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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: VIAGRA (SILDENAFIL CITRATE)
AND CIALIS (TADALAFIL) PRODUCTS
LIABILITY LITIGATION

This Document Relates to : ALL ACTIONS

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**STIPULATED ORDER RE:
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION BETWEEN
PLAINTIFFS AND ELI LILLY AND
COMPANY**

9 **1. PURPOSE**

10   This Order will govern discovery of electronically stored information ("ESI") in this case as

11 a supplement to the Federal Rules of Civil Procedure, this Court's Guidelines for the Discovery of

12 Electronically Stored Information, and any other applicable orders and rules. This Order shall apply

13 to the production of hard-copy and electronic documents by Eli Lilly and Company and its agents,

14 employees (current and former), representatives, subsidiaries, and other affiliated entities

15 (collectively, "Lilly"), as well as to the production of hard-copy and electronic documents by

16 Plaintiffs. This Order also may apply to state court actions provided that the parties thereto so agree

17 or the applicable court so orders.

18   Nothing in this Order alters a Party's rights, obligations, and responsibilities under the

19 Federal Rules of Civil Procedure and any other applicable orders and rules, nor does anything in this

20 Order impose additional burdens beyond those imposed by the Federal Rules of Civil Procedure or

21 any other applicable orders or rules. The Parties reserve all objections under the Federal Rules of

22 Civil Procedure and applicable decision authority for matters relating to the production of documents

23 that are not specifically addressed in this Order.

24 **2. DEFINITIONS**

25   (a)   **"Confidentiality Designation"** means the legend affixed to Documents for

26 Confidential or Highly Confidential Information as defined by, and subject to, the terms of

27 Stipulated Protective Order entered by the Court in this litigation.

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1   (b)   **"Document"** is defined to be synonymous in meaning and equal in scope to the

2 usage of this term in Rules 26 and 34 of the Federal Rules of Civil Procedure. The term

3 "document" shall include hard-copy documents, electronic documents, and ESI as defined herein.

4   (c)   **"Electronic Document or Data"** means documents or data existing in electronic

5 form at the time of collection, including but not limited to: e-mail or other means of electronic

6 communications, word processing files (e.g., Microsoft Word), computer presentations (e.g.,

7 PowerPoint slides), spreadsheets (e.g., Excel), and image files (e.g., PDF).

8   (d)   **"Electronically stored information"** or **"ESI,"** as used herein has the same

9 meaning as in Federal Rules of Civil Procedure 26 and 34.

10   (e)   **"Hard-Copy Document"** means documents existing in paper form at the time of

11 collection.

12   (f)   **"Hash Value"** is a unique numerical identifier that can be assigned to a file, a group

13 of files, or a portion of a file, based on a standard mathematical algorithm applied to the

14 characteristics of the data set. The most commonly used algorithms are known as MD5 and SHA.

15   (g)   **"Load files"** means electronic files provided with a production set of documents

16 and images used to load that production set into a receiving party's document review platform, and

17 correlate its data within that platform.

18   (h)   **"Media"** means an object or device, real or virtual, including but not limited to a

19 disc, tape, computer, or other device on which data is or was stored.

20   (i)   **"Metadata"** means: (i) information embedded in or associated with a native file

21 that is not ordinarily viewable or printable from the application that generated, edited, or modified

22 such native file which describes the characteristics, origins, usage, and/or validity of the electronic

23 file; (ii) information generated automatically by the operation of a computer or other information

24 technology system when a native file is created, modified, transmitted, deleted, or otherwise

25 manipulated by a user of such system, (iii) information, such as Bates numbers, created during the

26 course of processing documents or ESI for production, and (iv) information collected during the

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1 course of collecting documents or ESI, such as the name of the media device on which it was

2 stored, or the custodian or non-custodial data source from which it was collected.

3   (j)   **"Native Format"** means and refers to the format of ESI in which it was generated

4 and/or as used by the Producing Party in the usual course of its business and in its regularly

5 conducted activities. For example, the native format of an Excel workbook is a .xls or .xslx file.

6   (k)   **"Optical Character Recognition" or "OCR"** means the process of recognizing

7 and creating a file containing, visible text within an image.

8   (l)   **"Party" or "Parties"** means or refers to the named Plaintiffs and/or Lilly in the

9 above-captioned matter, as well as any later added plaintiffs or defendants.

10   (m)   **"Searchable Text"** means the native text extracted from an electronic document

11 and any Optical Character Recognition text ("OCR text") generated from a hard-copy document or

12 electronic document.

13   (n)   **"Include" and "Including"** shall be construed to mean "include but not be limited

14 to" and "including, but not limited to".

15 **3. COOPERATION**

16   The Parties are aware of the importance the Court places on cooperation and commit to

17 cooperate in good faith throughout the matter consistent with this Court's Guidelines for the

18 Discovery of ESI. The Parties shall meet and confer in good faith on any issue regarding ESI, as

19 necessary, including any relating to custodians and data sources, that arise under this Order. In the

20 event the Parties cannot reach an agreement on a disputed matter, the Parties shall submit the matter

21 to the Court in accord with local rules.

22 **4. LIAISON**

23   The Parties have identified liaisons to each other who are and will be knowledgeable about

24 and responsible for discussing their respective Party's ESI efforts. Each e-discovery liaison will be,

25 or have access to those who are, knowledgeable about the technical aspects of the Party's e-discovery

26 systems, including the location, nature, accessibility, format, collection, search methodologies, and

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1   production of ESI in this matter. The Parties will rely on the liaisons, as needed, to confer about ESI

2   and to help resolve disputes without court intervention.

3   **5.   PRESERVATION**

4   The Parties represent that they have issued litigation hold notices and taken reasonable steps

5   to preserve data in this litigation. The Parties shall maintain, preserve, and not render less reasonably

6   accessible documents which may contain responsive data, or are produced pursuant to this Order

7   and/or in response to requests for production of documents.

8   **6.   IDENTIFICATION OF DOCUMENTS AND ESI**

9   The Parties agree to meet and confer to discuss (a) the identification of custodial and non-

10 custodial data sources, and (b) additional parameters for scoping the review and production efforts

11 (e.g., application of date ranges, de-NIST'ing, etc.).

12 With respect to custodial files, the Parties will (a) identify and select custodians most likely

13 to possess relevant documents pursuant to any Pretrial Orders entered by the Court governing

14 discovery; and (b) apply agreed-upon search terms to those custodians' data sources. The Parties

15 shall first exchange search terms, then meet and confer to discuss the search terms and the proper

16 methodology for validating those search terms (such as sampling of documents that do not hit on

17 the search terms). The selection of search terms may need to be iterative.

18 The Producing Party may review all hard-copy and electronic documents that contain any

19 agreed-upon search terms for responsiveness and privilege prior to production. The fact that a

20 document may have been retrieved by application of any agreed-upon search terms shall not prevent

21 the Producing Party from withholding the document for lack of responsiveness or privilege.

22 No specific document of which the Producing Party is aware and knows to be responsive

23 shall be withheld from production because it was not identified as responsive by the agreed

24 methodologies or was not within an identifiable data repository or custodial or non-custodial data

25 source.

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7.   PRODUCTION FORMAT AND PROCESSING SPECIFICATIONS

(a)   **Production Format.**   Unless otherwise specified in Section 7(b) or pursuant to Section 7(k) below, the Parties shall produce all documents in black-and-white, single page, 300 DPI, tagged image file format ("TIFF") images, utilizing Group IV compression, with corresponding extracted or OCR text and, to the extent possible, applicable metadata as specified in Exhibit A. Image file names will be identical to the corresponding Bates numbered images, with a ".tif" file extension. The Producing Party will brand all TIFF images in the lower right-hand corner with its corresponding Bates number, using a consistent font type and size, to the extent possible. The Bates number must not obscure any part of the underlying image. If the placement in the lower right-hand corner will result in obscuring the underlying image, the Bates number should be placed as near to the position as possible while preserving the underlying image.

(b)   **Native Format.**   The Parties shall produce Excel spreadsheets, audio files, and video files in native format, unless redacted, with applicable metadata as specified in Exhibit A and extracted searchable text. If production in native format is necessary to decipher the meaning, context, or content of a Word or PowerPoint document produced in TIFF, the Producing Party will honor reasonable requests made in good faith for the production of specific documents in native format.

(c)   **Embedded Objects.**   If documents contain embedded objects, the Parties shall extract the embedded objects as separate documents and treat them like attachments to the document. To the extent reasonably possible, images embedded in emails shall not be extracted and produced separately.

(d)   **Load Files.**   Every document referenced in a production image load file must have all corresponding images, text, and applicable metadata as specified in Exhibit A. The name of the image load file must mirror the name of the delivery volume and should have a .LFP, .OPT, or .DII extension. The volume names must be reasonably consecutive (e.g., ABC001, ABC002). The load file must contain one line per image. Every image in the delivery volume must be contained

1   in the image load file. The image key must be named the same as the Bates number of the image.

2   Load files must not span across media.

3   (e)   **Foreign Language Documents.**   Hard-copy documents and ESI that contain

4   languages other than English, in whole or in part, shall be produced in the original language(s),

5   along with all existing translations of the searchable text maintained in the ordinary course of

6   business.

7   (f)   **Text Files.**   A single text file shall be provided for each document. The text file

8   name shall be the same as the Bates number of the first page of the document to which it

9   corresponds. Files names shall not have any special characters or embedded spaces. Electronic text

10 must be extracted directly from the native electronic file unless the document requires redaction, is

11 an image file, or is any other native electronic file that does not contain text to extract (e.g., non-

12 searchable PDFs). In these instances, a text file will be created using OCR and will be produced in

13 lieu of extracted text. Except in the case of redacted documents, the Receiving Party will not be

14 required to rely upon a less accurate version of the text than the Producing Party.

15   (g)   **TIFFs of ESI.**   TIFFs of ESI shall convey the same information and image as the

16 original document, including all non-redacted elements and formatting.

17   (h)   **Bates Numbers.**   All Bates numbers will consist of a three digit Alpha Prefix,

18 followed immediately by an 8 digit numeric: AAA########. There must be no spaces in the

19 Bates number. Any numbers with less than 8 digits will be front padded with zeros to reach the

20 required 8 digits.

21   (i)   **Metadata Fields and Processing.**   Each of the metadata fields set forth in Exhibit

22 A that can be reasonably extracted from ESI will be produced for each document. If a Party

23 becomes aware of a systemic issue extracting or processing metadata, the Party shall notify all

24 other Parties and they shall meet and confer to arrive at a mutually acceptable resolution of the

25 issue. The Parties are not obligated to populate manually any of the metadata fields in Exhibit A if

26 such fields cannot be extracted from a document.

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1   (j)   **Native File Image Placeholders.** A Bates-stamped placeholder TIFF, bearing the

2 legend "This document has been produced in native format" shall be provided for ESI produced in

3 native format; these placeholders will be Bates numbered in the same way as any other TIFF, and

4 the Bates number of that single page shall be used as the BegBates and EndBates of the associated

5 document.

6   (k)   **Databases, Structured, Aggregated or Application Data.** The Parties will meet

7 and confer to address the production and production format of any responsive data contained in a

8 database or other structured or aggregated data source.

9   (l)   **Scanning of Hard-Copy Documents.** The Parties may produce hard-copy

10 documents either in their hard-copy form or as scanned images. In scanning paper documents,

11 documents are to be produced as they are kept. For documents found in folders or other containers

12 with labels, tabs, or other identifying information, such labels and tabs shall be scanned where

13 practicable. The Parties will use best efforts to unitize documents.

14   (m)   **Proprietary Software.** To the extent that relevant ESI cannot be rendered or

15 reviewed without the use of proprietary software, the parties shall meet and confer to ensure that

16 the data is produced in a format, or made accessible in a manner, that does not restrict the

17 receiving party's ability to utilize the data fully and to minimize any expense or burden associated

18 with the production of such documents in such format or access to such data in such manner.

19   (n)   **Confidentiality Treatment.** The Parties have entered into a Stipulated Protective

20 Order in this matter, which specifies various confidentiality treatment levels for use in this matter.

21 The Producing Party will brand any confidentiality endorsements in a corner of any TIFF images

22 representing the produced item. Those endorsements must be in a consistent font type and size and

23 must not obscure any part of the underlying image or Bates number, to the extent possible.

24   (o)   **Redactions.** A Party may use redactions to protect attorney-client or attorney work

25 product privileges, or consistent with the Protective Order entered in this matter. Other than as

26 allowed by the Stipulated Protective Order, no redactions for relevance may be made within a

27 produced document or ESI item. For redacted items which were originally ESI, unaffected, non-

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1   privileged metadata fields per paragraph 7(i) will be provided and will include all non-redacted

2   data. The basis for each redaction must be provided as metadata, except for documents already

3   produced as of the date of this Order.

4   (p)   **Color.** The Parties shall honor reasonable and specific requests for the production

5   of documents as color images.

6   (q)   **Parent-Child Relationships.** Parent-child relationships (the association between

7   an attachment and its parent document or between embedded documents and their parent) shall be

8   preserved.

9   (r)   **Family Relationships.** Family relationships often exist between an e-mail and its

10 attachments, but can also be found amongst a stand-alone document and files originally contained

11 within the parent document, which are subsequently de-embedded as part of discovery processing.

12 Non-relevant attachments may be excluded from production. All non-relevant attachments

13 excluded from production shall be produced as a slipsheet or placeholder.

14   (s)   **OCR.** OCR software should be set to the highest quality setting during processing.

15 If the requesting party receives a document where OCR appears not to have captured foreign

16 language characters, the requesting party may raise this issue with the producing party, which will

17 make reasonable efforts to return the "re-OCRed" text within 30 days as long as the volume

18 involved is fewer than 1,000 pages. The Parties will meet and confer if the volume involved is

19 greater than 1,000 pages. Settings such as "auto-skewing" and "auto-rotation" should be turned

20 on during the OCR process.

21   (t)   **Date Fields Time Zone.** All documents shall be processed so as to show fielded

22 dates and times in Eastern Time.

23   (u)   **Lost, Destroyed or Irretrievable ESI.** If a Producing Party learns that responsive

24 ESI that once existed was lost, destroyed, or is no longer retrievable as a result of acts or

25 circumstances not occurring in the ordinary course of business, the Producing Party shall comply

26 with its obligations under the Federal Rules of Civil Procedure.`

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8.   PRODUCTION MEDIA

The Producing Party shall produce documents on readily accessible, computer or electronic media as the Parties may hereafter agree upon, including CD-ROM, DVD, external hard drive, or via secure FTP site (the "Production Media"). Each piece of Production Media shall be assigned a production number or other unique identifying label corresponding to the date of the production of documents on the Production Media as well as the sequence of the material in that production. The Producing Party shall accompany all document productions with a transmittal cover letter identifying by Bates number the documents produced.

9.   PRIVILEGE LOG

Within sixty (60) days after production absent agreement of the Parties, the Producing Party shall provide the Receiving Party with a log of the documents entirely withheld from production for a claim of attorney-client privilege, work product protection, or other applicable privilege or immunity, as provided for under the Court's pretrial orders related to Discovery and Other Proceedings Related to General Causation. The log will be produced in Excel or CSV format, and populated with the following extracted metadata fields, to the extent providing this information will not destroy privilege: Custodian, From, To, CC, BCC, Subject, File Name, File Extension, Date Sent, Date Created, Date Last Modified. An e-mail thread may be logged as a single entry. Log entries for emails that are accompanied by attachment(s) must note the existence of the attachment(s) and provide a unique ID for each separate document. If an email thread contained in a single document contains both privileged and nonprivileged emails, the privileged emails shall be redacted and the document shall be produced, rather than the entire document being withheld as privileged. The log also will provide the privilege(s) claimed. In-house attorney names shall be designated with an asterisk; outside counsel attorney names will be designated with a double asterisk.

10.   INADVERTENT DISCLOSURE

The Parties agree that they do not intend to disclose information subject to a claim of attorney-client privilege or attorney work product protection. If, nevertheless, a Producing Party inadvertently discloses privileged or work product information to another party, such disclosure

1   shall not constitute or be deemed a waiver or forfeiture of any claim of attorney-client privilege or

2   work product protection that the Producing Party would otherwise be entitled to assert with respect

3   to the inadvertently disclosed information and its subject matter.

4   If the Producing Party notifies the Receiving Party of the inadvertently disclosed documents

5   or information, the Receiving Party shall return or destroy, within fourteen (14) business days, all

6   copies of such documents or information and upon written request provide a certification of

7   counsel that all such inadvertently disclosed documents or information have been returned or

8   destroyed. After a Producing Party provides written notice of inadvertent production, a Receiving

9   Party shall not copy, distribute, or otherwise use in any manner the inadvertently disclosed

10   documents or information, and shall notify all persons to whom the Receiving Party has

11   disseminated a copy of the inadvertently disclosed documents or information that the documents or

12   information are subject to this Order and may not be copied, distributed, or otherwise used pending

13   further notice from the Court.

14   **11. COST SHIFTING**

15   Generally, the costs of production pursuant to this Order shall be borne by the Producing

16   Party. However, the Court may apportion the costs of electronic discovery in accordance with the

17   Federal Rules of Civil Procedure.

18   **12. MODIFICATION**

19   This Stipulated Order may be modified by a Stipulated Order of the Parties or by the Court

20   for good cause shown.

21   **IT IS SO STIPULATED**, through Counsel of Record.

22

23   Dated: March 22, 2017   */s/ Ernest Cory*

                                                Ernest Cory (*Admitted Pro Hac Vice*)

24   Alabama Bar No.: asb-2279-y83e

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2   Dated: March 22, 2017   */s/ Michael X. Imbroscio*
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7

8   *Lead Counsel for Defendant, Eli Lilly
                                            and Company*
9

10   **IT IS ORDERED** that the forgoing Agreement is approved.

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12   Dated: 3/23/17   _____

13   RICHARD SEEBORG
                                            UNITED STATES DISTRICT JUDGE

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EXHIBIT A: FIELDS AND METADATA TO BE PRODUCED

Field	Definition	Doc Type
BEGBATES	Beginning Bates number (production number)	All
ENDBATES	Ending Bates number (production number)	All
PAGECOUNT	Number of pages in the document	All
BEGATTACH	First Bates number of family range (i.e. Bates number of the first page of the parent e-mail)	E-mail
ENDATTACH	Last Bates number of family range (i.e. Bates number of the last page of the last attachment)	E-mail
FILESIZE	File size in KB	All
FILEPATH	Original file/path of the location where the item was located at the time of collection.	E-document
FILEEXT	File extension	E-document
FILENAME	File name	E-document
CUSTODIAN	Name of person or other data source (non-human) whose documents/files are produced. Where redundant names occur, individuals should be distinguished by an initial which is kept constant throughout productions (e.g., SmithJA or Smith, John A.).	All
FROM	Sender	E-mail
TO	Recipient	E-mail
CC	Additional Recipients	E-mail
BCC	Blind Additional Recipients	E-mail
SUBJECT	Subject line of e-mail	E-mail
DATESENT	Date sent (mm/dd/yyyy hh:mm:ss AM)	E-mail
DATECREATED	Date file was created	E-document
LASTMODIFIED	Last modified date	E-document
HASHVALUE	MD5 hash value	All
PARENT_ATTACHMENT	"P" for parent; "A" for attachment.	E-mail
REDACTED	Redaction status. "Yes" for redacted documents; "No" for un-redacted documents.	All
CONFIDENTIALITY	Confidentiality level if assigned.	All
NATIVEFILELINK	For documents provided in native format only	All
TEXTPATH	File path for OCR or Extracted Text files	All
EMAILFOLDER	Folder location where the email was located at the time of the collection	E-mail
ATTACHCOUNT	Number of attachments to an e-mail	E-mail
ATTACHNAMES	Names of each individual Attachment, separated by semi-colons	E-mail
TITLE	Internal document title property	E-document

Field	Definition	Doc Type
DATERCVD (mm/dd/yyyy hh:mm:ss AM)	Date Received	E-mail
AUTHOR	Internal document property	E-document
LASTMODIFIEDBY	Internal document property	E-document
DOCUMENTTYPE	Descriptor for the type of document: **"E-document"** for electronic documents not attached to e-mails; **"E-mail"** for all e-mails; "E-attachment" for files that were attached to e-mails; and **"Physical"** for hard copy physical documents that have been scanned and converted to an electronic image.	All
Redaction Reason	The reason(s) for redaction of a document.	All
ProdVol	Production Volume	All
Importance	Y if High Importance	Email