring in any manner to the manufacture, promotion, publicity, advertising, receiving, acquisition, importation, return, shipment, purchase, sale, offer for sale or distribution of any merchandise bearing the Accu-Chek Marks, whether such information is stored in a written or computerized form, including information stored on a mobile telephone or other personal electronic device, and all telephone and address directories such as a Rolodex.

IV. Costs

Plaintiffs represent that they are willing to reimburse the JMD Defendants for their reasonable expenses and other fees as required by Indian law. Additionally, Plaintiffs represent that they are willing to reimburse the judicial authorities of the country of India and the Honorable High Court of Delhi at New Delhi for the costs incurred in connection with this Letter of Request.

V. Reciprocity

This Court expresses its willingness to provide similar assistance to the Honorable High Court of Delhi at New Delhi and other appropriate judicial authorities of New Delhi, India, having original and appellate jurisdiction, to the extent allowed by 28 U.S.C. § 1782, if future circumstances so require.

VI. Conclusion

In the spirit of international comity and reciprocity, this Court hereby requests international judicial assistance in the issuance by your proper and usual process of an *Anton Piller* Order, as set forth in this Letter of Request.

/s/ Diane Gujarati
DIANE GUJARATI
United States District Judge

Dated: May 24, 2024
Brooklyn, New York