

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

ELI LILLY AND COMPANY,

Defendant.

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Civil Action No.:

CONSENT OF DEFENDANT ELI LILLY AND COMPANY

1. Defendant Eli Lilly and Company (“Defendant”) waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the “Final Judgment”) and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violation of Sections 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)];

(b) orders Defendant to pay disgorgement in the amount of \$13,955,196, plus prejudgment interest thereon in the amount of \$6,743,538, for a total payment of \$ 20,698,734;

(c) orders Defendant to pay a civil penalty in the amount of \$8,700,000 under Section 21(d)(3) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)(3)]; and

(d) order Defendant to:

(i) retain FTI Consulting, Inc. (“FTI”), which pursuant to a Corporate Integrity Agreement with the Office of Inspector General of the United States Department of Health and Human Services (“CIA”), dated January 14, 2009, is currently serving as the Independent Review Organization to perform reviews in a professionally independent and objective fashion that assess Defendant’s systems, processes, policies, procedures and practices related to promotional activities and product-related services, within sixty days (60) of the entry of the Final Judgment, to review and evaluate Defendant’s internal controls, record-keeping and financial reporting policies and procedures, including those recently revised and implemented by Defendant, (“Policies and Procedures”) as they relate to its compliance with the books and records, internal accounting controls, and anti-bribery provisions of the Foreign Corrupt Practices Act (“the FCPA Policies”), codified at Sections 13(b)(2)(A), 13(b)(2)(B) and 30A of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and (B) and 78dd-1]. Defendant shall provide the Commission’s staff with a copy of the agreement detailing the scope of FTI’s new responsibilities within sixty (60) days after the entry of the Final Judgment;

(ii) cooperate fully with FTI and provide FTI with access to its files, books, records, and personnel as reasonably requested for the review, provided, however, that

Defendant does not intend to waive the protection of the attorney work product doctrine, attorney-client privilege, or any other privilege applicable as to third parties;

(iii) require FTI to issue a written Report, within sixty (60) days after being retained to review Defendant's Policies and Procedures: (a) summarizing its review and evaluation, and (b) if necessary, making recommendations based on its review and evaluation that are reasonably designed to improve Defendant's Policies and Procedures. Defendant shall require that FTI provide the Report to the Board of Directors of Eli Lilly and simultaneously transmit a copy to the staff of the Commission at the following address: Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549;

(iv) adopt all recommendations in FTI's report within sixty (60) days of the issuance of the Report; provided, however, that, as to any recommendations that Defendant considers to be unduly burdensome, impractical, or costly, Defendant need not adopt the recommendations at that time, but may submit in writing to the Commission staff, within thirty (30) days of receiving the Report, an alternative policy or procedure designed to achieve the same objective or purpose. Defendant and FTI shall attempt in good faith to reach an agreement relating to each recommendation Defendant considers unduly burdensome, impractical, or costly. In the event that Defendant and FTI are unable to agree on an alternative proposal within thirty (30) days, Defendant will abide by the determinations of the Commission staff;

(v) certify in writing to the Commission staff and FTI within 60 days of the issuance of the Report that Defendant has adopted and implemented all of FTI's recommendations or agreed upon alternatives;

(vi) one year after the certification in paragraph (v) above, require FTI to perform a follow-up review to confirm that Defendant has implemented the recommendations or agreed-upon alternatives and continued the application of the Policies and Procedures, and to deliver a supplemental report within 30 days to the Board of Directors of Defendant and the Commission staff setting forth its conclusions and whether any further improvements should be implemented;

(vii) require that FTI enter into an agreement with Defendant that provides that for the period of engagement and for a period of two years from completion of the engagement, that FTI shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Defendant, or any of its present or former affiliates, subsidiaries, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that FTI will require that any firm with which it is affiliated or of which it is a member, and any person engaged to assist it in performance of its duties under this Order shall not, without prior written consent of the Securities and Exchange Commission's Division of Enforcement, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Defendant, or any of its present or former affiliates, subsidiaries, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that nothing contained therein or contained in this Order, shall affect the rights or obligations of FTI or Defendant under any of the provisions of the CIA;

(viii) agree that these undertakings shall be binding upon any acquirer or successor in interest to Defendant or substantially all of Defendant's assets and liabilities or business;

(ix) agree that for good cause shown, the Commission's staff may extend any of the procedural dates set forth above; and

(x) certify, in writing, compliance with the undertaking(s) set forth above.

The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance and Defendant agrees to provide such evidence. Defendant shall submit the certification and supporting material to Kara N. Brockmeyer, Chief of FCPA Unit, Division of Enforcement, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

3. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

4. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

5. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

6. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

7. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

8. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

9. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that it shall not be permitted to contest the factual allegations of the complaint in this action.

10. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction

while denying the allegations in the complaint or order for proceedings.” 17 C.F.R. § 202.5. In compliance with this policy, Defendant agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant’s: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

11. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney’s fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

12. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

13. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Eli Lilly and Company

By: Robert A. Armitage
Robert Armitage
Senior Vice-President and General Counsel
Lilly Corporate Center
Indianapolis, Indiana 46285

On Dec. 3, 2012, Robert A. Armitage, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of Eli Lilly as its Sr. V.P. + General Counsel and Company

Jennifer L. Alley
Notary Public Jennifer L. Alley
Commission expires: 12/31/2015

Approved as to form:



William R. Baker III Latham & Watkins
555 Eleventh Street
Suite 1000
Washington, D.C. 20004-1304
Attorney for Defendant