

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 ALZHEIMER'S INSTITUTE OF
5 AMERICA, INC.,

6 Plaintiff,

7 vs.

8 ELAN PHARMACEUTICALS, INC.,
9 ELI LILLY AND COMPANY, and THE
10 JACKSON LABORATORY,

11 Defendants.

Case No. 3:10-CV-00482 (EDL)

**JOINT STIPULATED
[PROPOSED] ORDER
REGARDING SERVICE OF AIA'S
DISCLOSURES, DISCOVERY
RESPONSES, EXPERT REPORTS,
CONFIDENTIAL FILINGS, AND
DEPOSITION TRANSCRIPTS IN
PENDING ACTIONS**

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13 IT IS HEREBY STIPULATED AND ORDERED THAT:

14 1. To the extent it has not already done so, Plaintiff Alzheimer's Institute of America
15 ("AIA") shall, within five (5) business days after entry of this Order, serve upon all Participating
16 Defendants¹ all of AIA's discovery responses, required disclosures, expert reports, confidential court
17 filings, and deposition transcripts² of AIA witnesses and any witness whose deposition bears on the
18 following issues: claim construction, standing, inventorship, ownership, assignment, invalidity,
19 inequitable conduct, patent misuse, license defenses, damages and/or reasonable royalty, (including
20 such materials that include Participating Defendants' designated confidential information, i.e,
21 information designated "CONFIDENTIAL," "HIGHLY CONFIDENTIAL -- ATTORNEYS EYES
22 ONLY," "HIGHLY CONFIDENTIAL -- PROSECUTION BAR," or otherwise designated under an
23

24
25 ¹ "Participating Defendants" include Elan Pharmaceuticals, Eli Lilly, The Jackson Laboratory, Avid
26 Radiopharmaceuticals, Trustees for the University of Pennsylvania, Mayo Clinic Jacksonville, Mayo
Foundation for Medical Education and Research, Myriad Genetics, Myriad Pharmaceuticals,
Oklahoma Medical Research Foundation, and CoMentis.

27 ² With respect to Paragraphs 1 and 2 of this Order, the handling of deposition transcripts containing
28 the designated confidential information of a party other than AIA and the Participating Defendants
shall be governed by the provisions of the protective order entered in the case in which the
deposition was taken.

1 applicable protective order) that have been served by AIA on any Defendant (or, with respect to
2 deposition transcripts, produced by a reporter) in any Participating Action.³

3 2. AIA shall serve upon all Participating Defendants on a going-forward basis its
4 discovery responses, required disclosures, expert reports, confidential court filings, and deposition
5 transcripts of AIA witnesses and any witness whose deposition bears on the following issues: claim
6 construction, standing, inventorship, ownership, assignment, invalidity, inequitable conduct, patent
7 misuse, license defenses, damages and/or reasonable royalty (including such materials that include
8 Participating Defendants' designated confidential information, i.e, information designated
9 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL -- ATTORNEYS EYES ONLY," "HIGHLY
10 CONFIDENTIAL -- PROSECUTION BAR," or otherwise designated under an applicable protective
11 order) that are served by AIA on any Defendant (or, with respect to deposition transcripts, produced
12 by a reporter) in any Participating Action within three (3) business days of such service.

13 3. AIA shall further identify which Participating Defendant's confidential information is
14 present and the exhibit number of any exhibit in which the Participating Defendants' designated
15 confidential information appears.

16 4. AIA consents that the defendants in the *Mayo* litigation may disclose AIA's discovery
17 responses, required disclosures, expert reports, confidential court filings, and deposition transcripts
18 of AIA witnesses and any witness whose deposition bears on the following issues: claim
19 construction, standing, inventorship, ownership, assignment, invalidity, inequitable conduct, patent
20 misuse, license defenses, damages and/or reasonable royalty, in that litigation to the defendants in
21 the Participating Actions and all Participating Defendants.

22 5. Pursuant to the consent of Participating Defendants, this Order is intended to permit
23 AIA to disclose Participating Defendants' confidential information that may be subject to protective
24

25 ³ "Participating Action" means (1) *AIA v. Elan Pharmaceuticals, Inc.*, Civ. No. 3:10-CV-00482
26 (EDL) (N.D. Cal.), (2) *AIA v. CoMentis, Inc., et al.*, Civ. Nos. 5:09-CV-01366-F (W.D. Okla.), 3:09-
27 CV-02772-VRW (N.D. Cal.), and (3) *AIA v. Avid Radiopharmaceuticals, et al.*, Civ. No. 2:10-CV-
28 06908-TJS (E.D. Pa.). "Participating Action" does not include *Mayo Clinic Jacksonville, et al. v.*
AIA, Civ. Nos. 8:05-CV-00639-SDM-TBM, 8:05-CV-01049-SDM-TBM (M.D. Fla.) and *AIA v.*
Mayo Clinic Jacksonville, et al., 2:03-CV-02645-CM-DJW (D. Kan.), transferred to the M.D. Fla.
and consolidated with 8:05-CV-01049-SDM-TBM.

1 orders entered in the other Actions. Participating Defendants consent that AIA's compliance with
2 this Order shall not be construed by Participating Defendants as a breach of any such protective
3 orders. Participating Defendants consent that they have reached agreement among themselves as to
4 the proper treatment of Participating Defendants' confidential information by other Participating
5 Defendants, and Participating Defendants further consent that AIA shall not be liable for any
6 mishandling by Participating Defendants of confidential information that is served by AIA in
7 accordance with this Order.

8 6. The Joint Motion to Compel filed by Defendants Elan and Eli Lilly is WITHDRAWN
9 without prejudice to defendants' right to seek relief with respect to AIA's disclosures in the Mayo
10 litigation should AIA and Mayo become unwilling or unable to serve AIA's disclosures from that
11 litigation on the Participating Defendants.

12 SO STIPULATED:

13 Dated: May 27, 2011

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21 Dated: 05/31/2011

IT IS SO ORDERED.

22 Hon. Elizabeth D. Laporte
23 UNITED STATES MAGISTRATE
24 JUDGE

