

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 07-1107-CV

Caption [use short title]

Motion for: Extension of time to file Appellant's Brief and the Appendix

In re Zyprexa Litigation

Set forth below precise, complete statement of relief sought:

Appellant James Gottstein seeks an extension of time to file the brief and the appendix from July 22, 2009 to and including July 23, 2009.

MOVING PARTY: Appellant James Gottstein
Plaintiff x Defendant
Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY: Appellee Eli Lilly & Co.

MOVING ATTORNEY: Steven Brock, Esq.
[name of attorney, with firm, address, phone number and e-mail]
Berkman, Henoch Peterson & Peddy, P.C.
100 Garden City Plaza
Garden City, NY 11530
516.780.0325
s.brock@bhpp.com

OPPOSING ATTORNEY [Name]: Sean P. Fahey, Esq.
[name of attorney, with firm, address, phone number and e-mail]
Pepper Hamilton, LLP
3000 Two Logan Square
Philadelphia, Pa 19103
215.981.4296
Faheys@pepperlaw.com

Court-Judge/Agency appealed from: United States District Court, EDNY, Honorable Jack B. Weinstein

Please check appropriate boxes:

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Has consent of opposing counsel:

Has request for relief been made below? Yes No

A. been sought? Yes No

B. been obtained? No response at this time. Yes No

Has this relief been previously sought in this Court? Yes No

Has service been effected? Yes No
[Attach proof of service]

Is oral argument requested? Yes x No
(requests for oral argument will not necessarily be granted)

Requested return date and explanation of emergency:

Has argument date of appeal been set? Yes x No
If yes, enter date:

Signature of Moving Attorney: Date: July 23, 2009

ORDER

IT IS HEREBY ORDERED that the motion is GRANTED DENIED.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date:
Form T-1080 (Revised 10/31/02)

By:

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

In re: Zyprexa Litigation

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**AFFIDAVIT IN SUPPORT
OF MOTION FOR
EXTENSION OF TIME
TO FILE BRIEF AND
APPENDIX**

Dkt. No. 07-1107-CV

STATE OF NEW YORK)
 :ss.:
COUNTY OF NASSAU)

STEVEN BROCK, being duly sworn, deposes and says:

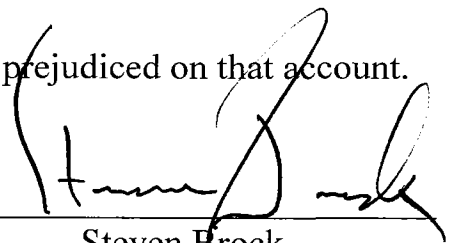
1. I am an attorney duly admitted to practice law in this State and before this Court, and a partner in the firm of Berkman, Henoch, Peterson & Peddy, P.C. I represent the Respondent-Appellant, James Gottstein on this appeal. I make this motion to serve and file one day out of time Respondent-Appellant Gottstein's opening brief on appeal due to technical difficulties encountered during the afternoon and evening of July 22, 2009, the date the brief was due. I have served opposing counsel on July 23, 2009, and will come to the Court on the afternoon of July 23 to lodge the brief with the Court for filing if and when this motion is granted. Accordingly, I request that the Court grant this motion to serve and file one day out of time on July 23, 2009.

2. The technical difficulties mentioned related to incorporating substantial revisions received that were prepared on different word processing

programs and obtaining an accurate word count for purposes of counsel's certificate of compliance with Rule 32(a). While the word count had been reported within limits recently, as the brief was being finalized the word count was reported to be about 1,000 words over the limit. I do not know whether the discrepancy was due to human or computer software error. I was unable to bring the brief within the word limit and revise the contents and authorities by midnight on July 22.

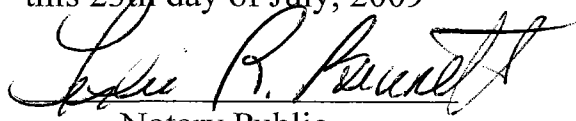
3. I contacted opposing counsel today to request consent but do not have a response at this time.

4. This appeal was reactivated on or about February 13, 2009. Staff Counsel granted one prior request to extend the time for filing of the brief and appendix on appeal, which was extended *sua sponte* to May 27, 2009. The Court previously granted extensions to June 17, 2009, July 2, 2009, July 13, 2009, and a final extension to July 22, 2009. I apologize to the Court for the need to request leave to serve and file one day out of time, for which I am responsible, and respectfully request that my client's interests not be prejudiced on that account.



Steven Brock

Sworn to before me
this 23rd day of July, 2009



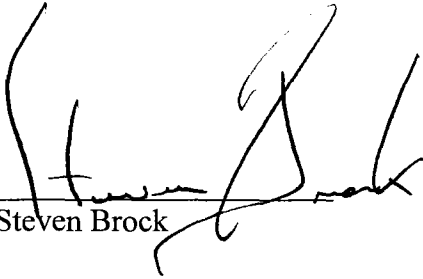
Notary Public

LESLIE R. BENNETT
Notary Public, State of New York
No. 02BE5052100
Qualified in Nassau County
Commission Expires 11/20/09

VIRUS PROTECTION CERTIFICATE

Steven Brock certifies that the PDF version of the attached document that has been submitted via email to the Court of Appeals at civilcases@ca2.uscourts.gov has been scanned for viruses and no virus has been detected.

Dated: July 23, 2009



Steven Brock

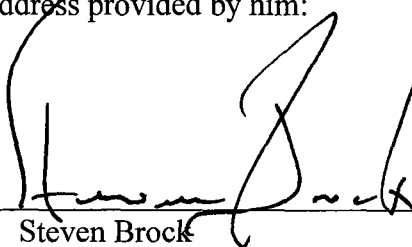
CERTIFICATE OF SERVICE

I hereby certify that:

(1) a true and correct copy of the Form T-1080 and Affidavit In Support of Motion of Extension of Time to File Brief and Appendix were served this 23rd day of July, 2009 upon Sean P. Fahey, Esq., Pepper Hamilton, LLP, 3000 Two Logan Square, Philadelphia, PA 19103, via Federal Express, and

(2) an additional copy of the foregoing form and Affidavit were emailed to Mr. Fahey on this 23rd day of July, 2009, at the following email address provided by him:
Faheys@pepperlaw.com.

Dated: July 23, 2009



Steven Brock