

JOHN McGERALD	*	IN THE COUNTY COURT
	*	
VS.	*	AT LAW NO. 1
	*	
AMYLIN PHARMACEUTICALS, INC. & ELI LILLY AND COMPANY	*	NUECES COUNTY, TEXAS

**AGREED PRODUCTION ORDER**

On the date entered below, the parties, Petitioner, JOHN McGERALD, and Respondents, AMYLIN PHARMACEUTICALS, INC. ("Amylin") and ELI LILLY AND COMPANY ("Lilly"), came before the Court and announced that, in reply to Petitioner's Rule 202 Petition, the parties met and conferred, and agreed on the production of documents requested therein. Accordingly, the Court orders as follows:

**I. DOCUMENTS TO BE PRODUCED WITHIN 20 DAYS**

The following documents are to be produced within twenty (20) days:

- a. All documents previously produced by Respondents in the consolidated California litigation concerning Byetta cases, *In Re: Byetta Litigation*, JCCP 4574, County of Los Angeles, Superior Court of the State of California.
- b. Sales representatives' documents specific to Dr. Cheryl Sacco: (1) the name of every sales representative who called on Dr. Sacco about Byetta during Petitioner's prescription period (September 8, 2008-October 12, 2011); (2) call notes and sample data for each of those sales representatives from April 28, 2005 to October 30, 2011; (3) prescribing data for Dr. Sacco for the period of Petitioner's Byetta use; (4) speaker information for Dr. Sacco for the period of Petitioner's Byetta use, if any; and (5) any medical or Dear Healthcare Provider letters sent to Dr. Sacco concerning Byetta.
- c. All Periodic Safety Update Reports (PSURs) concerning Byetta.
- d. All Risk Management Plans (RMPs) concerning Byetta.

**II. SEARCHES FOR RESPONSIVE DOCUMENTS**

The following documents shall be produced on a rolling basis with the first production on or before February 1, 2013:

- a. Respondents provided discovery to Plaintiffs in the consolidated California litigation concerning Byetta cases, *In Re: Byetta Litigation*, JCCP 4574, County of Los Angeles, Superior Court of the State of

California, by utilizing search terms negotiated between the parties, and then producing responsive documents dated through December 28, 2009.

- b. Subject to the terms of this Order, Respondents shall produce documents dated from December 28, 2009 to November 12, 2012. In making such production, Respondents shall utilize the search terms attached hereto as Exhibit "A", and shall produce responsive documents to the Petitioner.
- c. For documents produced by Lilly, documents shall be identified and produced from the custodial files of:
  - a. James Malone (Senior Medical Director - Medical - Diabetes/Endocrine);
  - b. Jeffrey Ferguson (Medical Advisor, Worldwide Pharmacovigilance and Epidemiology);
  - c. Kathryn Broderick (Global Regulatory Lead - Lilly/Amylin Alliance until November 2011).
- d. For documents produced by Amylin, documents shall be identified and produced from the custodial files of:
  - a. Denis Roy (Senior Director, Non-Clinical Drug Safety);
  - b. Orville Kolterman (Senior Vice President, Chief Medical Officer);
  - c. Staci Ellis (Director, Regulatory Affairs).
- e. Production of the documents from these six custodians is made without prejudice to Petitioner seeking documents from additional custodians once a lawsuit is commenced. Respondents will not argue in this or any other proceeding that by accepting production from the six above-named custodians, Petitioner's counsel is precluded from seeking the documents of additional custodians in this or any other proceeding.
- f. Respondents shall produce all documents used by their sales representatives in calling on physicians regarding Byetta.
- g. If any documents are withheld or redacted on the grounds of privilege or trade secret, Respondent shall provide Petitioner with a privilege log, setting forth the author(s), recipient(s) and person copied thereon, the subject matter and nature of the communication, and the basis for the withholding or redaction of documents.
- h. With respect to any disputes concerning this production, the parties are ordered to first meet and confer about such disputes, and if necessary, file a motion before this Court to resolve such disputes.
- i. Respondents shall bear the cost of this production.
- j. Respondents shall produce responsive documents in the same format they made production of documents in the consolidated California litigation concerning Byetta cases, *In Re: Byetta Litigation*, JCCP 4574, County of Los Angeles, Superior Court of the State of California.

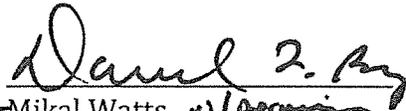
### III. PROTECTIVE ORDER

- a. The Parties agree that the Stipulated Protective Order attached hereto as Exhibit B should be entered by the Court and shall govern all documents produced pursuant to this Production Order, subject to the following:
1. The Parties do not agree on whether the following sentence, which appears in Paragraph 13 of the Stipulated Protective Order, should remain or be stricken by the Court prior to entry of the Stipulated Protective Order:  
“Counsel providing access to Confidential Discovery Materials to any individual listed in Paragraph 5(a)(3), other than the undersigned counsel for Petitioner or his partners, associates, secretaries, paralegal assistance, and employees, shall, within 10 days of providing such access, deliver a copy of the executed Endorsements(s) of Protective Order to counsel for the Party who produced the Confidential Discovery Material.”
  2. Defendants’ position is that the afore-quoted sentence should remain in the Stipulated Protective Order as entered by the Court.
  3. Petitioners’ position is that the Court should strike the afore-quoted sentence from the Stipulated Protective Order before entering the Stipulated Protective Order.
  4. The Parties respectfully request that the Court rule upon whether the afore-quoted sentence should remain or be stricken from the Stipulated Protective Order before the Court enters the Stipulated Protective Order. The Parties are available to further advise the Court as to the bases for their respective positions in such manner as the Court may direct.

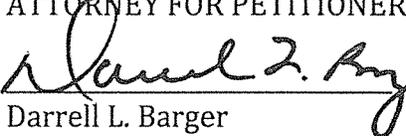
[SIGNATURES ON NEXT PAGE]

AGREED AS TO FORM AND SUBSTANCE:

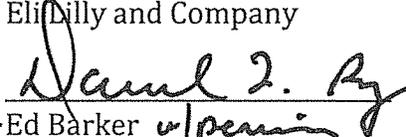
Date: November \_\_, 2012

  
for Mikal Watts w/permission  
ATTORNEY FOR PETITIONER

Date: November \_\_, 2012

  
Darrell L. Barger  
ATTORNEY FOR RESPONDENTS  
Eli Lilly and Company

Date: November \_\_, 2012

  
for Ed Barker w/permission  
ATTORNEY FOR RESPONDENTS  
Amylin Pharmaceuticals, LLC

ENTERED this 19 day of November, 2012.

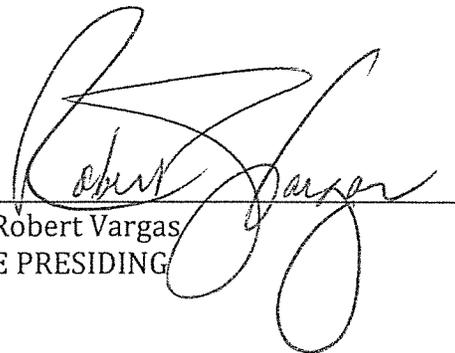
  
Hon. Robert Vargas  
JUDGE PRESIDING

Exhibit "A"

For Lilly:  
 (byetta OR exenatide OR exendin OR C184H272N50060S OR AC2993 OR 2993 OR LLY2148568 OR LLY2148568 OR LSN2148568 OR 2148568 OR "141732 76 5" OR 141732765 OR 21919 OR NDA21919 OR "NDA 21 919" OR "N21 919" OR "NDA21 919" OR N21919 OR 21773 OR NDA21773 OR "NDA 21 773" OR "N21 773" OR "NDA21 773" OR N21773 OR 57725 OR IND57725 OR I57725 OR "57 725" OR Amylin OR Alliance OR Nuzendis OR bydureon\* OR QW OR EQW OR LAR OR "long acting release")

For Amylin:  
 (byetta OR exenatide OR exendin OR C184H272N50060S OR AC2993 OR 2993 OR LLY2148568 OR LLY2148568 OR LSN2148568 OR 2148568 OR "141732 76 5" OR 141732765 OR 21919 OR NDA21919 OR "NDA 21 919" OR "N21 919" OR "NDA21 919" OR N21919 OR 21773 OR NDA21773 OR "NDA 21 773" OR "N21 773" OR "NDA21 773" OR N21773 OR 57725 OR IND57725 OR I57725 OR "57 725" OR Lilly OR Alliance OR Nuzendis OR bydureon\* OR QW OR EQW OR LAR OR "long acting release")

AND

(pancr* near2 duct* near2 gland) or pdg
adenom* OR carci*
*plasia
Acinar
Adenom*
Animal
Butler near100 (pancr* OR cancer* OR ductal OR panin OR pdg OR tumor*)
CA 19-9
Cancer*
Carci*
CEA near100 pancr*
ct near5 (scan* OR imag* OR show*)
ductal near5 (pancr* or bil*)
Dysplasia
Elashoff
ERCP
Gale
Gier
Hyperplasia
intraductal or (intra near2 ductal)
IPMN
Janumet near100 (pdg OR animal OR cancer* OR carci* OR CEA OR lesion OR malig* OR MCN OR monkey OR primate OR monkie* OR mouse OR mice OR murine OR pancr* OR panin OR rat OR rats OR thyroid OR tumor

Exhibit "A"

Januvia* near100 (pdg OR animal OR cancer* OR carci* OR CEA OR lesion OR malig* OR MCN OR monkey OR primate OR monkie* OR mouse OR mice OR murine OR pancr* OR panin OR rat OR rats OR thyroid OR tumor
Lesion
Malig*
matvey*
MCN near100 pancr*
Metaplasia
Metast*
mid* near2 epigastric
monkey or primate* or monkie*
mouse or mice
Murine
Nachnani
neopla*
Pancr*
pancr* near2 duct*
panin near100 pancr*
prolifer* near5 (duct* or cell*)
rat or rats
SCA
SCD
Sedo
thyroid*
tumor* near100 pancr*
Victoza near100 (pdg OR animal OR cancer* OR carci* OR CEA OR lesion OR malig* OR MCN OR monkey OR primate OR monkie* OR mouse OR mice OR murine OR pancr* OR panin OR rat OR rats OR thyroid OR tumor