

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re: ZYPREXA PRODUCTS LIABILITY : MDL No. 1596
LITIGATION :
-----X
THIS DOCUMENT RELATES TO: :
 :
ALL ACTIONS :
 :
-----X

**ELI LILLY AND COMPANY’S PROPOSED FINDINGS OF FACT CONCERNING ITS
REQUEST TO EXTEND THE TEMPORARY MANDATORY INJUNCTION**

Eli Lilly and Company (“Lilly”) submits the following proposed Findings of Fact in support of its request to extend the December 29, 2006, Temporary Mandatory Injunction, as modified by the Court on January 3, 2007.

CASE MANAGEMENT ORDER NO. 3

1. On July 2, 2004, when discussing the entry of the protective orders in this case, the Court expressed concern about select disclosures of information because they could harm the vulnerable patient population that is treated with antipsychotic medications, and prejudice the parties rights to a fair trial: “[I]f the newspapers are slathered with material that might be misunderstood by the lay reader, that might do some harm or prejudge a case that is still pending.” (Tr. of Hearing before the Honorable A. Simon Chrein (July 2, 2004) at 10-11; attached Ex. 1.)

2. On August 3, 2004, this Court entered Case Management Order No. 3 (“CMO-3”). (CMO-3; attached Ex. 2.)

3. CMO-3 prohibits dissemination of “Confidential Discovery Materials” to any person with certain specified exceptions. (*Id.* at ¶ 5.)

~~4. CMO-3 requires, in relevant part, that “[a]ny individual to whom~~
disclosure is to be made . . . shall sign, prior to such disclosure, a copy of the Endorsement of Protective Order.” (*Id.* at ¶ 6.)

5. The Endorsement of Protective Order attached to CMO-3 provides, in relevant part, that the recipient of Confidential Discovery Materials agrees (i) to be “bound by” CMO-3; (ii) “not to disclose [to] others, except in accord with the Order, any Confidential Discovery Materials, in any form whatsoever, and that such Confidential Discovery Materials and the information contained therein may be used only for purposes authorized by the Order”; (iii) that the recipient’s “obligation to honor the confidentiality of such discovery material will continue even after this Litigation concludes”; (iv) to “be subject to sanctions, including contempt of court,” for failure to abide by those orders; and (v) to be “subject to the jurisdiction of the United States District Court, Eastern District of New York, for the purposes of any proceedings relating to the enforcement of the Order.” (*Id.* at Attach. A.)

6. Among other restrictions, CMO-3 requires any recipient of Confidential Discovery Materials, if subpoenaed by another court, to promptly notify the party that produced the Confidential Discovery Materials:

in writing of all of the following: (1) the discovery materials that are requested for production in the subpoena; (2) the date on which compliance with the subpoena is requested; (3) the location at which compliance with the subpoena is requested; (4) the identity of the party serving the subpoena; and (5) the case name, jurisdiction and index, docket, complaint, charge, civil action or other identification number or other designation identifying the litigation . . . or other proceeding in which the subpoena or other process has been issued. In no event shall confidential documents be produced prior to the receipt of written notice by the designating party and a reasonable opportunity to object. Furthermore, the person receiving the subpoena or other process shall cooperate with the producing party in any proceeding related thereto.

DR. DAVID EGILMAN

7. David Egilman, M.D., M.P.H., was retained by The Lanier Law Firm to serve as a consulting expert for cases pending in the Zyprexa MDL proceedings. (Affirmation of Richard D. Meadow, (January 2, 2007) at ¶ 3, Attach. D; attached Ex. 3.)

8. Before Dr. Egilman received any Confidential Discovery Materials, The Lanier Law firm was required to, and did, inform Dr. Egilman of the multiple protective orders entered in the above-captioned case, including CMO-3, CMO-10, and CMO-11. (Ex. 2 at ¶ 6, Attach. A; Ex. 3 at ¶¶ 5-7, Attach. C).

9. Before receiving Confidential Discovery Materials, Dr. Egilman executed the Endorsement to CMO-3, agreeing (i) to be bound by those protective orders; (ii) to “be subject to sanctions, including contempt of court,” for failure to abide by those orders; and (iii) to be “subject to the jurisdiction of the United States District Court, Eastern District of New York, for the purposes of any proceedings relating to the enforcement of” CMO-3. (*Id.* at ¶¶ 3, 5-7, Attach. B and C).

10. Although Dr. Egilman asked The Lanier Law Firm to modify the terms of his Endorsement, to create special exceptions – which were never communicated to Lilly or the Court – Mr. Meadow confirmed that no such exceptions were made. (*Id.*)

11. After signing multiple copies of the Endorsement, Dr. Egilman received Confidential Discovery Materials from The Lanier Law Firm, and later was granted remote access to the Plaintiffs’ Steering Committee-maintained database of Zyprexa-related discovery materials. (*Id.* at ¶¶ 4, 7-8, Attach. B and C).

12. James Gottstein is an attorney living in the State of Alaska. (Ltr. from James Gottstein to Special Master Woodin, (Dec. 17, 2006); attached Ex. 4.)

13. Mr. Gottstein also serves as the President and CEO of the Law Project for Psychiatric Rights (“PsychRights”). (*Id.*)

VIOLATION OF THIS COURT’S PROTECTIVE ORDERS

14. On December 15, 2006, counsel for Lilly learned that Dr. Egilman violated CMO-3 by sending Mr. Gottstein documents that he had received pursuant to the confidentiality provisions of CMO-3.

15. That same day (which was a Friday) upon the joint application of members of the *In Re Zyprexa Products Liability Litigation* Plaintiffs’ Steering Committee (“PSC”) and Lilly, and, after giving Mr. Gottstein notice and an opportunity to be heard on the matter, Special Master Peter H. Woodin entered an order requiring Mr. Gottstein and Dr. Egilman to immediately send to the Special Master’s office in New York any and all documents produced by Lilly pursuant to CMO-3 (including all copies of any electronic documents, hard copy documents and CDs/DVDs). (Order of Dec. 15, 2006; attached Ex. 5.)

16. Mr. Gottstein did not comply with the Court’s order. (Email from James Gottstein to Special Master Woodin (Dec. 16, 2006); attached Ex. 6.)

17. Instead, he sent a letter to Special Master Woodin on Sunday evening, December 17, 2006, at 11:30 p.m., questioning Special Master Woodin’s authority and providing his version of the events that led to his possession of CMO-3 protected Zyprexa documents. (*See* Ex. 4.)

18. Mr. Gottstein’s December 17 letter explained how Dr. Egilman had violated CMO-3 and described in detail Mr. Gottstein’s collusion in that violation. (*See id.*)

~~19. According to Mr. Gottstein, Dr. Egilman contacted him “out of the blue”~~
on November 29, 2006. (*Id.* at 4.)

20. During their discussion, Dr. Egilman informed Mr. Gottstein that he had access to “secret Eli Lilly documents pertaining to Zyprexa.” (*Id.* at 5.)

21. Mr. Gottstein told Dr. Egilman he did not have a pending case that would allow him to subpoena the documents, but that he wanted access to the documents. (*Id.*)

22. Mr. Gottstein and Dr. Egilman then agreed that Mr. Gottstein would “undertake a [forced drugging] case” that would “occur very quickly” in order to subpoena the CMO-3 protected documents. (*Id.*)

23. Although Mr. Gottstein then “proceeded to try to acquire a suitable case in earnest,” he was unable to find a forced drugging case, with its quick deadlines. Instead, on December 5, he found a situation where the Alaska Office of Public Advocacy had been granted guardianship rights over a patient (identified as “B.B.”), which allowed the State to make treatment decisions on behalf of B.B.

24. There is no evidence that B.B. was taking Zyprexa on December 5, or at any time thereafter.

25. The next morning, on December 6, Mr. Gottstein filed papers to terminate the guardianship of B.B., and asked an Alaska state court to issue a subpoena to Dr. Egilman. (*Id.*)

26. Mr. Gottstein then emailed an Alaska subpoena to Dr. Egilman rather than making proper service of a subpoena in Massachusetts, Dr. Egilman’s state of residence. (*Id.*)

27. The Alaska state court subpoena called for the production of Zyprexa documents on December 20. (*Id.*)

~~28. Although Dr. Egilman now claims that Mr. Gottstein told him on~~

December 6 that the subpoenaed material “was needed for an emergency hearing,” there is no evidence of any emergency hearing in the B.B. case, and this claim contradicts Mr. Gottstein’s admissions regarding his November 29 discussion with Dr. Egilman. (*Compare* Ltr. from Dr. Egilman to Brewster Jamieson, Esquire (counsel for Lilly in Alaska) (Dec. 15, 2006); attached Ex. 7, *with* Ex. 4 at 5.)

29. Dr. Egilman did not notify Pepper Hamilton LLP, Lilly’s National Counsel in these cases – or The Lanier Law Firm, which retained him in the Zyprexa litigation – of this subpoena but instead sent a fax to the office of the General Counsel of Lilly informing him that the production of documents was to occur on December 20. (*See* Ex. 7).

30. Despite efforts to delay Lilly’s counsel’s involvement in this issue, Pepper Hamilton spoke with The Lanier Law Firm a full week before the announced production date and received assurances that plaintiff’s counsel had spoken with Dr. Egilman and that no documents would be produced until Lilly’s motion to quash the Alaska subpoena was ruled upon. (*See* Ex. 3 at ¶ 9, Attach. D).

31. Richard Meadow, Esq., of The Lanier Law Firm, confirms that he spoke with Dr. Egilman on December 13. During this conversation, according to Mr. Meadow, he told Dr. Egilman not to produce any documents, and Dr. Egilman responded, “Yes, Ricky.” (*Id.*)

32. The parties later learned that Dr. Egilman and Mr. Gottstein had worked in concert to issue a secret “amended” subpoena on December 11, which called for the immediate production of documents. (*See* Ex. 4 at 5-6.)

33. There is no evidence that any of the parties in the Alaska case received notice of this amended subpoena.

~~34. Neither Lilly's counsel nor The Lanier Law Firm received notice of this~~
amended subpoena, and as Mr. Meadows confirms:

It was not until later that in the business day on December 15, 2006, that I first learned from reading Dr. Egilman's own narrative timeline that an amended subpoena had been issued by James Gottstein, Esq., calling for the production of Zyprexa-related documents prior to December 20, 2006. It was also on December 15, 2006 that I first learned that Dr. Egilman had produced the Zyprexa-related documents to the requesting party beginning on December 12, 2006.

(See Ex. 3 at ¶ 9, Attach. D).

35. On December 12, three business days after receiving the original subpoena, and one day after receiving the secret amended subpoena, Dr. Egilman began electronically transferring documents to Mr. Gottstein without the knowledge of Lilly, Pepper Hamilton, or The Lanier Law Firm. (Ex. 4 at 5-6; *see also* Ex. 3 at ¶ 9, Attach. D.)

36. According to Mr. Gottstein, Dr. Egilman continued to transfer documents—even after speaking with Mr. Meadow on December 13, and falsely telling Mr. Meadow that no documents would be produced—until Mr. Gottstein received communication from Lilly's lawyers on December 15. (*See* Ex. 4 at 5-6.)

37. After learning of Dr. Egilman's disclosure of documents to Mr. Gottstein, The Lanier Law Firm demanded the return of all documents in Dr. Egilman's possession, and terminated their relationship with him in this matter. (*See* Ex. 3 at ¶ 11).

38. Based on the admissions in Mr. Gottstein's December 17 letter, and Mr. Gottstein's continued refusal to comply with Special Master Woodin's order, further court involvement was necessary.

39. The next day, December 18, the Honorable Roanne L. Mann held a telephonic hearing relating to Mr. Gottstein's failure to comply with Special Master Woodin's

~~December 15 order. Mr. Gottstein participated in the hearing. During the hearing, Magistrate~~

Judge Mann made findings relating to Mr. Gottstein, based on admissions in his December 17 letter and his own statements during the hearing:

I think what happened here was an intentional violation of Judge Weinstein's orders. I think it was inappropriate.

* * *

I personally [as a Magistrate Judge, without authority to grant injunctive relief] am not in a position to order you to return the documents. I can't make you return them but I can make you wish you had because I think this is highly improper not only to have obtained the documents on short notice without Lilly being advised of the amendment but then to disseminate them publicly before it could be litigated. It certainly smacks of bad faith.

So this is the extent of what I'm prepared to do is simply state my views on the record and if counsel in the MDL case want to go before a District Court Judge who has more authority – I understand Judge Cogan is on miscellaneous duty today.

(Tr. of Telephone Conf. before the Honorable Roanne L. Mann (Dec. 18, 2006) at 10; attached Ex. 8; *see also* Rulings of the Honorable Roanne L. Mann; attached Ex. 9 (“[T]he Court concludes that the dissemination of the documents to Mr. Gottstein, and his public dissemination of those documents, violated [CMO-3] and that the E.D.N.Y. has jurisdiction to enforce its orders.”))

40. Shortly thereafter – and again upon the joint application of members of the PSC and Lilly, and after hearing argument from Mr. Gottstein (through his counsel, Mr. McKay) – the Honorable Brian M. Cogan issued an Order for Mandatory Injunction. (Order for Mandatory Injunction of Dec. 18, 2006; attached Ex. 10.)

41. The Mandatory Injunction enjoined Mr. Gottstein from further dissemination of the CMO-3 protected Zyprexa documents, enforced Special Master Woodin's December 15 order requiring Mr. Gottstein to immediately return all such documents to the

~~Special Master, required Mr. Gottstein to immediately identify any person, organization or entity~~
to which he had disseminated the documents, and required the retrieval and return of all copies of the disseminated documents, regardless of their current location, including the removal of any such documents posted to any website. (*Id.*)

42. The Mandatory Injunction also included a finding by Judge Cogan that Mr. Gottstein had “deliberately and knowingly aided and abetted Dr. David Egilman’s breach of CMO-3.” (*Id.*)

43. This Mandatory Injunction was not entered lightly, and, as the Court made clear, the findings by the Court were made “exclusively” on the admissions made by Mr. Gottstein in his December 17 letter contesting Special Master Peter Woodin’s authority in this case:

I think it’s clear not only that the facts are as stated in the Magistrate’s report and recommendation, but I can tell from the December 17th draft letter from Mr. Gottstein that he was aware that these documents were restricted, and that he undertook procedures to help the experts, Dr. Egilman, try to circumvent the restrictions that were on him. He deliberately aided and abetted Dr. Egilman in getting these documents released from the restriction that they were under, under the protective order. He knew what he was doing, and he did it deliberately. Those are my findings, and it’s on that basis that I grant the relief.

* * *

I will say any findings I have made have been made exclusively on the basis of [Mr. Gottstein’s December 17 letter]. That’s the only evidence I have in front of me.

(Tr. of Phone Conf. before the Honorable Brian M. Cogan (Dec. 18, 2006) at 19–20, 22; attached Ex. 11.)

44. In connection with Mr. Gottstein’s compliance with this Mandatory Injunction, the parties learned that as soon as Mr. Gottstein received the unlawfully obtained

~~Zyprexa documents, he began creating DVD copies. (see Email from John McKay to Special~~
Master Woodin (Dec. 22, 2006); attached Ex. 12.)

45. On December 12 and 13, Mr. Gottstein sent DVDs to fifteen individuals, including all of the individuals specifically named in the Order for Temporary Mandatory Injunction entered by the Honorable Brian M. Cogan. (*Id.*; *see also* Temporary Mandatory Injunction of Dec. 29, 2006; attached Ex. 13.)

46. Mr. Gottstein understood that these individuals, with whom he was affiliated, would assist in disseminating the unlawfully obtained CMO-3 protected documents more broadly. (*See* Ex. 4 at 1-2, 5-6).

47. After the December 18 hearing, Mr. Gottstein put the recipients of the unlawfully obtained Zyprexa documents on notice the Court had concluded that the documents were improperly disseminated in violation of CMO-3. (*See, e.g.*, Email from James Gottstein to Judi Chamberlain (Board Member of MindFreedom International (“MFI”)), email from James Gottstein to Vera Sharav (President and Founder of the Alliance for Human Research Protection (“AHRP”)); attached Ex. 14.).

48. Mr. Gottstein specifically informed these individuals that a court order required the return of the DVD that he had sent to them, along with all physical and electronic copies of the documents. (*Id.*)

49. Mr. Gottstein further informed these individuals that the Order required the removal of any copies of these documents from their computers “or any other computer equipment, or in any other format, website(s), or FTP site(s), or otherwise on the Internet.” (*Id.*)

50. After providing this information, Mr. Gottstein implied that the recipients of the emails did not need to comply with the Court’s order:

~~“A copy of the proposed written order is posted at~~
<http://psychrights.org/States/Alaska/CaseXX/EliLilly/ProposedOrder.pdf> with a comment about certain language which I strenuously disagree with and we are trying to get eliminated from the signed order. . . . There is a question in my mind that the court actually has jurisdiction over me to issue the order.”

(*Id.*)

51. When the parties presented to Judge Cogan the substance of these emails, as well as Lilly’s concerns about the mixed messages being sent to the recipients regarding their need to comply with the Mandatory Injunction—during a hearing on December 20, 2006 relating to Mr. Gottstein’s failure to comply with other aspects of the December 18 Mandatory Injunction—Judge Cogan noted:

It seems clear from the way that you have described the emails going out that he has at least directed the people to comply, and I think what you’re suggesting is that he’s done it in a kind of backhanded way, which might dissuade them from actually complying

* * *

Okay. It does seem to me, Mr. McKay, that at the very least, there was no need for him to assert his position to third parties, and it may have been ill-advised for him to do so.

(Tr. of Phone Conf. before the Honorable Brian M. Cogan (Dec. 20, 2006) at 23–24, 28; attached Ex. 15.)

52. During this same hearing, in response to Mr. Gottstein’s continued denial of this Court’s jurisdiction and the legitimacy of its Order, Judge Cogan reaffirmed the Mandatory Injunction and the Court’s jurisdiction over Mr. Gottstein. (*Id.* at 24-25.)

53. On December 21, 2006, Mr. Gottstein told Special Master Woodin that he had informed everyone to whom he had given copies of the unlawfully obtained documents to return those documents to the Special Master and to ensure that they retained no additional

~~copies of those documents. (James Gottstein Certification (Dec. 21, 2006) at 2-4; attached Ex.~~

16.)

54. The next day, Mr. Gottstein's counsel informed Special Master Woodin that none of the recipients of the unlawfully obtained documents had refused to return the documents. (Ex. 12.)

55. After learning of the Mandatory Injunction, some of the recipients of the documents unlawfully disseminated by Mr. Gottstein returned them to Special Master Woodin.

56. On December 19, Dr. Grace Jackson returned the DVDs that Mr. Gottstein had shipped to her. (Email from Dr. Grace Jackson to Special Master Woodin (December 19, 2006); attached Ex. 17.)

57. On December 21, 2006, Representative Henry A. Waxman, then Ranking Member of the Committee on Government Reform and now Chairman of that Committee, returned the documents that Mr. Gottstein sent to the House Committee on Government Reform, "out of a sense of comity and respect for a coordinate branch of the federal government." (Ltr. from Representative Henry A. Waxman to Special Master Woodin (Dec. 21, 2006); attached Ex. 18.)

58. On January 9, 2006, Dr. Stefan P. Kruszewski, returned the DVDs that Mr. Gottstein had shipped to him. (Ltr. from Dr. Stefan P. Kruszewski, to Special Master Woodin (January 9, 2007); attached Ex. 19).

59. Mr. Gottstein also certified that he personally retrieved the DVDs that he gave to Terri Gottstein and Jerry Winchester, (Ex. 16 at 4.), and, on January 13, 2007, certified that Will Hall has returned the DVDs that Mr. Gottstein had shipped to him (James Gottstein Supp. Certification (Jan. 13, 2007) at 1; attached Ex. 20.)

60. Judi Chamberlain, a member of the Board of Directors for MindFreedom International (“MFI”), did not return the unlawfully obtained Zyprexa documents.

61. MFI is an organization comprised of Affiliates (other organizations that use the MFI name) and Sponsors (organizations with their own name) who share a common goal relating to pharmaceutical use in the mental health system. Sponsors and Affiliates form a “Support Coalition” for MFI. *See* MindFreedom.org, Affiliates and Sponsors, <http://www.mindfreedom.org/affspo> (last visited Jan. 12, 2007).

62. Mr. Gottstein’s organization “PsychRights” is a Sponsor of MFI. Mr. Gottstein is also the President of the National Association of Rights Protection and Advocacy (“NARPA”), a founding Sponsor Group of MFI. *See* MindFreedom.org, Public List – MFI Sponsor & Affiliate, <http://www.mindfreedom.org/affspo/mfi-sponsor-affiliate-public-list/> (last visited Jan. 12, 2007). Mr. Gottstein is displayed prominently in the “We are MFI” segment of the MFI website. (Screen shot of www.mindfreedom.org. (Jan. 7, 2007); attached Ex. 21.)

63. Dr. Peter Breggin, who has not returned the unlawfully obtained documents, is the founder of The International Center for the Study of Psychiatry and Psychology (ICSPP), a sponsor group of MFI. *See* MindFreedom.org, Public List – MFI Sponsor & Affiliate, <http://www.mindfreedom.org/affspo/mfi-sponsor-affiliate-public-list/> (last visited Jan. 7, 2007).

64. David Oaks, the Director of MFI, is also integrally involved with another website, zyprexa.pbwiki.com. This website is used to “anonymously” post information about the location of the unlawfully obtained Zyprexa documents, but as his posts make clear, there is nothing anonymous about Mr. Oaks’s involvement or the efforts (of small number of other

~~individuals involved with this wiki) to assist Mr. Oaks in continuing to violate this Court's~~

orders:

The big question I have though . . . is can people still get the documents [through the TOR network] . . . but how to let anyone know it still works without disclosing identity? via the wiki?

(See Message Bd. Posting by David Oaks (Dec. 30, 2006 at 21:53:22); attached Ex. 22.)

65. On December 24, 2006, "Rafael" announced the launch of the Zyprexa wiki, and asked others to contact him for the password needed to edit the wiki. (See Message Bd. Posting of "rafi at phantomcynthetics.com" (December 24, 2006 at 22:22:39); attached Ex. 23).

66. Later that evening, "Rafael" confirmed that, while the people collaborating with Mr. Gottstein, Mr. Oaks and MFI have another website on reserve (zyprexakills.us), they have decided to use zyprexa.pbwiki.com "for organizing and promotional purposes." (See Message Bd. Posting of "rafi at phantomcynthetics.com" (December 24, 2006 at 23:55:22); attached Ex. 24).

67. The next morning, on December 25, 2006, Mr. Oaks, congratulated "Rafael" and another individual setting up the wiki ("Asheesh Laroia") on their progress – "Way to go!" (See Message Bd. Posting by David Oaks (Dec. 25, 2006 at 12:25:12); attached Ex. 25). He then asked for comments on a proposed MFI alert he planned to send out relating to the unlawfully obtained Zyprexa documents, including "should I advertise this e-mail list on the alert?" (*Id.*)

68. Twenty minutes later, "Rafael" provided suggested edits to the MFI alert, and informed Mr. Oaks that he should "publicize zyprexa.pbwiki.com as I think that is the safest bet for now." (See Message Bd. Posting by "rafi at phantomcynthetics.com" (Dec. 25, 2006 at 12:53:30); attached Ex. 26).

~~69. One minute later, “Rafael” reminded Mr. Oaks that “we want to be~~
collecting all mirrors of the memos on the zyprexa.pbwiki.com site.” (See Message Bd. Posting by “rafi at phantomcynthetics.com” (Dec. 25, 2006 at 12:54:34); attached Ex. 27).

70. Later the same day, Mr. Oaks sent out the email alert, which incorporated these edits, to several thousand people. (See Message Bd. Posting by David Oaks (Dec. 26, 2006 at 12:06:32; attached Ex. 28 (with embedded December 25, 2006 MindFreedom email alert)).

71. In the alert, Mr. Oaks proclaimed, “We are all Jim [Gottstein]!” and went on to inform the recipients of the alert about a “grassroots Internet campaign” to disseminate the unlawfully obtained Zyprexa documents. (*Id.*) Mr. Oaks said that this campaign was distributing an “unusual Christmas Gift” and “counting on the fact that many courts are closed today.” (*Id.*) The alert provided a link to the www.mindfreedom.org and the zyprexa.pbwiki.com websites where the recipients could link to a free file-sharing website and download the unlawfully obtained Zyprexa documents. (*Id.*) Although the alert includes a disclaimer that MFI is only forwarding anonymous alerts, and did not originate them, this is patently untrue.

72. By midnight on December 25, Mr. Oaks was warning people that Mr. Gottstein had to “save any and all relevant emails he receives (or sends) on the matter of the suppressed and released Zyprexa documents,” (*id.*), implying that communications about distributing the documents from Mr. Gottstein should be made orally if they included Mr. Gottstein, and that the group should collaborate without emailing Mr. Gottstein.

73. Over the course of the next several days, the small group of contributors to zyprexa.pbwiki.com worked in concert with Mr. Oaks to disseminate the unlawfully obtained Zyprexa documents, in violation of CMO-3 and the Court’s subsequent injunctions, and to hide

~~their identity. (See, e.g., Message Bd. Posting by “Asheesh Laroia” (Dec. 30, 2006 at 15:41:59);~~
attached as Ex. 29; Message Bd. Posting by “rafi at phantomcynthetics.com” (Dec. 30, 2006 at
19:00:00); attached Ex. 30; and Message Bd. Posting by David Oaks (Dec. 30, 2006 at 21:29:07)
(asking for the addition of TOR instructions to the wiki, which was then done); attached Ex. 31.)

74. Another MFI member, Eric Whalen, stored the unlawfully obtained Zyprexa documents on his website server, and made these documents available for download for a short time at www.joysoup.net. David Oaks added this URL to the MFI website. (See Ex. 25; see also Update 11, MFI Webpage; attached Ex. 32.)

75. After Mr. Whalen’s link was removed, in compliance with the Court’s orders, contributors to the zyprexa.pbwiki.com site were discussing, with Mr. Whalen, how to circumvent the Court’s injunctions. “Rafael” told Mr. Whalen that one “relatively safe way to disseminate these files is to upload them anonymously to a free file sharing service – this was how the original file was seeded.” (See Message Bd. Posting by “rafi at phantomcynthetics.com” (Jan. 3, 2007 at 11:03:01); attached Ex. 33).

76. On January 4, shortly after the Court modified the Temporary Mandatory Injunction to include zyprexa.pbwiki.com, “Rafael” notified the Chief Executive Officer of company hosting zyprexa.pbwiki.com that “[w]e are in the process of contacting representation on this matter.” (See Message Bd. Posting by “rafi at phantomcynthetics.com” (Jan. 4, 2007 at 13:40:50); attached Ex. 34).

77. The only party that has joined these proceedings since January 4, 2007, is the Electronic Freedom Foundation (“EFF”) on behalf of “John Doe.” EFF has, thus far, refused to disclose the identify of “John Doe,” although EFF has represented to the Court that this individual collaborates with others on the wiki website (zyprexa.pbwiki.com) that has been used

~~in an attempt to anonymously distribute the unlawfully obtained Zyprexa documents, although~~

EFF asserts that Mr. Doe has had no contact with any of the parties in these proceedings, or parties subject to the Court Orders or injunctions.

ALLIANCE FOR HUMAN RESEARCH PROTECTION

78. Vera Sharav, the President and Founder of the Alliance for Human Research Protection (“AHRP”), and David Cohen, an AHRP Board Member, also did not return the unlawfully obtained Zyprexa documents.

79. Even after the entry of the Temporary Mandatory Injunction, Ms. Sharav continued to provide links to the unlawfully obtained Zyprexa documents at AHRP websites, including www.ahrp.com and www.ahrp.blogspot.com:

Something is warped in this picture. The court is helping Lilly intimidate public advocates by issuing Temporary Mandatory Injunctions. See the court injunction several of us received below. But the internet is an uncontrolled information highway – you never know where or when the court suppressed documents may surface! The documents appear to be downloadable at <http://files-upload.com/files/34070/ZyprexaKills.tar.gz.html> at least as of now. It also appears to be at <http://joysoup.net/archives/06/12/23/08052.html>

(See Blog Posting of Vera Sharav (Dec. 29, 2006); attached Ex. 35.)

80. Despite a concerted effort by a small group of individuals to take advantage of Dr. Egilman’s and Mr. Gottstein’s violation of CMO-3, and to violate the Temporary Mandatory Injunctions, this effort fell flat. As Mr. Oaks said in a web posting on December 30, 2006:

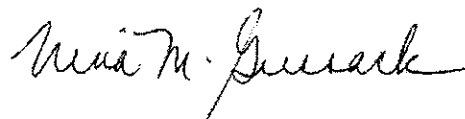
Someone said that they thought the tor download link on [Zyprexa.pbwiki.com] was working . . .
. . . it is not as of now . . . it goes nowhere.
So its apparently conclusive: I know of no source for anyone to download these documents at this time.
If someone does know, they may want to edit the wiki to reflect that . . .

(See Ex. 31).

81. At the time of the Court's January 3, 2007, modification of the Temporary Mandatory Injunction (to include the zyprexa.pbwiki.com site), zyprexa.pbwiki.com had not been edited to reflect a single active link to the unlawfully obtained Zyprexa documents.

82. Despite claims that it would be impossible to control the content of a wiki, because of the variety of people that could contribute to it, "Rafael" and others – who now appear to be contributing to zyprexa.pbwiki.com under several different pseudonyms, perhaps in an effort to suggest the existence of widespread contributions – have been able to abide by the terms of the Temporary Mandatory Injunction, and no one has posted information that would facilitate the dissemination of the unlawfully obtained Zyprexa documents.

Respectfully submitted,



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