

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

TEVA PHARMACEUTICALS
INTERNATIONAL GMBH and
TEVA PHARMACEUTICALS
USA, INC.,

Plaintiffs,

v.

ELI LILLY AND COMPANY,

Defendant.

Civil Action No.
1:18-cv-12029-ADB

**JOINT STIPULATED PROTOCOL
GOVERNING PRIVILEGE LOGS**

Plaintiffs Teva Pharmaceuticals International GmbH (“Teva GmbH”) and Teva Pharmaceuticals USA, Inc. (“Teva USA” and together with Teva GmbH, “Plaintiffs” or “Teva”) and Defendant Eli Lilly and Company (“Lilly” or “Defendant”) (Teva and Lilly collectively, the “Parties”), through their counsel, hereby stipulate and agree to this Joint Stipulated Protocol Governing Privilege Logs (“Protocol”). All Parties are bound by and subject to the terms of this Order. Nothing contained in this Protocol shall be construed as a waiver of any legally cognizable privilege to withhold any Documents, or of any right to assert such privilege at any stage of the Litigation. No Party shall be required to undertake privilege logging measures beyond the scope of this Protocol unless the Parties agree in advance and in writing, or the Protocol is modified by the Court. All Documents and electronically stored information (“ESI”) for which any Party asserts a claim of protection from disclosure under the attorney-client privilege, work product protection, or any other applicable privilege or protection shall be handled in accordance with this Protocol.

1. Definitions. Words shall have their normally accepted meanings as employed in this Protocol. The word “shall” is mandatory. The words “includes” and “including” are not limiting. The singular shall include the plural and vice versa. Additionally, the Parties hereby incorporate by reference the definitions set forth in Rule 26.5 of the Local Rules of the United States District Court for the District of Massachusetts (“Local Rules” or “L.R.”) as if fully set forth herein. Certain definitions from the Local Rules have been reproduced below for clarity. In addition, as used herein, the following words shall have the following meanings:

(a) As used herein, the term “Document” is defined to be synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Fed. R. Civ. P. 34(a)(1)(A) and Local Rule 26.5(c)(2). A draft or non-identical copy is a separate document within the meaning of this term.

(b) As used herein, the term “Producing Party” shall mean any Party to the Litigation (1:18-cv-12029) or any non-party or third party, including its counsel, directors, officers, employees, business partners, or agents, who produces or files any Document.

(c) As used herein, the term “Receiving Party” shall mean any Party to the Litigation, including its counsel, directors, officers, employees, business partners, or agents, who receives any Document in the Litigation from the Producing Party.

2. Privilege Logs. Parties shall maintain privilege logs pursuant to Federal Rule of Civil Procedure 26(b)(5). A Producing Party shall provide a privilege log within ninety (90) calendar days of making its first production of Documents responsive to a Request for Production served by a Receiving Party. The Producing Party shall provide an updated privilege log within ninety (90) calendar days after each subsequent production of Documents. A Receiving Party shall be permitted to request that the Producing Party provide a privilege log (original or updated) within

a shorter time period if the Receiving Party has a good faith basis for such a request in connection with a scheduled deposition. Following such a request, the Parties shall meet and confer regarding a mutually-agreeable date for provision of the requested privilege log.

(a) No Party is required to list on a privilege log any communications regarding the claims and defenses in these proceedings exclusively between a Party and its in-house counsel, outside counsel, an agent of outside counsel other than the Party, any non-testifying experts, and, with respect to information protected by Fed. R. Civ. P. 26(b)(4), testifying experts.

(b) No Party is required to list on a privilege log any privileged materials or work product created after September 27, 2018, including by its in-house counsel, outside counsel, an agent of outside counsel other than the Party, any non-testifying experts, and, with respect to information protected by Fed. R. Civ. P. 26(b)(4), testifying experts.

(c) If a Producing Party identifies portions of otherwise discoverable information that are privileged and redacts such portions of the otherwise discoverable information on that basis, the Producing Party does not need to provide a log entry where: (i) for email Documents, the face of the redacted Document provides the information that otherwise would appear on a log, the bibliographic information (i.e., to, from, cc, bcc, date/time) is not redacted, and the reason for the redaction is noted on the face of the Document in the redaction box; or (ii) for non-email Documents, the face of the redacted Document provides the information that otherwise would appear on a log or where the information that would otherwise appear on a log is included in the DAT file with that Document's production, and the redaction is noted on the face of the Document in the redaction box. The following terms will be used to signify the reasons for any privileged redactions: AC Privilege, WP Privilege, and AC/WP Privilege.

(d) A Party's privilege log shall provide at least: objective metadata (to the extent it is reasonably available and does not reflect privileged or protected information); an indication of the privilege or protection being asserted; and a description for each log entry consistent with Fed. R. Civ. P. 26(b)(5)(A)(ii).

(e) Privilege logs will be produced in Excel or CSV format, and will be populated with the following extracted metadata fields, to the extent providing this information will not destroy privilege: Custodian, From, To, CC, BCC, Subject, Author, File Name, File Extension, Date Sent, Date Created, Date Last Modified. In-house attorney names shall be designated with an asterisk; outside counsel names will be designated with a double asterisk. With the exception of asterisks to designate legal counsel, a Producing Party shall not modify the existing metadata for any Document listed in a privilege log. If a Producing Party withholds any available metadata for a particular log entry on the basis of privilege, it shall so indicate using the terms set forth in Subparagraph 2(d), above.

(f) An email thread may be logged in a single privilege log entry. For email threads that do not have legal personnel listed in the email header metadata, the Producing Party will identify in its privilege log the names of legal personnel that do not appear in the top line metadata. All privilege assertions for the email thread shall be listed on the email thread's single privilege log entry.

(g) If a Receiving Party has a good faith basis for challenging a Producing Party's privilege determination, the Receiving Party shall promptly inform counsel for the Producing Party in writing of said challenge. If, after conferring, the Parties cannot resolve the dispute despite good faith efforts to do so, the Party challenging a privilege determination may move for a ruling on the issue of privilege. The Producing Party must show by a preponderance

of the evidence that the withheld Document or portion thereof, is privileged. If the Court finds that said information is privileged, said information shall remain withheld or redacted and may not be used as evidence by either Party at trial or at a hearing or be relied upon by either Party's experts. If the Court finds that said information is not privileged, the Producing Party shall provide a version of the Document removing any redaction for privilege that was the subject of the Court's ruling within ten (10) business days of the Court's decision or, if the Producing Party challenges such a decision, within ten (10) business days of the conclusion of any and all proceedings or interlocutory appeals challenging the decision, or within any time specified by the Court or Local Rules if they dictate a shorter period for production.

3. Additional Parties. The terms of this Protocol shall be binding upon all current and future Parties to the Litigation and their counsel. Within seven (7) calendar days of the entry of appearance by a new Party to the Litigation, the Party responsible for the appearance of the new Party shall serve a copy of this Protocol on the new Party's counsel. When serving subpoenas on non-parties, a copy of this Protocol shall be included, and the subpoena shall expressly incorporate by reference the terms of this Protocol. Any non-party producing any Document in the Litigation shall maintain privilege logs pursuant to this Protocol.

4. Compliance with Federal and Local Rules. This Protocol does not relieve any Party or non-party from compliance with the Federal Rules of Civil Procedure, the Local Rules of the District of Massachusetts, or any other orders of this Court with respect to discovery issues.

5. Modification by the Court. Nothing in this Protocol shall prevent any Party or other person from seeking modification of this Protocol or from objecting to discovery that it believes to be otherwise improper. The Court may allow, after notice to the Parties, the disclosure of any Document or information covered by this Protocol, and may modify this Protocol at any time in

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