

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

<i>In re</i> MELINTA THERAPEUTICS, INC., et al., Debtors. ¹	Chapter 11 Case No. 19-12748 (LSS) BAP No. 20-09
LIN LUO, Appellant, v. MELINTA THERAPEUTICS, INC. Appellee.	C.A. No. 20-600 (MN) Related Docket No. 12

**APPELLEE’S OBJECTION TO
APPELLANT’S MOTION FOR A CONTINUANCE**

Appellee Melinta Therapeutics, Inc. (“**Melinta**” and, together with certain of its affiliates, the reorganized debtors in the above-captioned chapter 11 cases, the “**Reorganized Debtors**”), hereby objects (this “**Objection**”) to the *Motion to Continuance* [Docket No. 12]² (the “**Continuance Motion**”)³ filed by Appellant Lin Luo. In response to the Continuance Motion, Melinta respectfully states as follows:

¹ The Reorganized Debtors and the last four digits of their respective taxpayer identification numbers are: Melinta Therapeutics, Inc. (0364); Cempra Pharmaceuticals, Inc. (5814); CEM-102 Pharmaceuticals, Inc. (4262); Melinta Subsidiary Corp. (9437); Rempex Pharmaceuticals, Inc. (6000); and Targanta Therapeutics Corporation (1077). The address of the Reorganized Debtors’ corporate headquarters is 44 Whippany Road, Suite 280, Morristown, New Jersey 07960.

² Documents filed in this appeal are cited as “Docket No.”; documents filed in the bankruptcy court are cited as “Bankr. Docket No.”.

³ As noted below, Melinta will respond to Ms. Luo’s contemporaneously filed *Motion for an Order Pursuant to Bankruptcy Rule 2004 Authorizing Discovery and Production of Documents Requests of Vatera, Medco, Melinta, Deerfield, Peter Milligan, Thomas Koestler, and David Zaccardelli, and Granting the Shareholder/s’ Authority to Issue Subpoenas for the Production of Documents* [Docket No. 12] (the “**2004 Motion**”) in a separate filing.



OBJECTION

1. The Continuance Motion reprises arguments Ms. Luo advanced in her *Initial Proposed Briefing Schedule*, filed on July 28, 2020 [Docket No. 5]. Ms. Luo argued in that paper that her opening brief should be due on December 14, 2020, due to the hospitalization of the “attorney who represents the shareholder group” and the need for discovery. Initial Proposed Briefing Schedule ¶ 2. Melinta responded, requesting that Ms. Luo file and serve her opening brief by August 29, 2020 [Docket No. 10]. By order dated July 30, 2020 [Docket No. 11], this Court set October 28, 2020—roughly midway between the competing dates proposed by Ms. Luo and Melinta—as the deadline for Ms. Luo to file her opening brief.

2. The Continuance Motion presents no compelling basis for this Court to reconsider the briefing schedule it previously established. Six months have now elapsed since the entry of the order from which Ms. Luo appeals. Since that date, Ms. Luo has been a prolific litigant, having filed at least 30 motions and other papers with the Bankruptcy Court.⁴ Ms. Luo’s prodigious output demonstrates her wherewithal to file her opening brief on a timely basis should she so choose. Instead she has chosen to allocate her time to duplicative motion practice in the Bankruptcy Court, despite the Bankruptcy Court’s admonition that such seriatim filings “simply ha[ve] to stop.” Sept. 17, 2020 Hr’g Tr. at 19:11 [Bankr. Docket No. 839].

3. Nor does Mr. Colbert’s unfortunate illness justify the relief sought. As an initial matter, Mr. Colbert’s incapacity is not a new development; it was among the factors Ms. Luo cited in her Initial Proposed Briefing Schedule. *See* Initial Proposed Briefing Schedule ¶ 2. More fundamentally, Mr. Colbert is not Ms. Luo’s attorney. Mr. Colbert has not appeared for Ms. Luo

⁴ *See* Bankr. Docket. Nos. 446, 532, 545, 578, 581, 585, 612, 613, 614, 615, 646, 647, 648, 694, 695, 696, 697, 707, 708, 768, 769, 771, 772, 773, 778, 792, 793, 808, 812, 814.

either in the Bankruptcy Court or in this Court. Rather, Ms. Luo has proceeded throughout on a *pro se* basis.⁵ Accordingly, Mr. Colbert’s illness has no bearing on Ms. Luo’s ability to timely file her opening brief.

4. Relatedly, the so-called “shareholder group” that Mr. Colbert purportedly represents (or formerly represented) is not a party to this appeal. Although Ms. Luo’s notice of appeal identifies the appellants as herself “and other shareholders” [Docket No. 1], these “other shareholders” are not identified and did not sign the notice of appeal either personally or through counsel nor otherwise indicated their participation in this appeal. In the bankruptcy court, no putative shareholder group has filed a statement pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”)—the required procedure when a group of creditors or shareholders form an ad hoc group to “act[] in concert to advance their common interests.” Fed. R. Bankr. P. 2019(b). Nor has Mr. Colbert actually appeared on behalf of the purported shareholder group or any party in the Bankruptcy Court.

5. Nor is Ms. Luo’s recently filed motion for discovery pursuant to Rule 2004 of the Federal Rules of the Bankruptcy Procedures [Docket No. 13] cause for an extension of time. Melinta will respond fully to Ms. Luo’s 2004 Motion in due course. Suffice it to say for these purposes that this Court exercises jurisdiction over this case as an appellate court under 28 U.S.C. § 148(a), not as a trial court or finder of fact, and cannot admit new evidence that was not introduced in the Bankruptcy Court. *See, e.g., Shareholders v. Sound Radio, Inc.*, 109 F.3d 873, 882 (3d Cir. 1997) (reviewing appeal of a bankruptcy court decision to the district court and holding that “the taking of evidence, including testimony and fact-finding by the court, is

⁵ None of Ms. Luo’s many papers in the Bankruptcy Court, *see supra* note 4, nor her filings in this Court, were signed by counsel.

inappropriate for an appellate tribunal.”). Ms. Luo’s efforts to supplement the evidentiary record by taking discovery during this appeal is plainly improper. Even if discovery pursuant to Bankruptcy Rule 2004 were somehow permissible in connection with a bankruptcy appeal, Ms. Luo does not and cannot justify her failure to seek such discovery for the first time more than six months after entry of the order from which she now appeals. *Cf. Mem. on Relief Sought by Shareholders Seeking to “Cancel Sale”* [Bankr. Docket No. 744] at 4 (noting that Ms. Luo presented extensive argument, but no evidence, at the confirmation hearing).

6. Ms. Luo is entitled to a fair opportunity to present her appeal, but Melinta has an equally legitimate interest in the prompt adjudication of this appeal in order to bring finality to its restructuring efforts. The existing briefing schedule appropriately balances these competing interests. The Continuance Motion presents no compelling reason to deviate from the fair and reasonable briefing schedule this Court has already established and should be denied

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WHEREFORE, Melinta respectfully request that the Court deny the Continuance Motion, and grant such other and further relief as is just and proper.

Dated: Wilmington, Delaware
October 20, 2020

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

<p>In re:</p> <p>MELINTA THERAPEUTICS, INC., et al.,</p> <p style="text-align: center;">Debtors.¹</p>	<p>Chapter 11</p> <p>Case No. 19-12748 (LSS)</p> <p>BAP No. 20-09</p>
<p>LIN LUO,</p> <p style="text-align: center;">Appellants</p> <p style="text-align: center;">v.</p> <p>MELINTA THERAPEUTICS, INC.,</p> <p style="text-align: center;">Appellee.</p>	<p>C.A. No. 20-600 (MN)</p>

CERTIFICATE OF SERVICE

I, Jason M. Liberi, an attorney, do hereby certify as follows:

On October 20, 2020, I caused a copy of the following document to be filed and served electronically using the CM/ECF System on all counsel of record in the above referenced Case:

- Appellee’s Objection to Appellant’s Motion for a Continuance

¹ The Reorganized Debtors and the last four digits of their respective taxpayer identification numbers are: Melinta Therapeutics, Inc. (0364); Cempra Pharmaceuticals, Inc. (5814); CEM-102 Pharmaceuticals, Inc. (4262); Melinta Subsidiary Corp. (9437); Rempex Pharmaceuticals, Inc. (6000); and Targanta Therapeutics Corporation (1077). The address of the Reorganized Debtors’ corporate headquarters is 44 Whippany Road, Suite 280, Morristown, New Jersey 07960.

In addition, on October 20, 2020, I also caused a copy of this document to be served on those listed below in the manner indicated:

Lin Luo
11510 Bucknell Drive
Apt. 204
Silver Spring, MD 20902
(By First-class mail and Electronic Mail)

Dated: Wilmington, Delaware
October 20, 2020

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

/s/ Jason M. Liberi

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