

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

ELI LILLY AND COMPANY, and  
LILLY USA, LLC

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, *et al.*,

Defendants.

No. 1:21-cv-81-SEB-MJD

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' SLIDES PROVIDED AT  
ORAL ARGUMENT**

As instructed by the Court during oral argument on February 26, 2021, Defendants respectfully submit this filing to provide objections to certain slides submitted by counsel for Lilly immediately in advance of oral argument. Specifically, Defendants object to the following slides: Nos. 4, 6, 7, 9, 10, 11, 15, 16, 17, 18, 19, 27, 28, 29, 30, 31, 34, 35, 36, 37, 38. These slides contain factual assertions that: (1) are unsupported by competent evidence; (2) exceed the scope of the parties' briefing on Lilly's pending motion; (3) assert the veracity of matters directly disputed between the parties, including (but not limited to) the current operation of contract-pharmacy arrangements between covered entities and pharmacies; and (4) lack relevance to the matters presented for decision by the pending motion. Defendants further respectfully suggest that, since the matters pending resolution by this Court turn on legal issues pertaining to the formal dispute-resolution process Lilly seeks to evade participating in—not factual matters relevant to the role of contract pharmacies—and,

since the recent oral argument was not an evidentiary hearing on those factual matters, Lilly's attempt to shoehorn in irrelevant factual disputes is improper and should not be considered by the Court.

In conclusion, Defendants respectfully request that this Court decline to consider the irrelevant and disputed factual information related to contract pharmacies contained in the slides noted above.

Dated: March 5, 2021

Respectfully submitted,

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