

**ZYPREXA CLASS ACTION
CANADA – WIDE SETTLEMENT AGREEMENT**

Made as of May 5, 2010

<p>ANDREA HEWARD, ANDREW CHARLES HEWARD, KELLY HUTCHINS, DARLENE HUTCHINS, DANIEL WELLS, and NANCY WELLS</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p>ELI LILLY & COMPANY and ELI LILLY CANADA INC.</p> <p style="text-align: right;">Defendants</p>	<p style="text-align: center;">PROVINCE OF ONTARIO Ontario Superior Court of Justice Toronto, Ontario Court File No.: 05-CV-283309CP</p>
<p>NICOLE DALLAIRE, JACQUES GOSSELIN, and RITA PELLETIER</p> <p style="text-align: right;">Petitioners</p> <p style="text-align: center;">v.</p> <p>ELI LILLY CANADA INC. and ELI LILLY AND COMPANY</p> <p style="text-align: right;">Respondents</p>	<p style="text-align: center;">PROVINCE OF QUEBEC Superior Court of Quebec, District of Quebec (Class Actions) No.: 200-06-000050-057</p>
<p>MARC ESTRIN by his litigation guardian, AARON ESTRIN, and the said AARON ESTRIN</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p>ELI LILLY CANADA INC. and ELI LILLY AND COMPANY</p> <p style="text-align: right;">Defendants</p>	<p style="text-align: center;">PROVINCE OF BRITISH COLUMBIA Supreme Court of British Columbia Vancouver, British Columbia No. S050483</p>

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SETTLEMENT AGREEMENT**

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PREAMBLE

Andrea Heward, Andrew Charles Heward, Kelly Hutchins, Darlene Hutchins, Daniel Wells and Nancy Wells, as representative plaintiffs in Ontario Court File No. 05-CV-283309CP ("the Ontario Proceeding"), and Nicole Dallaire, Jacques Gosselin, and Rita Pelletier, as representative plaintiffs in Quebec Court File No. 200-06-000050-057 ("the Quebec Proceeding"), and Marc Estrin by his litigation guardian Aaron Estrin and the said Aaron Estrin, as proposed representative plaintiffs in British Columbia Court File No. S050483 ("the British Columbia Proceeding") ("collectively, the "Plaintiffs") (collectively the "Proceedings"), and the defendants, Eli Lilly and Company and Eli Lilly Canada Inc. ("the Defendants") (collectively the "Parties"), hereby enter into this settlement agreement (the "Settlement Agreement") providing for the settlement of claims arising out of or relating to, without limitation, the manufacture, marketing, sale, distribution, labelling and use of Zyprexa, pursuant to the terms and conditions set forth herein, and subject to approval of the Courts;

RECITALS

A. WHEREAS, the Parties intend by this Settlement Agreement to resolve all past, present and future claims of Class Members in any way arising out of or relating to the use, purchase or ingestion of Zyprexa in Canada by or for residents of Canada during the Class Period;

B. WHEREAS, the Defendants deny the allegations made in the Proceedings, deny that any damages are payable, have not conceded or admitted any civil liability, and have defences to all of the claims in the Proceedings;

C. WHEREAS, the Parties have engaged in extensive, arms-length negotiations through counsel with substantial experience in complex class proceedings that have resulted in this Settlement Agreement;

D. WHEREAS, the Plaintiffs and Plaintiffs' Counsel, namely the law firms Siskinds ^{LLP}, Stevensons ^{LLP}, Siskinds, Desmeules, and Poyner Baxter (collectively "Class Counsel") have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the burden and expense in prosecuting the Proceedings, including the risks and uncertainties associated with

trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiffs and the classes they represent (and in British Columbia, the classes they seek to represent);

E. WHEREAS, despite their belief that they are not liable in respect of the allegations made in the Proceedings and have good defences thereto, the Defendants are entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted against them by the Plaintiffs, and to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and it is acknowledged that the Defendants would not have entered into this Settlement Agreement were it not for the foregoing;

F. WHEREAS, the Parties therefore wish to, and hereby do, fully and finally resolve, without admission of liability, the Proceedings against the Defendants;

G. WHEREAS, for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to the certification of a class in the British Columbia Proceeding;

H. WHEREAS, the Defendants expressly reserve their rights to contest certification of other related or unrelated proceedings in British Columbia and assert that the actions herein would not be appropriately certified in the absence of the Settlement Agreement and that this Settlement Agreement does not constitute in any way a precedent to support the certification of classes of this nature;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceedings be settled and that the Parties shall consent to the Courts' Orders finally approving the settlement in Quebec and dismissing the Ontario and British Columbia Proceedings with prejudice, without costs to the Plaintiffs, the classes they seek to represent, or the Defendants, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) *Account* means an interest bearing trust account under the control of the Claims Administrator at a Schedule 1 chartered Canadian bank. All interest accrued will be added to the fund used to compensate Eligible Claimants. The conversion rate for the Settlement Amount will be the Bank of Canada rate on the date of payment. If the monies are not paid when due they will accrue interest until paid at a rate of 5% per annum.
- (2) *Administration Expenses* means all fees, disbursements, expenses, costs, taxes, and any other amounts incurred or payable by the Plaintiffs, Class Counsel, or otherwise for the approval, implementation, and operation of this Settlement Agreement, including the costs of notice and the fees and expenses of the Claims Administrator but excluding Class Counsel Fees and Disbursements.
- (3) *Claims Administrator* means the entity appointed by the Courts to administer the settlement pursuant to the terms outlined in Schedule "G".
- (4) *Claims Deadline* means one hundred and twenty (120) days from the date notice of settlement approval is first disseminated.
- (5) *Class Counsel* means Siskinds ^{LLP}, Stevensons ^{LLP}, Siskinds, Desmeules, and Poyner Baxter.
- (6) *Class Counsel Fees* means the fees, disbursements, costs, GST, and other applicable taxes or charges of Class Counsel.
- (7) *Class or Class Members* for the purposes of the settlement, the Classes and Class Members shall be defined as:
 - (a) All persons resident in Canada who were prescribed and ingested the drug Zyprexa (generic name: olanzapine), at any time on or before June 6, 2007 (Primary Class Member); and
 - (b) All persons resident in Canada asserting rights derivatively by reason of their personal relationship with one or more of such persons described in (a) above with a valid claim (Derivative Class Member).

- (8) *Class Period* means any time on or before June 6, 2007 when Zyprexa was manufactured, marketed and/or sold or otherwise placed into the stream of commerce in Canada.
- (9) *Costs* means a payment towards Class Counsel Fees and/or Disbursements.
- (10) *Courts* means the Ontario Superior Court of Justice, the Superior Court of Quebec, and the Supreme Court of British Columbia, as the case may be.
- (11) *Defendants* means Eli Lilly and Company (incorrectly named in the Ontario Proceeding as "Eli Lilly & Company") and Eli Lilly Canada Inc.
- (12) *Derivative Claimant(s)* means all residents of Canada asserting the right to sue the Defendants or any Released Party independently or derivatively by reason of their familial relationship to a Primary Claimant as defined herein, and shall mean for the purposes of this Settlement Agreement spouses, common-law spouses, same-sex partners, children, and parents of Primary Claimants.
- (13) *Effective Date* means the date on which the right to terminate the Settlement pursuant to section 6.3 has expired and the final judgments or final approval orders approving this Settlement Agreement issued by the Courts have become Final Orders, whichever is later.
- (14) *Eligible Claimant(s)* are the Primary Claimants, Representative Claimants and Derivative Claimants who are able to establish the criteria for eligibility as defined in ss. 4.2 and Schedule G below.
- (15) *Final Order/Orders* means the final judgments or final approval orders entered by the Courts in respect of the certification as a class proceeding (in British Columbia) and the approval of this Settlement Agreement, and the expiration of the time to appeal or to seek permission to appeal such final judgment or final approval order without any appeal being taken, or if an appeal from the final judgment or final approval order is taken, the affirmance of such final judgment or final approval order in its entirety, without modification, by the court of last resort to which an appeal of such final judgment or final approval order may be taken.

- (16) *Opt-Out* means a person who would have been a member of the Class except for his or her timely and valid request for exclusion. In British Columbia, such exclusion will be by the timely submission of an Opt Out Form as attached hereto as Schedule "A".
- (17) *Parties* means the Plaintiffs and the Defendants.
- (18) *Plaintiffs* means Andrea Heward, Andrew Charles Heward, Kelly Hutchins, Darlene Hutchins, Daniel Wells, Nancy Wells, Nicole Dallaire, Jacques Gosselin, Rita Pelletier, Marc Estrin by his litigation guardian Aaron Estrin and the said Aaron Estrin and all Class Members.
- (19) *Primary Class Members* are those persons defined in ss. 1(7)(a) above.
- (20) *Proceedings* means Andrea Heward, Andrew Charles Heward, Kelly Hutchins, Darlene Hutchins, Daniel Wells and Nancy Wells v. Eli Lilly & Company and Eli Lilly Canada Inc., Court File No. 05-CV-283309CP in Ontario; Nicole Dallaire, Jacques Gosselin and Rita Pelletier v. Eli Lilly Canada Inc. and Eli Lilly and Company, Court File No. 200-06-000050-057 in Quebec; and Marc Estrin by his litigation guardian, Aaron Estrin and the said Aaron Estrin v. Eli Lilly Canada Inc. and Eli Lilly and Company, Court File No. S050483, in British Columbia.
- (21) *Provincial Health Insurers* means all provincial and territorial Ministries of Health or equivalents, Provincial and Territorial Governments, and/or provincial and territorial plans funding medical services throughout Canada, including those set out in Schedule "A" to the Ontario Second Amended Fresh as Amended Statement of Claim and equivalents in Quebec.
- (22) *Released Claims* means any and all manner of claims, demands, actions, suits, Quebec civil law and statutory liabilities, and causes of action alleged or which could have been asserted in the Proceedings, whether direct or indirect, class, individual, or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, penalties, and attorneys' fees that Releasees, or any one of them, whether directly, indirectly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against the Releasees, whether known or unknown, relating in any way to any conduct by the

Releasees prior to the execution of this Settlement Agreement concerning alleged damages from the use of Zyprexa.

- (23) *Releasees* means, jointly and severally, the Defendants and their respective present and former parents, subsidiaries, affiliates, officers, directors, employees, insurers, agents, attorneys, servants, representatives, and the successors, heirs, executors, administrators, trustees, and assigns of each of the foregoing.
- (24) *Releasors* means, jointly and severally, individually and collectively, the Plaintiffs and the Class Members who are not Opt-Outs, and their respective successors, heirs, executors, administrators, trustees, and assigns, and their affiliated, predecessor, successor and related companies.
- (25) *Representative Claimants* means personal representatives, heirs, assigns and trustees of Primary Claimants/Primary Class Members.
- (26) *Settlement Agreement or Settlement* means this agreement, including the Recitals and Schedules.
- (27) *Settlement Amount* means the amount paid by the Defendants herein, plus any interest accrued.
- (28) *Settlement Matrix* means the plan for distributing the Settlement Amount as outlined in Schedule "B" hereto, and as approved by the Court.
- (29) *Zyprexa* means olanzapine, an atypical antipsychotic medication manufactured, sold, and otherwise placed into the stream of commerce by the Defendants.

SECTION 2 - CONDITION PRECEDENT: COURT APPROVAL

Subject to section 7.4 below, this Settlement Agreement shall be null and void and of no force or effect unless the Courts approve this Settlement Agreement, and the orders so given have become Final Orders and the Effective Date has occurred.

SECTION 3 - SETTLEMENT APPROVAL

3.1 Best Efforts

The Parties shall use their best efforts to effectuate this Settlement.

3.2 Motion for Approval

(1) The Plaintiffs shall file motions before the British Columbia Court for an order certifying the British Columbia Proceeding as a class proceeding (for settlement purposes only) and approving this Settlement Agreement, and shall file motions before the Ontario and Quebec Superior Courts for orders approving this Settlement Agreement.

(2) The orders referred to in paragraph 3.2(1) shall be in a form substantially similar to those attached hereto as Schedules "C", "D", and "E", as agreed upon by Class Counsel and counsel for the Defendants and approved by the Court.

SECTION 4 - SETTLEMENT BENEFITS

4.1 Payment of Settlement Amount

(1) The Defendants agree to pay the Settlement Amount in accordance with this Settlement Agreement, in full satisfaction of all of the Released Claims against the Releasees

(2) Contingent on dismissal of the claims of the certified class in Ontario, of the claims of the putative class in British Columbia, and the approval of the Settlement in Quebec, Defendants have agreed to pay the Settlement Amount (in U.S. dollars) as follows:

- (a) \$17,750,000 to Eligible Claimants;
- (b) \$2,250,000 to Provincial Health Insurers;
- (c) Up to \$4,500,000 towards Class Counsel Costs, and up to \$500,000 towards disbursements of Class Counsel, subject to the approval of the Courts;
- (d) Up to \$1,000,000 for notice and claims administration ("Notice Monies").

(3) Class Counsel will be solely responsible for, and shall account for and inform the Courts of arrangements in respect of, any required payments to the Class Proceedings Fund.

(4) Defendants will pay the amounts set forth in section 4.1(2)(a) and (b) above as follows:

- (a) Within 15 days of the date the Settlement Agreement is finally approved by the last Court whose approval is required,

- (A) Defendants will pay \$8,875,000.00 to the Claims Administrator; and
 - (B) Defendants will pay \$2,004,750 to the Claims Administrator for distribution to the Provincial Health Insurers other than British Columbia in per-Province amounts as outlined in Schedule "F"; and
- (b) Within 15 days after the time expires for termination of the Settlement Agreement with respect to Class Members residing in British Columbia (as set out in section 7.1), if the Defendants do not exercise their right to terminate, Defendants will pay \$245,250 to the Claims Administrator for distribution to the British Columbia Health Insurer.
 - (c) Within 30 days of a final determination of the number of Eligible Claimants, Defendants will pay any remaining amounts due Eligible Claimants.
 - (d) Following the final determination of the number of Eligible Claimants, within 30 days of any further Class Members becoming Eligible Claimants because one of the Courts allowed a claim that missed the Claims Deadline, the Defendants will pay \$6,120,69 for each such additional claim up to the maximum amount payable to Eligible Claimants in accordance with this Settlement Agreement including, in particular, subsection 4.1(9) below.
- (5) Within 15 days of the date Class Counsel Fees are finally approved by the last Court whose approval is required, Defendants will pay up to \$4,500,000 to the Claims Administrator towards Class Counsel fees and an additional up to \$500,000 towards Class Counsel disbursements in such amounts as are approved by the Courts.
- (6) Within 15 days of the date the Ontario Superior Court of Justice approves the notice to the class of the proposed settlement and approval hearing, Defendants will pay the Claims Administrator \$100,000 of the Notice Monies for costs of notice and claims administration. Additional amounts up to the total of \$1,000,000 in Notice Monies will be paid to the Claims Administrator against receipts as costs for administration are incurred.
- (7) The Claims Administrator will invest the monies in a bankers acceptance issued by a Schedule 1 chartered Canadian bank. All interest accrued will be added to the fund used to

compensate Class Members. The conversion rate for the Settlement Amount will be the Bank of Canada rate on the date of payment. If the monies are not paid when due they will accrue interest until paid at a rate of 5% per annum.

(8) The amount payable to Eligible Claimants (\$17,750,000) is based on an expected 1,450 Eligible Primary Claimants or Eligible Representative Claimants. If there are fewer than 1,450 Eligible Primary Claimants or Eligible Representative Claimants, the amount payable by Defendants will be reduced by \$6,120.69 for each eligible claimant under the 1,450 threshold. For greater clarity, by way of example, if there were 975 Eligible Primary Claimants or Eligible Representative Claimants, the amount payable will be reduced by \$2,907,327.75.

(9) If there are more than 1,450 Eligible Primary Claimants or Eligible Representative Claimants, the Defendants will pay an additional amount to compensate Class Members. The amount shall be \$6,120.69 for each Eligible Primary Claimant or Eligible Representative Claimant over the 1,450 threshold, up to a maximum top-up of \$4,590,517.50. For greater clarity, by way of example, if there are 1600 Eligible Primary Claimants or Eligible Representative Claimants, the Defendants will pay an additional \$918,103.50 when the final number of Eligible Claimants has been settled.

(10) The Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement.

(11) The Claims Administrator shall maintain the Account as provided for in this Settlement Agreement and shall not pay out any monies from the Account, except in accordance with the provisions of this Settlement Agreement, without an order of the Court made on notice to or on consent of the Parties.

4.2 Claims and Claimants

Eligible Primary Claimants or Eligible Representative Claimants

(1) An Eligible Primary Claimant is a person who meets one or more of the following criteria.

- (a) Took Zyprexa for at least 90 days, and was first diagnosed with diabetes while taking Zyprexa or within one year of his/her last ingestion of Zyprexa; or

- (b) Took Zyprexa for at least 90 days, was a previously diagnosed diabetic, and, while taking Zyprexa or within 60 days of the last Zyprexa use, underwent a clear change in the therapy for diabetes, meaning that the person underwent a change either:
 - (A) From diet and exercise therapy to requiring oral hypoglycaemic agents; or
 - (B) From requiring oral hypoglycaemic agents only, to requiring insulin with or without oral hypoglycaemic agents; or
- (c) Took Zyprexa for at least 90 days, and was first diagnosed with hyperglycemia while taking Zyprexa or within one year of his/her last ingestion of Zyprexa. Hyperglycemia means impaired fasting glucose (IFG), identified by a FPG reading of 6.1 mmol/L to 6.9 mmol/L, and impaired glucose tolerance (IGT), identified by a FPG less than 6.1 and 2hPG in a 75-g OGTT of 7.8 mmol/L to 11.0 mmol/L, and requires proof of at least two lab tests; or
- (d) Took Zyprexa for at least 90 days, and was first diagnosed with diabetic ketoacidosis while taking Zyprexa or within one year of his/her last ingestion of Zyprexa; or
- (e) Took Zyprexa for at least 90 days, and was first diagnosed with pancreatitis while taking Zyprexa or within one year of his/her last ingestion of Zyprexa.

(2) A Primary Claimant or Representative Claimant must establish these criteria as outlined in Schedule "G" in order to become an Eligible Primary Claimant or an Eligible Representative Claimant .

(3) The Defendants will have the right to examine the supporting documentation for any claim submitted to the Claims Administrator. The Defendants have the right to dispute and appeal decisions by the Claims Administrator in accordance with the procedures set out in Schedule "G".

(4) Any disputes between the Parties with respect to whether a claimant has met any criteria will be resolved in accordance with Schedule "G" including section 9 regarding appeals to the Courts.

(5) A Settlement Matrix will be used to allocate funds to Eligible Primary Claimants. The Settlement Matrix will utilize a points system. Points will be awarded based on the medical condition and other relevant factors. Further points may be added based on factors such as date of ingestion, complications, and/or other losses. The Settlement Matrix will be determined by Class Counsel and counsel for the Defendants, in a form substantially similar to Schedule "B", subject to approval by the Courts.

Derivative Claimants

(6) Payments to Eligible Derivative Claimants will be determined in accordance with and made pursuant to section 10 of Schedule "G".

Provincial Health Insurers

(7) Payments to Provincial Health Insurers will be made pursuant to Schedule "F".

4.3 Taxes and Interest

(1) All interest earned on the Settlement Amount shall become and remain part of the Account.

(2) Class Counsel shall bear all risks related to the investment of the Settlement Amount in the Account.

(3) All funds held by the Claims Administrator shall be deemed and considered to be in *custodia legis* of the Ontario Superior Court, and shall remain subject to the jurisdiction of the Ontario Superior Court until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order of the Ontario Superior Court.

(4) Class Counsel, jointly and severally, hereby indemnifies, defends, and holds harmless the Defendants from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or other action taken or failure to act by Class Counsel or by the Claims Administrator with respect to the Settlement Amount, or funds in the Account not strictly in accordance with the provisions of this Settlement Agreement, the Matrix, or any orders of the Courts.

(5) All taxes payable on any interest which accrues on the Settlement Amount in the Account or otherwise in relation to the Settlement Amount, shall be the responsibility of the Class. The

Claims Administrator in consultation with Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Account.

(6) The Defendants shall have no responsibility to make any tax filings relating to the Account and shall have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Account.

SECTION 5- RELEASES AND DISMISSALS

5.1 Release of Releasees

(1) Upon the Effective Date, the Releasers forever and absolutely release, acquit, and discharge the Releasees from the Released Claims. And for the consideration provided herein, the Releasers agree not to make any claim or take or continue any proceedings arising out of or relating to the subject matter of the Released Claims against any other person, corporation or entity (including, without limitation, any health care professionals, health care providers, health care facilities, pharmacies, or other distributors of Zyprexa) which might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or other comparable provincial legislation and any amendments thereto, the common law, Quebec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from one or more of the Releasees.

(2) The parties intend that the final Settlement Agreement will be approved by the Courts and will result in the dismissal of all claims asserted or which could have been asserted by members of the certified and putative classes on the terms set forth herein in Ontario and British Columbia, and in the definitive approval of the Settlement in Quebec.

(3) Orders will be sought at the Approval Hearings which shall include a term releasing the claims of the Provincial Health Insurers generally in the following form:

In consideration of the payments made to the Provincial Health Insurers set out in this Settlement Agreement, Provincial Health Insurers will be deemed to release and forever discharge the Defendants from any and all actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, claims and demands whatsoever that were asserted or which could have been asserted by or on behalf

of any Class Member relating to Zyprexa. Provincial Health Insurers may not make any claims, or take or continue any proceedings against any person, partnership, corporation, or other entity who might claim contribution or indemnity or any other relief of a monetary, declaratory or injunctive nature from the Defendants in connection with the claims released in this Settlement Agreement.

(4) Without limiting any other provisions herein, each Class Member who did not opt out, whether or not he or she submits a claim or otherwise receives an award, will be deemed by the Settlement Agreement completely and unconditionally to have released and forever discharged the Releasees from any and all Released Claims, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, and demands whatsoever that were asserted in the litigation that is the subject of this Settlement Agreement.

(5) The parties agree that each Class Member who did not opt out, whether or not he or she submits a claim or otherwise receives an award, will be forever barred and enjoined from continuing, commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively or derivatively, asserting against any of the Defendants or Releasees any claims that relate to or constitute any Released Claims covered by the final Settlement Agreement.

5.2 Dismissal of Proceedings

The Parties shall, on consent, as part of the motions for approval of the Settlement, request the Courts in Ontario and British Columbia to dismiss the Proceedings with prejudice as against the Defendants, without costs, and to approve definitively the Settlement in Quebec.

SECTION 6 - OPTING-OUT AND RIGHT TO TERMINATE AGREEMENT

6.1 Procedure

(1) The procedure for opting out of the British Columbia Proceeding, including timing and notice requirements and the information required from the person seeking to opt out, shall be agreed to by the Parties and approved by the British Columbia Court.

(2) Class Counsel shall, as part of the motion for approval of the Settlement, submit a notice in a form that is mutually agreed by the parties and substantially similar to Schedule "K", which shall include, *inter alia*, information regarding opting out of the British Columbia action for approval by the Courts. This notice shall require that on a date (the "Opt-Out Deadline") thirty

(30) days prior to the Claims Deadline, Primary Class Members or Representative Claimants residing in British Columbia who do not want to participate in the Settlement Agreement must submit a timely and valid request for exclusion from the Class in the Opt-Out Form attached as Schedule "A".

6.2 Opt-Out Report

Within fifteen (15) days after the expiration of the British Columbia Opt-Out Deadline, the Defendants and Class Counsel shall be provided with a report from the Claims Administrator advising as to the names of any Opt-Outs, the reasons for their opting out, if known, and a copy of all information provided by that Opt-Out ("Opt-Out Report").

6.3 Right to Terminate / Opt-Out Credit

(1) If 10 or more Primary Class Members or Representative Claimants residing in British Columbia opt out of the Proceeding, the Defendants may, at their sole option, either:

- (a) Terminate this settlement with respect to Class Members residing in British Columbia and deduct from the amount otherwise payable in the settlement an amount reasonably allocated to British Columbia based on a proportional assessment of the use of Zyprexa in British Columbia; or
- (b) Deduct from the amount otherwise payable to Primary Claimants or Representative Claimants, an amount equal to \$6,120.69 per person opting out.

A Primary Class Member or Representative Claimant will not be counted for the purposes of section 6.3(1) if he or she has indicated, to the Defendant's sole satisfaction, that he or she does not intend to begin individual litigation against the Defendants with respect to Zyprexa. If the intention is not clear on the Opt-Out Form, Class Counsel will contact the Class Member so that the Defendants will have sufficient information.

SECTION 7 -- TERMINATION OF SETTLEMENT AGREEMENT

7.1 Manner of Termination with respect to British Columbia

If the Defendants exercise their right to terminate this Settlement Agreement with respect to Class Members residing in British Columbia pursuant to paragraph 6.3(1)(a), then they shall give written notice of the termination to Class Counsel no later than thirty (30) days after receipt of the Opt-Out Report.

7.2 Effect of Termination with respect to British Columbia

In the event of termination of this Settlement Agreement with respect to Class Members residing in British Columbia pursuant to paragraph 6.3(1)(a), and notwithstanding any other provisions of this Agreement, all parties shall be restored to their respective positions in and with respect to the British Columbia Proceeding immediately prior to the date on which this Settlement Agreement is signed by all parties. Any certification order made for the purposes of settlement shall be rescinded on consent. All statutes of limitation and/or repose for all claims asserted in the British Columbia Proceeding shall be deemed to have been tolled from the date of signature of this Settlement Agreement by all parties until the date of reinstatement and reactivation, or for such longer period as the law may provide without reference to this Agreement.

The parties further agree that any certification of a class in British Columbia for the purposes of settlement shall be without prejudice to any position that any of the parties may later take on any issue in the British Columbia Proceeding in the event of termination with respect to British Columbia, and that the Defendants' consent to certification for the purposes of settlement shall not constitute and shall not be deemed or construed as any admission on the part of the Defendants that the British Columbia Proceeding, or any other putative class proceeding, is appropriate for trial as a class proceeding.

7.3 Survival of Provisions After any Termination with respect to British Columbia

If this Settlement Agreement is terminated with respect to Class Members residing in British Columbia pursuant to paragraph 6.3(1), the provisions of this Settlement Agreement referring to and dealing with British Columbia Class Members will have no force or effect and all obligations related thereto shall cease immediately, with the exception that the agreements and commitments contained in Section 11 shall survive termination.

Notwithstanding the Settlement Agreement's termination with respect to British Columbia Class Members, the Settlement Agreement will continue in full force and effect with respect to all other Class Members in all other Canadian jurisdictions.

7.4 Not Approved by the Courts

(1) If this Settlement Agreement is not approved by each of the Ontario, British Columbia and Quebec Courts:

- (a) subject to subsection 7.4(2) below, it shall be null and void and shall have no force or effect, and the parties shall not be bound by its terms, with the sole exception of the agreements and commitments contained in section 11, which shall survive; and
- (b) all negotiations, statements and proceedings relating to the settlement and the Settlement Agreement shall be deemed to be without prejudice to the rights of the parties, and the parties shall be deemed to be restored to their respective positions existing immediately before it was executed.

(2) In the event that the Settlement Agreement is approved by at least one of the Courts, but one or two of the other Courts do not approve the Settlement Agreement, the Defendants may at their sole discretion elect to terminate the settlement in all jurisdictions in accordance with section 7.4(1) or terminate the Settlement only in the jurisdiction(s) where the Settlement Agreement was not approved (the "Terminated Jurisdiction(s)"). In the event of a partial termination:

- (a) the Defendants shall be entitled to deduct from the amount otherwise payable under the Settlement Agreement an amount reasonably allocated to the Terminated Jurisdiction(s) based on a proportional assessment of the use of Zyprexa in that jurisdiction or those jurisdictions;

- (b) notwithstanding any other provisions of this Agreement, all parties shall be restored to their respective positions in and with respect to the Terminated Jurisdiction(s) immediately prior to the date on which this Settlement Agreement is signed by all parties;

- (c) if the Terminated Jurisdiction includes British Columbia, any certification order made for the purposes of settlement in British Columbia shall be rescinded on consent in accordance with the provisions of section 7.2 above;

- (d) all statutes of limitation and/or repose for all claims asserted in the Terminated Jurisdiction(s) shall be deemed to have been tolled from the date of signature of this Settlement Agreement by all parties until the date of reinstatement and reactivation, or for such longer period as the law may provide without reference to this Agreement;

(e) the provisions of this Settlement Agreement referring to and dealing with Class Members in the Terminated Jurisdiction(s) will have no force or effect, and all obligations related thereto shall cease immediately, with the exception that the agreements and commitments contained in Section 11 shall survive termination, and

(f) notwithstanding the Settlement Agreement's termination with respect to Class Members in the Terminated Jurisdiction(s), the Settlement Agreement will continue in full force and effect with respect to all other Class Members in any other jurisdiction(s) where the Settlement Agreement has been approved.

(3) The parties expressly reserve all of their respective rights to the extent that the Ontario, British Columbia and Quebec Courts do not approve this Settlement Agreement.

SECTION 8 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

8.1 Settlement Matrix

The Settlement Amount shall be held by the Claims Administrator in trust for the benefit of Class Members and, after the Effective Date, shall be paid in accordance with the Settlement Matrix in a form substantially similar to Schedule "B", subject to approval by the Courts.

The Claims Administrator shall administer claims according to the Settlement Matrix, this Settlement Agreement, and the procedures outlined in Schedule "G".

8.2 Monies in the Account

In no event shall the Defendants have any responsibility, financial obligations, or liability whatsoever with respect to the investment, distribution, use, or administration of monies in the Account including, but not limited to, the costs and expenses of such investment, distribution, use, and administration, Administration Expenses and Class Counsel Fees except as otherwise provided for in section 4 of this Settlement Agreement.

SECTION 9- LEGAL FEES AND DISBURSEMENTS

(1) Class Counsel will bring motions to the Courts for approval of Class Counsel Fees and Disbursements. Such Fees and Disbursements are awarded at the discretion of the Courts after hearing from counsel for the Parties. The Defendants will not take any position with respect to the amount of fees requested by Class Counsel.

(2) Class Counsel will apply the monies payable by the Defendants towards Costs in respect of fees and disbursements approved by the Courts. Any legal fees and/or disbursements awarded to Class Counsel as approved by the Courts in excess of the amount listed in Section 4.1(2)(c) will come from other Settlement Amounts and not from the Defendants.

(3) Class Counsel Fees and Disbursements may be paid out of the Account only after Class Counsel obtain the Courts' approval.

(4) Class Members who have retained, or in the process of making a claim do retain, lawyers to assist them in making their individual claims to this settlement shall be responsible for the legal fees and expenses of such lawyers.

SECTION 10 - ADMINISTRATION AND IMPLEMENTATION

10.1 Mechanics of Administration

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Courts on motion brought by the Parties, or any of them.

10.2 Notices Required

(1) The Class shall be given notice of (i) the hearing at which the Courts will be asked to approve the Settlement Agreement; (ii) the outcome of that hearing; and (iii) in British Columbia only, any termination of this Settlement Agreement if the Settlement was terminated after notice of the hearing to approve the Settlement was provided.

(2) Class Counsel and the Defendants will jointly prepare such Notices to the Class as may be required, to provide for "Short Form" and "Long Form" Notices substantially in the form attached in Schedules "H", "I", "J" and "K" respectively, as well as a plan for distribution of the Notices (Schedules "L" and "M"). Counsel acknowledge that all Notices and the plan for distribution of Notices must be approved by the Courts. No Notices shall be disseminated anywhere until such time as they are approved by all of the Ontario Superior Court of Justice, the Supreme Court of British Columbia and the Superior Court of Quebec.

(3) If the costs of notice, plus the costs of claims administration exceed the Notice Monies, the difference will be paid from the monies identified in section 4.1(2)(a) with the exception that the Defendants will pay up to \$25,000 against receipts solely for costs incurred by the Claims

Administrator for the reconsideration of Disputed Claims in accordance with section 7.2 of Schedule "G" where the Defendants have been unsuccessful.

SECTION 11-- NO ADMISSION OF LIABILITY

The Parties agree that, whether or not this Settlement Agreement is finally approved or is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations made in the Proceeding or in any other pleading filed by the Plaintiffs.

The Parties further agree that, whether or not this Settlement Agreement is finally approved or is terminated, neither this Settlement nor any document relating to it shall be offered in evidence in any action or proceeding in any court, agency or tribunal, except to seek court approval of this Settlement Agreement or to give effect to and enforce the provisions of this Settlement Agreement.

SECTION 12-- MISCELLANEOUS

12.1 Motions for Directions

(1) The Plaintiffs, Class Counsel, the Claims Administrator, or the Defendants may apply to the Courts for directions in respect of the implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement, including applications to the Courts for directions, shall be on notice to the Parties.

12.2 Timing

The parties will make their best efforts to bring the motions to approve the Settlement Agreement within 90 days of the execution of the Settlement Agreement.

12.3 Releasees Have No Liability for Administration

The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

12.4 **Headings, etc.**

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement", "the Settlement Agreement", "hereof", "hereunder", "herein", "hereto", and similar expressions refer to this Settlement Agreement and not to any particular section or portion of this Settlement Agreement.

12.5 **Ongoing Jurisdiction**

The Ontario Superior Court of Justice, the Supreme Court of British Columbia and the Superior Court of Quebec shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this Settlement Agreement as it relates to the Proceedings in their respective Court.

12.6 **Governing Law**

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

12.7 **Entire Agreement**

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. The Parties agree that they have not received or relied on any agreements, representations, or promises other than as contained in this Settlement Agreement. None of the Parties shall be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein. This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Courts.

12.8 Binding Effect

Once the Settlement Agreement is approved by the Courts and the approval orders become Final Orders, this Settlement Agreement shall be binding upon, and inure to the benefit of, the Plaintiffs, Class Members, the Releasers, the Defendants, the Releasees, Class Counsel, and the Claims Administrator.

12.9 Survival

The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

12.10 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement. This Settlement Agreement may be delivered and is fully enforceable in either original, faxed or other electronic form provided that it is duly executed.

12.11 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

12.12 Language

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.

12.13 Dates

Dates referred to in this Settlement Agreement may be altered with the written consent of the Parties and with the approval of the Courts.

12.14 French Translation

A French translation of this Settlement Agreement, all Schedules attached hereto, and all Notices pursuant to this Settlement Agreement shall be prepared by Class Counsel and paid from the Notice Monies, and made available to Class Members upon their request.

12.15 Confidentiality

When the Notice of Settlement Approval is first disseminated in accordance with Schedule "M", Class Counsel will publish a press release, the form and content of which will be agreed to by the Parties. Class Counsel will be permitted to respond to inquiries from the media for the sole purpose of explaining the Settlement and claims process.

The Parties agree that no public statements shall be made regarding these Proceedings or their settlement which are in any way inconsistent with the terms of the Settlement Agreement. In particular, the Parties agree that any public statements regarding these Proceedings will indicate clearly that the settlement has been negotiated, agreed and approved by the Courts without any admissions or findings of liability or wrongdoing, and without any admissions or conclusions as to the truth of any of the facts alleged in the Proceedings, all of which are specifically denied.

Each Party agrees not to disparage the opposite Parties or their counsel with respect to any of the matters in issue in the Proceedings or the manner in which the Proceedings were conducted or settled. The Parties agree that any public statements that are inconsistent with the terms of this Settlement Agreement could cause irreparable harm, including harm to the business and reputation of the Defendants.

12.16 Recitals

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement

12.17 Schedules

The Schedules annexed hereto form part of this Settlement Agreement.

12.18 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her, or its counsel;
- (c) he, she, or the Party's representative fully understands each term of the Settlement Agreement and its effect, and
- (d) no Party has relied upon any statement, representation, or inducement (whether material, false, negligently made, or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

12.19 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

12.20 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication, or document shall be provided by email, facsimile, or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For Plaintiffs and for Class Counsel:

Michael Eizenga
Siskinds ^{LLP}
Barristers & Solicitors
680 Waterloo Street
London, ON N6A 3V8
Telephone: 519-660-7820
Facsimile: 519-660-7821
Email: mike.eizenga@siskinds.com

Colin Stevenson
Stevenson ^{LLP}
Barristers
144 Front Street, Suite 400
Toronto, ON M5J 2L7
Telephone: 416-599-7900
Facsimile: 416-599-7910
Email: cstevenson@stevensonlaw.net

Claude Desmeules
Siskinds, Desmeules
43 Rue Buade, Bureau 320
Quebec City, Quebec G1R 4A2
Telephone: 418-694-2009
Facsimile: 418-694-0281
Email:
claude.desmeules@siskindsdesmeules.com

Ken Baxter
Poyner, Baxter LLP
Lawyers
408 - 145 Chadwick Court
North Vancouver, BC V7M 3K1
Telephone: 604-988-6321
Facsimile: 604-988-3632
Email: ken@poynerbaxter.com

For Defendants:

David Morritt
Osler, Hoskin & Harcourt ^{LLP}
Barristers & Solicitors
100 King Street West
1 First Canadian Place
Suite 6100, P.O. Box 50
Toronto, Ontario M5X 1B8
Telephone: 416-862-6723
Facsimile: 416-862-6666
Email: dmorritt@osler.com

The Parties have executed this Settlement Agreement as of the date on the cover page.

ANDREA HEWARD, ANDREW CHARLES HEWARD, KELLY HUTCHINS, DARLENE HUTCHINS, DANIEL WELLS, NANCY WELLS, NICOLE D'ALLAIRE, JACQUES GOSSELIN, RITA PELLETIER, MARC ESTRIN by his litigation guardian, AARON ESTRIN, and the said AARON ESTRIN

By: 

Name: Siskinds^{LLP}
Title: Counsel for Ontario Plaintiffs

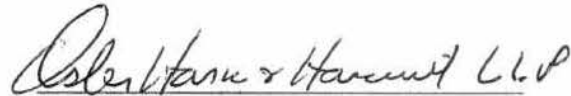
By: _____

Name: Poyner Baxter LLP
Title: Counsel for B.C. Plaintiffs

By: _____

Name: Siskinds, Desmeules
Title: Counsel for Quebec Plaintiffs

ELI LILLY & COMPANY and ELI LILLY CANADA INC.



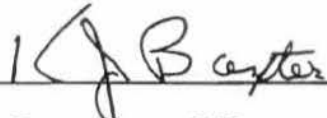
By: Name: Osler Hoskin & Harcourt^{LLP}
Title: Counsel for the Defendants

per David Hammit

ANDREA HEWARD, ANDREW CHARLES HEWARD, KELLY HUTCHINS, DARLENE HUTCHINS, DANIEL WELLS, NANCY WELLS, NICOLE D'ALLAIRE, JACQUES GOSSELIN, RITA PELLETIER, MARC ESTRIN by his litigation guardian, AARON ESTRIN, and the said AARON ESTRIN

By: _____

Name: Siskinds^{LLP}
Title: Counsel for Ontario Plaintiffs

By:  _____

Name: Poyner Baxter LLP
Title: Counsel for B.C. Plaintiffs

By: _____

Name: Siskinds, Desmeules
Title: Counsel for Quebec Plaintiffs

ELI LILLY & COMPANY and ELI LILLY CANADA INC.

By: _____
Name: Osler Hoskin & Harcourt^{LLP}
Title: Counsel for the Defendants

ANDREA HEWARD, ANDREW CHARLES HEWARD, KELLY HUTCHINS, DARLENE HUTCHINS, DANIEL WELLS, NANCY WELLS, NICOLE D'ALLAIRE, JACQUES GOSSELIN, RITA PELLETIER, MARC ESTRIN by his litigation guardian, AARON ESTRIN, and the said AARON ESTRIN

By: _____

Name: Siskinds ^{LLP}
Title: Counsel for Ontario Plaintiffs

By: _____

Name: Poyner Baxter LLP
Title: Counsel for B.C. Plaintiffs

By:  _____

Name: Siskinds, Desmeules
Title: Counsel for Quebec Plaintiffs

ELI LILLY & COMPANY and ELI LILLY CANADA INC.

By: _____
Name: Osler Hoskin & Harcourt ^{LLP}
Title: Counsel for the Defendants