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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE: INCRETIN MIMETICS
PRODUCTS LIABILITY
LITIGATION

Case No. 13-md-2452-AJB-MDD

As to all related and member cases

**(PROPOSED) CASE MANAGEMENT
ORDER NO. ___**

**PROCEDURES FOR PRODUCTION
OF ELECTRONICALLY STORED
INFORMATION**

This order relates to the production of documents and supplements all other discovery rules and orders as between defendant Eli Lilly and Company (“Lilly”), and all plaintiffs in this litigation. It streamlines Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive determination” of this action, as required by the Federal Rules of Civil Procedure.

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A. Already Produced Documents

On December 21, 2012 Lilly produced approximately 1.8 million pages of documents comprising documents from 13 Lilly custodians through December 29, 2009, the IND/NDA for Byetta, Risk Management Plans, and a production from Lilly’s Adverse Event database. On February 28, 2013 Lilly produced an additional 18,924 pages of updated custodial documents through November 12, 2012 for key safety, regulatory and medical custodians. On September 27, 2013 Lilly produced an additional 679,207 pages of custodial documents through November 12, 2012. Nothing in this Order requires Lilly to amend, alter or re-do its production of these materials. Lilly has spent significant time and resources producing documents. The parties agree that, to the extent technologically feasible, Plaintiffs will use the previously produced documents and will not request their reproduction under this Order. If Plaintiffs find that any of the documents previously produced are not reasonably useable to them, the parties will meet and confer.

B. Format of Production

1. The Parties shall produce electronic documents in a single-paged Tagged Image File format (“TIFF”) with extracted text with an accompanying load file to indicate the location and unitization of the TIFF files. The Parties will also produce hard copy documents in single-paged Tagged Image File format (“TIFF”).
2. Each page of a produced document shall have a legible, unique page identifier (“Bates Number”), and confidentiality legend (where applicable), on the face of the image at a location that does not interfere with the information from the source document.
3. To the extent possible, Lilly will provide the following metadata fields:
 - a. Beginning bates number

- 1 b. Ending bates number
- 2 c. Beginning attachment number
- 3 d. Ending attachment number
- 4 e. Attachment count (email)
- 5 f. Attachment name (email)
- 6 g. Custodian/Source
- 7 h. Author/From
- 8 i. Document type
- 9 j. Subject
- 10 k. Recipient
- 11 l. CC
- 12 m. BCC
- 13 n. Sent date
- 14 o. Received date
- 15 p. Create date
- 16 q. Last modified date
- 17 r. DocExt
- 18 s. File name
- 19 t. File path
- 20 u. Native file link
- 21 v. Text path
- 22 w. Importance
- 23 x. File size
- 24 y. Page count
- 25 z. Redacted

26 This list of fields does not create any obligation to create or manually code fields that
27 are not automatically generated by the processing of the ESI, that do not exist as part
28 of the original metadata of the document, or that would be burdensome or costly to

1 obtain. The Custodian/Source metadata field shall be provided for all documents
2 produced.

- 3 4. In scanning paper documents, distinct documents shall not be merged into a
4 single record, and single documents shall not be split into multiple records
5 (*i.e.*, paper documents should be logically unitized). Parent-child
6 relationships (the association between an attachment and its parent
7 document) shall be preserved. Original document orientation shall be
8 maintained (*i.e.*, portrait to portrait and landscape to landscape).
- 9 5. Excel spreadsheets that do not require redaction shall be produced in native
10 format. PowerPoint presentations that do not require redaction may be
11 produced in native format or in TIFF. Any document produced in native
12 format will have a corresponding place holder TIFF image for these records
13 bearing the legend “This document produced in native file format only.”
14 Prior to the production of native documents, the Parties will reach agreement
15 on the format and use of such native documents. Other document formats
16 that present imaging problems shall promptly be identified, and the Parties
17 shall meet and confer to attempt to resolve the problems.
- 18 6. The mere production of ESI in this litigation as part of a larger production
19 shall not itself constitute a waiver for any purpose.
- 20 7. Pursuant to Federal Rule of Evidence 502(d) and the governing Protective
21 Order in this case, the production of a privileged or work product protected
22 document is not a waiver in the pending case or in any other federal or state
23 proceeding.
- 24 8. The Parties are not required to produce exact duplicates of electronic
25 documents stored in different locations. Lilly may globally de-duplicate
26 identical ESI, which will be determined as follows:

- 27 (i) Electronic files will be de-duplicated based upon calculated SHA1 values
28 for binary file content. File contents only will be used for SHA 1 value

1 calculation and will not include operating system metadata (filename, file
2 dates) values.

- 3 (ii) Messaging files will be de-duplicated based upon SHA 1 values for the
4 message family, including parent object and attachments. The following
5 fields will be used to create the unique value for each message: BCC;
6 CC: To: Date Sent; From; Subject; AttachmentCount; Total Attachment
7 Size. Messaging materials will be de-duplicated at a family level,
8 including message and attachment(s).

9 If Lilly de-duplicates identical ESI, Lilly shall provide custodian
10 associations in a semi-colon delimited overlay file that includes duplicate
11 custodian name information and related source file paths for the duplicate
12 custodians. The overlay files shall be produced after every production and shall
13 be regularly updated to account for rolling productions. The parties shall
14 produce documents on CD, DVD, or hard drives.

15 9. No party has an obligation to make its production text-searchable; however,
16 if a party's documents exist in text-searchable format, then such documents
17 shall be produced in a text-searchable format at no cost to the receiving
18 party.

19 10. For each document containing searchable text, a single text file shall be
20 provided along with the image files and metadata. The text file name shall
21 be the same as the Bates number of the first page of the document. File
22 names shall not have any special characters or embedded spaces. Electronic
23 text must be extracted directly from the native electronic file unless the
24 document was redacted, an image file, or a hard copy document. Subject to
25 paragraph B.9, in these instances, a text file shall be created using OCR and
26 shall be produced in lieu of extracted text.

27 11. Absent a showing of good cause, no party need restore any form of media
28 upon which backup data is maintained in a party's normal or allowed

1 processes, including but not limited to backup tapes, disks, SAN, and other
2 form of media, to comply with its discovery obligations in the present case.
3 It will be presumed, although either party may seek to rebut that
4 presumption, that costs for production from a backup or archive, to the
5 extent it is deemed necessary, will be paid by the party making the request.

6 12. Absent a showing of good cause, non-transcribed voicemails, and PDAs are
7 deemed not reasonably accessible and need not be collected and preserved.

8 13. When processing ESI, EST shall be selected as the time zone.

9 14. Objects embedded in Microsoft Word and .RTF files will be extracted as
10 separate documents and produced as attachments to the document.

11 15. Compression file types (i.e., .CAB, .GZ, .TAR, .Z, .ZIP) shall be
12 decompressed in a reiterative manner to ensure that a zip within a zip is
13 decompressed into the lowest possible compression resulting in individual
14 folders and/or files.

15 16. Audio files and video files shall be produced in native format with the
16 source file path provided.

17 17. Any documents that are replaced in later productions shall be clearly
18 designated as such, by appending an “ R” to the production prefix. When a
19 party produces a replacement production indicated by “R,” the receiving
20 party must discard or return to the producing party all copies, including
21 working copies, of the original, replaced image.

22 18. Any native files that are produced shall be produced with the source file
23 path provided, as well as all extracted text and applicable metadata fields set
24 forth in this order.

25 19. Documents with dynamic fields for file names, dates, and times will be
26 processed to show the field code (e.g., “[FILENAME]” or
27 “[AUTODATE]”), rather than the values for such fields existing at the time
28 the file is processed.

1 20. The Parties will meet and confer, as necessary, regarding potentially
2 relevant structured data sources.

3 C. Production of Custodial Files

4 1. As set forth above, Lilly has already produced custodial documents from 13
5 custodian pursuant to prior searches. Plaintiffs will review these productions
6 and the parties will meet and confer regarding any additional production. For
7 productions from any additional custodians, Lilly will use search terms, to be
8 agreed upon by the parties , to cull collected electronic data from September 19,
9 2002 to June 1, 2013. This Order does not require Lilly to search any custodial
10 files for time periods that have previously been searched. Should plaintiffs
11 believe that any prior search was insufficient to reasonably capture material
12 responsive to their requests, plaintiffs will notify Lilly of the asserted deficiency
13 and their basis for believing it material, and the parties will meet and confer.
14 Lilly will notify Plaintiffs when the production of a custodial file is
15 substantially complete. Upon substantial completion of the production of the
16 custodial files of the above-referenced custodians, the parties will meet and
17 confer regarding the production of additional custodial files, if any. If Plaintiffs
18 elect to take the deposition of a custodian prior to receiving notice that the
19 production of the custodian’s documents is substantially complete, Plaintiffs
20 will not be entitled to further depose that witness on the grounds that the
21 document production was not complete.

22 D. Technical Specifications

23 1. All TIFF-formatted documents will be single page, Group 4 TIFF at 300 x 300
24 dpi resolution and 8.5 x 11 inch page size, except for documents that in the
25 producing party’s reasonable judgment require a different resolution or page
26 size. If a color image is produced in black and white, the receiving party may
27 request the producing party to produce the original, color image. After

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receiving such a request for color production, the parties will meet and confer on a reasonable and cost-effective means of providing the requested documents.

- 2. There will be two Load/Unitization files accompanying all productions. One will be the Image load file and the other will be the Metadata load file.
- 3. Specifications for the image load files will be the following:

- (i) Every Document referenced in a production image load file shall have all corresponding images, text, and data logically grouped together in a directory structure with a common key to properly load the data.
- (ii) Documents shall be produced in only one image load file throughout the productions, unless that document is noted as being a replacement document in the Replacement field of the data load file.
- (iii) The name of the image load file shall mirror the name of the delivery volume, and should have an .lfp, .opt or .dii* extension (e.g., ABC001.lfp). The volume names shall be consecutive (i.e., ABC001, ABC002, et. seq.). If a .dii file is produced, the accompanying metadata load file shall be separate from the .dii file and not contained within the .dii file.
- (iv) The load file shall contain one row per TIFF image.
- (v) Every image in the delivery volume shall be contained in the image load file.
- (vi) The image key shall be named the same as the Bates number of the page. Load files shall not span across media (e.g., CDs, DVDs, Hard Drives, etc.), i.e., a separate volume shall be created for each piece of media delivered.

- 4. Specifications for the metadata load files will be the following:

- (i) The metadata load file shall use the following delimiters:

- Column Delimiter: Pipe - | (ASCII 124) or (ASCII 020)
- Text Qualifier: Caret - ^ (ASCII 94) or ¸ (ASCII 254)
- New line: Registered sign - ® (ASCII 174)
- Example: ¸PRODBEG¸¸PRODEND¸¸PRODBEGATT¸

- (ii) Data for documents shall be produced in only one data load file throughout the productions, unless that document is noted as being a replacement document in the Replacement field of the data load file.
- (iii) The first record shall contain the field names in the order of the data set forth in the Metadata.
- (iv) All date fields shall be produced in “mm/dd/yyyy hh:mm:ss AM” format.
- (v) A carriage-return line-feed shall be used to indicate the start of the next record.
- (vi) Load files shall not span across media (e.g., CDs, DVDs, Hard Drives, etc.); a separate volume shall be created for each piece of media delivered.
- (vii) The name of the metadata load file shall mirror the name of the delivery volume, and shall have a .dat, .csv or .txt extension (i.e., ABC001.dat).
- (viii) The volume names shall be consecutive for each produced source. (i.e., ABC001, ABC002, et. seq.).

E. Costs

While each party expressly reserves its rights to seek costs relating to this litigation, including the costs of producing documents, initially each party will bear the costs to process and review its own documents and readily accessible ESI. To the extent any party requests data that is not readily accessible, subject to Paragraph C.11, the parties shall comply with the Federal Rules of Civil Procedure in determining

1 whether the inaccessible data is to be produced, including the costs to process or
2 review unique or non-standard data. The parties shall confer concerning inaccessible
3 material, including inaccessible ESI, prior to seeking the Court's assistance.

4 F. Protective Order

5 All documents that have been or will be produced by the parties will be subject
6 to the terms of the Protective Order entered in this litigation.

7 G. Predictive Coding

8 The parties agree that Lilly may, but is not required to, use predictive
9 coding in connection with the review of documents in this litigation.

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11 IT IS SO ORDERED.

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13 DATED: _____

14 Honorable Mitchell D. Dembin
15 United States Magistrate Judge
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