

# Exhibit 1

Date: Mon, 5 Feb 2007 13:15:17 -0900  
To: "Fahey, Sean P." <Faheys@pepperlaw.com>  
From: John McKay <mckay@alaska.net>  
Subject: Re: Request for documents  
Cc: pwoodin@jamsadr.com, Peter Woodin <peterwoodin@earthlink.net>  
X-ACS-Spam-Status: no  
X-ACS-Spam-Score: 0.912 ()  
X-ACS-Spam-Tests: HTML\_10\_20,HTML\_MESSAGE,  
X-ACS-Scanned-By: MD 2.57; SA 3.1.6; spamdefang 1.117

Sean,

It was definitely not my intention to leave you off those copied with my e-mail sent to Special Master Woodin earlier today. If there is anyone I would have wanted on the recipient list, it is you, since you have been responsible for forwarding most of the documents we have received from Lilly, and I appreciate it.

You indicate that you will be back tomorrow, and ask me to call you. I can't tell whether you want me to call you today, and if so, what number I should use. If you are not available until tomorrow, but one of your colleagues could send the documents I am requesting before then, I would be happy to contact the person you designate.

I would also be happy to contact counsel for another party, if you would prefer, if you can provide me with the information necessary to do so.

If it seems necessary to redact a patient's name or other similar information so that the documents can be sent promptly, I have no problem with that.

Thank you for your assistance.

John

At 4:39 PM -0500 2/5/07, Fahey, Sean P. wrote:

I have not been in the office since Thursday. I will be back in tomorrow. Please call me so we can discuss your requests, some of which relate to filings made under seal. In the future if you correspond with Special Master Woodin, I would appreciate being copied on those emails.

----- Original Message -----

From: John McKay <mckay@alaska.net>  
To: Peter Woodin <pwoodin@jamsadr.com>  
Cc: Fahey, Sean P.  
Sent: Mon Feb 05 16:21:16 2007  
Subject: RE: Request for documents

Mr. Woodin,

Thank you for your response.

I had already asked Mr. Fahey, on Friday, for a copy of a different document -- a transcript that he excerpted in his brief and attached a portion of as an exhibit, and which is not available electronically on the ECF system. I have had no reply from him. Per your suggestion, by copy of this e-mail, I am requesting that he send the pleadings in question to me by e-mail or fax today.

Unfortunately, the Docket Sheet does not identify most counsel with the clients they represent except by case numbers, so that I have been unable to determine at this time who serves as counsel for the plaintiffs in that case. If you know, I would be happy to have that information.

Again, thanks.

John McKay

At 1:58 PM -0500 2/5/07, Peter Woodin wrote:

>Mr. McKay,

>

>The confidentiality of various of Lilly's Zyprexa documents has been  
>challenged by plaintiffs in the UCFW Local 1776 case, in which plaintiffs  
>seek monetary damages for economic injuries alleged to have been caused by  
>Lilly in the marketing of Zyprexa. I do not have electronic copies of  
>various of the materials submitted in connection with that challenge, and  
>suggest that you ask for copies from counsel for Eli Lilly or counsel for  
>plaintiffs in that case.

>

>Regards,

>Peter Woodin

>Special Discovery Master

>

>-----Original Message-----

>From: John McKay [<mailto:mckay@alaska.net>]

>Sent: Monday, February 05, 2007 3:54 AM

>To: Peter Woodin

>Cc: Alan Milstein; Alex Reinert; Ted Chabasinski; Fred von Lohmann EFF;

>Richard Meadow; Jim Gottstein

>Subject: Request for documents

>Importance: High

>

>Mr. Woodin,

>

>In its filing made a few days ago, Eli Lilly and Company discusses  
>and provides to the court a portion of the materials it says have  
>been filed with you in connection with another matter that it  
>represents is "of a similar nature, and indeed, (substantially  
>overlaps)" with the injunction proceedings presently before Judge  
>>Weinstein. Lilly 1/31 Memo, p. 10, fn. 8.

>

> From the caption of the selected pleading it has filed, it appears  
>this matter before you arises from the case captioned "UCFW Local  
>1776 and Participating Employers Health and Welfare Fund, Eric Tayag  
>and Mid-West National Life Insurance Company of Tennessee." If the  
>foregoing is insufficient to identify the matter at issue, they have  
>described it as a dispute concerning confidentiality, in connection  
>with which Lilly has filed a January 16 Declaration of its employee  
>Gerald Hoffman.

>

>I would ask that you provide me with copies of the briefing submitted  
>to you on this matter, so that I can evaluate the context and  
>arguments that relate to this document Lilly has submitted. As we  
>are on a very short time frame for submitting our brief, I would  
>appreciate it if you could provide these documents as soon as  
>possible.

>

>Feel free to call if you have questions about this.

>

>Thank you very much.

>

>Thank you.

>

>John McKay  
>(907) 274-3154

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# Exhibit 2

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Nina M. Gussack  
direct dial: 215-981-4950  
gussackn@pepperlaw.com

January 12, 2007

**VIA FACSIMILE**

Honorable Jack B. Weinstein  
Senior United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *In re Zyprexa Products Liability Litigation*  
*MDL 1596*

Dear Judge Weinstein:

We write, as Your Honor requested on January 8, 2007, to advise the Court of Eli Lilly and Company's intentions to seek sanctions relating to the violations of Case Management Order No. 3 ("CMO-3"), and subsequent Orders of the Court, and to provide Your Honor with suggestions for streamlining the arguments and evidentiary hearing presently scheduled for January 16, 2007 at 2:00 p.m.

**January 16, 2007 Agenda**

1. Rule to Show Cause Regarding James B. Gottstein, Esquire

The first item set for argument on January 16, 2007, at 2:00 p.m., is the Rule to Show Cause relating to Mr. Gottstein's deposition and document production. As Your Honor requested, we will submit a brief in support of the proposed order, requiring Mr. Gottstein to submit to a deposition within five days, under the supervision of Special Master Peter H. Woodin, and to produce, before his deposition, copies of any and all relevant documents and information. Once Mr. Gottstein's deposition is completed, Lilly will promptly file its motions for sanctions against Mr. Gottstein.

Honorable Jack B. Weinstein

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2. Extension of the Temporary Mandatory Injunction

The second item set for argument on January 16, at 2:00 p.m., relates to Lilly's request to extend (and other parties' requests to modify) the December 29, 2006 Temporary Mandatory Injunction. At the present time, Lilly intends to expedite its portion of the evidentiary hearing by submitting proposed Findings of Fact, supported by documentary evidence. We do not anticipate calling any witnesses. We also intend to submit a brief on the legal issues relating to an extension of the injunction. In our discussions, no other party has advised us of its intention to submit further briefing or documentary evidence on these issues, or call live witnesses.

**Additional Matters**

Ms. Vena Sharav, Dr. David Cohen, and the Alliance for Human Research Protection, in addition to opposing an extension of the temporary mandatory injunction, now also seek to vacate the application of CMO-3 to the documents at issue. The reasons for this legal maneuver are transparent, particularly in light of Ms. Sharav's repeated attempts to disseminate the unlawfully obtained Zyprexa documents even after entry of the Temporary Mandatory Injunction. Nevertheless, as the Court is aware, Special Master Woodin has been designated to assist in discovery matters, including issues relating to CMO-3. As a result, we respectfully suggest that the most efficient resolution of this matter is to refer the motion regarding CMO-3 to Special Master Woodin.

**Contempt Proceedings**

Lilly intends to seek the imposition of sanctions against Dr. David Egilman and James B. Gottstein, Esquire, for their willful and deliberate violation of CMO-3. On December 28, 2006, Your Honor ordered Dr. Egilman to submit to a deposition in New York City, under the supervision of Special Master Woodin. This Order further required Dr. Egilman to produce all relevant documents by 10:00 a.m. on January 2, 2007. Dr. Egilman did not do this. We also learned that Dr. Egilman had deleted and destroyed otherwise responsive materials. Consistent with Your Honor's December 28 Order, Dr. Egilman provided access to his computers to allow for forensic recovery of these materials.

Although the recovered materials have been provided to his counsel for review and production, Dr. Egilman has still not completed his production. We hope to finally begin his

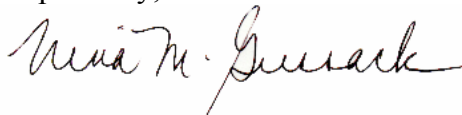
Honorable Jack B. Weinstein

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deposition next week, under the supervision of Special Master Woodin. Once this deposition is completed, Lilly will file its motion for sanctions against Dr. Egilman.

Respectfully,



Nina M. Gussack

NMG/lis

cc: Ted Chabasinski, Esquire (510) 843-6372)  
Alan Milstein, Esquire (856-488-4774)  
Alex Reinert, Esquire (212-349-4658)  
Kenneth Feinberg, Esquire (202-962-9290)  
James Shaughnessy, Esquire (212-273-4325)  
Fred von Lohmann, Esquire (via email)  
John McKay, Esquire (via email)  
Laura Ziegler (via email)  
Eric Whalen (via email)  
Peter Breggin (via email))  
Will Hall (via email)  
Grace Jackson (via email)  
Stephen Kruszewski (via email)  
Bruce Whittington (via email)