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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 IN RE: PHENYLPROPANOLAMINE
8 (PPA) PRODUCTS LIABILITY
9 LITIGATION,

MDL NO. 1407

10 _____
11 This document relates to all
12 actions

ORDER DENYING PLAINTIFFS'
MOTIONS TO COMPEL
RESPONSES TO PLAINTIFFS'
MASTER FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
OF DOCUMENTS FROM
WALGREEN COMPANY AND RITE
AID CORPORATION

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15 THIS MATTER comes before the Court on plaintiffs' Motions to
16 Compel Responses to Plaintiffs' Master First Set of Interrogato-
17 ries and Requests for Production of Documents (hereinafter
18 "Master Discovery Requests") from Walgreen Company ("Walgreen")
19 and Rite Aid Corporation ("Rite Aid") (collectively, "defen-
20 dants"). Having reviewed the pleadings filed in support of and in
21 opposition to the motion, the Court finds and rules as follows:

22 The defendants are Group III defendants, which are those
23 defendants named in any action transferred into MDL 1407 after
24 January 29, 2002. See Case Management Order ("CMO") No. 1,
25 Section V(A)(3). CMO No. 1 requires Group III defendants to
26 respond to the Master Requests for Production

1 within sixty (60) days of the transfer to this MDL 1407
2 of the first action in which it is named and produce
3 all documents responsive to the Master Requests For
4 Production on a rolling basis within one hundred twenty
5 (120) days thereafter, except for those documents
6 withheld under an assertion of privilege or protection,
7 or where an objection has been asserted.

8 CMO No. 1, Section V(E)(3)(c). Further, Group III defendants must
9 respond to

10 all interrogatories contained in the Master First Set
11 of Interrogatories within sixty (60) days of the trans-
12 fer to this MDL 1407 of the first action in which it is
13 named." CMO No. 1, Section V(F)(2)(c).

14 Walgreen and Rite Aid have asserted that since they are
15 retailers, they are not required to respond to the Master Discov-
16 ery Requests. The parties have conferred, but were unable to
17 resolve their dispute, and plaintiffs filed these motions to
18 compel. In their joint opposition ("Joint Opp."), defendants
19 argue: (1) that on February 26, 2002 this Court ruled that
20 retailer defendants need not respond to the Master Discovery
21 Requests; (2) that plaintiffs have failed to demonstrate either
22 the relevance of, or the need for, further discovery from defen-
23 dants; and (3) plaintiffs' delay in seeking this discovery
24 constitutes a waiver of their right to compel responses.

25 Plaintiffs' motions to compel are denied. Plaintiffs attempt
26 to characterize defendants as manufacturers by alleging that
Walgreen and Rite Aid sold store brand PPA-containing products.
Plaintiffs' Motions to Compel at 3. In support of this argument,
plaintiffs cite the Louisiana Product Liability Act, which

1 defines a manufacturer as “[a] person or entity who labels a
2 product as his own or otherwise holds himself out to be the
3 manufacturer of the product.” Plaintiffs’ Motions to Compel at 3.
4 However, the Louisiana Product Liability Act is intended to
5 address a different situation, wherein a manufacturer is also a
6 seller under its own label. Plaintiffs have presented no evidence
7 whatsoever that these retailers are indeed manufacturers. Without
8 a showing that defendants are manufacturers, plaintiffs have
9 failed to establish that defendants have any documents that would
10 be relevant. Nor, for that matter, have plaintiffs shown that
11 they need documents in addition to the ones defendants have
12 already produced.

13 Furthermore, on February 26, 2002, this Court ruled that
14 retailer defendants were not subject to the Master Discovery
15 Requests. Although the Court mistakenly went on to assume that
16 all retailer defendants in MDL 1407 were subject to dismissal as
17 having been fraudulently joined, the Court’s position regarding
18 the retailer defendants’ role with respect to the Master Discov-
19 ery Requests was clear.

20 Finally, plaintiffs have waited far too long to complain of
21 the defendants’ failure to respond to the Master Discovery
22 Requests. The Court ruled in February 2002 that retailer defen-
23 dants did not have to respond to the Master Discovery Requests.
24 Plaintiffs’ counsel, however, did not request responses until
25 April 2003. See Declaration of Jonathan Allan Klein in Support of
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1 Joint Opposition at ¶ 3; Declaration of T. Haller Jackson in
2 Support of Joint Opposition at ¶ 1; Declaration of Ann M. Smith
3 in Support of Joint Opposition at ¶ 3.

4 For the foregoing reasons, the Court DENIES Plaintiffs'
5 Motions to Compel.

6 DATED at Seattle, Washington this 3rd day of December, 2003.
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8 /s/Barbara Jacobs Rothstein
9 BARBARA JACOBS ROTHSTEIN
10 UNITED STATES DISTRICT JUDGE