Exhibit H

Matthew D. Rodgers

From: Akowuah, Kwabena (FDA/OGC) <Kwabena.Akowuah@fda.hhs.gov>
Sent: Friday, December 15, 2023 11:24 AM
To: Matthew D. Rodgers; Potoula Tournas; Edward Longosz
Cc: Bardo, John (USADC); Svonkin, Michele (FDA/OGC); Michael Flammia
Subject: [O365 Filtering: Possible SPAM] [External] RE: [EXTERNAL] RE: JRC et al. v. FDA, 22-3583 (D.D.C.)

Matthew,

Thank you for your email. I have reviewed the various FOIA requests and your prior communications with Seth and Jonathan about the scope of the same. Again, we maintain that 2022-8287 is a separate FOIA request and we cannot agree to incorporate its production and processing in this current litigation regarding FOIA request 2022-2434.

There is, however, significant overlap between the records sought in 2022-8287 and the two additional categories of records we agreed to produce in response to 2022-2434 (see JSR No. 22, paragraph 7). Both requests seek communications between FDA and HHS or DOJ regarding JRC, aversive therapy, ACDs, ESDs, or GEDs. Because FDA searched for records responsive to the two additional categories of records between Nov. and Dec. 2023, the additional records production will include all responsive non-exempt records between FDA and HHS and/or DOJ regarding these topics dated between July 6, 2021, and November/December 2023.

The only records sought in 2022-8287 that would not be covered by the ongoing 2022-2434 production will be (a) communications between FDA and Congress, the Massachusetts AG's office, and the Mass. Dept. of Developmental Services regarding JRC, aversive therapy, ACDs, ESDs, or GEDs dated after March 29, 2022, and (b) communications between FDA and HHS or DOJ regarding JRC, aversive therapy, ACDs, ESDs, or GEDs dated after November/December 2023. 2022-8287 has been placed in the FOIA queues at the appropriate FDA offices and will be processed accordingly.

Thanks for your consideration.

Best,

Kwabena "Kwabs" Akowuah
Associate Chief Counsel

Food & Drug Division, OGC
FDA Office of the Chief Counsel
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From: Matthew D. Rodgers <mrodgers@eckertseamans.com>
Sent: Friday, December 8, 2023 11:14 AM
To: Akowuah, Kwabena (FDA/OGC) <Kwabena.Akowuah@fda.hhs.gov>; Potoula Tournas <ptournas@eckertseamans.com>; Edward Longosz <ELongosz@eckertseamans.com>
Cc: Bardo, John (USADC) <John.Bardo@usdoj.gov>; Svonkin, Michele (FDA/OGC) <Michele.Svonkin@fda.hhs.gov>;

Michael Flammia <MFlammia@eckertseamans.com>
Subject: RE: [EXTERNAL] RE: JRC et al. v. FDA, 22-3583 (D.D.C.)

Kwabena:

Welcome again to the case and look forward to working with you in the future.

I write to follow up on points one and three in Jonathan's below email.

On the first point, in a final attempt to avoid future litigation, we request that FDA reconsider its position concerning its response to FOIA request 2022-8287. FDA's assertion that FOIA request 2022-8287 is broader than FOIA request 2022-2434, which is at issue in this lawsuit, is unfounded. FOIA request 2022-2434, a copy of which is attached, is comprehensive and, even as narrowed, seeks FDA's communications concerning certain subjects with seven groups. *See* Email Dated 02022023 and Joint Status Report 10162023, copies of which are attached. In contrast, FOIA request 2022-8287, a copy of which is also attached, seeks more recent FDA communications concerning the exact same subjects with only five groups, three of which are the same as in FOIA request 2022-2434. It would be more efficient for FDA to process simultaneously these nearly identical requests. We have already explained – on multiple occasions – why the referenced "production" by FDA's Dockets was non-responsive to FOIA request 2022-8287, and FDA's most recent proposal – that it would be "*at least 12 months*" before CDRH and OL begin reviewing records potentially responsive to this request that was submitted 12 months ago – violates FOIA. *See* Email Dated 09142023, a copy of which is attached. Thus, in a final attempt to avoid future litigation, we request that FDA reconsider its position and agree to a reasonable rolling production schedule for records responsive to FOIA request 2022-8287, either in the context of this lawsuit or otherwise. If we do not reach an agreement on this issue within the next week, we will again be compelled to institute another FOIA lawsuit to obtain a production schedule from the Court.

[redacted]

We look forward to your response.

Best,

ECKERT SEAMANS ATTORNEYS AT LAW

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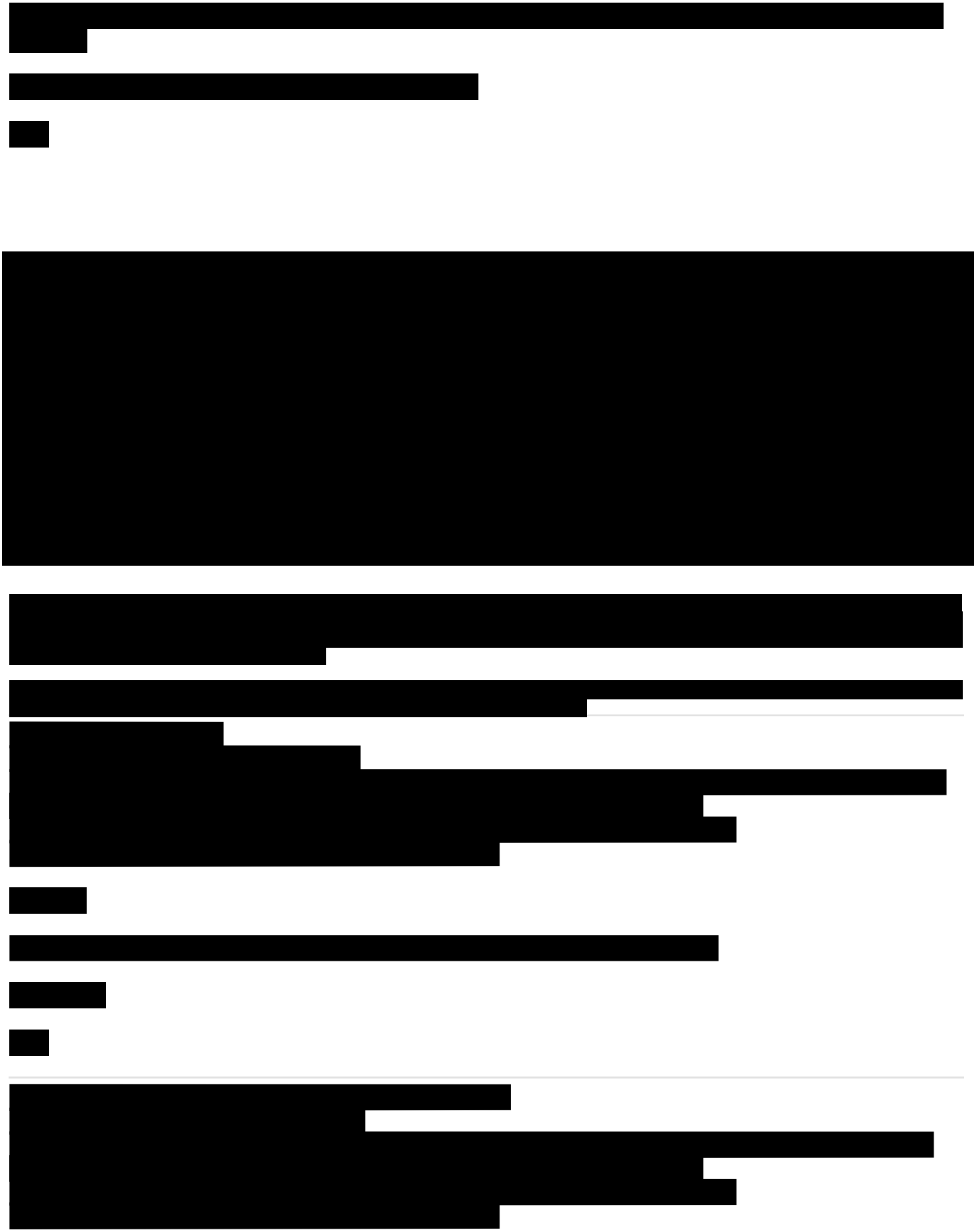
From: Silberman, Jonathan <Jonathan.Silberman@fda.hhs.gov>
Sent: Tuesday, October 10, 2023 11:43 AM
To: Potoula Tournas <ptournas@eckertseamans.com>; Edward Longosz <ELongosz@eckertseamans.com>
Cc: Bardo, John (USADC) <John.Bardo@usdoj.gov>; Matthew D. Rodgers <mrodgers@eckertseamans.com>; Svonkin, Michele <Michele.Svonkin@fda.hhs.gov>
Subject: RE: [EXTERNAL] RE: JRC et al. v. FDA, 22-3583 (D.D.C.)

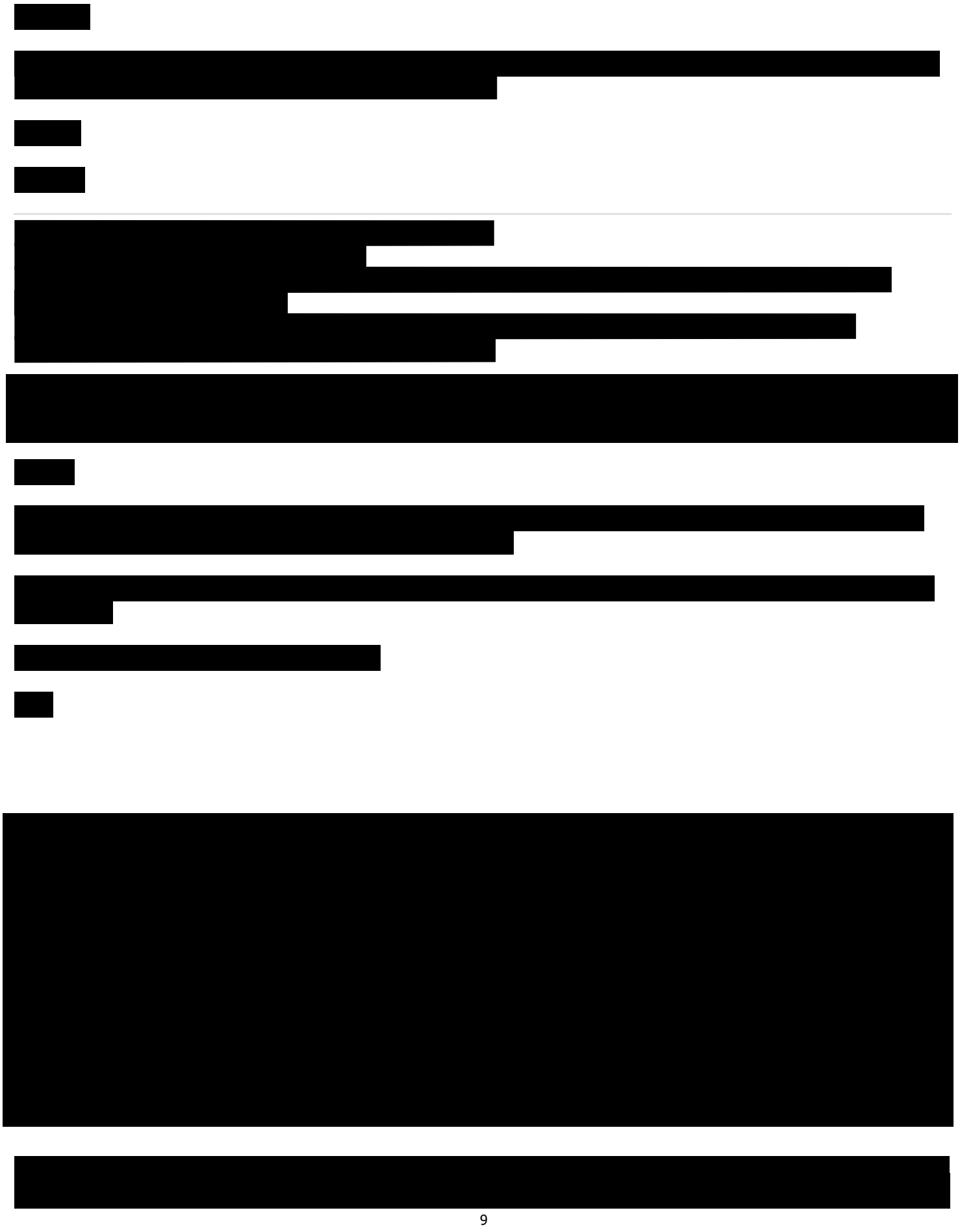
Potoula & Ed,

Thank you for taking the time to meet with us on Friday. I want to follow up in writing on a few points from Friday's call.

First, as we discussed on the call, FOIA request 2022-8287 is broader than FOIA request 2022-2423, the request at-issue in this suit. As such, we cannot commit to produce documents in response to your new request in this lawsuit over a different request. However, some documents responsive to FOIA request 2022-2423 will also be responsive to FOIA request 2022-8287, so you will receive those documents as part of the ongoing production. As explained previously, with respect to request 2022-8287, FDA's Dockets produced records in Dec. 2022; this request is now pending in the complex que at CDRH and OL, and once it reaches the top of that que those offices will begin their search and production.

[redacted]





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