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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF NEW YORK

10 IN RE: ZYPREXA PRODUCTS ) NO. 07-0504  
11 LIABILITY LITIGATION ) NO. 04-MDL-1596  
12 )  
13 ) MEMORANDUM OF POINTS  
14 ) AND AUTHORITIES OF  
15 ) RESPONDENTS MINDFREEDOM  
16 ) INTERNATIONAL, JUDI  
CHAMBERLIN AND ROBERT  
WHITAKER OPPOSING  
EXTENSION OF MANDATORY  
INJUNCTION

17 **THE COURT MAY ENJOIN NON-PARTIES ONLY IF**  
18 **THEY HAVE ACTED IN CONCERT WITH PARTIES,**  
19 **OR HAVE AIDED AND ABETTED THEM IN SOME WRONGDOING**

20 It is long-settled law that nonparties to a case may only be  
enjoined if they have a certain relationship with parties.

21 Rule 65(d) of the Federal Rules of Civil Procedure provides that  
22 "[e]very order granting an injunction...is binding only upon the parties to  
23 the action...and upon those persons in active concert and participation with  
24 them."

25 And, in *Alemite Mfrg. v. Staff*, 42 F. 2d 832, 833 (2d Cir. 1930),  
26 still the leading case on this issue, Judge Learned Hand wrote that "the  
27 only occasion where a person not a party may be punished, is when he  
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1 has helped to bring about, not merely what the decree has forbidden...but  
2 what it has the power to forbid, the act of a party." See also *People of New*  
3 *York v. Operation Rescue*, 80 F. 3d 64 (2d Cir. 1996); *Regal Knitwear v NLRB*,  
4 324 U.S. 9, 14 (1945); *Zenith Radio Corp v. Hazeltine Research Inc.*, 395 U.S.  
5 100, 112 (1969).

6 Respondents will demonstrate that Eli Lilly has completely failed  
7 to establish that any of them have acted in concert with, or aided and  
8 abetted, the alleged wrongful obtaining of the documents in question by  
9 James Gottstein. Furthermore, Lilly has introduced no evidence at all that  
10 respondents were connected in any way with the acts of Dr. David Egilman,  
11 a party-identified expert witness who turned over the documents to Mr.  
12 Gottstein.

13 Even if the court becomes convinced that any of these  
14 respondents aided and abetted Mr. Gottstein, he is not a party. While  
15 there appears to be no authority directly on point, the logic of *Alemite* and  
16 its progeny, and Rule 65(d) as well, would mandate that respondents'  
17 connection with the alleged unlawful distribution of the documents must  
18 have a close relation with the acts of a party. Otherwise, where would the  
19 process end?

20 Suppose a non-party gives the documents to yet another non-  
21 party. That person gives them to a friend, who makes copies and  
22 distributes them to several other people. One of those people puts them  
23 on her website to be downloaded. At this point, we have reached five  
24 degrees of separation. At what point would the court's authority end to  
25 enjoin all these people? As Judge Hand observed, a court "cannot lawfully  
26 enjoin the world at large." *Alemite* at 833.

27 But respondents believe this legal argument will not be  
28 necessary, as petitioner's evidence claiming respondents aided and



1 whether she aided and abetted either party-identified Dr. Egilman or non-  
2 party Mr. Gottstein.

3           This statement in the Proposed Findings of Fact appears to be  
4 petitioner's entire case against Ms. Chamberlin.

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**ROBERT WHITAKER**

7           In Petitioner's Exhibit 28, Lilly refers to a series of emails among  
8 various people in which Mr. Gottstein appears to have been a passive  
9 recipient. Mr. Whitaker's contribution to the "conversation" is a statement  
10 to Mr. Gottstein that he had done the right thing, at great risk to himself,  
11 and that he need not apologize for having gotten other people involved by  
12 sending them the documents. A reading of all the emails in this  
13 "conversation" shows nothing about any conspiracy or acts coordinated  
14 with Mr. Gottstein. Rather, it shows a discussion among like-minded  
15 people, who are clearly in sympathy with Mr. Gottstein.

16           Respondents ask, so what? As the court has learned over the  
17 course of these proceedings, there is a rather widespread movement now  
18 of groups seeking to protect psychiatric patients from abuse, particularly to  
19 protect them from being forced to ingest highly toxic psychiatric drugs. In  
20 this proceeding, MindFreedom International, the Alliance for Human  
21 Research Protection, the National Association for Rights Protection and  
22 Advocacy (NARPA), the Law Project for Psychiatric Rights, and the  
23 International Center for the Study of Psychiatry and Psychology (ICSPP), all  
24 have been mentioned. There are many more. There is nothing sinister  
25 about the unsurprising fact that most people involved in these groups will  
26 respond the same way to a development like the release of the Zyprexa  
27 documents. A common set of beliefs and principles does not constitute a  
28 conspiracy.

1           In another email from Mr. Whitaker to Mr. Gottstein, dated  
2 12/16/06, and cited by petitioner as its Exhibit 30, Mr. Whitaker says that if  
3 the New York Times doesn't run the story, then he would try to publicize  
4 the documents. There is no evidence that Mr. Whitaker actually did so, and  
5 more importantly, no response by Mr. Gottstein is offered by petitioner,  
6 although they had extensive access to Mr. Gottstein's emails over a period  
7 of several months.

8           Again, this does not show a conspiracy, but rather Mr.  
9 Whitaker's strong feelings toward the issue. Petitioner introduces no  
10 evidence that Messrs. Whitaker and Gottstein planned any action together  
11 about the documents, or even that Mr. Whitaker did *anything* with the  
12 documents, other than receive them.

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#### 14           **DAVID OAKS AND MINDFREEDOM INTERNATIONAL**

15           Before considering the mind-numbing jumble of confusing,  
16 repetitious, and overwhelmingly irrelevant documents offered by petitioner  
17 against Mr. Oaks, the court is urged to focus on a small but very significant  
18 fact, established by sworn testimony. On January 17, both Mr. Gottstein  
19 and Mr. Oaks stated under oath that Mr. Gottstein had never sent  
20 MindFreedom a copy of the documents. Transcript, Pages 152 and 228,  
21 also 235 at 21-23.

22           Petitioner alleges that Mr. Oaks and Mr. Gottstein were involved  
23 in a conspiracy to wrongfully disseminate these documents. What a  
24 strange conspiracy this would be, when the alleged mastermind didn't  
25 even send the documents in question to his "co-conspirator"!

26           The court is also requested to take note of Mr. Oaks' sworn  
27 testimony that he only became aware that Mr. Gottstein had obtained the  
28 documents when he read about it in the New York Times, Transcript at

1 236:1; and that he had never had any discussion with Mr. Gottstein as to  
2 what he or MindFreedom should do with the documents, either before,  
3 during, or after Mr. Gottstein obtained the documents. Transcript at 236:3-  
4 6.

5           Petitioners make much of the fact that Mr. Oaks did indeed in  
6 effect disseminate the documents by referring people to websites where  
7 they could be downloaded. At that time, Mr. Oaks and MindFreedom were  
8 not enjoined from doing so.

9           Again, respondents ask, so what? The real issue here is not  
10 whether MindFreedom circulated the documents independently, but  
11 whether they acted in concert with, or aided and abetted, a party (which  
12 Mr. Gottstein is not).

13           Petitioners claim that Mr. Oaks was in constant contact with Mr.  
14 Gottstein about the documents and what to do about them. It is true that  
15 there were many emails between the two at that time, but none of  
16 them involved mutual planning or discussions of what tactic would be best  
17 to circulate the documents. Rather, the emails dealt with various topics  
18 that two people working in the same movement might discuss.

19           Petitioner's Exhibit 8, for example, includes a series of emails  
20 discussing problems both men had had regarding a blog whose pro-drug  
21 company owner had attacked both Oaks and Gottstein for their activities.  
22 Other people in the email conversation chimed in with their own  
23 experiences with this blog.

24           Another email in the same exhibit is Mr. Gottstein's notification  
25 that his email address has been changed. In another email, Mr. Oaks  
26 sends Mr. Gottstein a draft of a news article about the controversy that is  
27 meant to appear on the MindFreedom website. In yet another email, they  
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1 discuss the problems both organizations have had trying to make clear  
2 that they have no connection to the Church of Scientology.

3           Exhibit 8 soon becomes completely chaotic and difficult to  
4 follow, as petitioner seemed to have decided to throw in everything it could  
5 and hope something would stick. After a certain point, respondents here  
6 were completely unable to make sense of it. And we doubt that the court,  
7 should it be inclined to try to read it all, would be able to make much sense  
8 of it either.

9           One more point should probably be made. Petitioner claims in  
10 its Revised Findings of Fact, Paragraph 79 et seq., that Mr. Oaks lied in his  
11 testimony when he said that "in no way, shape, or form have we...posted  
12 these documents ourselves to the internet or disseminated them in that  
13 way." Petitioner claims that "after being confronted with a copy of the  
14 update from the MindFreedom website...Mr. Oaks changed his testimony  
15 and admitted that MindFreedom did provide links to the stolen [sic]  
16 Zyprexa documents."

17           But there was no contradiction in Mr. Oaks' testimony. He said  
18 that MindFreedom did not post the documents itself to the internet or  
19 disseminate them in that way. He never denied that the MindFreedom  
20 website directed readers to other websites where the documents could be  
21 downloaded. Furthermore, an examination of Mr. Oaks' testimony will  
22 show that he acknowledged, several times, posting other websites' links to  
23 the documents long before he was "confronted" with the document  
24 referred to by petitioner. Transcript, 227, et seq.

25           While this discussion may seem trivial, its importance is that it  
26 shows the tactics of petitioner, trying to accomplish by misleading innuendo  
27 what it cannot do with any solid evidence.

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