PLAINTIFFS:

DEFENDANTS:

3AN-06-05630CI Volume: 003
State of Alaska vs. Eli Lilly & Co
Superior Court Civil

VOL 3

Begin: 7-12-07
End=9-25-07

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Appeal to COA/Supreme
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PLAINTIFF'S ATTORNEY

DEFENDANT'S ATTORNEY

TYPE OF PROCEEDING

MASTER ASSIGNED	DATE ASSIGNED	DATE DISQUALIFIED	BY WHOM DISQUALIFIED

JUDGE ASSIGNED	DATE ASSIGNED	DATE DISQUALIFIED	BY WHOM DISQUALIFIED
Rindner	9/1/06		

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CV-E-L

Dan A. Hensley
Attorney
Practice Limited to Mediation and Arbitration
1036 W. 22d Ave.
Anchorage, AK 99503
360-3177
dhensley@gci.net

September 24, 2007

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301 W. Northern Lights Blvd., Suite 301
Anchorage, AK 99503

Eric Sanders
Feldman, Orlansky & Sanders
500 L Street, Suite 400
Anchorage, AK 99501

RE: State of Alaska v. Eli Lilly & Co., 3AN-06-05630 CI

DISCOVERY MASTER ORDER
State's First Motion to Compel
Lilly's Motion to Compel
Lilly's Motion for Commission for Subpoena

9.25-07

Introduction

The State of Alaska seeks damages from Eli Lilly & Co. for harm allegedly caused by Lilly's marketing and sale of the drug Zyprexa. The State asserts claims in strict product liability for failure to warn and design defect, for violation of the State's Unfair Trade Practices and Consumer Protection Act, and for negligence, negligent misrepresentation and fraud.

The State has not filed a class action and is not seeking damages for individual patients. Instead, the state seeks to recover for excess expenditures allegedly incurred by

the State's Medicaid program in paying for excess prescriptions and medical treatment for injuries caused by use of the drug.

Because it is not seeking damages for individual patients, the State does not intend to prove its case by presenting evidence regarding specific patients. Rather, the State will attempt to prove its claim solely by use of statistical and epidemiological evidence. For example, the State may argue that epidemiological data demonstrates that use of Zyprexa in a Medicaid population produces a significant increase in diabetes and that Lilly failed to warn the consumer (an ordinary doctor) of this risk and of the need to take appropriate extra precautions to prevent that risk.

The State's experts will apply existing scientific research to the State Medicaid database to reach conclusions about the injury and damages allegedly suffered by the Medicaid program. That data base, according to the State, will allow experts to identify (without naming) every Medicaid recipient who took Zyprexa, the illness for which it was prescribed, whether the patient suffers from one of the medical conditions caused by Zyprexa and information regarding other risk factors that may have caused those complications.

The trial court has imposed limits on discovery in this case. Lilly has been involved in substantial other litigation regarding Zyprexa and a considerable amount of discovery has been catalogued in a collection in Multi District Litigation in New York. Because the State has access to those documents, the Court found no good reason to allow the State to conduct direct discovery against Lilly for the same information. In addition, the court set a trial date of March 2008 in this complex case, based primarily on

the State's estimate of the amount of time necessary to prepare the case under its epidemiological theories.

In earlier proceedings Judge Rindner, although recognizing that use of epidemiological evidence is generally accepted in litigation, found that he did not have sufficient information to determine whether the State's evidence passed muster under Alaska law. The Judge ordered discovery to flesh out those claims so that he could make that determination. He also noted that Lilly was free to defend the claim in whatever ways might be appropriate, and thus did not limit Lilly's discovery solely to the defense of epidemiological evidence.

With this general background in mind I turn to the specific discovery disputes raised by pending motions. This order will address is detail the most significant dispute between the parties – access to individual patient records. As explained below, I find that in large part Lilly has not shown how discovery of individual Zyprexa users' medical records will lead to evidence relevant to challenging the State's epidemiological evidence. To the extent that Lilly has demonstrated a theoretical possibility that this evidence may be useful, that does not outweigh the significant risk of harm posed by a wholesale invasion of mental health patients' records or the expense and considerable delay resulting from that discovery. Finally, Lilly has not explained how this discovery will aid its defense of the case in ways other than challenging the scientific evidence.

Following the general discussion of the patient records issue, this Order will address all remaining discovery disputes.

Access to Individual Patient Records

Lilly seeks discovery of medical records of State Medicaid patients receiving Zyprexa. The State opposes, claiming that the records are not relevant and asserting a number of other privacy and practical objections.

At the outset I note that Zyprexa is prescribed for patients diagnosed with mental illness or mental health concerns, including schizophrenia, certain stages of bipolar disorder and mood disorders. Thus I will not order discovery of the records containing the identity of these patients unless that discovery is vital to this litigation and unless there is no other practical way of obtaining it.

The State argues that evaluating whether and why an individual Zyprexa patient incurred adverse symptoms does not shed any light on whether the overall epidemiological evidence is valid. The State claims that its epidemiological estimate of increased risk of diabetes is based on the Medicaid population as a whole and not on specific individuals. The State supports its claims by noting that in the scientific arena, Lilly and the Federal Drug Administration rely heavily on epidemiological evidence to make major decisions concerning prescription drug regulation without needing access to specific patient records.

Lilly makes the following arguments to support its request for access to individual patient records. (1) It needs the individual records to challenge directly the State's expert epidemiological evidence; (2) The State Medicaid database is insufficient because it does not contain information about certain non–Zyprexa risk factors for diabetes, including being overweight and having a family history of diabetes; (3) Access to medical records will allow Lilly to test whether the Medicaid database entries are accurate; and (4) Lilly

is not limited to defending this case by using epidemiological evidence, and the medical records may produce relevant evidence to other forms of defense. I address these claims in order.

Lilly has not really explained why use of specific patient records is an accepted scientific method for directly challenging epidemiological evidence. Lilly's expert, Dr. Virnig, identifies the kind of general factors that might be important in evaluating an individual's claim of Zyprexa related diabetes – risk factors other than diabetes, prior history of diabetes or the fact that some diabetes patients are non-symptomatic. But Dr. Virnig does not explain how access to this specific information is useful in challenging an epidemiological study where one population is compared against another and the factors mentioned by the affidavit are controlled.

Lilly's second claim, also supported by the Virnig affidavit, is that the State's Medicaid database is not sufficiently detailed to be used as a basis for a valid epidemiological analysis because it does not contain important information. While Lilly is free to challenge to validity of the database, it is not clear to me that access to individual records is the appropriate scientific method of doing so. In fact, Dr. Virnig was able to explain in detail why the database production is inadequate without having access to patient records. If the database is inadequate, that may be cause for its exclusion from trial. If the database is admitted at trial Lilly presumably will have ample opportunity to show the jury that the State's claims are based on bad science. But nowhere in Lilly's arguments is the claim that access to individual records is necessary to show that the database is inadequate.

Lilly also asserts that access to individual patient records is necessary to challenge the validity of entries coded in the database. Lilly is technically correct. Lilly is entitled to test the accuracy of the database and the only 100% foolproof way to challenge its accuracy is to start from scratch and compare individual records to data base entries.

But, a court is obligated to impose reasonable limitations on discovery, including limitations on pursuing information that might technically lead to the discovery of relevant information. In doing so a court may balance the need for the information against the cost, burden and harm caused by obtaining the data.

Discovery of the identity of Zyprexa users would be extraordinarily intrusive. Zyprexa is used to treat mental illness, including schizophrenia, certain stages of bi-polar diseases and other mood disorders. The records of Zyprexa users are bound to contain highly personal and private information.

Discovery of these records will cause significant delay in this case. The State estimates that its case involves prescriptions to approximately 700 Zyprexa patients. To obtain these records, the State or Lilly would be required to review the Medicaid database to identify the patients and their physicians. Then, a party would be required to send an order to the physicians to produce the records. The court may be required or feel obligated to offer each patient the opportunity to object to disclosure of his or her records. Even in the absence of that requirement or courtesy, I anticipate that the court will be required to resolve assertions of physician-patient privilege by some physicians.

Discovery of the records but with information regarding the actual identity of the patient removed would be less intrusive but equally time consuming. At oral argument the parties discussed retaining a medical records gathering company to obtain the records

(under the process described above) and then redacting the records prior to distribution to the parties. But this method of discovery would still entail considerable delay through the process of patient and physician identification, potential objections made by physicians, and the record editing process. Although neither party discussed the costs of this method of discovery, neither volunteered to pay for it.

I cannot determine exactly how long gathering this data would take. But I can say with some confidence that if the discovery is ordered, the March 2008 trial date will have come and gone before anyone sees an actual patient record.

In light of these burdens associated with the gathering of records, Lilly must make a strong showing that it is likely that the discovery will produce important evidence undermining the accuracy of the Medicaid database. Lilly has not made that showing.

As to post 1996 data, Lilly makes only general assertions of potentially inaccurate database entries. For pre 1996 data, the State has conceded that some of the data is "corrupt." But I do not know what that means. That may mean that the data is so unreliable that the State may not use it to establish epidemiological proof. In that case, Lilly doesn't need actual patient records to challenge that evidence.

Finally Lilly claims that it needs specific patient information to defend the case in ways unrelated to the epidemiological proof. But, when pressed Lilly was unable to make a compelling showing as to why the court should invade a mental health patient's privacy in pursuit of that goal.

Lilly asserts that it might want to present evidence from individual patients who liked the drug and felt better using it. But its not clear to me what that type of evidence would prove. The State does not assert that Zyprexa has no benefit or that some patients

were happy with the drug. Indeed, as Lilly points out, Zyprexa is still part of the State's Medicaid formulary – Medicaid physicians are free to prescribe it and seek payment for their services. Finally, even if evidence from satisfied actual Zyprexa users is relevant, surely Lilly can find that evidence by some means other than the method proposed here.

Discovery Regarding State's Medicaid Database

Lilly has asserted a number of objections regarding the State's production of information from its Medicaid Database (aside from information regarding the identity of Zyprexa patients). The Virnig affidavit specifically identifies those deficiencies.

At oral argument the State indicated that it did not object to producing the information identified by Dr. Virnig if it was actually in the database. The State has since confirmed that it has taken steps to provide that discovery. Thus I consider Lilly's motion resolved. I am mindful that the State's case may rise or fall in large part on the database. Lilly may renew its motion regarding the database if unsatisfied with the State's supplemental discovery.

Lilly also filed a separate motion seeking a subpoena of the original database maintained for the State by First Health Services Corporation. The State opposes.

The State asserts that it took the original database, manipulated it to exclude all patient identifying information, and produced (or will produce) the rest. The State claims that if Lilly has access to the original database, it will have access to patient identifying information.

Lilly doesn't dispute the second claim -- that access to the First Health records will result in access to patient identifying information. But Lilly asserts that it should

have that access because the production from the State has been so shoddy that Lilly cannot be assured of the accuracy of the edited database information.

For the reasons stated above, Lilly is not entitled to access to patient identifying information. Because the State has committed to making additional database discovery, Lilly's claim of risk of inaccurate production is not persuasive.

Rulings on Individual Discovery Requests

Lilly's Motion to Compel (August 6, 2007)

DENIED. See discussion of Access to Patient Medical Records above.

Lilly's Motion for Application For Commission to Issue Subpoena

DENIED. See discussion of Access to patient Medical records and Discovery Regarding State's Medicaid Data Base above.

State's First Motion to Compel (July 10, 2007)

DENIED in part and GRANTED in part.

Int. # 1, RFP # 1. Lilly withdrew its objection at oral argument.

Int. # 2, RFP # 2. DENIED. The State seeks information regarding communications about Zyprexa from Lilly to public payors of medical bills in Alaska other than Medicaid. Lilly argues that the information sought will not lead to admissible evidence because the State's claims are limited to misrepresentations to Medicaid. The State argues that this information is relevant because other public payor organizations could influence the State and prescribing physicians regarding the use of Zyprexa.

The State has access to the MDL collection that likely contains a representative sample of communications about Zyprexa made by Lilly to numerous organizations. It is also likely that the communications made to other payors in Alaska are similar to

communications made to the State and evidence of communications available in the MDL collection.

The evidence sought by the State is technically discoverable -- but it appears that the ability of other payors to influence the State is tenuous and the information sought is also likely redundant to information already available to the State. Given the State's interest in limiting unnecessary discovery so as to preserve the March 2008 trial date, Lilly's objection to the discovery as overbroad is sustained.

Int. # 3, RFP #3. Lilly withdrew is objection at oral argument.

Int. #6, RFP #9. DENIED. The State seeks information regarding communications about Zyprexa from Lilly to representatives of Alaska's executive or legislative branch. Lilly asserts the same objections noted above regarding Int. #2. The State does not have any evidence that other members of the Alaska executive branch or the Alaska Legislature influenced Alaska Medicaid regarding the use of Zyprexa. Lilly's objection is sustained.

Int. # 8, RFP #11; Int. #9, RFP # 12; Int. #10, RFP # 13; Int. # 11, RFP # 14. DENIED. The State seeks information regarding communications about Zyprexa from Lilly to patient advocacy groups, the American Psychiatric Association, the Texas Medication Algorithm Project, and Comprehensive NueroScience. Lilly's objections are sustained for the reasons stated above in Int. #2.

Int. #4, RFP #7. GRANTED in part. The State seeks information regarding call note references to Zyprexa generated by Lilly sales representatives in Alaska. Call notes are brief entries made by sales representatives documenting meetings with physicians. Lilly recognizes that the information may be discoverable but claims that retrieving the

information from its database is unduly burdensome. Lilly asserts that it must search approximately 40,000 entries in the call note database, a task that may take 1300 hours. The State disputes this assertion.

I do not have enough information to determine how burdensome the search for Alaska related Zyprexa call notes will be. But Lilly's proposed solution to the issue appears reasonable. Lilly proposes to produce a random sample of Zyprexa related call notes and suggests that any pattern relevant to these proceedings should reveal itself through that sample.

Lilly shall produce a random sample of 4,000 Alaska call notes referencing Zyprexa.

Int. #7, RFP # 10. Lilly withdrew its objection at oral argument.

Int. #12. GRANTED in part. The State seeks financial information regarding Lilly's worldwide revenue from Zyprexa sales, cost of products sold, gross margin, operating expenses, other expenses and income before taxes. Lilly agrees to produce publicly available information regarding sales and revenue, but objects to engaging in forensic accounting to calculate cost of products sold, gross margin, operating expenses and pre-tax income. While the more detailed financial information may help the State prove a motive for misrepresentation or corroborate the State's claim that Lilly's marketing tactics resulted in increased sales, the publicly available information offered by Lilly is relevant to the same issue. In light of the State's interest in efficient discovery to maintain the March 2008 trial date, Lilly's objections to produce other than publicly available information are sustained. Lilly must produce publicly available worldwide Zyprexa sales revenue responsive to this request.

Int. #13. Granted in part. The State seeks information regarding Lilly's Alaska Zyprexa sales revenue, and its gross margin and income before taxes. For the reasons stated regarding Int. # 12, Lilly must produce publicly available Alaska Zyprexa sales revenue responsive to this request.

Int. # 19 and 20. Lilly's 9//21/2007 letter is responsive to this request.

RFP # 4, 5 and 6. GRANTED. The State seeks documents regarding communications about Zyprexa from Lilly to Alaska physicians other than those made by Lilly sales representatives. Those include communications made by "thought leaders" – physicians or other consultants retained by Lilly to communicate about Zyprexa on Lilly's behalf. At oral argument Lilly counsel conceded that these documents may be discoverable and indicated that counsel had not made a search for them. Counsel also indicated that he would check but was not certain whether he had the capability of locating that information in Lilly's file database.

Lilly shall make a diligent search for documents responsive to these requests and produce those documents within 15 days. If unable to locate documents Lilly must explain efforts made in that regard.

Int. # 5, 15, 16, 17 and 18; RRFP # 8, 15, 17, and 18. GRANTED in part. Lilly did not object to the discoverability of the information sought by these requests but referred the State to the MDL collection to obtain that information. The State asks that Lilly at least designate the Bates ranges for that information to ease the burden of locating the documents.

At oral argument Lilly asserted that the MDL collection was so extensive, and the method of organization of documents so peculiar, that it was equally difficult for the State and Lilly to locate the information in the collection.

In my view, if Lilly knows the information sought by the State is in the MDL collection, then Lilly must have some idea as to how to locate the information. Thus, no later than September 27 Lilly must produce the information sought by the discovery, or provide some more specific means to assist the State to locate the information, or if unable to do either, explain what efforts were made to obtain the information.

Discovery Master Fees

The Discovery Master fees incurred to date for all matters submitted are $6350.00. The parties shall each pay one-half. (Invoice submitted to counsel)

Dan A. Hensley
Discovery Master

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, Plaintiff, vs. ELI LILLY AND COMPANY, Defendant.	Case No. 3AN-06-5630 CIV

ORDER GRANTING PERMISSION FOR NON-RESIDENT ATTORNEY T. SCOTT ALLEN JR. TO APPEAR AND PARTICIPATE

IT IS HEREBY ORDERED that the Motion and Application of Non-Resident Attorney T. Scott Allen Jr. for Permission to Appear and Participate as co-counsel for plaintiff State of Alaska in the above-referenced case is GRANTED.

DATED this 7 day of Sept, 2007.

BY THE COURT

Mark Rindner
Superior Court Judge

9-7-07

FELDMAN ORLANSKY & SANDERS
500 L STREET
FOURTH FLOOR
ANCHORAGE, AK
99501
TEL: 907.272.3538
FAX: 907.274.0819

I certify that on September 7, 2007 a copy of the above was mailed to each of the following at their addresses of record:
Sanders Jamieson

Administrative Assistant

000604

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, Plaintiff, vs. ELI LILLY AND COMPANY, Defendant.	Case No. 3AN-06-5630 CIV

MOTION AND APPLICATION OF NON-RESIDENT ATTORNEY T. SCOTT ALLEN JR. FOR PERMISSION TO APPEAR AND PARTICIPATE

Pursuant to Alaska Rule of Civil Procedure 81(a)(2), attorney T. Scott Allen Jr. of the law firm of Cruse, Scott, Henderson & Allen, L.L.P., whose mailing address is 2777 Allen Parkway, 7th Floor, Houston, Texas 77019-2133 (Telephone: (713) 650-6600), applies for permission to appear and participate as co-counsel for plaintiff State of Alaska in this action.

Mr. Allen will associate with the undersigned, Eric T. Sanders, a member of the Bar of this Court, who maintains an office at a place within the district, with whom the Court and opposing counsel may readily communicate regarding this case. My Consent of Local Counsel in support of this motion is filed herein.

Mr. Allen is a member in good standing of the Bar of the State of Texas. A copy of his Certificate of Good Standing with the Bar of the State of Texas is attached as

FELDMAN ORLANSKY & SANDERS
500 L STREET
FOURTH FLOOR
ANCHORAGE, AK
99501
TEL: 907.272.3538
FAX: 907.274.0819

Exhibit A. Proof of payment of the required fee to the Alaska Bar Association is also attached as Exhibit B.

DATED this 30 day of August, 2007.

FELDMAN ORLANSKY & SANDERS
Attorneys for State of Alaska

By_____
Eric T. Sanders
Alaska Bar No. 7510085

CONSENT OF LOCAL COUNSEL

The undersigned consents and moves for the granting of the application of T. Scott Allen Jr. to appear and participate as co-counsel in this action on behalf of plaintiff State of Alaska. The undersigned is authorized to practice law in the State of Alaska and is admitted to the Superior Court for the Third Judicial District at Anchorage.

Dated this 30 day of August, 2007.

FELDMAN ORLANSKY & SANDERS

By:_____
Eric T. Sanders
Alaska Bar No. 7510085
500 L Street, Suite 400
Anchorage, Alaska 99501
Telephone: (907) 272-3538
Facsimile: (907) 274-0819

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500 L STREET
FOURTH FLOOR
ANCHORAGE, AK
99501
TEL: 907.272.3538
FAX: 907.274.0819

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Motion and Application of Non-Resident Attorney T. Scott Allen Jr. for Permission to Appear and Participate was served by messenger on:

Brewster H. Jamieson
Lane Powell LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648

By Peggy S. Crowe
Date 9/7/07

FELDMAN ORLANSKY & SANDERS
500 L STREET
FOURTH FLOOR
ANCHORAGE, AK
99501
TEL: 907.272.3538
FAX: 907.274.0819

CERTIFICATE OF GOOD STANDING

UNITED STATES OF AMERICA §
§
SOUTHERN DISTRICT OF TEXAS §

I, MICHAEL N. MILBY, Clerk of the United States District Court for the SOUTHERN DISTRICT OF TEXAS

DO HEREBY CERTIFY That **T. Scott Allen Jr.,** Federal Bar No. **64**, was duly admitted to practice in said Court on August 12, 1985, and is in good standing as a member of the bar of said Court.

Dated August 24, 2007 at Houston, Texas.

MICHAEL N. MILBY, Clerk

By: _____
Shannon Jones
Attorney Admissions Deputy Clerk

United States District Court
1902 2002
Southern District of Texas

Exhibit A
Motion to Participate – Allen
Case No. 3AN-06-5630 Civ

000608

ALASKA BAR ASSOCIATION
P.O. Box 100279, Anchorage, Alaska 99510-0279
(907) 272-7469

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		8-30-07

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City: Houston TX 77019-2133

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	Rule 81		550. 00
	T. Scott Allen NA		
	assoc. w/ Eric Sanders 7510085		
	case # 3AN-06-5630		
	check # 30285		
	2007		
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Exhibit B
Motion to Participate – Allen
Case No. 3AN-06-5630 Civ

000609

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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STATE OF ALASKA
THIRD DIST.
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BY DEPUTY CLERK

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

MOTION OF NONRESIDENT ATTORNEY FOR PERMISSION TO APPEAR AND PARTICIPATE

Pursuant to Alaska R. Civ. P. 81(a)(2), defendant moves to permit Barry H. Boise of Pepper Hamilton LLP, 3000 Two Logan Square, Philadelphia, Pennsylvania 19103-2799, phone number 215-981-4881, to appear and participate as attorney for defendant in the above-captioned action. Mr. Boise, as shown by the attached certificate, is a member in good standing of the Bar of the Commonwealth of Pennsylvania and is not otherwise disqualified from practicing law in the State of Alaska.

Applicant will be associated with Brewster H. Jamieson, ASBA No. 8411122, of Lane Powell LLC, whose address is 301 West Northern Lights Boulevard, Suite 301, Anchorage, Alaska 99503-2648, phone number 907-277-9511, and who is authorized to practice in this court and the courts of this state. Brewster H. Jamieson consents to this association.

Pursuant to Civil Rule 81(a)(2)(D), proof of payment of the fee required to be paid to the Alaska Bar Association is also attached.

DATED this 31st day of August, 2007.

LANE POWELL LLC
Attorneys for Defendant

By _____
Brewster H. Jamieson, ASBA No. 8411122

I certify that on August 31, 2007, a copy of the foregoing was served by mail on:

Eric T. Sanders, Esq.
Feldman Orlansky & Sanders
500 L. Street, Suite 400
Anchorage, Alaska 99501-5911

_____
Nanci L. Biggs-Hall, CPS, RES
009867.0038/161537.1

LANE POWELL LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648
Telephone 907.277.9511 Facsimile 907.276.2631

Supreme Court of Pennsylvania

CERTIFICATE OF GOOD STANDING

Barry H. Boise, Esq.

DATE OF ADMISSION

December 12, 1991

The above named attorney was duly admitted to the bar of the Commonwealth of Pennsylvania, and is now a qualified member in good standing.

Witness my hand and official seal
Dated: August 30, 2007

Patricia A. Johnson
Chief Clerk

000611

ALASKA BAR ASSOCIATION
P.O. Box 100279, Anchorage, Alaska 99510-0279
(907) 272-7469

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Practice Limited to Mediation and Arbitration
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360-3177
dhensley@gci.net

September 17, 2007

Brewster Jamieson, Esq.
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301 W. Northern Lights Blvd., Suite 301
Anchorage, AK 99503

Eric Sanders
Feldman, Orlansky & Sanders
500 L Street, Suite 400
Anchorage, AK 99501

RE: State of Alaska v. Eli Lilly & Co., 3AN-06-05630 CI

DISCOVERY MASTER ORDER
STATE'S SECOND MOTION TO COMPEL

For the reasons stated below, the State's Second Motion to Compel is GRANTED.

The State's second motion to compel seeks discovery of information related to a March 28, 2007 letter from the FDA to Lilly regarding a drug called Symbyax, a combination of Zyprexa and Prozac. The letter refers to a study or research submitted by Lilly and expresses concern that information known to Lilly about weight gain, hyperglycemia, and hyperlipidemia associated with the drug was not included in Lilly's proposed warnings. The state seeks information regarding the studies and communications between Lilly and the FDA regarding the March 28 letter.

9-25-07

Lilly claims that information sought by the State is irrelevant because it was developed in 2006 or later and the State's claims are based on conduct preceding 2006. Lilly also argues that even if the information is relevant, the court should impose a discovery cutoff date similar to that imposed by the MDL (2004) because with a medicine on the market, new information is developed daily. Finally, Lilly claims that it should not be required to disclose information regarding Prozac, the other drug in Symbyax.

I find that the discovery seeks information that may lead to the relevant evidence. The FDA letter expresses the same concerns raised by the State in this litigation – whether Zyprexa (alone or in combination) creates an increased risk of diabetes symptoms. Although Lilly presented the studies to the FDA in 2006, it is possible that the studies were based on information available earlier. Finally, because the request focuses on a discrete issue, allowing this discovery will not automatically open Lilly up to ongoing discovery of information generated at later times.

Lilly shall answer the State's Interrogatories 1-9 within 10 days. Lilly shall produce the documents requested by the State's RFP Nos. 1-6 within 15 days.

To the extent that information responsive to these discovery requests is contained in the MDL discovery collection, Lilly's counsel shall identify a specific means of locating the information, or if unable to locate it, explain why counsel believes it is there and what efforts were made to locate it.

Lilly is not required to produce information regarding Prozac, if it is possible to segregate that information from the discovery.

Dan A. Hensley
Discovery Master

IN THE ASKA

ALASKA BAR ASSOCIATION
P.O. Box 100279, Anchorage, Alaska 99510-0279
(907) 272-7469

Customer's Order No.	Phone No.	Date
	206-223-7000	9-4-07

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City: Seattle, WA 98101-2338

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Qty.	Description	Price	Amount
	Rule 81		550 00
	Barry H. Boise NA ——		
	assoc. w/ Brewster Jamieson		
	8411122		
	case # 3AN-06-05630		
	Check # 658047		
	2007		

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'ANY'S
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August 10, 2007, as

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l pending before the

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identified below, as

ay name or substitute

date, and may name

the foregoing, Lilly

he trial in this matter.

d experience, as well

as the evidence produced in this case.

LANE POWELL LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648
Telephone 907.277.9511 Facsimile 907.276.2631

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, Plaintiff, v. ELI LILLY AND COMPANY, Defendant.	Case No. 3AN-06-05630 CI **DEFENDANT ELI LILLY AND COMPANY'S SUPPLEMENTAL IDENTIFICATION OF RETAINED EXPERT WITNESSES**

Defendant Eli Lilly and Company ("Lilly") submits the following identification of retained experts, supplementing the identification filed by Lilly on August 10, 2007, as required by the Court's Routine Pre-Trial Order. As was the case when Lilly filed its identification on August 10, Lilly submits this list without the benefit of evidence that may be considered by experts, including data from the State's Medicaid claims database and patient medical records. This evidence is the subject of a Motion to Compel pending before the Discovery Master. Accordingly, Lilly may identify additional witnesses, and Lilly's witnesses may be asked to testify about topics in addition to those identified below, as necessary, to address the evidence discovered in the case. Lilly also may name or substitute additional experts or withdraw some experts named herein at a later date, and may name additional experts to respond to the State's expert reports. Subject to the foregoing, Lilly hereby advises it may call the following expert witnesses to testify at the trial in this matter. The following experts will testify based on their education, training, and experience, as well as the evidence produced in this case.

LANE POWELL LLC
301 West Northern Lights Boulevard, Suite 301
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EXPERT WITNESSES

1. Ernst Berndt, Ph.D.
   Sloan School of Management
   MIT, E52-452
   50 Memorial Drive
   Cambridge, MA 0214241

Dr. Berndt is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and respond to the reports and opinions of the State's experts.

2. Robert S. Busch, M.D.
   The Endocrine Group, LLP
   Washington Center Medical Arts
   1365 Washington Ave., Ste 300
   Albany, NY 12206-1035

Dr. Busch is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and regarding the care and treatment of diabetes and complications of diabetes, and respond to the reports and opinions of the State's experts. He will also analyze individual medical records to assess issue of causation, and he will testify about the cost of individual treatment of diabetes.

3. Iain Cockburn, Ph.D.
   School of Management
   Boston University
   595 Commonwealth Avenue
   Boston, MA 02215

Dr. Cockburn is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and respond to the reports and opinions of the State's experts.

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4. Boris Draznin, M.D., Ph.D.
UCHSC Endocrinology
4200 E. 9th Ave, B 151
Denver, CO 80262

Dr. Draznin is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and regarding the care and treatment of diabetes and complications of diabetes, and respond to the reports and opinions of the State's experts. He will also analyze individual medical records to assess issue of causation, and he will testify about the cost of individual treatment of diabetes.

5. William S. Gilmer, M.D.
Northwestern University
Feinberg School of Medicine
Department of Psychiatry and Behavioral Sciences
446 E. Ontario, Suite 7-100
Chicago, IL 60611

Dr. Gilmer is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and respond to the reports and opinions of the State's experts. Dr. Gilmer also will testify about the cost-benefit analysis involved in individual prescribing decisions.

6. Dana Goldman, Ph.D.
RAND Corporation
1776 Main Street
Santa Monica, CA 90407

Dr. Goldman is expected to provide testimony about his review and analysis of Alaska Medicaid data regarding the incidence of medical conditions experienced by Zyprexa users compared to other groups in the Alaska Medicaid population, regarding health care costs for patients using mental health medications, including his review of Alaska Medicaid cost data for Medicaid recipients using Zyprexa and other mental health medications. Dr. Goldman also will testify about conclusions that can, and cannot, be drawn from the data in the State's Medicaid database, and otherwise respond to the reports and opinions of the State's experts.

7. Rodney A. Hayward, M.D.
Veterans Affairs Ann Arbor Healthcare System
2215 Fuller Road
Room Mailstop 11H
Ann Arbor, MI 48105-2399

Dr. Hayward is expected to provide expert testimony concerning the diagnosis, care and treatment of diabetes and the complications of diabetes, the epidemiology of diabetes among patients with severe mental illness, and respond to the State's efforts to attribute the sequellae of diabetes to the use of atypical antipsychotics, including Zyprexa, as opposed to other risk factors for the disease. Dr. Hayward also will testify about conclusions that can, and cannot, be drawn from the data in the State's Medicaid database, and otherwise respond to the State's expert reports.

8. Sean Hennessy, Ph.D., Pharm.D.
Center for Clinical Epidemiology and Biostatistics
University of Pennsylvania School of Medicine
803 Blockley Hall, 423 Guardian Drive
Philadelphia, PA 19104-6021

Dr. Hennessy is expected to provide testimony about the epidemiology of diabetes, his review and analysis of Alaska Medicaid data regarding the incidence of medical conditions experienced by Zyprexa users compared to other groups in the Alaska Medicaid population. Dr. Hennessy also will testify about conclusions that can, and cannot, be drawn from the data in the State's Medicaid database, and otherwise respond to the reports and opinions of the State's experts.

9. William H. Herman, M.D., M.P.H.
A. Alfred Taubman Health Care Center
1500 East Medical Center Drive
Room 3920 H
Ann Arbor, MI 48109-0354

Dr. Herman is expected to provide expert testimony generally in the fields of endocrinology and epidemiology concerning potential risk factors for diabetes, the epidemiology of diabetes among the mentally ill, the State's efforts to attribute to Zyprexa an alleged increased risk of diabetes independent of severity of disease state and other confounding factors, and the State's efforts to attribute to Zyprexa a cost of care for diabetes allegedly attributed to Zyprexa. Dr. Herman also will testify about conclusions that can, and

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cannot, be drawn from the data in the State's Medicaid database, and otherwise respond to the State's expert reports.

10. Silvio E. Inzucchi, M.D.
Yale University School of Medicine
Section of Endocrinology, LLCI-101
333 Cedar Street
New Haven, CT 06520-8020

Dr. Inzucchi is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and regarding the care and treatment of diabetes and complications of diabetes, and respond to the reports and opinions of the State's experts.

11. David A. Kahn, M.D.
Columbia University Medical Center
Harkness Pavilion
180 Fort Washington Avenue, HP 242
New York, NY 10032

Dr. Kahn is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and respond to the reports and opinions of the State's experts.

12. Nicholas Kletti, M.D.
2211 Congress Street, MSC 337
Portland, Maine 04122

Dr. Kletti is expected to provide expert testimony regarding the treatment of mentally ill patients in Alaska, testimony concerning the consequences of untreated severe mental illness, including schizophrenia and bipolar, the use of mental health medications, including the use of typical and atypical antipsychotics. Dr. Kletti will also testify as to the risk benefit analysis involved in individual decisions about which mental health drugs to prescribe, the sources of information available to prescribers when making that determination, and will respond to the reports and opinions of the State's experts.

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13. Patricia MacTaggart, M.M.A., M.B.A.
Department of Health Policy
George Washington University Medical Center School
of Public Health and Health Services #800
2021 K St.
Washington, DC 20006

Ms. MacTaggart is expected to provide testimony regarding Medicaid reimbursement policy, and Medicaid claims payment and data management. She also will testify about the creation and use of Medicaid claims data, and will respond to the reports and opinions of the State's experts.

14. Jeffrey S. McCombs, Ph.D.
1540 East Alcazar St.
CHP 140
Los Angeles, CA 90089-9004

Dr. McCombs is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and about health care costs for patients using mental health medications, including his review of Alaska Medicaid healthcare cost data for Medicaid recipients using Zyprexa and other mental health medications. Dr. McCombs also will testify about conclusions that can, and cannot, be drawn from the data in the State's Medicaid database, and otherwise respond to the reports and opinions of the State's experts.

15. Mark Olfson, M.D., M.P.H.
New York Psychiatric Institute
1051 Riverside Drive
Box 24
New York, NY 10032

Dr. Olfson is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and respond to the reports and opinions of the State's experts.

16. Tomas Philipson, Ph.D.
University of Chicago
Irving B. Harris Graduate School of Public Policy Studies
1155 E. 60th St, Suite 112
Chicago, IL 60637

Dr. Philipson is expected to testify about his review and analysis of Alaska Medicaid data regarding the incidence of medical conditions experienced by Zyprexa users compared to other groups in the Alaska Medicaid population, and about health care costs for patients using mental health medications, including his review of Alaska Medicaid cost data for Medicaid recipients using Zyprexa and other mental health medications. Dr. Philipson also will testify about conclusions that can, and cannot, be drawn from the data in the State's Medicaid database, and otherwise respond to the reports and opinions of the State's experts.

17. Thomas Schwenk, M.D.
Women's Hospital
1500 East Medical Center Drive
Room L2003
Ann Arbor, MI 48109-0239

Dr. Schwenk is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and respond to the reports and opinions of the State's experts.

18. Carol A. Tamminga, M.D.
UT Southwestern Medical Center at Dallas
5323 Harry Hines Blvd.
Dallas, TX 75390-9070

Dr. Tamminga is expected to provide testimony consistent with opinions expressed in her report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and respond to the reports and opinions of the State's experts.

19. Beth A. Virnig, Ph.D., M.P.H.
School of Public Health
University of Minnesota
Mayo Mail Code 729
420 Delaware Street SE
Minneapolis, MN 55455-0392

Dr. Virnig is expected to provide testimony about the epidemiology of diabetes, her review and analysis of Alaska Medicaid data regarding the incidence of medical conditions experienced by Zyprexa users compared to other groups in the Alaska Medicaid population. Dr. Virnig also will testify about conclusions that can, and cannot, be drawn

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from the data in the State's Medicaid database, and otherwise respond to the reports and opinions of the State's experts.

DATED this 4th day of September, 2007.

Attorneys for Defendant

PEPPER HAMILTON LLP
Andrew R. Rogoff, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
3000 Two Logan Square, Suite 3000
Philadelphia, Pennsylvania 19103-2711
(215) 981-4000

LANE POWELL LLC

By _____
Brewster H. Jamieson, ASBA No. 8411122
Andrea E. Girolamo-Welp, ASBA No. 0211044

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Anchorage, Alaska 99503-2648
Telephone 907.277.9511 Facsimile 907.276.2631

I certify that on September 4, 2007, a copy of the foregoing was served by mail on:

Eric T. Sanders, Esq.
Feldman Orlansky & Sanders
500 L. Street, Suite 400
Anchorage, Alaska 99501-5911

_____

009867.0038/161597.1

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

NOTICE OF FILING EXHIBIT A, ENDORSEMENT OF PROTECTIVE ORDER

COME NOW the parties, through their respective counsel, and give notice to the Court of jointly filing the attached Endorsement of Protective Order, Exhibit A to the Protective Order. Exhibit A was inadvertently not attached to the original Protective Order filed with the court and subsequently signed by Judge Rindner on July 30, 2007. The parties stipulate and agree that this Exhibit A is the Endorsement of Protective Order.

LANE POWELL LLC
Attorneys for Defendant

Dated: August 22, 2007

By _____
Brewster H. Jamieson, ASBA No. 8411122
Andrea E. Girolamo-Welp, ASBA No. 0211044

FELDMAN ORLANSKY & SANDERS
Attorneys for Plaintiff

Dated: August 22, 2007

By _____
Eric T. Sanders, ASBA No. 75100085

LANE POWELL LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648
Telephone 907.277.9511 Facsimile 907.276.2631

ORDER

IT IS SO ORDERED that Exhibit A attached to the Notice of Filing Exhibit A, Endorsement of Protective Order is the Endorsement of Protective Order to the July 30, 2007 Protective Order.

DATED this 27 day of August, 2007.

The Honorable Mark Rindner
Judge of the Superior Court

009867.0038/161499.1

I certify that on August 27, 2007 a copy of the above was mailed to each of the following at their addresses of record:
Sanders Jamieson

Administrative Assistant

LANE POWELL LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648
Telephone 907.277.9511 Facsimile 907.276.2631

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

ENDORSEMENT OF PROTECTIVE ORDER

I hereby attest to my understanding that information or documents designated Confidential are provided to me subject to the Protective Order ("Order") dated July 30, 2007 (the "Protective Order"), in the above-captioned litigation ("Action"); that I have been given a copy of and have read the Order; and that I agree to be bound by its terms. I also understand that my execution of this Endorsement of Protective Order, indicating my agreement to be bound by the Order, is a prerequisite to my review of any information or documents designated as Confidential pursuant to the Order.

I further agree that I shall not 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 maybe used only for the purposes authorized by the Order.

I further agree to return all copies of any Confidential Discovery Materials I have received to counsel who provided them to me upon completion of the purpose for which they were provided and no later than the conclusion of this Action.

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301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648
Telephone 907.277.9511 Facsimile 907.276.2631

I further agree and attest to my understanding that my obligation to honor the confidentiality of such discovery material will continue even after this Action concludes.

I further agree and attest to my understanding that, if I fail to abide by the terms of the Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the Superior Court for the State of Alaska, Third Judicial District at Anchorage, for the purposes of any proceedings relating to enforcement of the Order.

I further agree to be bound by and to comply with the terms of the Order as soon as I sign this Agreement, regardless of whether the Order has been entered by the Court.

Date: _____

By: _____
Signature

_____
Printed Name

_____
Company

009867.0038/160900.1

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-5630 CI

ORDER

The State's Motion to Compel Discovery dated July 10, 2007 is referred to the Discovery Master.

DATED at Anchorage, Alaska, this 17th day of August 2007.

MARK RINDNER
Superior Court Judge

I certify that on August 17, 2007 a copy was mailed to:
E. Sanders B. Jamieson
D. Hensley

Administrative Assistant

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ELI LILLY AND COMPANY,	)	
	)	Case No. 3AN-06-5630 CIV
Defendant.	)	
	)	

ORDER GRANTING REQUEST FOR ORAL ARGUMENT

IT IS HEREBY ORDERED that plaintiff's request for oral argument on its Motion to Compel Discovery is GRANTED. Oral argument shall be held on the ____ day of_____, 2007, at _____ ___.m., before the Judge Mark Rindner, at the Alaska Court System, 825 West 4th Avenue, Anchorage, Alaska, in the Courtroom 403.

DATED this ____ day of _____, 2007.

_____
Mark Rindner
Superior Court Judge

not used 8-17-07

FELDMAN ORLANSKY & SANDERS
500 L STREET
FOURTH FLOOR
ANCHORAGE, AK
99501
TEL: 907.272.3538
FAX: 907.274.0819

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3AN-06-05630 CI
	)	
ELI LILLY AND COMPANY,	)	
	)	
Defendant.	)	
	)	

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DISCOVERY

The State of Alaska ("the State") has filed a Motion to Compel responses to several of its Requests for Production of Documents and Interrogatories previously served on Eli Lilly and Company ("Lilly"). The Court finds the State's discovery requests to be reasonably calculated to lead to the discovery of admissible evidence, and further finds Lilly has asserted no meritorious objection to those requests. Therefore, the Court hereby orders Lilly to respond, within 20 days, to the State's Requests for Production and Interrogatories as follows:

1. Interrogatory Nos. 1, 2, 3, 6, 8, 9, 10, and 11 – Lilly shall identify its employees responsible for Zyprexa-related communications with: representatives of Alaska's Medicaid program; representatives of other public payors in Alaska; members of any organization, committee or authority responsible for determining which

not used 8-17-07

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prescription drugs will be on any Alaska formulary, pharmaceutical and therapeutics list or preferred drug list; employees or representatives of Alaska's executive or legislative branch of government; patient advocacy groups; the American Psychiatric Association or any of its work groups; employees, representatives, members or participants in the Texas Medication Algorithm Project (TMAP); and Comprehensive NeuroScience (CNS).

2. Interrogatory No. 4 – Lilly shall identify its sales representatives in Alaska from October 1996 to the present and describe the organizational relationship of its sales representatives to its Chief Executive Officer.

3. Interrogatory Nos. 5, 15, 16, 17, and 18 – Lilly refers the State generally to the documents and depositions in the MDL collection, but does not specify by bates range or deponent. Lilly shall respond specifically to the State's interrogatories by referring to bates ranges or specific deponents which it contends provide responsive information.

4. Interrogatory No. 7 – Lilly shall identify its employees or others, including but not limited to third party marketing entities, responsible for developing and implementing marketing programs to support access to Medicaid recipients.

5. Interrogatory Nos. 12 and 13 – Lilly shall produce the financial information related to the sales of Zyprexa worldwide, and specifically in Alaska, requested by the State.

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ANCHORAGE, AK
99501
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6. Interrogatory Nos. 19 and 20 – Lilly shall identify any civil or criminal investigations of Lilly or actions against it related to Zyprexa, and shall identify any particular Lilly employees or representatives involved in those investigations or actions.

7. Request for Production Nos. 1, 2, 3, 9, 11, 12, 13, and 14 – Lilly shall produce any Zyprexa-related communications between Lilly employees or representatives and representatives of the following: Alaska's Medicaid program; representatives of other public payors in Alaska; members of any organization, committee or authority responsible for determining which prescription drugs will be on any Alaska formulary, pharmaceutical and therapeutics list or preferred drug list; employees or representatives of Alaska's executive or legislative branch of government; patient advocacy groups; the American Psychiatric Association or any of its work groups; employees, representatives, members or participants in the Texas Medication Algorithm Project (TMAP); and Comprehensive NeuroScience (CNS).

8. Request for Production Nos. 4, 5, and 6 – Lilly shall provide Zyprexa-related communications between its sales representatives, "thought leaders" and other consultants retained or paid by Lilly, or any medical doctor who is a regular employee of Lilly, and healthcare providers in Alaska.

9. Request for Production No. 7 – Lilly shall produce a database containing call notes generated by its sales representatives in Alaska.

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ANCHORAGE, AK
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10. Request for Production No. 8 – Lilly shall provide color copies of advertisements for Zyprexa which appeared in medical journals published in the United States.

11. Request for Production No. 10 – Lilly shall provide documents regarding the development and implementation of Zyprexa-related marketing programs supporting access to Zyprexa Medicaid recipients.

12. Request for Production No. 15 – Lilly shall provide the documents identified in response to Plaintiff's Interrogatories.

13. Request for Production Nos. 17 and 18 – Lilly shall provide documents submitted to, generated or reviewed by its Global Product Labeling Committee or Policy Committee which relate or refer to Zyprexa.

14. Request for Production Nos. 19 and 20 – Lilly shall produce any documents, including testimony or transcripts of Lilly employees or representatives, related to any civil or criminal investigation or action the Court has ordered Lilly to identify in response to Interrogatory Nos. 19 and 20.

Dated this ___ day of _____, 2007.

BY THE COURT

_____
Mark Rindner
Superior Court Judge

FELDMAN ORLANSKY
& SANDERS
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FOURTH FLOOR
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NCS 8/13

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

DEFENDANT ELI LILLY AND COMPANY'S
IDENTIFICATION OF RETAINED EXPERT WITNESSES

Defendant Eli Lilly and Company ("Lilly") identifies the following retained experts as required by the Court's Routine Pre-Trial Order. Lilly submits this list without the benefit of evidence that may be considered by its experts, including data from the State's Medicaid claims database and patient medical records. Accordingly, Lilly's witnesses may be asked to testify about topics, in addition to those identified below, as necessary to address the evidence discovered in the case. Lilly also may name or substitute additional experts or withdraw some experts named herein at a later date, and may name additional experts to respond to the State's expert reports. Subject to the foregoing, Lilly hereby advises it may call the following expert witnesses to testify at the trial in this matter.

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EXPERT WITNESSES

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   Sloan School of Management
   MIT, E52-452
   50 Memorial Drive
   Cambridge, MA 0214241

Dr. Berndt is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and respond to the reports and opinions of the State's experts.

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   The Endocrine Group, LLP
   Washington Center Medical Arts
   1365 Washington Ave., Ste 300
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   Boston University
   595 Commonwealth Avenue
   Boston, MA 02215

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UCHSC Endocrinology
4200 E. 9th Ave, B 151
Denver, CO 80262

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Northwestern University
Feinberg School of Medicine
Department of Psychiatry and Behavioral Sciences
446 E. Ontario, Suite 7-100
Chicago, IL 60611

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6. Dana Goldman
RAND Corporation
1776 Main Street
Santa Monica, CA 90407

Dr. Goldman is expected to provide testimony about his review and analysis of Alaska Medicaid data regarding the incidence of medical conditions experienced by Zyprexa users compared to other groups in the Alaska Medicaid population, and about his review of Alaska Medicaid cost data for Medicaid recipients using Zyprexa and other mental health medications, and respond to the reports and opinions of the State's experts.

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Center for Clinical Epidemiology and Biostatistics
University of Pennsylvania School of Medicine
803 Blockley Hall, 423 Guardian Drive
Philadelphia, PA 19104-6021

Dr. Hennessy is expected to provide testimony about his review and analysis of Alaska Medicaid data regarding the incidence of medical conditions experienced by Zyprexa users compared to other groups in the Alaska Medicaid population, and respond to the reports and opinions of the State's experts. Dr. Hennessy also will testify about conclusions than can, and cannot, be drawn from the data in the State's Medicaid database.

8. Silvio E. Inzucchi, MD
Yale University School of Medicine
Section of Endocrinology, LLCI-101
333 Cedar Street
New Haven, CT 06520-8020

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Columbia University Medical Center
Harkness Pavilion
180 Fort Washington Avenue, HP 242
New York, NY 10032

Dr. Kahn is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and respond to the reports and opinions of the State's experts.

10. Patricia MacTaggart, MMA, MBA
Department of Health Policy
George Washington University Medical Center School
of Public Health and Health Services #800
2021 K St.
Washington, DC 20006

Ms. MacTaggart is expected to provide testimony regarding Medicaid reimbursement policy, and Medicaid claims payment and data management. She also will testify about the creation and use of Medicaid claims data.

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1540 East Alcazar St.
CHP 140
Los Angeles, CA 90089-9004

Dr. McCombs is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and about his review of Alaska Medicaid healthcare cost data for Medicaid recipients using Zyprexa and other mental health medications, and respond to the reports and opinions of the State's experts.

12. Mark Olfson, MD, MPH
New York Psychiatric Institute
1051 Riverside Drive
Box 24
New York, NY 10032

Dr. Olfson is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and respond to the reports and opinions of the State's experts.

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13. Tomas Philipson, PhD
University of Chicago
Irving B. Harris Graduate School of Public Policy Studies
1155 E. 60th St, Suite 112
Chicago, IL 60637

Dr. Philipson is expected to testify about his review and analysis of Alaska Medicaid data regarding the incidence of medical conditions experienced by Zyprexa users compared to other groups in the Alaska Medicaid population, and about his review of Alaska Medicaid cost data for Medicaid recipients using Zyprexa and other mental health medications, and respond to the reports and opinions of the State's experts.

14. Thomas Schwenk, MD
Women's Hospital
1500 East Medical Center Drive
Room L2003
Ann Arbor, MI 48109-0239

Dr. Schwenk is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and respond to the reports and opinions of the State's experts.

15. Carol A. Tamminga, MD
UT Southwestern Medical Center at Dallas
5323 Harry Hines Blvd.
Dallas, TX 75390-9070

Dr. Tamminga is expected to provide testimony consistent with opinions expressed in her report and declaration provided in MDL 1596, In Re Zyprexa Products Liability Litigation, and respond to the reports and opinions of the State's experts.

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DATED this 10th day of August, 2007.

Attorneys for Defendant

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Eric J. Rothschild, admitted *pro hac vice*
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Philadelphia, PA 19103
(215) 981-4000

LANE POWELL LLC

By _____
Brewster H. Jamieson, ASBA No. 8411122
Andrea E. Girolamo-Welp, ASBA No. 0211044

I certify that on August 10, 2007, a copy of the foregoing was served by hand on:

Eric T. Sanders, Esq.
Feldman Orlansky & Sanders
500 L. Street, Suite 400
Anchorage, Alaska 99501-5911

_____

00986/0038/161405.1

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

ORDER

THIS COURT, having considered defendant's Motion for Extension of Time to Identify Retained Experts, all responses thereto, as well as applicable law:

IT IS HEREBY ORDERED that defendant's motion is GRANTED.

ORDERED this _____ day of _____, 2007.

The Honorable Mark Rindner
Judge of the Superior Court

I certify that on July 31, 2007, a copy of the foregoing was served by fax and mail, on:

Eric T. Sanders, Esq.
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Not used 8-3-07

JUL 31 2007

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

MOTION FOR EXTENSION OF TIME TO IDENTIFY RETAINED EXPERTS

Defendant Eli Lilly and Company ("Lilly"), by and through counsel, hereby moves the Court for an extension of time to Identify Retained Experts.

The Court's Routine Pretrial Order entered on January 10, 2007, requires the parties to identify retained experts on August 1, 2007. The Order was entered before the parties submitted pleadings regarding the method by which the State proposes to prove its claims, which was argued to the Court at a hearing on July 12, 2007. The parties also have disagreements about the discovery each side is entitled to, which they are preparing to discuss this week, and which will likely require determinations by the Court. It is Lilly's position that until the Court rules on the State's motion regarding how it will prove its claims, and the parties' discovery disputes are resolved, it is premature to identify expert witnesses. The type of experts that will be helpful to the trier of fact will be guided by how the case is to be proved, and what evidence will be available for consideration.

Beyond the specific deadline for identifying retained experts, Lilly believes that the Court and parties should revisit other deadlines in the Routine Pretrial Order, including the completion of fact discovery by December 10, 2007, and trial on March 10, 2008. The discovery required for this case will involve, among other things, the collection of medical

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records, and prescriber depositions, which, based on past experience, will take considerably more time to arrange and carry out than the schedule currently permits. It will also require the production and analysis of Alaska's Medicaid claims database. Lilly proposes that once the Court rules on the State's Motion for Rule of Law, that the Court call a conference to discuss the resolution of discovery disputes and the schedule for discovering the case.

Lilly sought agreement from the State to an extension of this deadline for both parties, which was denied. *See* Exhibit A, attached to the Affidavit of Brewster H. Jamieson in support of the Motion for Expedited Consideration. Accordingly, Lilly moves this Court to extend the time for identifying retained experts until after it has ruled on the State's Motion for Rule of Law and the parties' disputes relating to their Responses to the First Sets of Discovery Requests, and, in any event, no earlier than September 3, 2007. Lilly also requests a conference to discuss other aspects of the scheduling order for this case.

DATED this 31st day of July, 2007.

Attorneys for Defendant

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I certify that on July 31, 2007, a copy of the foregoing was served by mail and fax, on:

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Toni Gerken

009867.0038/161294.1

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3AN-06-05630 CI
	)	
ELI LILLY AND COMPANY,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S EXPERT WITNESS LIST

Pursuant to the Court's Standard Pre-trial Scheduling Order entered in this action, Plaintiff hereby advises it may call the following expert witnesses to testify at the trial in this matter.

EXPERT WITNESSES

1. David Allison, Ph. D.
University of Alabama at Birmingham
1665 University Boulevard, RPHB 327
Birmingham, AL 35294-0022

Dr. Allison is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596; In Re Zyprexa Products Liability Litigation.

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2. Judith Benkover, Ph.D.
Innovative Health Solution

Dr. Benkover is expected to provide testimony regarding the expected cost of diabetes and other outcomes resulting from the ingestion of Zyprexa resulting in damages to the State.

3. Zachary Bloomgarden, M.D.
Clinical Professor
Department of Medicine
Mount Sinai School of Medicine
35 East 85th Street
New York, NY 10028

Dr. Bloomgarden is expected to provide testimony regarding the expected costs of treatment for diabetes, diabetes-related conditions and other Zyprexa-related conditions.

4. Frederick Brancati, M.D., Ph. D.
Welch Center for Prevention, Epidemiology, and Clinical Research
Johns Hopkins Medical Institutions
2024 East Monument Street, Suite 2-619
Baltimore, MD 21205

Dr. Brancati is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596; In Re Zyprexa Products Liability Litigation. In addition, Dr. Brancati will testify regarding the appropriate Medicaid Codes to be considered in epidemiology and he will testify regarding the nature and extent of diabetes, diabetes-related conditions and other Zyprexa-related conditions within Alaska's Medicaid population before and after ingestion of Zyprexa.

5. David Calvin Goff, Jr., M.D., Ph.D.
Public Health Sciences and Internal Medicine
Wake Forest University School of Medicine
641 Summit Street
Winston Salem, NC 27101

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Dr. Goff is expected to provide testimony consistent with opinions expressed in his affidavit provided in MDL 1596; In Re Zyprexa Products Liability Litigation.

6. John L. Gueriguian, M.D.
14513 Woodcrest Drive
Rockville, MD 20853-2371

Dr. Gueriguian is expected to provide testimony consistent with opinions expressed in his report provided in MDL 1596; In Re Zyprexa Products Liability Litigation.

7. Stefan P. Kruszewski, M.D.
732 Forest Road
Harrisburg, PA 17112

Dr. Kruszewski is expected to provide testimony regarding good medical practice regarding the use of atypical antipsychotics, the history of Zyprexa, and the inadequacies of Zyprexa's labeling.

8. Laura Plunkett, Ph.D., DABT
1223 Melford Drive
Houston, TX 77077-1544

Dr. Plunkett is expected to provide testimony consistent with opinions expressed in her statement provided in MDL 1596; In Re Zyprexa Products Liability Litigation.

9. Robert A. Rosenheck, M.D.
66 Elmwood Road
New Haven, CT 06515

Dr. Rosenheck is expected to provide testimony consistent with opinions expressed in his declaration provided in MDL 1596; In Re Zyprexa Products Liability Litigation.

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10. H. Dennis Tolley, Ph.D.
Department of Statistics
Brigham Young University
206 TMCB
Provo, UT 84602

Dr. Tolley is expected to testify regarding his review and analysis of Alaska Medicaid data to determine the nature and extent of diabetes, diabetes-related conditions and other Zyprexa-related conditions within the population, and to quantify the morbidity resulting from the introduction of Zyprexa into the Alaska Medicaid population.

11. Brian R. Tulloch, M.D.
Diagnositic Clinic of Houston
6448 Fannin Street
Houston, TX 77030

Dr. Tulloch is expected to testify regarding the epidemiology of diabetes, diabetes-related conditions and other Zyprexa-related conditions generally and in particular with respect to the Alaska Medicaid population.

12. William C. Wirshing, M.D.
VA Greater Los Angeles Healthcare System – West Los Angeles
11301 Wilshire Blvd.
Building 210, Room 8 (B-151H)
Los Angeles, CA 90073

Dr. Wirshing is expected to provide testimony consistent with opinions expressed in his report and declaration provided in MDL 1596; In Re Zyprexa Products Liability Litigation.

Respectfully SUBMITTED and DATED this 1 day of August, 2007

FELDMAN, ORLANSKY & SANDERS
Counsel for Plaintiff

BY _____
Eric T. Sanders
Alaska Bar No. 7510085

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Counsel for Plaintiff

RICHARDSON, PATRICK, WESTBROOK
& BRICKMAN, LLC
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Christiaan A. Marcum
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(843) 727-6500
Counsel for Plaintiff

Certificate of Service
I hereby certify that a true and correct copy of **Plaintiff's Expert Witness List** was served by messenger on:

Brewster H. Jamieson
Lane Powell LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648

By Peggy S Crowe
Date 8/1/07

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3AN-06-05630 CI
	)	
ELI LILLY AND COMPANY,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S RESPONSE TO DEFENDANT ELI LILLY AND COMPANY'S MOTION FOR EXTENSION OF TIME TO IDENTIFY RETAINED EXPERTS

The State opposes Lilly's motion for an extension of time in which to identify retained experts. Litigation involving Zyprexa has been proceeding in various other state courts and in the federal courts for over three years. In the pending Zyprexa Multidistrict Litigation, *In re Zyprexa Products Liability Litigation*, MDL 1596, Lilly identified thirteen experts in March 2007. Those experts provided written reports and were presented for deposition months ago.

While the State's case against Lilly differs in some respects from the cases pending in the MDL, Lilly obviously knows what the generic liability and causation issues are. The issues in this litigation are sufficiently well known to the parties to identify retained experts. On January 11, 2007, this Court entered a Pretrial Order which set August 1, 2007 as the time for identification of retained experts. Despite the fact that

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Lilly has had notice of this deadline for almost eight months, it decided just days ago that it would notify the State and the Court that it had no intention of meeting this deadline. Further, without providing any justification for its unwillingness to comply with the Court's Pretrial Order, Lilly seeks an open-ended extension while the parties work out discovery disputes. Lilly's stated justifications for the extension request were uncertainty regarding how the case would proceed and what evidence would be available for use at trial. In light of the Court's ruling yesterday that it would be premature to decide exactly the manner in which the trial will proceed, and that further motion practice would be necessary to define the proper scope of discovery and what evidence will be available for use at trial, Lilly is essentially asking that the Court indefinitely extend the deadline for designating experts.

The existence of various legal, evidentiary or discovery disputes between the parties does not necessitate a postponement. Such disputes exist in every litigation, and regardless of their presence, parties typically must obey court ordered deadlines for designating witnesses, expert or otherwise. Lilly has made no showing why, at the eleventh hour, it must have the requested extension of time to name its experts. The State has filed pleadings describing the nature of its claims and the proof it intends to offer. Lilly has done the same. In light of this, Lilly knows exactly – and has known for some time – what experts it may need to dispute evidence proffered by the State, and what experts it may need to support its defenses. Again, it identified thirteen experts in similar

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litigation months ago. Certainly it could identify some, if not all, of its experts in this case. Presumably there may even be some "crossover" of the experts Lilly has previously identified. The notion that Lilly cannot name a single expert at this juncture is incomprehensible.

Lilly is well aware of a number of issues in this case that are certain to remain in the case until its conclusion. Some obvious examples include, but are not limited to, whether Zyprexa's warning label was adequate and whether Zyprexa causes diabetes or other conditions. At the very least, Lilly could identify some experts on issues it knows or anticipates will be in the case, and if the need arises at a later date, name additional experts or withdraw some of those previously named. Lilly's last-minute assertion that it is not in a position to identify *any* experts can be viewed as nothing more than an effort to delay the parties' progress in this litigation.

This Court has put in place a schedule that will put the parties on a reasonable track through discovery to trial. From day one, this schedule has specified a date certain for the parties to identify retained expert witnesses. Also from day one, Lilly has taken every opportunity to delay its obligations under this schedule. At no time before this deadline did Lilly indicate to the Court or the State it could not timely identify experts. Even now, Lilly has not put forth a single plausible reason why it cannot do so. The Court should not allow Lilly to treat its schedule so cavalierly in what appears to be a

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tactic aimed at derailing the parties' progress toward trial. The State respectfully requests that the Court deny Lilly's Motion.

Dated this 2 day of August, 2007.

FELDMAN, ORLANSKY & SANDERS
Counsel for Plaintiff

BY _____

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Alaska Bar No. 7510085
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(907) 272-3538

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Counsel for Plaintiff

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Certificate of Service

I hereby certify that a true and correct copy of **Plaintiff's Response to Lilly's Motion for Extension of time to Identify Retained Experts** was served by messenger on:

Brewster H. Jamieson
Lane Powell LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648

By Peggy S Capul
Date 8/2/07

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

ORDER

The Court, upon consideration of Plaintiff's Motion and Memorandum Describing its Claims and Proofs, and Defendant Eli Lilly and Company's Response thereto, and being otherwise fully apprised in the matter;

IT IS HEREBY ORDERED that:

1. All counts of the Complaint are dismissed with prejudice because the State may not prove proximate causation using only aggregate statistical evidence;

2. All common law counts, including strict liability—failure to warn, strict liability—design defect, negligence, fraud and negligent misrepresentation, are dismissed with prejudice based on the doctrine of remoteness;

3. Both counts sounding in strict liability, including failure to warn and design defect, are dismissed with prejudice based on the doctrine of economic loss;

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4. The State's claims under the Unfair Trade Practices and Consumer Protection Act are dismissed with prejudice because an action involving prescription drugs does not lie under the Act;

5. The State's claims under the Unfair Trade Practices and Consumer Protection Act are dismissed with prejudice because the practices upon which the State bases its claims are exempt from coverage under the Act; and

6. The State's claims under the Unfair Trade Practices and Consumer Protection Act are dismissed with prejudice because the remedies sought by the State are not available to it under the Act.

IT IS HEREBY, IN THE ALTERNATIVE, ORDERED that Eli Lilly & Company is permitted to discover, with the proper protective order in place, the individual circumstances of each and every Alaska Medicaid patient whose Zyprexa prescriptions give rise to the State's claims in this case.

ORDERED this _____ day of _____, 2007.

The Honorable Mark Rindner
Judge of the Superior Court

I certify that on May 8, 2007, a copy of the foregoing was served by mail and fax on:

Eric T. Sanders, Esq., Feldman Orlansky & Sanders
500 L. Street, Suite 400, Anchorage, Alaska 99501-5911

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ELI LILLY AND COMPANY,	)	
	)	Case No. 3AN-06-5630 CIV
Defendant.	)	
	)	

ORDER REGARDING CLAIMS AND PROOFS

In this action the State of Alaska (the "State") is seeking damages and civil penalties from Eli Lilly and Company ("Lilly") arising from the marketing of an allegedly defective drug called Zyprexa. At a hearing conducted on January 8, 2007, Lilly maintained that the trial of this matter would be lengthy because the State could only prove essential aspects of its case by offering the testimony of each physician who prescribed Zyprexa to a patient on Medicaid and by offering proof of each patient in Alaska who developed diabetes as a result of consuming the drug. In short, it was Lilly's position that to prevail the State would be required to present hundreds of individual physicians and patients as witnesses at trial. The State disagreed with Lilly, asserting that in the instant case the examination of an individual physician's or patient's experience

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with Zyprexa was not necessary for the State to recover under Alaska law. Because the resolution of this disagreement will determine the nature and scope of the trial, the Court requested briefing at the earliest opportunity.

Having considered the pleadings and arguments of the parties, the Court rules as follows:

1. The State did not file this action on behalf of its Medicaid recipients as individuals, nor did it file this action in subrogation. The State has filed its own action for damages it sustained as a result of Lilly's alleged conduct. Therefore, the State need not prove specific injury to particular persons resulting from Lilly's conduct, but rather must prove that the State itself was injured in some manner by Lilly's actions.

2. The State has made a number of factual allegations which, if proven, would be sufficient to establish prima facie proof that: (a) Zyprexa was defective in design; (b) Zyprexa was defective in that it lacked adequate warnings of serious risks; (c) Lilly committed unfair and/or deceptive acts in the conduct of trade or commerce; (d) Lilly breached a duty of care to the State; and (e) Lilly's conduct was fraudulent.

3. To prove its design defect claim, the State need only show that either (a) Zyprexa failed to perform as safely as an "ordinary doctor" would expect when used by patients in an intended and reasonably foreseeable manner, or (b) a defect in Zyprexa proximately caused the State's damages and the benefits of the drug's design do not outweigh its risks. The State has alleged sufficient evidence, if proven at trial, to meet

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this burden. As discussed in the State's pleadings, its evidence on these matters will largely be presented by expert testimony and documentary evidence intended to meet the objective standards above. The testimony of individual physicians' subjective opinions or individual patients' experiences is not necessary to the State's burdens on design defect.

4. The State's failure to warn claim requires proof that Lilly marketed Zyprexa without warnings sufficient to put the ordinary physician on notice of the nature and extent of any scientifically knowable risks or dangers inherent in the use of the drug. Again, the State will attempt to satisfy its burden on this claim by way of expert and documentary evidence. As with the design defect claim, the burden of proof on the failure to warn claim involves an objective standard, that of the "ordinary physician," and thus the testimony of individual physicians and patients is not required to prove Lilly failed to warn of scientifically knowable risks.

5. To establish violations of the Alaska Unfair Trade Practices Act, the State need only show that: (a) the defendant is engaged in trade or commerce; and (b) in the conduct of that trade or commerce, the defendant committed an unfair and/or deceptive act. The State has alleged a number of facts which could establish violations of the Act. Because all that is required is a showing that the acts were capable of being interpreted in a misleading way, the primary focus of the evidence, as discussed in the State's

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pleadings, is on Lilly's conduct and not the individual experience of patients and physicians.

6. Lilly owed the State – as the financially responsible party for Alaska Medicaid recipients – a duty of care to market to the State and its physicians a pharmaceutical that was appropriately designed, packaged with appropriate warnings, and safe when ingested in a reasonably foreseeable manner. The State has alleged numerous facts that, if true, would establish that Lilly breached this duty and Lilly knew or should have known the serious risks alleged to be connected with Zyprexa use would cause significant injury to the State.

7. The State has alleged numerous fraudulent misrepresentations by Lilly, along with facts indicating Lilly knew the falsity of its statements and that it intended others to rely on those statements. As discussed in its pleadings, the State intends to provide significant documentary and expert evidence proving Lilly's fraudulent conduct. Further, the State has indicated that through expert and statistical evidence it can demonstrate proof of justifiable reliance on Lilly's misrepresentations.

8. For most claims above, the State must show Lilly's conduct caused it damages. Litigants routinely use statistical or epidemiological evidence to establish causation. As noted, the State's burden in this case is to establish by a preponderance of the evidence that Lilly's conduct was the cause of the State's damages. The method of proving causation in a population of individuals described by the State in its pleadings,

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though subject to challenge by Lilly, is appropriate to the posture of the present case. Where the State must show Lilly's conduct caused it damages, it may do so by demonstrating, for example, the increased incidence of diabetes in the State's Medicaid recipients attributable to Zyprexa, or the rate of prescriptions for uses that were not medically necessary. Examination of an individual physician's or patient's experience with Zyprexa is not a necessary element of the State's proof.

9. Because the State need only prove its damages are "reasonably probable" to occur, it may seek to meet this burden by using its own Medicaid data, other available medical evidence, and accepted scientific means of using that data and evidence to establish both the nature and extent of its damages.

DATED this ____ day of _____, 2007.

BY THE COURT

_____
Mark Rindner
Superior Court Judge

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-5630 CI

ORDER RE: PLAINTIFF'S CLAIM OF PROOF

The State of Alaska ("State") filed this civil action on its own behalf against drug manufacturing Eli Lilly & Company ("Lilly") for damages allegedly caused by Lilly's introduction of the drug Zyprexa. The State alleges that it has paid and in the future will pay additional expenses for the medical care of Alaska's Medicaid population because Medicaid recipients developed diabetes and diabetes-related illnesses as a direct result of ingesting Zyprexa. The State also seeks civil penalties for what it alleges are Lilly's deceptive Zyprexa marketing practices.

The State's complaint asserts five claims for relief: (1) Violations of Alaska's Unfair Trade Practices and Consumer Protection Act (AS 45.50.471 *et. seq.*); (2) strict products liability for failure to warn; (3) strict

products liability for design defect; (4) negligence; (5) fraud and negligent misrepresentation.

At the start of this litigation, Lilly suggested that in order to prove its claims the State would need to produce evidence and testimony from most of the Medicaid patients who were prescribed Zyprexa and every physician who wrote prescriptions for those patients. The State disputed this and indicated that if that were its burden of proof the State would not pursue this case. This Court requested the State to provide a brief recitation of the State's causes of action, and an outline of the proof that the State expected to produce to satisfy each cause of action. The State now has done so, asserting that it intends to prove its claims using aggregate data and statistical, epidemiological, and endocrinological analyses. The State notes that it did not file this action on behalf of a class of individuals or as action in subrogation. Rather, it filed this lawsuit to recover its own monetary damages. Thus, the State argues it need not rely upon evidence of injury to specific persons. Rather, the State expects to prove its own case through expert testimony based on scientifically derived statistical evidence of Zyprexa's effect upon the State's Medicaid population and the damages the State has sustained as a result of Lilly's actions.

In response to the State's memorandum describing its claims and proofs Lilly filed a comprehensive memorandum in which Lilly asserts that the methodology described by the State fails to sustain this lawsuit. Lilly asserts that the statistical methodology that the State intends to use to prove its case cannot satisfy the State's burden to prove that any act of Lilly proximately caused the damages for which the State seeks recovery. Lilly further asserts that the State's common-law court claims fail under the remoteness and economic loss doctrines, that Alaska's Unfair Trade Practices Act does not apply to prescription drug transactions, and that the State does not have standing under the Unfair Trade Practices Act to seek the money damages that it has demanded. Lilly also argues that even if the State is allowed to present its case using only statistical evidence, Lilly is entitled to build and present a defense using non-statistical evidence.

Following thorough and comprehensive briefing on these issues, oral argument was held on July 12, 2007.

DISCUSSION

A. The Court Declines to Rule Whether the Method by Which the State Proposes to Prove its Case is Legally Sufficient

This Court declines to rule whether the method by which the Sate proposes to prove its case is legally sufficient. The Court recognizes that

the Court itself, originally proposed that the State file a memorandum describing the method by which it proposed to prove its claims so that the legal sufficiency of this methodology could be challenged. However, after now reviewing the memoranda of the parties and after hearing argument on these issues, the Court believes that it would be issuing an advisory opinion and that a determination on these issues is premature. There is no "evidence" before the Court, the sufficiency of which the Court could rule upon. Epidemiological and other statistical evidence is an accepted method of proof depending on the reliability and validity of such evidence. Ultimately the scientific evidence the State intends to use can be examined under the standards set forth in State v. Coon, 974 P.2d 386 (Alaska 1999). But the case is not sufficiently advanced for such challenges to be brought at this time. Nor is there any clear legal standard by which this Court could rule on the sufficiency of the methodology the State proposes to use. Any challenge to the methodology the State proposes to use is not raised by a Motion to Dismiss or a Motion for Judgment on the Pleadings. Motions for Summary Judgment may eventually be utilized to challenge the sufficiency of the State's evidence. But such motions will depend on a evidentiary record that has not yet been developed.

This Court therefore reluctantly concludes that any determination by it as to the sufficiency of the methodology the State proposes to use to prove its case would require this Court to issue an advisory opinion and that such an opinion would be inappropriate. See Earth Movers of Fairbanks, Inc. v. State, Dept. of Transportation and Public Facilities, 824 P.2d 715, 718 (Alaska 1992); Geiffels v. State, 562 P.2d 661, 664-65 (Alaska 1976). The State is free to proceed with its discovery and to develop the statistical evidence that it intends to use at trial. The manner by which the State intends to prove its case, however, should not, by itself, limit Lilly's method of defending against the State's claims. Lilly is free to obtain discovery in accordance with the Rules of Civil Procedure. Both parties, if necessary, may request that the Court or the Discovery Master impose appropriate limitations on discovery pursuant to Civil Rule 26(b)(2), Civil Rule 26(c) or other applicable civil rules.

B. Lilly's Other Challenges

In addition to its broad assertion discussed above that the methodology the State proposes to use is inadequate to meet its burden of proof, Lilly also raises a number of other arguments in which Lilly contends that various of the State's causes of action fail as a matter of law. The Court will treat these arguments as motions to dismiss for failure to state a

cause of action upon which relief can be granted under Civil Rule 12(b)(6) and will apply the standard of review applicable to such motions.[1]

1. Remoteness

Lilly contends that the State's attempt to recover directly from Lilly for the cost of treating beneficiaries' medical costs is precluded under the remoteness doctrine. Lilly contends that under this doctrine "plaintiffs who are obligated to pay the medical expenses of another may not recover against the tortfeasor who caused the damage, because their injuries are indirect since they derive wholly from the injuries sustained by the third party." Laborers Local 17 Health & Benefit Fund v. Phillip Morris, 191 F.3d 229, 233-34, 242 (2nd Cir. 1999), *cert. denied*, 528 U.S. 1080 (2000). Lilly cites at fn. 28 of its response to plaintiff's motion concerning claims and proofs to a number of other cases standing for this proposition.

Other states, however, have rejected the remoteness rule. See Texas v. American Tobacco Company, 14 F. Supp. 2nd 956 (E.D. Texas 1997). There, various tobacco companies filed motions to dismiss Texas' complaint for recovery of state medical expenditures arising from smoking

[1] Alaska Civil Rule 12(b)(6) allows the dismissal of a complaint for "failure to state a claim upon which relief can be granted." To survive a motion to dismiss, a "complaint need only allege a set of facts consistent with and appropriate to some enforceable cause of action." Guerrero v. Alaska Hous. Fin. Corp., 6 P.3d 250, 254 (Alaska 2000)(internal quotation marks omitted). "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claims that would entitle the plaintiff to relief." Angnabooguk v. State, 26 P.3d 447, 451 (Alaska 2001).

related injuries, arguing, in part, that the State was limited to its right of subrogation and that the State could not successfully proceed directly against the defendants because the damages incurred by the State were too remote. The Court rejected that argument, finding the State had reason to bring the action directly under common law theories of liability because Texas expended millions of dollars each year under its Medicaid program and such action was clearly beneficial to the State's citizens. Additionally, the Court held that limiting Texas to individual subrogation actions in the face of such large expenditures and potential third party recovery responsibilities under Medicaid would frustrate the purposes of both state and federal Medicaid third-party recovery requirements. The Court also found the State's injuries were not too remote for the State to seek its increased health costs under common law theories of liability. This Court finds the reasoning of Texas v. American Tobacco Co. to be persuasive and directly applicable to this case.

This Court also notes that in other contexts the Alaska Supreme Court has allowed third-parties, whose economic injuries flow from physical injury of others, to proceed directly against the tortfeasor. See *e.g.* Mattingly v. Sheldon Jackson College, 743 P.2d 356 (Alaska 1987). Indeed, under the doctrine of Ruggles Ex Rel. Estate of Mayor v.

Grow, 984 P.2d 509 (Alaska 1999) an insurer who pays expenses on behalf of an insured may pursue a direct action against the tortfeasor, discount and settle its claim, or determine that the claim should not be pursued at all. If the insurer determines to handle its rights directly, the insured lacks authority to pursue the claim on its own. The right of an insurer to directly assert its claim under Ruggles for expenses paid on behalf of an insured would appear to apply with an even greater force to the right of the State to proceed directly against a tortfeasor for Medicaid expenses incurred by the State as a result of a tortfeasor's actions. Lilly's Motion to Dismiss the State's Claims under the Remoteness Doctrine is denied.

2. The Economic Loss Doctrine

Lilly next contends that under Alaska law a plaintiff may not recover economic losses in strict products liability in the absence of any property damage or personal injury suffered by the plaintiff itself. "Economic loss" does not suffice. See Kodiak Elec. Ass'n v. Delaval Turbine, Inc., 694 P.2d 150, 153 (Alaska 1984); See also Northern Power & Eng'g v. Caterpillar Tractor Co., 623 P.2d 324, 329 (Alaska 1981); Pratt & Whitney Canada, Inc. v. Sheehan, 852 P.2d 1173, 1177-81 (Alaska 1993). The economic loss rule has traditionally only been applied to bar strict liability claims

where there was no injury to persons or property but merely to the product itself. Even then if the defective product is potentially dangerous to persons or other property and loss occurs as a result of that danger strict liability in tort is an appropriate theory of recovery even though the damages may be only economic in nature. See Northern Power, *supra*, 623 P.2d at 329; Sheehan, *supra*, 852 P.2d at 1176-1178. Given that the allegations in this case assert that Zyprexa is potentially dangerous to others and resulted in physical injuries to persons, the State's strict liability claims are not barred by the economic loss rule and Lilly's motion to dismiss the products liability claims based on the economic loss rule is denied.

3. The Unfair Trade Practices and Consumer Protection Act Claims

Lilly contends that Alaska's Unfair Trade Practices and Consumer Protection Act (UTP) does not apply to prescription medication transactions. Lilly notes that the Federal Trade Commission Act (FTCA) does not apply to prescription medications. Alaska's UTP requires courts to give "due consideration and great weight" to the interpretation of the FTCA when determining what constitutes an unfair trade practice. AS

45.50.545; see also State v. O'Neill Investigations, 609 P.2d 520 (Alaska 1980).

Lilly also asserts that the acts and practices at issue in this litigation are exempt from the UTP under AS 45.50.481(a)(1). That section states:

> Nothing in AS 45.50.471 – 45.50.561 applies to . . . an act or transaction regulated under laws administered by the State, by a regulatory board or commission . . . or officer acting under statutory authority of the state or of the United States, unless the law regulating the act or transaction does not prohibit the practices declared unlawful in AS 45.50.471.

"[W]here the business is both regulated elsewhere and the unfair acts and practices are prohibited therein," the exemption applies. O'Neill Investigations, Inc., 609 P.2d 520, 528 (Alaska 1980). Lilly argues that the sales of an FDA approved pharmaceutical such as Zyprexa are exempt under this test because the FDA regulates the industry and the alleged unlawful practices at issue in this litigation – off-label promotion and making false claims regarding safety and efficacy – are prohibited by FDA regulations.

The UTP is accorded a liberal construction. Id. The act is not limited to consumer transactions. Western Star Trucks, Inc. v. Big Iron Equipment Service, 101 P.3d 1047 (Alaska 2004). Any interpretation of the UTP or claim of exemption must be afforded the liberal construction designed to promote the purposes of the Act.

While the federal government under the FTC may have ceded its jurisdiction over certain pharmaceutical related matters to the Federal Drug Administration, the plain language of Alaska's UTP makes clear that Alaska has not done so. The plain language of the Alaska UTP specifically applies to prescription drug transactions by making a violation of AS 17.20 (the Alaska Food, Drug, Cosmetic Act) an unfair or deceptive practice. See AS 45.50.471(b)(48).

Nor is it clear that the acts or practices complained of by the State are specifically prohibited by the FDA. Mere regulation of Zyprexa by the FDA is insufficient to exempt the conduct complaint by the State from coverage under the UTP where that conduct is not specifically prohibited by the FDA. See Smallwood v. Central Peninsula Gen. Hosp., 151 P.3d 319, 328-29 (Alaska 2006). The plain language of the UTP applies to pharmaceutical transactions and Lilly's conduct is not exempted from the Acts coverage by AS 45.50.481.

Finally, Lilly argues that the State cannot recover money damages, restitution or civil penalties pursuant to its UTP claim arguing that the State is not a private actor under the Act and that the statutory scheme confers different causes of action and different remedies on the State and private actors. The parties have debated what remedies the State may

seek under the Act when the State is acting not on its own behalf but in its role as an enforcer of the Act. See O'Neill Investigations, Inc., 609 P.2d at 524. This Court need not resolve that dispute. Here the State does not bring this action seeking injunctive relief or to enforce the UTP's prohibitions. Rather the State seeks to recover on its own behalf damages it has incurred. Under AS 45.50.531 a "person" who suffers an ascertainable loss of money or property as a result of another person's act or practice declared unlawful under the Act may bring a civil action and obtain the relief specified in that statute. The term "person" is not defined under the UTP. "Person" is defined under AS 01.10.060(a)(8). In other contexts the State has been declared to fall within this definition of "person". Mustafoski v. State, 867 P.2d 824, 833 (Alaska 1994). Given the remedial purposes of the Act and the liberal construction that must be applied to any interpretation of the Act, this Court finds as a matter of law that the State, when suing for its own damages, is a "person" under the Act.

Accordingly, Lilly's motion to dismiss the causes of action asserted under the UTP is denied.

CONCLUSION

This Court declines to rule whether the methodology the State purposes to use to meet its burden of proof are adequate. Both parties may proceed with discovery subject to further motion practice and rulings that may otherwise limit such discovery. Lilly's motions to dismiss the various causes of action on the basis of remoteness, the economic loss rule, or on the basis that the UTP does not cover such causes of action or allow the relief sought in the complaint are denied as discussed above.

DATED at Anchorage, Alaska, this 31st day of July 2007.

Mark Rindner

MARK RINDNER
Superior Court Judge

I certify that on 7-31-07 a copy was mailed to:
E. Sanders B. Jamieson

Administrative Assistant

RINDNER

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

SUPPLEMENTAL SCHEDULING ORDER

Mot vacd 7/30/07

The Routine Pretrial Order of January 10, 2007, is supplemented and revised as follows:

I. NATURE OF THE CASE

This case shall be characterized as non-routine. Accordingly, this case is exempt from the Initial Disclosure requirements of Rule 26(a)(1) and from the thirty-interrogatory limit of Rule 33(a). Except as provided in this Order, the Alaska Rules of Civil Procedure shall govern this case.

II. DISCOVERY

A. Plaintiff may serve requests for the production of documents in addition to, but not duplicative of, those already produced in *In re Zyprexa Products Liability Litigation,* MDL No. 1596 (E.D.N.Y.) ("Zyprexa MDL"). Plaintiff may serve requests for the production of documents in addition to, but not duplicative of, those already produced in the Zyprexa MDL. Lilly may object to such requests on any grounds, including that such discovery would be duplicative of discovery already taken in the Zyprexa MDL and available to plaintiff in the repository of Lilly documents established by the Plaintiffs' Steering Committee in the Zyprexa MDL, subject to the terms of Case Management Order No. 3 ("CMO-3") (copy attached) in the Zyprexa MDL. Exhibit A. To the extent that documents

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are produced in this action that are not duplicative of documents produced in the Zyprexa MDL, the terms of the attached Protective Order shall control. Exhibit B. Upon motion of any party, the Court may amend the terms of this Protective Order.

B. For purposes of this action, plaintiff may, without leave of Court, take ten depositions of employees or former employees of defendant, subject to Lilly's rights to object to any deposition under the Alaska Rules of Civil Procedure. If plaintiff wants to take additional depositions, it shall seek leave of Court.

C. The following guidelines shall govern depositions in this case:

1. Who May Be Present. Unless otherwise ordered by this Court or agreed by the parties, depositions may be attended by counsel of record, retained experts, members and employees of their firms, attorneys specially engaged by a party for purposes of the deposition, court reporters, videographers, the deponent, and counsel for the deponent. Upon application, and for good cause shown, the Court may permit attendance by a person who does not fall within any of the categories set forth in the preceding sentence. While the deponent is being examined about any stamped confidential document or the confidential information contained therein, persons to whom disclosure is not authorized under the Protective Order governing this litigation shall be excluded from the deposition. Any portion of the deposition transcript containing confidential information shall be sealed so as not to waive confidentiality when the transcript or video medium is placed in the document depository.

2. Scheduling. Absent extraordinary circumstances, counsel should consult in advance with opposing counsel and counsel for proposed deponents in an effort to

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schedule depositions at mutually convenient times and locations. Counsel are expected to cooperate and coordinate the scheduling of depositions.

3. Coordination with Other Actions. Several depositions of Lilly employees and former Lilly employees have been taken in the Zyprexa MDL. Zyprexa MDL Case Management Order No. 15 ("CMO-15") (copy attached as Exhibit C) requires counsel for Zyprexa MDL plaintiffs to coordinate with counsel in state court actions against Lilly. The Court notes that plaintiff in this action is represented by counsel who is a member of the Plaintiffs' Steering Committee ("PSC") in the Zyprexa MDL. Counsel for plaintiff shall use their best efforts to coordinate the scheduling of depositions with counsel for other plaintiffs in other state or federal courts in order to minimize the number of times that a witness shall appear for a deposition. Any deposition in this action may be cross-noticed by any party in any Zyprexa-related action pending in any state or federal court, and any deposition in any Zyprexa-related action pending in any state or federal court may be cross-noticed by any party in this action. If a deposition has been cross-noticed in this action, then neither party may take a subsequent deposition of that witness except for good cause shown.

4. Depositions Taken in Other Proceedings. The plaintiff in this proceeding shall not, without good cause, re-notice the depositions of witnesses who have already been deposed in the Zyprexa MDL. In the event that a party re-notices the deposition of a witness who has already been deposed, should a party object, then such objection must be made within ten days of the notice, and counsel shall meet and confer within five days of the objection to attempt to resolve the dispute. If no agreement can be reached, the matter shall be brought to the Court for resolution at the earliest possible time and without undue delay to avoid postponement of the deposition.

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5. Documents Used in Connection with Depositions.

a. Production of Documents. Non-party witnesses subpoenaed to produce documents shall, to the extent possible, be served with the document subpoena at least thirty calendar days before a scheduled deposition.

b. Copies. Extra copies of documents about which deposing counsel expects to examine a deponent should be provided to primary counsel for the parties and the deponent during the course of the deposition.

c. Marking of Deposition Exhibits. All documents previously produced and used as deposition exhibits shall be referred to by the unique alpha-numeric identifiers appearing on the documents.

d. Objections to Documents. Objections to the relevance or admissibility of documents used as deposition exhibits are not waived, and are reserved for later ruling by the Court or by the trial judge.

D. Pursuant to Alaska R. Civ. P. 53, the Court hereby appoints Dan Hensley, Esquire, as the discovery master ("DM"). Subject to the procedures set forth in this Order, the DM is authorized to decide all issues arising under Alaska R. Civ. P. 26-37 in this action. Notwithstanding his appointment, the DM's authority shall not extend to the first set of discovery requests served by defendant nor to the ten depositions of employees and former employees of Lilly that are referenced in paragraph III(B). The following procedures and guidelines shall be followed in submitting disputes to the DM for consideration:

1. Before submitting a discovery dispute to the DM for resolution, the parties shall make a good faith effort to resolve any such dispute. Any motion filed with the DM must include the certification required by Civil Rule 37(a)(2)(A) stating that the parties

attempted to resolve the dispute prior to seeking the DM's assistance. All motions shall be served on the DM and the opposing party by hand or electronic mail.

2. If the parties are unable to resolve the dispute, motions may be filed with the DM. The party or parties to whom the motion is directed shall file an opposition within seven days from the date the motion is served by hand or electronically. Any motion and any opposition shall be limited to 10 pages of argument and 30 pages of exhibits, unless the filing party can make a good cause showing why additional pages are needed. The party filing the motion may file a reply memorandum. Any reply shall be filed within three days from the date the opposition is served by hand or electronically. Any reply shall be limited to five pages of argument and 10 pages of exhibits, unless the party filing the reply memorandum can make a good cause showing why additional pages are needed. Each side shall submit a proposed order for the DM's signature.

3. In the event that a discovery issue arises which requires immediate resolution in order to prevent undue expense or delay (e.g., an issue arising over an instruction to a deponent not to answer a deposition question at an out-of-state deposition attended by multiple counsel), one or more parties may attempt to contact the DM by telephone for his expedited ruling on the discovery issue. If the DM cannot be reached, the party(ies) seeking immediate resolution of the discovery issue may attempt to contact the trial judge for his similar resolution of the issue.

4. Except as otherwise noted herein, all discovery disputes must first be submitted to the DM for resolution. In his discretion, the DM may schedule oral argument on any dispute presented to him for resolution. The DM is authorized to communicate on matters related to coordination of state and federal court Zyprexa actions with Peter H.

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Woodin, Special Master in the Zyprexa MDL. Such communications shall be in writing or recorded stenographically.

5. The DM shall decide the motions in the order they are received, unless a party can make a good cause showing why they should be taken out of order. The DM shall endeavor to decide the motions promptly. The DM will issue a written decision on each dispute presented to him for resolution.

6. The parties shall give telephonic notice to the DM's secretary that a motion is ripe for decision.

7. Once the DM issues a decision, a party has a right to appeal the decision to the Court. An appeal shall be filed with the Court within five days of service by hand or electronically (six days if mailed) of the DM's decision and will consist of a notice of appeal indicating which motion is being appealed, the DM's decision, and the papers filed with the DM. The DM will decide if his ruling will be stayed pending the Court's decision on appeal. If the Court affirms the DM's decision in its entirety, the Court may award the prevailing party costs and fees. The Court shall have the discretion to make any award of costs and fees against an appealing party if it determines that the appealing party did not substantially improve its position from the DM's order or if there was not a good faith basis to file the appeal. In support of the appeal to the Court, the party appealing may file supplemental pleadings addressing the perceived error of the DM's order of not more than five pages. A single response shall be allowed, with no reply, within five days of service by hand or electronically of the supplemental pleading in support of the appeal.

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8. The DM shall schedule status conferences with the parties when necessary. Any party may request a status conference with the DM to promptly resolve discovery disputes.

9. The DM's fee is $250 per hour. Each party shall pay an equal share of the fees and costs of the DM unless he orders that the fees be allocated in some other fashion.

ORDERED this ____ day of June, 2007.

The Honorable Mark Rindner
Judge of the Superior Court

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DOCKET & FILE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

In re: ZYPREXA
PRODUCTS LIABILITY LITIGATION

MDL No. 1596

----------x

THIS DOCUMENT RELATES TO:
ALL ACTIONS

MOVANT'S COUNSEL IS DIRECTED TO SERVE A COPY OF THIS ORDER ON ALL PARTIES UPON RECEIPT

----------x

CASE MANAGEMENT
~~CENTRAL~~ ORDER NO. 3 (PROTECTIVE ORDER)

To expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect confidential material, and ensure that protection is afforded only to material so entitled, the Court enters this Protective Order pursuant to Rule 26 of the Federal Rules of Civil Procedure.

1. Discovery Materials

This Order applies to all products of discovery and all information derived therefrom, including, but not limited to, all documents, objects or things, deposition testimony and interrogatory/request for admission responses, and any copies, excerpts or summaries thereof, obtained by any party pursuant to the requirements of any court order, requests for production of documents, requests for admissions, interrogatories, or subpoena ("discovery materials"). This Order is limited to the litigation or appeal of any action brought by or on behalf of plaintiffs, alleging personal injuries or other damages arising from plaintiffs' ingestion of olanzapine, commonly known as Zyprexa® ("Litigation") and includes any state court action where counsel for the plaintiff has agreed to be bound by this order.

2. Use of Discovery Materials

With the exception of documents or information that has become publicly available without a breach of the terms of this Order, all documents, information or other

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EXHIBIT A
PAGE 1 OF 15

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discovery materials produced or discovered in this Litigation and that have been designated confidential shall be used by the receiving party solely for the prosecution or defense of this Litigation, to the extent reasonably necessary to accomplish the purpose for which disclosure is made, and not for any other purpose, including any other litigation or judicial proceedings, or any business, competitive, governmental, commercial, or administrative purpose or function.

3. "Confidential Discovery Materials" Defined

For the purposes of this Order, "Confidential Discovery Materials" shall mean any information that the producing party in good faith believes is properly protected under Federal Rule of Civil Procedure 26(c)(7).

The terms of this Order shall in no way affect the right of any person (a) to withhold information on alleged grounds of immunity from discovery such as, for example, attorney/client privilege, work product or privacy rights of such third parties as patients, physicians, clinical investigators, or reporters of claimed adverse reactions; or (b) to withhold information on alleged grounds that such information is neither relevant to any claim or defense nor reasonably calculated to lead to the discovery of admissible evidence. If information is redacted on the basis it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, the redacting party shall identify on a separate log that identifies the document subject to redaction and the reason for such redaction.

Where large volumes of discovery materials are provided to the requesting party's counsel for preliminary inspection and designation for production, and have not been reviewed for confidentiality purposes, the producing party reserves the right to so designate and redact appropriate discovery materials after they are designated by the requesting party for production. During the preliminary inspection process, and before production, all discovery materials reviewed by the requesting party's counsel shall be treated as Confidential Discovery material.

4. Designation of Documents as "Confidential"

a. For the purposes of this Order, the term "document" means all tangible items, whether written, recorded or graphic, whether produced or created by a party or

another person, whether produced pursuant to subpoena, to discovery request, by agreement, or otherwise.

b. Any document which the producing party intends to designate as Confidential shall be stamped (or otherwise have the legend recorded upon it in a way that brings the legend to the attention of a reasonable examiner) with a notation substantially similar to the following:

Zyprexa MDL 1596: Confidential-Subject to Protective Order

Such stamping or marking will take place prior to production by the producing person, or subsequent to selection by the receiving party for copying. The stamp shall be affixed in such a manner as not to obliterate or obscure any written material.

c. A party may preliminarily designate as "Confidential" all documents produced by a third party entity employed by the party for the purposes of document management, quality control, production, reproduction, storage, scanning; or other such purpose related to discovery, by notifying counsel for the other party that all documents being produced are to be accorded such protection. Once said documents are produced by such third party vendor, the designating party will then review the documents and, as appropriate, designate them as "Confidential" by stamping the document (or otherwise having the legend recorded upon it in a way that brings its attention to a reasonable examiner) as such.

5. <u>Non-Disclosure of Confidential Discovery Materials</u>

Except with the prior written consent of the party or other person originally producing Confidential Discovery Materials, or as hereinafter provided under this Order, no Confidential Discovery Materials, or any portion thereof, may be disclosed to any person, including any plaintiff, except as set forth in section 6(d) below.

6. **Permissible Disclosures of Confidential Discovery Material**

Notwithstanding paragraph 5, Confidential Discovery Materials may be disclosed to and used only by:

a. counsel of record for the parties in this Litigation and to his/her partners, associates, secretaries, legal assistants, and employees to the extent considered reasonably necessary to render professional services in the Litigation ,

b. inside counsel of the parties, to the extent reasonably necessary to render professional services in the Litigation;

c. court officials involved in this Litigation (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);

d. any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;

e. where produced by a plaintiff, in addition to the persons described in subsections (a) and (b) of this section, a defendant's in-house paralegals and outside counsel, including any attorneys employed by or retained by defendant's outside counsel who are assisting in connection within this Litigation, and the paralegal, clerical, secretarial, and other staff employed or retained by such outside counsel or retained by the attorneys employed by or retained by defendant's outside counsel. To the extent a defendant does not have in-house counsel, it may designate two individuals employed by such defendant (in addition to outside counsel) to receive Confidential Discovery Materials produced by plaintiff;

f. where produced by defendant Eli Lilly and Company, in addition to the persons described in subsections (a) and (b) of this section, plaintiff's attorneys in other filed litigation alleging injuries or damages resulting from the use of Zyprexa® including their paralegal, clerical, secretarial and other staff employed or retained by such counsel, provided that

such counsel have agreed to be governed by the terms of this Order and shall sign a copy of the order;

g. where produced by any defendant, outside counsel for any other defendant, including any attorneys employed by or retained by any other defendant's outside counsel who are assisting in connection with this Litigation, and the paralegal, clerical, secretarial, and other staff employed or retained by such outside counsel;

h. persons noticed for depositions or designated as trial witnesses, or those who counsel of record in good faith expect to testify at deposition or trial, to the extent reasonably necessary in preparing to testify;

i. outside consultants or outside experts retained for the purpose of assisting counsel in the Litigation;

j. employees of counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designating programs for handling data connected with this action, including the performance of such duties in relation to a computerized litigation support system;

k. employees of third-party contractors performing one or more of the functions set forth in (j) above;

l. any employee of a party or former employee of a party, but only to the extent considered necessary for the preparation and trial of this action; and

m. any other person, if consented to by the producing party.

Any individual to whom disclosure is to be made under subparagraphs (d) through (m) above, shall sign, prior to such disclosure, a copy of the Endorsement of Protective Order, attached as Exhibit A. Counsel providing access to Confidential Discovery Materials shall retain copies of the executed Endorsement(s) of Protective Order. Any party seeking a copy of an endorsement may make a demand setting forth the reasons therefor to which the opposing party will respond in writing. If the dispute cannot be resolved the demanding party may move the Court for an order compelling production upon a showing of good cause. For testifying experts,

a copy of the Endorsement of Protective Order executed by the testifying expert shall be furnished to counsel for the party who produced the Confidential Discovery Materials to which the expert has access, at the time the expert's designation is served, or at the time the Confidential Discovery Materials are provided to the testifying expert, whichever is later.

Before disclosing Confidential discovery materials to any person listed in subparagraphs (d) through (m) who is a Customer or Competitor (or an employee of either) of the party that so designated the discovery materials, but who is not an employee of a party, the party wishing to make such disclosure shall give at least three (3) business days advance notice in writing to the counsel who designated such discovery materials as Confidential, stating that such disclosure will be made, identifying by subject matter category the discovery material to be disclosed, and stating the purposes of such disclosure. If, within the three (3) business day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Court has denied such motion. As used in this paragraph, (a) the term "Customer" means any direct purchaser of products from Lilly, or any regular indirect purchaser of products from Lilly (such as a pharmacy generally purchasing through wholesale houses), and does not include physicians; and (b) the term "Competitor" means any manufacturer or seller of prescription medications.

The notice provision immediately above applies to consultants and/or independent contractors of Competitors to the extent the consultants or contractors derive a substantial portion of their income, or spend a substantial portion of their time working for a pharmaceutical company that manufacturers prescription medical products in the neuroscience area.

7. **Production of Confidential Materials by Non-Parties**

Any non-party who is producing discovery materials in the Litigation may agree to and obtain the benefits of the terms and protections of this Order by designating as "Confidential" the discovery materials that the non-party is producing, as set forth in paragraph 4.

8. **Inadvertent Disclosures**

a. The parties agree that the inadvertent production of any discovery materials that would be protected from disclosure pursuant to the attorney-client privilege, the work product doctrine or any other relevant privilege or doctrine shall not constitute a waiver of the applicable privilege or doctrine. If any such discovery materials are inadvertently produced, the recipient of the discovery materials agrees that, upon request from the producing party, it will promptly return the discovery materials and all copies of the discovery materials in its possession, delete any versions of the discovery materials on any database it maintains and make no use of the information contained in the discovery materials; provided, however, that the party returning such discovery materials shall have the right to apply to the Court for an order that such discovery materials are not protected from disclosure by any privilege. The person returning such material may not, however, assert as a ground for such motion the fact or circumstances of the inadvertent production.

b. The parties further agree that in the event that the producing party or other person inadvertently fails to designate discovery materials as Confidential in this or any other litigation, it may make such a designation subsequently by notifying all persons and parties to whom such discovery materials were produced, in writing, as soon as practicable. After receipt of such notification, the persons to whom production has been made shall prospectively treat the designated discovery materials as Confidential, subject to their right to dispute such designation in accordance with paragraph 9.

9. **Declassification**

a. Nothing shall prevent disclosure beyond that limited by this Order if the producing party consents in writing to such disclosure.

b. If at any time a party (or aggrieved entity permitted by the Court to intervene for such purpose) wishes for any reason to dispute a designation of discovery materials as Confidential made hereunder, such person shall notify the designating party of such dispute in writing, specifying by exact Bates number(s) the discovery materials in dispute. The designating party shall respond in writing within 20 days of receiving this notification.

c. If the parties are unable to amicably resolve the dispute, the proponent of confidentiality may apply by motion to the Court for a ruling that discovery materials stamped as Confidential are entitled to such status and protection under Rule 26 of the Federal Rules of Civil Procedure and this Order, provided that such motion is made within forty five (45) days from the date the challenger of the confidential designation challenges the designation or such other time period as the parties may agree. The designating party shall have the burden of proof on such motion to establish the propriety of its Confidential designation.

d. If the time for filing a motion, as provided in paragraph 9.c, has expired without the filing of any such motion, or ten (10) business days (or such longer time as ordered by this Court) have elapsed after the appeal period for an order of this Court that the discovery material shall not be entitled to Confidential status, the Confidential Discovery Material shall lose its designation.

10. Confidential Discovery Materials in Depositions

a. Counsel for any party may show Confidential Discovery Materials to a deponent during deposition and examine the deponent about the materials so long as the deponent already knows the Confidential information contained therein or if the provisions of paragraph 6 are complied with. The party noticing a deposition shall obtain each witness' endorsement of the protective order in advance of the deposition and shall notify the designating party at least ten (10) days prior to the deposition if it has been unable to obtain that witness' endorsement. The designating party may then move the Court for an Order directing that the witness abide by the terms of the protective order, and no confidential document shall be shown to the deponent until the Court has ruled. Deponents shall not retain or copy portions of the

transcript of their depositions that contain Confidential information not provided by them or the entities they represent unless they sign the form described, and otherwise comply with the provisions in paragraph 6. A deponent who is not a party shall be furnished a copy of this Order before being examined about potentially Confidential Discovery Materials. While a deponent is being examined about any Confidential Discovery Materials or the Confidential information contained therein, persons to whom disclosure is not authorized under this Order shall be excluded from being present.

b. Parties (and deponents) may, within thirty (30) days after receiving a deposition, designate pages of the transcript (and exhibits thereto) as Confidential. Until expiration of such thirty (30) day period, the entire transcript, including exhibits, will be treated as subject to Confidential protection under this Order. If no party or deponent timely designates a transcript as Confidential, then none of the transcript or its exhibits will be treated as confidential.

11. Confidential Discovery Materials Offered as Evidence at Trial

Confidential Discovery Materials and the information therein may be offered in evidence at trial or any court hearing, provided that the proponent of the evidence gives notice to counsel for the party or other person that designated the discovery materials or information as Confidential in accordance with the Federal Rules of Evidence and any local rules, standing orders, or rulings in the Litigation governing identification and use of exhibits at trial. Any party may move the Court for an order that the evidence be received in camera or under other conditions to prevent unnecessary disclosure. The Court will then determine whether the proffered evidence should continue to be treated as Confidential and, if so, what protection, if any, may be afforded to such discovery materials or information at trial.

12. Filing

Confidential Discovery Materials shall not be filed with the Clerk except when required in connection with matters pending before the Court. If filed, they shall be filed in a sealed envelope, clearly marked:

"THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION COVERED BY A PROTECTIVE ORDER OF THE COURT AND IS SUBMITTED UNDER SEAL PURSUANT TO THAT PROTECTIVE ORDER. THE CONFIDENTIAL CONTENTS OF THIS DOCUMENT MAY NOT BE DISCLOSED WITHOUT EXPRESS ORDER OF THE COURT"

and shall remain sealed while in the office of the Clerk so long as they retain their status as Confidential Discovery Materials. Said Confidential Discovery Materials shall be kept under seal until further order of the Court; however, said Confidential Discovery Materials and other papers filed under seal shall be available to the Court, to counsel of record, and to all other persons entitled to receive the confidential information contained therein under the terms of this Order.

13. Client Consultation

Nothing in this Order shall prevent or otherwise restrict counsel from rendering advice to their clients in this Litigation and, in the course thereof, relying generally on examination of Confidential Discovery Materials; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 6.

14. Subpoena by other Courts or Agencies

If another court or an administrative agency subpoenas or otherwise orders production of Confidential Discovery Materials which a person has obtained under the terms of this Order, the person to whom the subpoena or other process is directed shall promptly notify the designating party 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, administrative proceeding 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.

15. Non-termination

The provisions of this Order shall not terminate at the conclusion of this Litigation. Within ninety (90) days after final conclusion of all aspects of this Litigation, counsel shall, at their option, return or destroy Confidential Discovery Materials and all copies of same. If counsel elects to destroy Confidential Discovery Materials, they shall consult with counsel for the producing party on the manner of destruction and obtain such party's consent to the method and means of destruction. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the party who produced the discovery materials not more than one hundred twenty (120) days after final termination of this Litigation. Outside counsel, however, shall not be required to return or destroy any pretrial or trial records as are regularly maintained by that counsel in the ordinary course of business; which records will continue to be maintained as confidential in conformity with this Order.

16. Modification Permitted

Nothing in this Order shall prevent any party or other person from seeking modification of this Order or from objecting to discovery that it believes to be otherwise improper.

17. Responsibility of Attorneys; Copies

The attorneys of record are responsible for employing reasonable measures to control and record, consistent with this Order, duplication of, access to, and distribution of Confidential Discovery Materials, including abstracts and summaries thereof.

No duplications of Confidential Discovery Materials shall be made except for providing working copies and for filing in Court under seal; provided, however, that copies may

be made only by those persons specified in sections (a), (b) and (c) of paragraph 6 above. Any copy provided to a person listed in paragraph 6 shall be returned to counsel of record upon completion of the purpose for which such copy was provided. In the event of a change in counsel, retiring counsel shall fully instruct new counsel of their responsibilities under this Order and new counsel shall sign this Order.

18. No Waiver of Rights or Implication of Discoverability

a. No disclosure pursuant to any provision of this Order shall waive any rights or privileges of any party granted by this Order.

b. This Order shall not enlarge or affect the proper scope of discovery in this or any other litigation; nor shall this order imply that Confidential Discovery Materials are properly discoverable, relevant, or admissible in this or any other litigation. Each party reserves the right to object to any disclosure of information or production of any documents that the producing party designates as Confidential Discovery Materials on any other ground it may deem appropriate.

c. The entry of this Order shall be without prejudice to the rights of the parties, or any one of them, or of any non-party to assert or apply for additional or different protection. Nothing in this Order shall prevent any party from seeking an appropriate protective order to further govern the use of Confidential Discovery Materials at trial.

19. Improper Disclosure of Confidential Discovery Material

Disclosure of discovery materials designated Confidential other than in accordance with the terms of this Protective Order may subject the disclosing person to such sanctions and remedies as the Court may deem appropriate.

SO ORDERED as agreed upon act of Magistrate judge and parties. No objections having been received. JBW

Hon. A. Simon Chrein
United States Magistrate Judge

Dated: August 13, 2004
Brooklyn, New York

Hon. Jack B. Weinstein
Senior District Judge

Dated: 8/13, 2004
Brooklyn, New York

000694

EXHIBIT A
PAGE 13 OF 15

B C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

In re: ZYPREXA
PRODUCTS LIABILITY LITIGATION

MDL No. 1596

----------x

THIS DOCUMENT RELATES TO:

ALL ACTIONS

----------x

ENDORSEMENT OF PROTECTIVE ORDER

I hereby attest to my understanding that information or documents designated Confidential are provided to me subject to the Protective Order ("Order") dated _____, 2004 (the "Protective Order"), in the above-captioned litigation ("Litigation"); that I have been given a copy of and have read the Order; and that I agree to be bound by its terms. I also understand that my execution of this Endorsement of Protective Order, indicating my agreement to be bound by the Order, is a prerequisite to my review of any information or documents designated as Confidential pursuant to the Order.

I further agree that I shall not 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 the purposes authorized by the Order.

I further agree to return all copies of any Confidential Discovery Materials I have received to counsel who provided them to me upon completion of the purpose for which they were provided and no later than the conclusion of this Litigation.

I further agree and attest to my understanding that my obligation to honor the confidentiality of such discovery material will continue even after this Litigation concludes.

I further agree and attest to my understanding that, if I fail to abide by the terms of the Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the United Stated District Court, Eastern District of New York, for the purposes of any proceedings relating to enforcement of the Order.

I further agree to be bound by and to comply with the terms of the Order as soon as I sign this Agreement, regardless of whether the Order has been entered by the Court.

Date: _____

By: _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

PROTECTIVE ORDER

To expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect confidential material, and ensure that protection is afforded only to material so entitled, the Court enters this Protective Order pursuant to Rule 26 of the Alaska Rules of Civil Procedure.

1. Discovery Materials

This Order applies to all products of discovery and all information derived therefrom, including but not limited to, all documents, objects or things, deposition testimony and interrogatory/request for admission responses and any copies, excerpts or summaries thereof, obtained by any party pursuant to the requirements of any court order, requests for production of documents, requests for admissions, interrogatories, or subpoena ("discovery materials"). This Order is limited to the litigation or appeal of this action ("Action").

2. Use of Discovery Materials

With the exception of documents or information that has become publicly available without a breach of the terms of this Order, all documents, information or other discovery

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materials produced or discovered in this Action and that have been designated confidential shall be used by the receiving party solely for the prosecution or defense of this Action, to the extent reasonably necessary to accomplish the purpose for which disclosure is made, and not for any other purpose, including any other litigation or judicial proceedings, or any business, competitive, governmental, commercial, or administrative purpose or function.

3. "Confidential Discovery Materials" Defined

For the purposes of this Order, "Confidential Discovery Materials" shall mean any information that the producing party in good faith believes is properly protected under Alaska Rule of Civil Procedure 26(c)(7); under any Federal or state statutes, regulations or court rules; or under Federal or state constitutions. Federal and state regulations may preclude the parties under certain circumstances from producing personal identifying information. In such cases, the parties my produce redacted or de-identified information for use in this litigation and under the protection of this Order, provided, however, that the Court nevertheless retains the authority to review any such action by any party.

The terms of this Order shall in no way affect the right of any person (a) to withhold information on alleged grounds of immunity from discovery such as, for example, attorney-client privilege, work product or privacy rights of such third parties as patients, physicians, clinical investigators, or reporters of claimed adverse reactions; or (b) to withhold information on alleged grounds that such information is neither relevant to any claim or defense nor reasonably calculated to lead to the discovery of admissible evidence; or (c) as

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required by Federal or state law. If information is redacted on the basis it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, the redacting party shall identify on a separate log the document subject to redaction and the reason for such redaction.

Where large volumes of discovery material are provided to the requesting party's counsel for preliminary inspection, and designation for production, and have not been reviewed for confidentiality purposes, the producing party reserves the right to so designate and redact appropriate discovery materials after they are designated by the requesting party for production. During the preliminary inspection process, and before production, all discovery materials reviewed by the requesting party's counsel shall be treated as Confidential Discovery Material.

4. Designation of Documents as "Confidential"

a. For the purposes of this Order, the term "document" means all tangible items, whether written, recorded or graphic, whether produced or created by a party or another person, whether produced pursuant to subpoena, to discovery request, by agreement, or otherwise.

b. Any document which the producing party intends to designate as Confidential shall be stamped (or otherwise have the legend recorded upon it in a way that brings the legend to the attention of a reasonable examiner) with a notation substantially similar to the following:

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Such stamping or marking will take place prior to production by the producing person, or subsequent to selection by the receiving party for copying. The stamp shall be affixed in such a manner as not to obliterate or obscure any written material.

c. A party may preliminarily designate as "Confidential" all documents produced by a non-party entity employed by the party for the purposes of document management, quality control, production, reproduction, storage, scanning, or other such purpose related to discovery, by notifying counsel for the other party that all documents being produced are to be accorded such protection. Once said documents are produced by such third-party vendor, the designating party will then review the documents and, as appropriate, designate them as "Confidential" by stamping the document (or otherwise having the legend recorded upon it in a way that brings its attention to a reasonable examiner) as such.

5. Non-Disclosure of Confidential Discovery Materials

Except with the prior written consent of the party or other person originally producing Confidential Discovery Materials, or as hereinafter provided under this Order, no Confidential Discovery Materials, or any portion thereof, may be disclosed to any person, including any plaintiff, except as set forth in section 6(d) below.

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6. Permissible Disclosures of Confidential Discovery Material

Notwithstanding paragraphs, Confidential Discovery Materials may be disclosed to and used only by:

a. counsel of record for the parties in this Action and to his/her partners, associates, secretaries, legal assistants, and employees to the extent considered reasonably necessary to render professional services in the Action;

b. inside counsel of the parties, to the extent reasonably necessary to render professional services in the Action;

c. court officials involved in this Action (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);

d. any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;

e. where produced by a plaintiff, in addition to the persons described in subsections (a) and (b) of this section, defendant's in-house paralegals and outside counsel, including any attorneys employed by or retained by defendant's outside counsel who are assisting in connection within this Action, and the paralegal, clerical, secretarial, and other staff employed or retained by such outside counsel or retained by the attorneys employed by or retained by defendant's outside counsel.

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f. where produced by defendant Eli Lilly and Company, in addition to the persons described in subsections (a) and (b) of this section, plaintiff's attorneys in other filed litigation alleging injuries or damages resulting from the use of Zyprexa® including their paralegal, clerical, secretarial and other staff employed or retained by such counsel, provided that such counsel have agreed to be governed by the terms of this Order and shall sign a copy of the Order;

g. persons noticed for depositions or designated as trial witnesses, or those who counsel of record in good faith expect to testify at deposition or trial, to the extent reasonably necessary in preparing to testify;

h. outside consultants or outside experts retained for the purpose of assisting counsel in the Action;

i. employees of counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designating programs for handling data connected with this action, including the performance of such duties in relation to a computerized litigation support system;

j. employees of non-party contractors performing one or more of the functions set forth in (i) above;

k. any employee of a party or former employee of a party, but only to the extent considered necessary for the preparation and trial of this Action; and, any other person, if consented to by the producing party;

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l. Any individual to whom disclosure is to be made under subparagraphs (d) through (k) above, shall sign, prior to such disclosure, a copy of the Endorsement of Protective Order, attached as Exhibit A. Counsel providing access to Confidential Discovery Materials shall retain copies of the executed Endorsement(s) of Protective Order. Any party seeking a copy of an endorsement may make a demand setting forth the reasons therefore to which the opposing party will respond in writing if the dispute cannot be resolved the demanding party may move the Court for an order compelling production upon a showing of good cause. For testifying experts, a copy of the Endorsement of Protective Order executed by the testifying expert shall be furnished to counsel for the party who produced the Confidential Discovery Materials to which the expert has access at the time the expert's designation is served or at the time the Confidential Discovery Materials are provided to the testifying expert, whichever is later. Before disclosing Confidential Discovery Materials to any person listed in subparagraphs (d) through (k) who is a Customer or Competitor (or an employee of either) of the party that so designated the discovery materials, but who is not an employee of a party, the party wishing to make such disclosure shall give at least three business days advance notice in writing to the counsel who designated such discovery materials as Confidential, stating that such disclosure will be made, identifying by subject matter category the discovery material to be disclosed, and stating the purposes of such disclosure. If, within the three business day period, a motion is filed Objecting to the proposed disclosure, disclosure is not permissible until the Court has denied such motion. As

used in this paragraph, (a) the term "Customer" means any direct purchaser of products from Lilly, or any regular indirect purchaser of products from Lilly (such as a pharmacy generally purchasing through wholesale houses), and does not include physicians; and (b) the term "Competitor" means any manufacturer or seller of prescription medications.

The notice provision immediately above applies to consultants and/or independent contractors of Competitors to the extent the consultants or contractors derive a substantial portion of their income, or spend a substantial portion of their time working for a pharmaceutical company that manufacturers prescription medical products in the neuroscience area.

7. Production of Confidential Materials by Non-Parties

An non-party who is producing discovery materials in the Action may agree to and obtain the benefits of the terms and protections of this Order by designating as "Confidential" the discovery materials that the non-party is producing, as set forth in paragraph 4.

8. Inadvertent Disclosures

a. The parties agree that the inadvertent production of any discovery materials that would be protected from disclosure pursuant to the attorney-client privilege, the work product doctrine or any other relevant privilege or doctrine shall not constitute a waiver of the applicable privilege or doctrine. If any such discovery materials are inadvertently produced, the recipient of the discovery materials agrees that, upon request from the producing party, it will promptly return, the discovery materials and all copies of the

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discovery materials in its possession, delete any versions of the discovery materials on any database it maintains and make no use of the information contained in the discovery materials; provided, however, that the party returning such discovery material shall have the right to apply to the Court for an order that such discovery materials are not protected from disclosure by any privilege. The person returning such material may not, however, assert as a ground for such motion the fact or circumstances of the inadvertent production.

b. The parties further agree that in the event that the producing party or other person inadvertently fails to designate discovery materials as Confidential in this or any other litigation, it may make such a designation subsequently by notifying all persons and parties to whom such discovery materials were produced, in writing, as soon as practicable. After receipt of such notification, the persons to whom production has been made shall prospectively treat the designated discovery materials as Confidential, subject to their right to dispute such designation in accordance with paragraph 9.

9. Declassification

a. Nothing shall prevent disclosure beyond that limited by this Order if the producing party consents in writing to such disclosure.

b. If at any time a party (or aggrieved entity permitted by the Court to intervene for such purpose) wishes for any reason to dispute a designation of discovery materials as Confidential made hereunder, such person shall notify the designating party of such dispute in writing specifying by exact Bates number(s) the discovery materials in

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dispute. The designating party shall respond in writing within 20 days of receiving this notification.

c. If the parties are unable to amicably resolve the dispute, the proponent of confidentiality may apply by motion to the Court for a ruling that discovery materials stamped as Confidential are entitled to such status and protection under Rule 26 of the Alaska Rules of Civil Procedure and/this Order, provided that such motion is made within forty-five days from the date the challenger of the confidential designation challenges the designation or such other time period and the parties may agree. The designating party shall have the burden of proof on such motion to establish the propriety of its Confidential designation.

d. If the time for filing a motion as provided in paragraph 9(c) has expired without the filing of any such motion, or ten business days (or such longer time as, ordered by this Court) have elapsed alter the appeal period for an order of this Court that the discovery materials shall not be entitled to Confidential status, the Confidential Discovery Material shall lose its designation.

10. Confidential Discovery Materials in Depositions

a. Counsel for any party may show Confidential Discovery Materials to a deponent during deposition and examine the deponent about the materials long as the deponent already knows the Confidential information contained therein or if the provisions of paragraph 6 are complied with. The party noticing a deposition shall obtain each witness' endorsement of the Protective Order in advance of the deposition and shall notify the

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designating party at least ten days prior to the deposition if it has been unable to obtain that endorsement. The designating party may then move the Court for an Order directing that the witness abide by the terms of the Protective Order, and no confidential document shall be shown to the deponent until the Court has ruled. Deponents shall not retain or copy portions of the transcript of their depositions that contain Confidential information not provided by them or the entities they represent unless they sign the form described, and otherwise comply with the provisions in paragraph 6. A deponent who is not a party shall be furnished a copy of this Order before being examined about potential Confidential Discovery Materials. While a deponent is being examined about any Confidential Discovery Materials or the Confidential information contained therein, persons to whom disclosure is not authorized under this Order shall be excluded from being present.

b. Parties (and deponents) may, within thirty days after receiving a deposition, designate pages of the transcript (and exhibits thereto) as Confidential. Until expiration of such thirty-day period the entire transcript, including exhibits, will be treated as subject to Confidential protection under this Order. If no party or deponent timely designates a transcript as Confidential, then none of the transcript or its exhibits will be treated as Confidential.

11. Confidential Discovery Materials Offered as Evidence at Trial

Confidential Discovery Materials and the information therein may be offered in evidence at trial or any court hearing, provided that the proponent of the evidence gives

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notice to counsel for the party or other person that designated the discovery materials or information as Confidential in accordance with the Alaska Rules of Evidence or rulings in the Action governing identification and use of exhibits at trial. Any party may move the Court for an order that the evidence be received *in camera* or under other conditions to prevent unnecessary disclosure. The Court will then determine whether the proffered evidence should continue to be treated as Confidential and, if so, what protection, if any, may be afforded to such discovery materials or information at trial.

12. Filing

Confidential Discovery Materials shall not be filed with the Clerk except when required in connection with matters pending before the Court. If filed, they shall be filed in a sealed envelope; clearly marked:

> "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION COVERED BY A PROTECTIVE ORDER OF THE COURT AND IS SUBMITTED UNDER SEAL, PURSUANT TO THAT PROTECTIVE ORDER. THE CONFIDENTIAL CONTENTS OF THIS DOCUMENT MAY NOT BE DISCLOSED WITHOUT EXPRESS ORDER OF THE COURT"

and shall remain sealed while in the office of the Clerk so long as they retain their status as Confidential Discovery Materials. Said Confidential Discovery Materials shall be kept under seal until further order of the Court; however, said Confidential Discovery Materials and other papers filed under seal shall be available to the Court, to counsel of record, and to all

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other persons entitled to receive the Confidential information contained therein under the terms of this Order.

13. Client Consultant

Nothing in this Order shall prevent or otherwise restrict counsel from rendering advice to their clients in this Action and, in the course thereof, relying generally on examination of Confidential Discovery Materials; provided, however, that in rendering such advice and otherwise communicating with, such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 6.

14. Subpoena by Other Courts or Agencies

If another court or an administrative agency subpoenas or otherwise orders production of Confidential Discovery Materials which a person has obtained under the terms of this Order, the person to whom the subpoena or other process is directed shall promptly notify the designating party 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, administrative proceeding 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

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opportunity to object. Furthermore, the person receiving the subpoena or other process shall cooperate with the producing party in any proceeding related thereto.

15. Non-termination

The provisions of this Order shall not terminate at the conclusion of this Action. Within ninety days after final conclusion of all aspects of this Action, counsel shall, at their option return or destroy Confidential Discovery Materials and all copies of same. If counsel elects to destroy Confidential Discovery Materials, they shall consult with counsel for the producing party on the manner of destruction and obtain such party's consent to the method and means of destruction. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the party who produced the discovery materials not more than one hundred twenty days after final termination of this Action. Outside counsel, however, shall not be required to return or destroy any pretrial or trial records as are regularly maintained by that counsel in the ordinary course of business, which records will continue to be maintained as Confidential in conformity with this Order.

16. Modification Permitted

Nothing in this Order shall prevent any party or other person from seeking modification of this Order or from objecting to discovery that it believes to be otherwise improper.

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301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648
Telephone 907.277.9511 Facsimile 907.276.2631

17. Responsibility of Attorneys; Copies

The attorneys of record are responsible for employing reasonable measures to control and record, consistent with this Order, duplication of, access to, and distribution of Confidential Discovery Materials, including abstracts and summaries thereof.

No duplications of Confidential Discovery Materials shall be made except for providing working copies and for filing in Court under seal; provided, however, that copies may be made only by those persons specified in sections (a); (b) and (c) of paragraph 6 above. Any copy provided to a person listed in paragraph 6 shall be returned to counsel of record upon completion of the purpose for which such copy was provided. In the event of a change in counsel, retiring counsel shall fully instruct new counsel of their responsibilities under this Order and new counsel shall sign this Order.

18. No Waiver of Right or Implication of Discoverability

a. No disclosure pursuant, to any provision of this Order shall waive any rights or privileges of any party granted by this Order.

b. This Order shall not enlarge or affect the proper scope of discovery in this or any other litigation nor shall this Order imply that Confidential Discovery Materials are properly discoverable, relevant, or admissible in this or any other litigation. Each party reserves the right to object to any disclosure of information or production of any documents that the producing party designates as Confidential Discovery Materials on any other ground it may deem appropriate.

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c. The entry of this Order shall be without prejudice to the rights of the parties, or any one of, them, or of any non-party to assert or apply for additional or different protection. Nothing in this Order shall prevent any party from seeking an appropriate protective order to further govern the use of Confidential Discovery Materials at trial.

19. Improper Disclosure of Confidential Discovery Material

Disclosure of discovery materials designated Confidential other than in accordance with the terms of this Protective Order may subject the disclosing person to such sanctions and remedies as the Court may deem appropriate.

ORDERED this ____ day of _____, 2007.

_____
The Honorable Mark Rindner
Judge of the Superior Court

009867.0038/160899.1

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

ENDORSEMENT OF PROTECTIVE ORDER

I hereby attest to my understanding that information or documents designated Confidential are provided to me subject to the Protective Order ("Order") dated _____ 2007 (the "Protective Order"), in the above-captioned litigation ("Action"); that I have been given a copy of and have read the Order; and that I agree to be bound by its terms. I also understand that my execution of this Endorsement of Protective Order, indicating my agreement to be bound by the Order, is a prerequisite to my review of any information or documents designated as Confidential pursuant to the Order.

I further agree that I shall not 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 maybe used only for the purposes authorized by the Order.

I further agree to return all copies of any Confidential Discovery Materials I have received to counsel who provided them to me upon completion of the purpose for which they were provided and no later than the conclusion of this Action.

I further agree and attest to my understanding that my obligation to honor the confidentiality of such discovery material will continue even after this Action concludes.

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I further agree and attest to my understanding that, if I fail to abide by the terms of the Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the Superior Court for the State of Alaska, Third Judicial District at Anchorage, for the purposes of any proceedings relating to enforcement of the Order.

I further agree to be bound by and to comply with the terms of the Order as soon as I sign this Agreement, regardless of whether the Order has been entered by the Court.

Date: _____

By: _____

DATED this _____ day of June, 2007.

009867.0038/160900.1

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

In re: ZYPREXA
PRODUCTS LIABILITY LITIGATION

MDL No. 1596 (JBW)

----------x

THIS DOCUMENT RELATES TO:

ALL ACTIONS

----------x

CASE MANAGEMENT ORDER No. 15
(Deposition Guidelines)

IT IS ORDERED that depositions in the above-captioned matter shall be conducted in accordance with the following rules:

1. GENERAL PROVISIONS

a. **Cooperation.** Counsel are expected to cooperate with and be courteous to each other and deponents in both scheduling and conducting depositions.

b. **Lead Deposition Counsel**. Depositions and matters related to depositions shall be coordinated by a Lead Deposition Counsel for plaintiffs and a Lead Deposition Counsel for defendant. Lead Deposition Counsel for plaintiffs shall be Plaintiff Liaison Counsel or his designee, and Lead Deposition Counsel for defendant shall be Nina Gussack or her designee. The name and contact information for any designee shall be promptly communicated to the other

parties.

c. Attendance.

i. Who May Be Present. Unless otherwise ordered under Fed. R. Civ. P. 26(c), depositions may be attended by counsel of record, members and employees of their firms, attorneys specially engaged by a party for purposes of the deposition, the parties or the representative of a party, court reporters, videographers, the deponent, and counsel for the deponent. Upon application, and for good cause shown, the Court may permit attendance by a person who does not fall within any of the categories set forth in the preceding sentence. While the deponent is being examined about any stamped confidential document or the confidential information contained therein, persons to whom disclosure is not authorized under an MDL - 1596 Protective Order shall be excluded from the deposition. Any portion of the deposition transcript containing confidential information shall be sealed so as not to waive confidentiality when the transcript or video medium is placed in the document depository.

ii. Unnecessary Attendance. Unnecessary attendance by counsel is discouraged and may not be compensated in any fee application to the Court. Counsel who have only marginal interest in a proposed deposition or who expect their interests to be adequately represented by other counsel should elect not to attend.

iii. Notice of Intent to Attend a Deposition. In order for counsel to make arrangements for adequate deposition space, counsel who intend to attend a deposition noticed in this MDL should advise Lead Deposition Counsel for the noticing party not fewer than seven (7) business days prior to the deposition, whenever feasible.

2. **CONDUCT OF DEPOSITIONS**

a. Examination. Except in depositions that have been cross-noticed in actions pending in state court (see below), questioning should ordinarily be conducted by two attorneys for all plaintiffs and one attorney for defendant in MDL No. 1596, designated by Lead Deposition Counsel for each side. Once the witness has fully answered a question, that same or substantially the same question shall not be asked again. Counsel for plaintiffs who have individual or divergent positions, which cannot be resolved by good faith negotiations with plaintiffs' Lead Deposition Counsel, may examine a deponent limited to matters not previously covered. This limitation shall be strictly construed against the examining attorney. Three (3) days before a deposition requested or noticed by plaintiffs or defendant, Lead Deposition Counsel for the noticing party shall give Lead Deposition Counsel for the other side notice of the identity of the attorney(s) who may examine the deponent. Smoking by deponents or counsel during the deposition will not be permitted.

b. Duration. Counsel should consult prior to a deposition to agree upon the time required to depose a particular witness. Absent agreement of the parties or order of Special Master Woodin based on a showing of good cause, the length of depositions shall be controlled by Fed. R. Civ. P. 30(d)(2). Counsel should cooperate so examinations by multiple attorneys do not result in a deposition exceeding the allotted time.

c. Scheduling. Absent extraordinary circumstances, counsel should consult in advance with opposing counsel and counsel for proposed deponents in an effort to schedule depositions at mutually convenient times and locations. Counsel are expected to cooperate and coordinate the scheduling of depositions. There shall be no multi-tracking of depositions of former or current

officers or management personnel of Eli Lilly and Company ("Lilly"). Distributors, sales representatives, detail personnel, or other fact witnesses may be multi-tracked and the parties shall meet and confer on the establishment of a reasonable schedule for the multi-tracking of those depositions. To the extent that the parties cannot agree on a proposed schedule for such multi-tracking, the parties shall file with Special Master Woodin separate proposed schedules.

After counsel, through consultation, have arrived on a mutually acceptable date and location for a deposition, each side shall be notified of the scheduled deposition at least thirty (30) days in advance.

d. Deposition Day. A deposition day shall commence at 9:30 a.m. and terminate no later than 5:30 p.m. local tune. Modest variations in this schedule may be made by agreement of counsel who noticed the deposition and counsel for the witness. There shall be a 15 minute morning break and a 15 minute afternoon break, with one (1) hour for lunch.

Depositions may not take place in more than three consecutive weeks out of every four consecutive weeks. The fourth week shall be an "off" week. In any given calendar month, the Plaintiffs in the MDL will ordinarily take the depositions of no more than nine (9) current or former employees of Lilly..

e. Depositions of Witnesses Who Have No Knowledge of the Facts. An officer, director, or managing agent of a corporation or a government official served with a notice of a deposition or subpoena regarding a matter about which such person has no knowledge may submit to the noticing party within fifteen (15) days before the date of the noticed deposition a declaration so stating and identifying a person within the corporation or government entity believed to have such knowledge. Notwithstanding such declaration, the noticing party may

proceed with the deposition. The right of the responding witness to seek a protective order or other appropriate relief during or following the deposition is reserved.

f. **Coordination with State Court Actions.** Counsel for plaintiffs in the MDL shall use their best efforts to coordinate the scheduling of depositions with counsel for state court plaintiffs in order to minimize the number of times that a witness shall appear for a deposition. In a coordinated deposition, the Special Master expects counsel for plaintiffs in the MDL and counsel for state court plaintiffs to cooperate in selecting the primary examiners. Upon the conclusion of the examination by the primary examiners, counsel for plaintiffs in a state court proceeding may ask additional questions prior to the completion of the deposition. It is the intent of this Order that counsel for MDL plaintiffs shall be the primary examiners in a deposition coordinated with a state court proceeding, but that counsel in the state court proceeding have sufficient opportunity to question the deponent so that the deposition may be used in the state proceeding for all purposes consistent with the state's procedure.

g. **Cross-Noticing.** Any deposition in this MDL may be cross-noticed by any party in any Zyprexa-related action pending in state court, and any deposition in any Zyprexa-related action pending in state court may be cross-noticed by any party in this MDL. Each deposition notice shall include the name, address and telephone number of the primary examiner(s) designated by the party noticing the deposition; and the date, time and place of the deposition. If a state court deposition has been cross-noticed in this MDL, then the state court plaintiffs may not take a subsequent deposition of that witness except for good cause shown as determined by Special Master Woodin or because documents which may be relevant to the witness or lead to discoverable information have been produced or discovered after the date of the deposition and,

in that case, any subsequent deposition shall be restricted to such additional inquiry permitted by Special Master Woodin or to subsequently produced or discovered documents. The attorney who conducts the primary examination for the noticing party is responsible for ensuring that a copy of the deposition transcript, a disk, and, where applicable, a videotape or video DVD, are provided to the other side's Lead Deposition Counsel.

h. Postponements. Once a deposition has been scheduled, it shall not be taken off the calendar, rescheduled or relocated less than three (3) calendar days in advance of the date it is scheduled to occur, except upon agreement between the primary examiner designated by the party noticing the deposition and Lead Deposition Counsel for the opposing party witness (if the witness is a party or a current or former employee or an expert designated by a party) or counsel for the witness (if the witness is not a party or a current or former employee or an expert designated by a party) or by leave of Special Master Woodin for good cause.

i. Objections and Directions Not to Answer.

i. Counsel shall comply with Fed. R. Civ. P. 30(d)(l). When a privilege is claimed, the witness should nevertheless answer questions relevant to the existence, extent, or waiver of the privilege, such as the date of a communication, who made the statement, to whom and in whose presence the statement was made, other persons to whom the contents of the statement have been disclosed, and the general subject matter of the statement, unless such information is itself privileged. Any objection made at a deposition shall be deemed to have been made on behalf of all other parties. All objections, except those as to form and privilege, are reserved until trial or other use of the depositions.

ii. Counsel shall refrain from engaging in colloquy during deposition. The

phrase "objection as to form" or similar language shall be sufficient to preserve all objections as to form until the deposition is sought to be used. If requested, the objecting party shall provide a sufficient explanation for the objection to allow the deposing party to rephrase the question.

iii. Counsel shall not make objections or statements which might suggest an answer to a witness.

iv. Counsel shall not direct or request that a witness refuse to answer a question, unless that counsel has objected to the question on the ground that the question seeks privileged information, information that the court has ordered may not be discovered, or a deponent seeks to present a motion to Special Master Woodin for termination of the depositions on the ground that it is being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass or oppress the party or deponent.

v. Private consultations between deponents and their attorneys during the actual taking of the deposition are improper, except for the purpose of determining whether a privilege should be asserted. Unless prohibited Special Master Woodin for good cause shown, conferences may be held during normal recesses, adjournments, or if there is a break in the normal course of interrogation and no questions are pending.

j. **Evidentiary Form of Questions.** It is stipulated by plaintiffs and defendant that in the event the parties seek to use at any trial the deposition testimony of any witness offering an opinion, the parties shall not raise at such deposition or trial the objection that the deposition questions asked or the answers given regarding such expert opinion do not conform to the evidentiary form typically required by the jurisdiction whose law would control the case being tried. For example, if one jurisdiction requires an opinion to be expressed to a reasonable degree

of certainty, the parties shall not object to an opinion given to a reasonable degree of probability.

k. Telephonic and Internet Participation.

i. Telephonic Participation. Telephone facilities shall be provided so that parties wishing to participate in the depositions by telephone may do so. However, technical difficulties with telephonic participation shall not constitute grounds for continuing the deposition or for rendering a deposition inadmissible that would otherwise be admissible in evidence. Counsel attending a deposition in person may terminate telephone participation in a deposition if technical problems with the telephonic facilities create disruptions in the deposition.

ii. Internet Participation. The parties will explore the possibility of providing internet facilities for depositions and court hearings.

l. Avoidance of Duplicative Depositions.

i. Depositions Taken in Other Proceedings. The defendant shall advise the Plaintiffs' Steering Committee of all depositions that have been taken by plaintiffs in other Zyprexa-related proceedings (other than depositions of case-specific witnesses) and shall assist in arranging for the Plaintiffs' Steering Committee to obtain copies of transcripts of those depositions. The plaintiffs in this MDL proceeding shall not, without good cause, re-notice the depositions of witnesses who have already been deposed. In the event that a party re-notices the deposition of a witness who has already been deposed, should a party object, then such objection must be made within ten (10) days of the notice and Lead Deposition Counsel shall meet and confer within five (5) days of the objection to attempt to resolve the dispute. If no agreement can be reached, the matter shall be brought to Special Master Woodin, for resolution at the earliest possible time and without undue delay to avoid postponement of the deposition.

ii. **Successive Depositions in this Proceeding.** As a general rule, no witness should be deposed on the same subject more than once in this proceeding.

m. **Disputes During Depositions.** Disputes between the parties should be addressed to Special Master Woodin rather than the District Court in the District in which the deposition is being conducted. Disputes arising during depositions that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require rescheduling of the deposition, or might result in the need to conduct a supplemental deposition, shall be presented to Special Master Woodin, by telephone (212-607-2754). If Special Master Woodin is not available, the deposition shall continue with full reservation of rights of the examiner for a ruling at the earliest possible time. Nothing in this Order shall deny counsel the right to suspend a deposition pursuant to Fed. R. Civ. P. 30 (d)(4), file an appropriate motion with Special Master Woodin at the conclusion of the deposition, and appear personally before Special Master Woodin.

n. **Documents Used in Connection with Depositions.**

i. Production of Documents. Third-party witnesses subpoenaed to produce documents shall, to the extent possible, be served with the document subpoena at least thirty (30) calendar days before a scheduled deposition. Depending upon the quantity of documents to be produced, some time may be needed for inspection of the documents before the examination commences. With respect to experts, arrangements should be made to permit inspection of documents, if possible, seven (7) calendar days before the deposition of expert witnesses.

ii. Copies. Extra copies of documents about which deposing counsel expects to examine a deponent should be provided to primary counsel for the parties and the deponent

during the course of the deposition.

iii. Marking of Deposition Exhibits. All documents previou... used as deposition exhibits shall be referred to by the unique alpha-numeric identifie... on the documents.

iv. Objections to Documents. Objections to the relevance or admissibility of documents used as deposition exhibits are not waived, and are reserved for later ruling by the Court or by the trial judge.

o. **Video Depositions.** By so indicating in its notice of a deposition, a party, at its expense, may record a deposition by videotape or digitally-recorded video pursuant to Fed. R. Civ. P. 30(b)(2) subject to the following rules:

i. Real-time Feed. All video depositions will be stenographically recorded by a court reporter with "real-time feed" transcription capabilities.

ii. Video Operator. The operator(s) of the video recording equipment shall be subject to the provisions of Fed. R. Civ. P. 28(c). At the commencement of the deposition, the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

iii. Attendance. Each witness, attorney and other person attending the deposition shall be identified on the record at the commencement of the deposition.

iv. Standards. Unless physically incapacitated, the deponent shall be seated at a table except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting and field of view will be changed only as

necessary to record accurately the natural body movements of the deponent. Only the deponent and any exhibits or demonstrative aids used in the examination will be video recorded. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent. The witness shall appear in ordinary business attire (as opposed to, for instance, a lab coat) and without objects such as a bible, medical equipment, or other props.

v. Filing. The operator shall preserve custody of the original video medium (tape or DVD) in its original condition until further order of the Court. No part of the video or audio record of a video deposition shall be released or made available to any member of the public unless authorized by the Court.

p. **Telephone Depositions**. By indicating in its notice of deposition that it wishes to conduct the deposition by telephone, a party shall be deemed to have moved for such an order under Fed. R. Civ. P. 30(b)(7). Unless an objection is filed and served within ten (10) calendar days after such notice is received, Special Master Woodin shall be deemed to have granted the motion. Other parties may examine the deponent telephonically or in person. However, all persons present with the deponent shall be identified in the deposition and shall not by word, sign or otherwise coach or suggest answers to the deponent. The court reporter shall be in the same room with the deponent.

3. **USE OF DEPOSITIONS**

Depositions of Lilly employees and former employees taken in this MDL proceeding or in any state action relating to Zyprexa in which Lilly is a party may be used by or against any person (including parties later added and parties in cases subsequently filed in,

removed to or transferred to this Court as part of this litigation):

(i) who is a party to this litigation;

(ii) who was present or represented at the deposition;

(iii) who was served with prior notice of the deposition or otherwise had reasonable notice thereof, or

(iv) who, within thirty (30) calendar days after the transcription of the deposition (or, if later, within sixty (60) calendar days after becoming a party in this Court in any action that is a part of this MDL proceeding), fails to show just cause why such deposition should not be useable against such party.Depositions may be used in any Zyprexa-related action in state court to the extent permitted by that state's law and rules.

4. **FEDERAL RULES OF CIVIL PROCEDURE APPLICABLE**

Unless specifically modified herein, nothing in this order shall be construed to abrogate the Federal Rules of Civil Procedure.

Dated: New York, New York
May 2, 2006

Peter H. Woodin
Special Discovery Master

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

SUPPLEMENTAL SCHEDULING ORDER

The Routine Pretrial Order dated January 10, 2007, is supplemented as follows:

DISCOVERY.

A. Except as indicated herein and as otherwise ordered by the Court, the Alaska Civil Rules governing discovery are applicable to this case.

B. The parties are exempt from the initial disclosure requirements of Rule 26(a)(1) and from the 30-interrogatory limit of Rule 33(a).

C. Defendant need not produce documents to Plaintiff that Defendant previously produced in the Zyprexa multi-district litigation, *In re Zyprexa Products Liability Litigation,* MDL No. 1596 (E.D.N.Y.).

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D. The Court will issue a protective order which governs any documents produced in this action. Upon motion of any party, the Court may amend the terms of this protective order.

E. Plaintiff may take ten depositions of employees or former employees of defendant, subject only to Lilly's right to object to the deposition under the Alaska Rules of Civil Procedure. If Plaintiff wants to take any additional depositions, it shall seek permission from the Court.

F. The following guidelines shall govern depositions in this case:

1. Who May Be Present. Unless ordered by this Court, or by agreement of the parties, depositions may be attended by counsel of record, members and employees of their firms, attorneys specially engaged by a party for purposes of the deposition, retained experts, court reporters, videographers, the deponent, and counsel for the deponent. By agreement of the parties, the Court may permit attendance by a person who does not fall within any of the categories set forth in the preceding sentence.

2. Confidential Information. Any portion of the deposition transcript containing confidential information shall be sealed until further order of the Court.

3. Scheduling. Absent extraordinary circumstances, counsel should consult in advance with opposing counsel and counsel for proposed deponents in an effort to schedule depositions at mutually convenient times and locations. Counsel are expected to cooperate in the scheduling of depositions.

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4. Coordination with Other Actions. With respect to any depositions in addition to the ten provided for in paragraph E., above, the following procedures shall apply. Counsel for plaintiff shall use their best efforts to coordinate the scheduling of depositions with counsel for plaintiffs in other state or federal courts in order to minimize the number of times that a witness must appear for a deposition.

5. Documents Used in Connection with Depositions.

a. Production of Documents. Non-party witnesses subpoenaed to produce documents shall, to the extent possible, be served with the document subpoena at least 30 calendar days before a scheduled deposition.

b. Copies. Extra copies of documents about which deposing counsel expects to examine a deponent should be provided to primary counsel for the parties and the deponent during the course of the deposition.

c. Marking of Deposition Exhibits. All documents previously produced and used as deposition exhibits shall be referred to by the unique alpha-numeric identifiers appearing on the documents.

d. Objections to Documents. Objections to the relevance or admissibility of documents used as deposition exhibits are not waived, and are reserved for later ruling by the Court or by the trial judge.

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DISCOVERY MASTER

G. Pursuant to Alaska R. Civ. P. 53, the Court hereby appoints Dan Hensley, Esquire, as the discovery master ("DM"). Subject to the procedures set forth in this Order, the DM is authorized to decide all issues arising under Alaska R. Civ. P. 26-37 in this action. Notwithstanding his appointment, the DM's authority shall not extend to the first set of discovery requests served by defendant nor to the ten depositions of employees and former employees of Lilly that are referenced in paragraph III(B). The following procedures and guidelines shall be followed in submitting disputes to the DM for consideration:

1. Before submitting a discovery dispute to the DM for resolution, the parties shall make a good faith effort to resolve any such dispute. Any motion filed with the DM must include the certification required by Civil Rule 37(a)(2)(A) stating that the parties attempted to resolve the dispute prior to seeking the DM's assistance. All pleadings shall be served by hand or electronic mail on the other party.

2. If the parties are unable to resolve the dispute, motions may be filed with the DM. The party or parties to whom the motion is directed shall file an opposition within seven days from the date the motion is served by hand or electronically. Any motion and any opposition shall be limited to 10 pages of argument and 30 pages of exhibits, unless the filing party can make a good cause showing why additional pages are needed. The party filing the motion may file a reply memorandum. Any reply shall be

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filed within three days from the date the opposition is served by hand or electronically. Any reply shall be limited to five pages of argument and 10 pages of exhibits, unless the party filing the reply memorandum can make a good cause showing why additional pages are needed. Each side shall submit a proposed order for the DM's signature.

3. In the event that a discovery issue arises which requires immediate resolution in order to prevent undue expense or delay (e.g., an issue arising over an instruction to a deponent not to answer a deposition question at an out-of-state deposition attended by multiple counsel), one or more parties may attempt to contact the DM by telephone for his expedited ruling on the discovery issue. If the DM cannot be reached, the party(ies) seeking immediate resolution of the discovery issue may attempt to contact the trial judge for his similar resolution of the issue.

4. Except as otherwise noted herein, all discovery disputes must first be submitted to the DM for resolution. In his discretion, the DM may schedule oral argument on any dispute presented to him for resolution.

5. The DM is authorized to communicate on matters related to coordination of state and federal court Zyprexa actions with Peter H. Woodin, Special Master in the Zyprexa MDL. Any such communications shall be in writing or stenographically recorded.

6. The DM shall decide the motions in the order they are received, unless a party can make a good cause showing why they should be taken out of order.

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The DM shall endeavor to decide the motions promptly. The DM will issue a written decision on each dispute presented to him for resolution.

7. The parties shall give telephonic notice to the DM's secretary that a motion is ripe for decision.

8. Once the DM issues a decision, a party has a right to appeal the decision to the Court. An appeal shall be filed with the Court within five days of service by hand or electronically of the DM's decision and will consist of a notice of appeal indicating which motion is being appealed, the DM's decision, and the papers filed with the DM. The DM will decide if his ruling will be stayed pending the Court's decision on appeal. If the Court affirms the DM's decision in its entirety, the Court may award the prevailing party costs and fees. The Court shall have the discretion to make any award of costs and fees against an appealing party if it determines that the appealing party did not substantially improve its position from the DM's order or if there was not a good faith basis to file the appeal. In support of the appeal to the court, the party appealing may file supplemental pleadings addressing the perceived error of the DM's order of not more than five pages. A single response shall be allowed, with no reply, within five days of service by hand or electronically (eight days if mailed) of the supplemental pleading in support of the appeal.

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9. The DM shall schedule status conferences with the parties when necessary. Any party may request a status conference with the DM to promptly resolve discovery disputes.

10. The DM's fee is $250.00 per hour. Each party shall pay an equal share of the fees and costs of the DM unless he orders that the fees be allocated in some other fashion.

ORDERED this ____ day of _____, 2007.

BY THE COURT

_____
The Honorable Mark Rindner
Judge of the Superior Court

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, Plaintiff, v. ELI LILLY AND COMPANY, Defendant.	Case No. 3AN-06-05630 CI

SUPPLEMENTAL SCHEDULING ORDER

The Routine Pretrial Order dated January 10, 2007, is supplemented as follows:

NATURE OF THE CASE

This case shall be characterized as non-routine. Accordingly, this case is exempt from the initial disclosure requirements of Rule 26(a)(1) and from the 30-interrogatory limit of Rule 33(a). Except as provided in this Order, the Alaska Rules of Civil Procedure shall govern this case.

DISCOVERY

A. Defendant need not produce documents to Plaintiff that Defendant previously produced in the Zyprexa multi-district litigation, *In re Zyprexa Products Liability Litigation,* MDL No. 1596 (E.D.N.Y.).

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B. The Court will issue a protective order which governs any documents produced in this action. Upon motion of any party, the Court may amend the terms of this protective order.

C. Plaintiff may take ten depositions of employees or former employees of defendant, subject only to Lilly's right to object to the deposition under the Alaska Rules of Civil Procedure. If Plaintiff wants to take any additional depositions, it shall seek permission from the Court.

D. The following guidelines shall govern depositions in this case:

1. Who May Be Present. Unless otherwise ordered by this Court or agreed by the parties, depositions may be attended by counsel of record, retained experts, members and employees of their firms, attorneys specially engaged by a party for purposes of the deposition, court reporters, videographers, the deponent, and counsel for the deponent. Upon application, and for good cause shown, the Court may permit attendance by a person who does not fall within any of the categories set forth in the preceding sentence. While the deponent is being examined about any stamped confidential document or the confidential information contained therein, persons to whom disclosure is not authorized under the Protective Order governing this litigation shall be excluded from the deposition. Any portion of the deposition transcript containing confidential information shall be sealed so as not to waive confidentiality when the transcript or video medium is placed in the document depository.

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2. Confidential Information. Any portion of the deposition transcript containing confidential information shall be sealed until further order of the Court.

3. Scheduling. Absent extraordinary circumstances, counsel should consult in advance with opposing counsel and counsel for proposed deponents in an effort to schedule depositions at mutually convenient times and locations. Counsel are expected to cooperate in the scheduling of depositions.

4. Coordination with Other Actions. With respect to any depositions in addition to the ten provided for in paragraph C., above, the following procedures shall apply. Counsel for plaintiff shall use their best efforts to coordinate the scheduling of depositions with counsel for plaintiffs in other state or federal courts in order to minimize the number of times that a witness must appear for a deposition.

5. Documents Used in Connection with Depositions.

a. Production of Documents. Non-party witnesses subpoenaed to produce documents shall, to the extent possible, be served with the document subpoena at least 30 calendar days before a scheduled deposition.

b. Copies. Extra copies of documents about which deposing counsel expects to examine a deponent should be provided to primary counsel for the parties and the deponent during the course of the deposition.

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c. Marking of Deposition Exhibits. All documents previously produced and used as deposition exhibits shall be referred to by the unique alpha-numeric identifiers appearing on the documents.

d. Objections to Documents. Objections to the relevance or admissibility of documents used as deposition exhibits are not waived, and are reserved for later ruling by the Court or by the trial judge.

DISCOVERY MASTER

E. Pursuant to Alaska R. Civ. P. 53, the Court hereby appoints Dan Hensley, Esquire, as the discovery master ("DM"). Subject to the procedures set forth in this Order, the DM is authorized to decide all issues arising under Alaska R. Civ. P. 26-37 in this action. Notwithstanding his appointment, the DM's authority shall not extend to the first set of discovery requests served by defendant nor to the ten depositions of employees and former employees of Lilly that are referenced in paragraph C. The following procedures and guidelines shall be followed in submitting disputes to the DM for consideration:

1. Before submitting a discovery dispute to the DM for resolution, the parties shall make a good faith effort to resolve any such dispute. Any motion filed with the DM must include the certification required by Civil Rule 37(a)(2)(A) stating that the parties attempted to resolve the dispute prior to seeking the DM's assistance. All pleadings shall be served by hand or electronic mail on the other party.

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2. If the parties are unable to resolve the dispute, motions may be filed with the DM. The party or parties to whom the motion is directed shall file an opposition within seven days from the date the motion is served by hand or electronically. Any motion and any opposition shall be limited to 10 pages of argument and 30 pages of exhibits, unless the filing party can make a good cause showing why additional pages are needed. The party filing the motion may file a reply memorandum. Any reply shall be filed within three days from the date the opposition is served by hand or electronically. Any reply shall be limited to five pages of argument and 10 pages of exhibits, unless the party filing the reply memorandum can make a good cause showing why additional pages are needed. Each side shall submit a proposed order for the DM's signature.

3. In the event that a discovery issue arises which requires immediate resolution in order to prevent undue expense or delay (e.g., an issue arising over an instruction to a deponent not to answer a deposition question at an out-of-state deposition attended by multiple counsel), one or more parties may attempt to contact the DM by telephone for his expedited ruling on the discovery issue. If the DM cannot be reached, the party(ies) seeking immediate resolution of the discovery issue may attempt to contact the trial judge for his similar resolution of the issue.

4. Except as otherwise noted herein, all discovery disputes must first be submitted to the DM for resolution. In his discretion, the DM may schedule oral argument on any dispute presented to him for resolution.

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5. The DM is authorized to communicate on matters related to coordination of state and federal court Zyprexa actions with Peter H. Woodin, Special Master in the Zyprexa MDL. Any such communications shall be in writing or stenographically recorded.

6. The DM shall decide the motions in the order they are received, unless a party can make a good cause showing why they should be taken out of order. The DM shall endeavor to decide the motions promptly. The DM will issue a written decision on each dispute presented to him for resolution.

7. The parties shall give telephonic notice to the DM's secretary that a motion is ripe for decision.

8. Once the DM issues a decision, a party has a right to appeal the decision to the Court. An appeal shall be filed with the Court within five days of service by hand or electronically of the DM's decision and will consist of a notice of appeal indicating which motion is being appealed, the DM's decision, and the papers filed with the DM. The DM will decide if his ruling will be stayed pending the Court's decision on appeal. If the Court affirms the DM's decision in its entirety, the Court may award the prevailing party costs and fees. The Court shall have the discretion to make any award of costs and fees against an appealing party if it determines that the appealing party did not substantially improve its position from the DM's order or if there was not a good faith basis to file the appeal. In support of the appeal to the court, the party appealing may file

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supplemental pleadings addressing the perceived error of the DM's order of not more than five pages. A single response shall be allowed, with no reply, within five days of service by hand or electronically (eight days if mailed) of the supplemental pleading in support of the appeal.

9. The DM shall schedule status conferences with the parties when necessary. Any party may request a status conference with the DM to promptly resolve discovery disputes.

10. The DM's fee is $250.00 per hour. Each party shall pay an equal share of the fees and costs of the DM unless he orders that the fees be allocated in some other fashion.

ORDERED this 30 day of July, 2007.

BY THE COURT

Mark Rindner

The Honorable Mark Rindner
Judge of the Superior Court

I certify that on July 30, 2007 a copy of the above was mailed to each of the following at their addresses of record:
Jamieson Sanders

Administrative Assistant

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

ORDER

THIS COURT, having considered defendant's Motion for Expedited Consideration on its Motion for Extension of Time to Identify Retained Experts, all responses thereto, as well as applicable law:

IT IS HEREBY ORDERED that defendant's motion is GRANTED. Any opposition shall be filed and served no later than 4:30 ~~am~~/pm, August 2, 2007.

A hearing will be held on August 3, 2007 at 1:30 p.m. in Courtroom 403, as previously notified telephonically.

ORDERED this 1st day of August, 2007.

Mark Rindner

The Honorable Mark Rindner
Judge of the Superior Court

I certify that on July 31, 2007, a copy of the foregoing was served by mail and fax, on:

Eric T. Sanders, Esq.
Feldman Orlansky & Sanders
500 L. Street, Suite 400
Anchorage, Alaska 99501-5911

009867.0038/161299.1

I certify that on August 1, 2007 a copy of the above was mailed to each of the following at their addresses of record: and faxed

E. Sanders B. Jamieson

Administrative Assistant

000741

LANE POWELL LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648
Telephone 907.277.9511 Facsimile 907.276.2631

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

MOTION FOR EXPEDITED CONSIDERATION

Defendant Eli Lilly and Company ("Lilly"), by and through counsel, hereby moves for expedited consideration of its Motion for Extension of Time to Identify Retained Experts.

Because the due date for identification of retained experts is August 1, 2007, and the State has refused to agree to an extension of time, Lilly hopes for a ruling on an expedited basis so as to not miss the previously-ordered deadline.

This motion is supported by the attached Affidavit of Brewster H. Jamieson.

DATED this 31st day of July, 2007.

Attorneys for Defendant

PEPPER HAMILTON LLP
Andrew R. Rogoff, admitted *pro hac vice*
Eric J. Rothschild, admitted *pro hac vice*
3000 Two Logan Square
18th & Arch Streets
Philadelphia, PA 19103
(215) 981-4000

LANE POWELL LLC

By _____
Brewster H. Jamieson, ASBA No. 8411122
Andrea E. Girolamo-Welp, ASBA No. 0211044

LANE POWELL LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648
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I certify that on July 31, 2007, a copy of the foregoing was served by mail and fax, on:

Eric Sanders, Feldman Orlansky & Sanders
500 L. St., Ste. 400, Anchorage, AK 99501

_____

009867.0038/161296.1

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

AFFIDAVIT OF BREWSTER H. JAMIESON

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Brewster H. Jamieson, being first duly sworn, states as follows:

1. I am an attorney with Lane Powell LLC, counsel for Defendant Eli Lilly and Company, and have personal knowledge of the contents of this affidavit. This affidavit is filed in support of the Motion for Expedited Consideration as well as for Defendant's Motion for Extension of Time to Identify Retained Experts.

2. Pursuant to the Routine Pretrial Order of January 10, 2007, the due date for the identification of retained experts is August 1, 2007.

3. For the reasons stated in the Motion for Extension of Time to Identify Retained Experts, defendant's counsel has contacted plaintiff's counsel via telephone and e-mail requesting an extension of the August 1, 2007, deadline. Plaintiff's counsel has refused both requests to grant an extension. *See* Exhibit A, e-mail exchange between David Suggs and Eric Rothschild, dated July 30, 2007.

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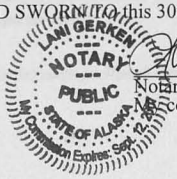
4. Lilly hopes for a ruling on an expedited basis so as to not miss the previously ordered deadline.

Further affiant sayeth naught.

Brewster H. Jamieson

SUBSCRIBED AND SWORN TO this 30th day of July, 2007.



Notary in and for the State of Alaska
commission expires: 9-12-07

I certify that on July 31, 2007, a copy of the foregoing was served by mail and fax, on:

Eric Sanders, Feldman Orlansky & Sanders
500 L St., Ste. 400, Anchorage, AK 99501

009867.0038/161297.1

LANE POWELL LLC
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Girolamo-Welp, Andrea

From: David Suggs [dsuggs@attglobal.net]
Sent: Monday, July 30, 2007 2:59 PM
To: 'Rothschild, Eric J.'; 'Eric Sanders'
Cc: 'Rogoff, Andy'; Jamieson, Brewster; Girolamo-Welp, Andrea; 'Blair Hahn'; 'Christiaan Marcum'; jwsteele5@att.net; 'matt garretson'
Subject: RE: Identification of experts

I don't know how I could have been any clearer than in our telephone conversation earlier today.

We know what the case is about and we intend to disclose the identities of our expert witnesses at the appointed time. We are not amenable to postponement.

From: Rothschild, Eric J. [mailto:ROTHSCHE@pepperlaw.com]
Sent: Monday, July 30, 2007 5:30 PM
To: Eric Sanders; David Suggs
Cc: Rogoff, Andy; JamiesonB@LanePowell.com; GirolamoA@LanePowell.com
Subject: Identification of experts

David and Eric,

As we discussed with David earlier today, it is Lilly's view that it is premature to disclose the identities of expert witnesses on August 1, as contemplated by the court's pre-trial order. That deadline was set back in January 2007, before the parties had filed pleadings relating to the method by which the State intended to prove the case, or exchanged discovery requests. Until the pending motion and disputes over discovery are resolved, the parties will not know what evidence will be available in the case. Accordingly, it is difficult to define what kinds of experts will be needed. Rather than have each side identify experts that may have to be changed depending on the nature of the case, we propose to postpone both parties' identification of experts to a later date.

Please advise whether you are agreeable to this proposal. If not, we will file a motion with the court seeking an extension.

Best,

Eric Rothschild
Attorney at Law
Pepper Hamilton LLP
3000 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103
Phone: (215) 981-4813
Direct Fax: (215) 981-4750
rothsche@pepperlaw.com
www.pepperlaw.com

RINDNER

JUN 07 2007 NIT filed 7/30/07

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

PROTECTIVE ORDER

To expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect confidential material, and ensure that protection is afforded only to material so entitled, the Court enters this Protective Order pursuant to Rule 26 of the Alaska Rules of Civil Procedure.

1. Discovery Materials

This Order applies to all products of discovery and all information derived therefrom, including but not limited to, all documents, objects or things, deposition testimony and interrogatory/request for admission responses and any copies, excerpts or summaries thereof, obtained by any party pursuant to the requirements of any court order, requests for production of documents, requests for admissions, interrogatories, or subpoena ("discovery materials"). This Order is limited to the litigation or appeal of this action ("Action").

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2. Use of Discovery Materials

With the exception of documents or information that have become publicly available, all documents, information or other discovery materials produced or discovered in this Action and that have been designated confidential shall be used by the receiving party solely for the prosecution or defense of Zyprexa litigation to the extent reasonably necessary to accomplish the purpose for which disclosure is made, and not for any other purpose, including any other competitive, governmental, commercial, or administrative purpose or function.

3. "Confidential Discovery Materials" Defined

For the purposes of this Order, "Confidential Discovery Materials" shall mean any information that the producing party in good faith believes is properly protected under Alaska Rule of Civil Procedure 26(c)(7); under any federal or state statutes, regulations or court rules; or under the federal or state constitutions. While state and federal laws and regulations preclude the parties from producing any personal identifying information, the parties may produce certain redacted or de-identified information for use in this litigation and under the protection of this Order.

The terms of this Order shall in no way affect the right of any person (a) to withhold information on alleged grounds of immunity from discovery such as, for example, attorney/client privilege, work product or privacy rights of such third parties as patients, physicians, clinical investigators, or reporters of claimed adverse reactions; or

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(b) to withhold information on alleged grounds that such information is neither relevant to any claim or defense nor reasonably calculated to lead to the discovery of admissible evidence. If information is redacted for any reason, the redacting party shall produce a separate log that identifies the document subject to redaction by bates number, the reason for such redaction, and describes the nature of the information redacted so that other parties may assess the applicability of any privilege or protection.

Where large volumes of discovery material are provided to the requesting party's counsel for preliminary inspection, and designation for production, and have not been reviewed for confidentiality purposes, the producing party reserves the right to so designate and redact appropriate discovery materials after they are designated by the requesting party for production. During the preliminary inspection process, and before production, all discovery materials reviewed by the requesting party's counsel shall be treated as Confidential Discovery material.

4. Designation of Documents as "Confidential"

a. For the purposes of this Order, the term "document" means all tangible items, whether written, recorded or graphic, whether produced or created by a party or another person, whether produced pursuant to subpoena, to discovery request, by agreement, or otherwise.

b. Any document which the producing party intends to designate as Confidential shall be stamped (or otherwise have the legend recorded upon it in a way

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that brings the legend to the attention of a reasonable examiner) with a notation substantially similar to the following:

State of Alaska v. Eli Lilly and Company: Confidential-Subject to Protective Order

Such stamping or marking will take place prior to production by the producing person, or subsequent to selection by the receiving party for copying. The stamp shall be affixed in such a manner as not to obliterate or obscure any written material.

c. A party may preliminarily designate as "Confidential" all documents produced by a non-party entity employed by the party for the purposes of document management, quality control, production, reproduction, storage, scanning, or other such purpose related to discovery, by notifying counsel for the other party that all documents being produced are to be accorded such protection. Once said documents are produced by such third party vendor, the designating party will then review the documents and, as appropriate, designate them as "Confidential" by stamping the document (or otherwise having the legend recorded upon it in a way that brings its attention to a reasonable examiner) as such.

5. Non-Disclosure of Confidential Discovery Materials

Except with the prior written consent of the party or other person originally producing Confidential Discovery Materials, or as hereinafter provided under this Order, no Confidential Discovery Materials, or any portion thereof, may be disclosed to any person, including any plaintiff, except as set forth in section 6(d) below.

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6. Permissible Disclosures of Confidential Discovery Material

Confidential Discovery Materials may be disclosed to and used only by:

a. counsel of record for the parties in this Action and to his/her partners, associates, secretaries, legal assistants, and employees to the extent considered reasonably necessary to render professional services in the Action;

b. inside counsel of the parties, to the extent reasonably necessary to render professional services in the Action;

c. court officials involved in this Action (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);

d. any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;

e. where produced by a plaintiff, in addition to the persons described in subsections (a) and (b) of this section, defendant's in-house paralegals and outside counsel, including any attorneys employed by or retained by defendant's outside counsel who are assisting in connection within this Action, and the paralegal, clerical, secretarial, and other staff employed or retained by such outside counsel or retained by the attorneys employed by or retained by defendant's outside counsel;

f. where produced by defendant Eli Lilly and Company, in addition to the persons described in subsections (a) and (b) of this section, plaintiff's attorneys in

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other filed litigation alleging injuries or damages resulting from the use of Zyprexa® including their paralegal, clerical, secretarial and other staff employed or retained by such counsel, provided that such counsel have agreed to be governed by the terms of this Order and shall sign a copy of the order;

g. persons noticed for depositions or designated as trial witnesses, or those who counsel of record in good faith expect to testify at deposition or trial, to the extent reasonably necessary in preparing to testify;

h. outside consultants or outside experts retained for the purpose of assisting counsel in the Action;

i. employees of counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designating programs for handling data connected with this action, including the performance of such duties in relation to a computerized litigation support system;

j. employees of non-party contractors performing one or more of the functions set forth in (i) above;

k. any employee of a party or former employee of a party, but only to the extent considered necessary for the preparation and trial of this action; and any other person, if consented to by the producing party; and

l. any individual to whom disclosure is to be made under subparagraphs (d) through (k) above, shall sign, prior to such disclosure, a copy of the Endorsement of

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Protective Order, attached as Exhibit A. Counsel providing access to Confidential Discovery Materials shall retain copies of the executed Endorsement(s) of Protective Order. Any party seeking a copy of an endorsement may make a demand setting forth the reasons therefore to which the opposing party will respond in writing if the dispute cannot be resolved the demanding party may move the Court for an order compelling production upon a showing of good cause. For testifying experts, a copy of the Endorsement of Protective Order executed by the testifying expert shall be furnished to counsel for the party who produced the Confidential Discovery Materials to which the expert has access, at the time the expert's designation is served or at the time the Confidential Discovery Materials are provided to the testifying expert, whichever is later. Before disclosing Confidential Discovery Materials to any person listed in subparagraphs (d) through (k) who is a Customer or Competitor (or an employee of either) of the party that so designated the discovery materials, but who is not an employee of a party, the party wishing to make such disclosure shall give at least three business days advance notice in writing to the counsel who designated such discovery materials as Confidential, stating that such disclosure will be made, identifying by subject matter category the discovery material to be disclosed, and stating the purposes of such disclosure. If, within the three business day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Court has denied such motion. As used in this paragraph, (a) the term "Customer" means any direct purchaser of products from Lilly, or

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any regular indirect purchaser of products from Lilly (such as a pharmacy generally purchasing through wholesale houses), and does not include physicians; and (b) the term "Competitor" means any manufacturer or seller of prescription medications.

The notice provision immediately above applies to consultants and/or independent contractors of Competitors to the extent the consultants or contractors derive a substantial portion of their income, or spend a substantial portion of their time working for a pharmaceutical company that manufacturers prescription medical products in the neuroscience area.

7. Production of Confidential Materials by Non-Parties

A non-party who is producing discovery materials in the Action may agree to and obtain the benefits of the terms and protections of this Order by designating as "Confidential" the discovery materials that the non-party is producing, as set forth in paragraph 4.

8. Inadvertent Disclosures

a. The parties agree that the inadvertent production of any discovery materials that would be protected from disclosure pursuant to the attorney-client privilege, the work product doctrine or any other relevant privilege or doctrine shall not constitute a waiver of the applicable privilege or doctrine. If any such discovery materials are inadvertently produced, the recipient of the discovery materials agrees that, upon request from the producing party, it will promptly return the discovery materials

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and all copies of the discovery materials in its possession, delete any versions of the discovery materials on any database it maintains and make no use of the information contained as the discovery materials; provided, however, that the party returning such discovery material shall have the right to apply to the Court for an order that such discovery materials are not protected from disclosure by any privilege. The person returning such material may not, however, assert as a ground for such motion the factor circumstances of the inadvertent production.

b. The parties further agree that in the event that the producing party or other person inadvertently fails to designate discovery materials as Confidential in this or any other litigation, it may make such a designation subsequently by notifying all persons and parties to whom such discovery materials were produced, in writing, as soon as practicable. After receipt of such notification, the persons to whom production has been made shall prospectively treat the designated discovery materials as Confidential, subject to their right to dispute such designation in accordance with paragraph 9.

9. Declassification

a. Nothing shall prevent disclosure beyond that limited by this Order if the producing party consents in writing to such disclosure.

b. If at any time a party (or aggrieved entity permitted by the Court to intervene for such purpose) wishes for any reason to dispute a designation of discovery materials as Confidential made hereunder, such person shall notify the designating party

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of such dispute in writing specifying by exact Bates number(s) the discovery materials in dispute. The designating party shall respond in writing within 20 days of receiving this notification.

c. If the parties are unable to amicably resolve the dispute, the proponent of confidentiality may apply by motion to the Court for a ruling that discovery materials stamped as Confidential are entitled to such status and protection under Rule 26 of the Alaska Rules of Civil Procedure and/or this Order, provided that such motion is made within 45 days from the date the challenger of the Confidential designation challenges the designation or such other time period that the parties may agree. The designating party shall have the burden of proof on such motion to establish the propriety of its Confidential designation.

d. If the time for filing a motion as provided in paragraph 9(c) has expired without the filing of any such motion, or ten business days (or such longer time as, ordered by this Court) have elapsed after the appeal period for an order of this Court that the discovery materials shall not be entitled to Confidential status, the Confidential Discovery Material shall lose its designation.

10. Confidential Discovery Materials in Depositions

a. Counsel for any party may show Confidential Discovery Materials to a deponent during deposition and examine the deponent about the materials as long as the

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deponent already knows the Confidential information contained therein or if the provisions of paragraph 6 are complied with.

b. Parties (and deponents) may, within 30 days after receiving a deposition, designate pages of the transcript (and exhibits thereto) as Confidential. Until expiration of such 30-day period the entire transcript, including exhibits, will be treated as subject to Confidential protection under this Order. If no party or deponent timely designates a transcript as Confidential, then none of the transcript or its exhibits will be treated as Confidential.

11. Confidential Discovery Materials Offered as Evidence at Trial

Confidential Discovery Materials and the information therein may be offered in evidence at trial or any court hearing, provided that the proponent of the evidence gives notice to counsel for the party or other person that designated the discovery materials or information are Confidential in accordance with the Alaska Rules of Evidence or rulings in the Action governing identification and use of exhibits at trial. Any party may move the Court for an order that the evidence be received in camera or under other conditions to prevent unnecessary disclosure. The Court will then determine whether the proffered evidence should continue to be treated as Confidential and, if so, what protection, if any, may be afforded to such discovery materials or information at trial.

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12.

Co ial Discovery Materials shall not be filed with the Clerk except when required in connection with matters pending before the Court. If filed, they shall be filed in a sealed envelope clearly marked:

> "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION COVERED BY A PROTECTIVE ORDER OF THE COURT AND IS SUBMITTED UNDER SEAL, PURSUANT TO THAT PROTECTIVE ORDER. THE CONFIDENTIAL CONTENTS OF THIS DOCUMENT MAY NOT BE DISCLOSED WITHOUT EXPRESS ORDER OF THE COURT."

and shall remain sealed while in the office of the Clerk so long as they retain their status as Confidential Discovery Materials. Said Confidential Discovery Materials shall be kept under seal until further order of the Court; however, said Confidential Discovery Materials and other papers filed under seal shall be available to the Court, to counsel of record, and to all other persons entitled to receive the Confidential information contained therein under the terms of this Order.

13. Client Consultant

Nothing in this Order shall prevent or otherwise restrict counsel from rendering advice to their clients in this Action and, in the course thereof, relying generally on examination of Confidential Discovery Materials; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make

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specific disclosure of any item so designated except pursuant to the procedures of paragraph 6.

14. Subpoena by other Courts or Agencies

If another court or an administrative agency subpoenas or otherwise orders production of Confidential Discovery Materials which a person has obtained under the terms of this Order, the person to whom the subpoena or other process is directed shall promptly notify the designating party 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, administrative proceeding 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.

15. Non-termination

The provisions of this Order shall not terminate at the conclusion of this Action. Within 90 days after final conclusion of all aspects of this Action, counsel shall, at their

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option, return or destroy Confidential Discovery Materials and all copies of same. If counsel elects to destroy Confidential Discovery Materials, they shall consult with counsel for the producing party on the manner of destruction and obtain such party's consent to the method and means of destruction. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the party who produced the discovery materials not more than 120 days after final termination of this Action. Outside counsel, however, shall not be required to return or destroy any pretrial or trial records as are regularly maintained by that counsel in the ordinary course of business, which records will continue to be maintained as confidential in conformity with this Order.

16. Modification Permitted

Nothing in this Order shall prevent any party or other person from seeking modification of this Order or from objecting to discovery that it believes to be otherwise improper.

17. Responsibility of Attorneys; Copies

The attorneys of record are responsible for employing reasonable measures to control and record, consistent with this Order, duplication of, access to, and distribution of Confidential Discovery Materials, including abstracts and summaries thereof.

No duplications of Confidential Discovery Materials shall be made except for providing working copies and for filing in Court under seal; provided, however, that

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copies may be made only by those persons specified in sections (a), (b) and (c) of paragraph 6 above. Any copy provided to a person listed in paragraph 6 shall be returned to counsel of record upon completion of the purpose for which such copy was provided. In the event of a change in counsel, retiring counsel shall fully instruct new counsel of their responsibilities under this Order and new counsel shall sign this Order.

18. No Waiver of Right or Implication of Discoverability

a. No disclosure pursuant to any provision of this Order shall waive any rights or privileges of any party granted by this Order.

b. This Order shall not enlarge or affect the proper scope of discovery in this or any other litigation nor shall this order imply that Confidential Discovery Materials are properly discoverable, relevant, or admissible in this or any other litigation. Each party reserves the right to object to any disclosure of information or production of any documents that the producing party designates as Confidential Discovery Materials on any other ground it may deem appropriate.

c. The entry of this Order shall be without prejudice to the rights of the parties, or any one of them, or of any non-party to assert or apply for additional or different protection. Nothing in this Order shall prevent any party from seeking an appropriate protective order to further govern the use of Confidential Discovery Materials at trial.

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19. Improper Disclosure of Confidential Discovery Material

Disclosure of discovery materials designated Confidential other than in accordance with the terms of this Protective Order may subject the disclosing person to such sanctions and remedies as the Court may deem appropriate.

DATED this ____ day of _____, 2007

BY THE COURT

_____
The Honorable Mark Rindner
Judge of the Superior Court

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

ENDORSEMENT OF PROTECTIVE ORDER

I hereby attest to my understanding that information or documents designated Confidential are provided to me subject to the Protective Order ("Order") dated _____ 2007 (the "Protective Order"), in the above-captioned litigation ("Action"); that I have been given a copy of and have read the Order; and that I agree to be bound by its terms. I also understand that my execution of this Endorsement of Protective Order, indicating my agreement to be bound by the Order, is a prerequisite to my review of any information or documents designated as Confidential pursuant to the Order.

I further agree that I shall not disclose to others, except in accord with the Order, any Confidential Discovery Materials, in any form whatsoever, and that such

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Confidential Discovery Materials and the information contained therein maybe used only for the purposes authorized by the Order.

I further agree to return all copies of any Confidential Discovery Materials I have received to counsel who provided them to me upon completion of the purpose for which they were provided and no later than the conclusion of this Action.

I further agree and attest to my understanding that my obligation to honor the confidentiality of such discovery material will continue even after this Action concludes.

I further agree and attest to my understanding that if I fail to abide by the terms of the Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the Superior Court for the State of Alaska, Third Judicial District at Anchorage, for the purposes of any proceedings relating to enforcement of the Order.

I further agree to be bound by and to comply with the terms of the Order as soon as I sign this Agreement, regardless of whether the Order has been entered by the Court.

Date: _____ By: _____

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

PROTECTIVE ORDER

To expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect confidential material, and ensure that protection is afforded only to material so entitled, the Court enters this Protective Order pursuant to Rule 26 of the Alaska Rules of Civil Procedure.

1. Discovery Materials

This Order applies to all products of discovery and all information derived therefrom, including but not limited to, all documents, objects or things, deposition testimony and interrogatory/request for admission responses and any copies, excerpts or summaries thereof, obtained by any party pursuant to the requirements of any court order, requests for production of documents, requests for admissions, interrogatories, or subpoena ("discovery materials"). This Order is limited to the litigation or appeal of this action ("Action").

2. Use of Discovery Materials

With the exception of documents or information that have become publicly available without a breach of the terms of this Order, all documents, information or other

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discovery materials produced or discovered in this Action and that have been designated confidential shall be used by the receiving party solely for the prosecution or defense of this Action, to the extent reasonably necessary to accomplish the purpose for which disclosure is made, and not for any other purpose, including any other litigation or judicial proceedings, or any business, competitive, governmental, commercial, or administrative purpose or function.

3. "Confidential Discovery Materials" Defined

For the purposes of this Order, "Confidential Discovery Materials" shall mean any information that the producing party in good faith believes is properly protected under Alaska Rule of Civil Procedure 26(c)(7); under any Federal or state statutes, regulations or court rules; or under Federal or state constitutions. Federal and state regulations may preclude the parties under certain circumstances from producing personal identifying information. In such cases, the parties may produce redacted or de-identified information for use in this litigation and under the protection of this Order, provided, however, that the Court nevertheless retains the authority to review any such action by any party.

The terms of this Order shall in no way affect the right of any person (a) to withhold information on alleged grounds of immunity from discovery such as, for example, attorney-client privilege, work product or privacy rights of such third parties as patients, physicians, clinical investigators, or reporters of claimed adverse reactions; or (b) to withhold information on alleged grounds that such information is neither relevant to any claim or defense nor reasonably calculated to lead to the discovery of admissible evidence; or (c) as

required by Federal or state law. If information is redacted for any reason, the redacting party shall produce a separate log that identifies the document subject to redaction by bates number, the reason for such redaction, and describes the nature of the information redacted so that other parties may assess the applicability of any privilege or production. Nothing in this Order shall be interpreted to require Lilly to prepare new privilege logs for the MDL production or supplement the privilege logs produced in the MDL.

Where large volumes of discovery material are provided to the requesting party's counsel for preliminary inspection, and designation for production, and have not been reviewed for confidentiality purposes, the producing party reserves the right to so designate and redact appropriate discovery materials after they are designated by the requesting party for production. During the preliminary inspection process, and before production, all discovery materials reviewed by the requesting party's counsel shall be treated as Confidential Discovery Material.

4. Designation of Documents as "Confidential"

a. For the purposes of this Order, the term "document" means all tangible items, whether written, recorded or graphic, whether produced or created by a party or another person, whether produced pursuant to subpoena, to discovery request, by agreement, or otherwise.

b. Any document which the producing party intends to designate as Confidential shall be stamped (or otherwise have the legend recorded upon it in a way that

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brings the legend to the attention of a reasonable examiner) with a notation substantially similar to the following:

***State of Alaska v. Eli Lilly and Company*: Confidential-Subject to Protective Order**

Such stamping or marking will take place prior to production by the producing person, or subsequent to selection by the receiving party for copying. The stamp shall be affixed in such a manner as not to obliterate or obscure any written material.

c. A party may preliminarily designate as "Confidential" all documents produced by a non-party entity employed by the party for the purposes of document management, quality control, production, reproduction, storage, scanning, or other such purpose related to discovery, by notifying counsel for the other party that all documents being produced are to be accorded such protection. Once said documents are produced by such third-party vendor, the designating party will then review the documents and, as appropriate, designate them as "Confidential" by stamping the document (or otherwise having the legend recorded upon it in a way that brings its attention to a reasonable examiner) as such.

5. Non-Disclosure of Confidential Discovery Materials

Except with the prior written consent of the party or other person originally producing Confidential Discovery Materials, or as hereinafter provided under this Order, no Confidential Discovery Materials, or any portion thereof, may be disclosed to any person, including any plaintiff, except as set forth in section 6(d) below.

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6. Permissible Disclosures of Confidential Discovery Material

Confidential Discovery Materials may be disclosed to and used only by:

a. counsel of record for the parties in this Action and to his/her partners, associates, secretaries, legal assistants, and employees to the extent considered reasonably necessary to render professional services in the Action;

b. inside counsel of the parties, to the extent reasonably necessary to render professional services in the Action;

c. court officials involved in this Action (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);

d. any person designated by the Court in the interest of justice, terms as the Court may deem proper;

e. where produced by a plaintiff, in addition to the pe subsections (a) and (b) of this section, defendant's in-house paralegals a including any attorneys employed by or retained by defendant's outsid assisting in connection within this Action, and the paralegal, clerical, secret staff employed or retained by such outside counsel or retained by the attorneys e or retained by defendant's outside counsel.

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f. persons noticed for depositions or designated as trial witnesses, or those who counsel of record in good faith expect to testify at deposition or trial, to the extent reasonably necessary in preparing to testify;

g. outside consultants or outside experts retained for the purpose of assisting counsel in the Action;

h. employees of counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designating programs for handling data connected with this action, including the performance of such duties in relation to a computerized litigation support system;

i. employees of non-party contractors performing one or more of the functions set forth in (h) above;

j. any employee of a party or former employee of a party, but only to the extent considered necessary for the preparation and trial of this Action; and, any other person, if consented to by the producing party;

k. Any individual to whom disclosure is to be made under subparagraphs (d) through (j) above, shall sign, prior to such disclosure, a copy of the Endorsement of Protective Order, attached as Exhibit A. Counsel providing access to Confidential Discovery Materials shall retain copies of the executed Endorsement(s) of Protective Order. Any party seeking a copy of an endorsement may make a demand setting forth the reasons therefore to which the opposing party will respond in writing. If the dispute cannot be resolved the

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demanding party may move the Court for an order compelling production upon a showing of good cause. For testifying experts, a copy of the Endorsement of Protective Order executed by the testifying expert shall be furnished to counsel for the party who produced the Confidential Discovery Materials to which the expert has access at the time the expert's designation is served or at the time the Confidential Discovery Materials are provided to the testifying expert, whichever is later. Before disclosing Confidential Discovery Materials to any person listed in subparagraphs (d) through (j) who is a Customer or Competitor (or an employee of either) of the party that so designated the discovery materials, but who is not an employee of a party, the party wishing to make such disclosure shall give at least three business days advance notice in writing to the counsel who designated such discovery materials as Confidential, stating that such disclosure will be made, identifying by subject matter category the discovery material to be disclosed, and stating the purposes of such disclosure. If, within the three business day period, a motion is filed Objecting to the proposed disclosure, disclosure is not permissible until the Court has denied such motion. As used in this paragraph, (a) the term "Customer" means any direct purchaser of products from Lilly, or any regular indirect purchaser of products from Lilly (such as a pharmacy generally purchasing through wholesale houses), and does not include physicians; and (b) the term "Competitor" means any manufacturer or seller of prescription medications.

The notice provision immediately above applies to consultants and/or independent contractors of Competitors to the extent the consultants or contractors derive a substantial

portion of their income, or spend a substantial portion of their time working for a pharmaceutical company that manufacturers prescription medical products in the neuroscience area.

7. Production of Confidential Materials by Non-Parties

An non-party who is producing discovery materials in the Action may agree to and obtain the benefits of the terms and protections of this Order by designating as "Confidential" the discovery materials that the non-party is producing, as set forth in paragraph 4.

8. Inadvertent Disclosures

a. The parties agree that the inadvertent production of any discovery materials that would be protected from disclosure pursuant to the attorney-client privilege, the work product doctrine or any other relevant privilege or doctrine shall not constitute a waiver of the applicable privilege or doctrine. If any such discovery materials are inadvertently produced, the recipient of the discovery materials agrees that, upon request from the producing party, it will promptly return the discovery materials and all copies of the discovery materials in its possession, delete any versions of the discovery materials on any database it maintains and make no use of the information contained in the discovery materials; provided, however, that the party returning such discovery material shall have the right to apply to the Court for an order that such discovery materials are not protected from disclosure by any privilege. The person returning such material may not, however, assert as a ground for such motion the fact or circumstances of the inadvertent production.

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b. The parties further agree that in the event that the producing party or other person inadvertently fails to designate discovery materials as Confidential in this or any other litigation, it may make such a designation subsequently by notifying all persons and parties to whom such discovery materials were produced, in writing, as soon as practicable. After receipt of such notification, the persons to whom production has been made shall prospectively treat the designated discovery materials as Confidential, subject to their right to dispute such designation in accordance with paragraph 9.

9. Declassification

a. Nothing shall prevent disclosure beyond that limited by this Order if the producing party consents in writing to such disclosure.

b. If at any time a party (or aggrieved entity permitted by the Court to intervene for such purpose) wishes for any reason to dispute a designation of discovery materials as Confidential made hereunder, such person shall notify the designating party of such dispute in writing specifying by exact Bates number(s) the discovery materials in dispute. The designating party shall respond in writing within 20 days of receiving this notification.

c. If the parties are unable to amicably resolve the dispute, the proponent of confidentiality may apply by motion to the Court for a ruling that discovery materials stamped as Confidential are entitled to such status and protection under Rule 26 of the Alaska Rules of Civil Procedure and/this Order, provided that such motion is made within forty-five

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days from the date the challenger of the confidential designation challenges the designation or such other time period as the parties may agree. The designating party shall have the burden of proof on such motion to establish the propriety of its Confidential designation.

d. If the time for filing a motion as provided in paragraph 9(c) has expired without the filing of any such motion, or ten business days (or such longer time as, ordered by this Court) have elapsed alter the appeal period for an order of this Court that the discovery materials shall not be entitled to Confidential status, the Confidential Discovery Material shall lose its designation.

10. Confidential Discovery Materials in Depositions

a. Counsel for any party may show Confidential Discovery Materials to a deponent during deposition and examine the deponent about the materials so long as the deponent already knows the Confidential information contained therein or if the provisions of paragraph 6 are complied with. The party noticing a deposition shall obtain each witness' endorsement of the Protective Order in advance of the deposition and shall notify the designating party at least ten days prior to the deposition if it has been unable to obtain that endorsement. The designating party may then move the Court for an Order directing that the witness abide by the terms of the Protective Order, and no confidential document shall be shown to the deponent until the Court has ruled. Deponents shall not retain or copy portions of the transcript of their depositions that contain Confidential information not provided by them or the entities they represent unless they sign the form described, and otherwise comply

with the provisions in paragraph 6. A deponent who is not a party shall be furnished a copy of this Order before being examined about potential Confidential Discovery Materials. While a deponent is being examined about any Confidential Discovery Materials or the Confidential information contained therein, persons to whom disclosure is not authorized under this Order shall be excluded from being present.

b. Parties (and deponents) may, within thirty days after receiving a deposition, designate pages of the transcript (and exhibits thereto) as Confidential. Until expiration of such thirty-day period the entire transcript, including exhibits, will be treated as subject to Confidential protection under this Order. If no party or deponent timely designates a transcript as Confidential, then none of the transcript or its exhibits will be treated as Confidential.

11. Confidential Discovery Materials Offered as Evidence at Trial

Confidential Discovery Materials and the information therein may be offered in evidence at trial or any court hearing, provided that the proponent of the evidence gives notice to counsel for the party or other person that designated the discovery materials or information as Confidential in accordance with the Alaska Rules of Evidence or rulings in the Action governing identification and use of exhibits at trial. Any party may move the Court for an order that the evidence be received *in camera* or under other conditions to prevent unnecessary disclosure. The Court will then determine whether the proffered evidence

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should continue to be treated as Confidential and, if so, what protection, if any, may be afforded to such discovery materials or information at trial.

12. Filing

Confidential Discovery Materials shall not be filed with the Clerk except when required in connection with matters pending before the Court. If filed, they shall be filed in a sealed envelope; clearly marked:

> "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION COVERED BY A PROTECTIVE ORDER OF THE COURT AND IS SUBMITTED UNDER SEAL, PURSUANT TO THAT PROTECTIVE ORDER. THE CONFIDENTIAL CONTENTS OF THIS DOCUMENT MAY NOT BE DISCLOSED WITHOUT EXPRESS ORDER OF THE COURT"

and shall remain sealed while in the office of the Clerk so long as they retain their status as Confidential Discovery Materials. Said Confidential Discovery Materials shall be kept under seal until further order of the Court; however, said Confidential Discovery Materials and other papers filed under seal shall be available to the Court, to counsel of record, and to all other persons entitled to receive the Confidential information contained therein under the terms of this Order.

13. Client Consultant

Nothing in this Order shall prevent or otherwise restrict counsel from rendering advice to their clients in this Action and, in the course thereof, relying generally on examination of Confidential Discovery Materials; provided, however, that in rendering such

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advice and otherwise communicating with, such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 6.

14. Subpoena by Other Courts or Agencies

If another court or an administrative agency subpoenas or otherwise orders production of Confidential Discovery Materials which a person has obtained under the terms of this Order, the person to whom the subpoena or other process is directed shall promptly notify the designating party 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, administrative proceeding 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.

15. Non-termination

The provisions of this Order shall not terminate at the conclusion of this Action. Within ninety days after final conclusion of all aspects of this Action, counsel shall, at their option return or destroy Confidential Discovery Materials and all copies of same. If counsel

elects to destroy Confidential Discovery Materials, they shall consult with counsel for the producing party on the manner of destruction and obtain such party's consent to the method and means of destruction. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the party who produced the discovery materials not more than one hundred twenty days after final termination of this Action. Outside counsel, however, shall not be required to return or destroy any pretrial or trial records as are regularly maintained by that counsel in the ordinary course of business, which records will continue to be maintained as Confidential in conformity with this Order.

16. Modification Permitted

Nothing in this Order shall prevent any party or other person from seeking modification of this Order or from objecting to discovery that it believes to be otherwise improper.

17. Responsibility of Attorneys; Copies

The attorneys of record are responsible for employing reasonable measures to control and record, consistent with this Order, duplication of, access to, and distribution of Confidential Discovery Materials, including abstracts and summaries thereof.

No duplications of Confidential Discovery Materials shall be made except for providing working copies and for filing in Court under seal; provided, however, that copies may be made only by those persons specified in sections (a); (b) and (c) of paragraph 6 above. Any copy provided to a person listed in paragraph 6 shall be returned to counsel of

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record upon completion of the purpose for which such copy was provided. In the event of a change in counsel, retiring counsel shall fully instruct new counsel of their responsibilities under this Order and new counsel shall sign this Order.

18. No Waiver of Right or Implication of Discoverability

a. No disclosure pursuant, to any provision of this Order shall waive any rights or privileges of any party granted by this Order.

b. This Order shall not enlarge or affect the proper scope of discovery in this or any other litigation nor shall this Order imply that Confidential Discovery Materials are properly discoverable, relevant, or admissible in this or any other litigation. Each party reserves the right to object to any disclosure of information or production of any documents that the producing party designates as Confidential Discovery Materials on any other ground it may deem appropriate.

c. The entry of this Order shall be without prejudice to the rights of the parties, or any one of, them, or of any non-party to assert or apply for additional or different protection. Nothing in this Order shall prevent any party from seeking an appropriate protective order to further govern the use of Confidential Discovery Materials at trial.

19. Improper Disclosure of Confidential Discovery Material

Disclosure of discovery materials designated Confidential other than in accordance with the terms of this Protective Order may subject the disclosing person to such sanctions and remedies as the Court may deem appropriate.

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ORDERED this 30 day of July, 2007.

Mark Rindner

The Honorable Mark Rindner
Judge of the Superior Court

#8685996 v2

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I certify that on July 30, 2007 a copy of the above was mailed to each of the following at their addresses of record:

Sanders Jamieson

Administrative Assistant

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

ORDER

THIS COURT, having upon considered defendant's Unopposed Motion for Extension of Time until Monday, August 6, 2007, to file its response to Plaintiff's Motion to Compel Discovery, all responses thereto, as well as applicable law;

IT IS HEREBY ORDERED that defendant's motion is GRANTED.

DATED this 19 day of July, 2007.

The Honorable Mark Rindner
Judge of the Superior Court

I certify that on July 18, 2007, a copy of the foregoing was served by hand on:

Eric T. Sanders, Esq.
Feldman Orlansky & Sanders
500 L. Street, Suite 400
Anchorage, Alaska 99501-5911

Nanci L. Biggerstaff, CPS, PLS
009867.0038/150970.1

I certify that on July 20, 2007 a copy of the above was mailed to each of the following at their addresses of record:
Sanders Jamieson

Administrative Assistant

000780

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, Plaintiff, vs. ELI LILLY AND COMPANY, Defendant.	Case No. 3AN-06-5630 CIV

SUBMISSION OF SUPPLEMENTAL SCHEDULING ORDER AS ORDERED BY THE COURT ON JUNE 22, 2007

Because they could not agree on the terms of the supplemental scheduling order, both parties submitted a proposed order for the Court's consideration. At the June 22, 2007 hearing, the Court stated it would adopt the State's proposed order with two exceptions: (1) the description of the nature of the case and (2) the description of who may be present at the depositions. (*See* attached transcript.) Pursuant to the Court's direction, the State has revised the scheduling order by including Lilly's description of the nature of the case and Lilly's description of who may be present at depositions.

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DATED this 19 day of July, 2007.

FELDMAN ORLANSKY & SANDERS
Counsel for Plaintiff

BY _____
Eric T. Sanders
AK Bar No. 7510085

GARRETSON & STEELE
Matthew L. Garretson
Joseph W. Steele
5664 South Green Street
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Counsel for Plaintiff

RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC
H. Blair Hahn
Christiaan A. Marcum
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Mt. Pleasant, SC 29465
(843) 727-6500
Counsel for Plaintiff

Certificate of Service
I hereby certify that a true and correct copy of **Plaintiff's Submission of Supplemental Scheduling Order as Ordered by the Court on June 22, 2007** was served by messenger on:

Brewster H. Jamieson
Lane Powell LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648

By Peggy S Crowe
Date 7/19/07

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,
Plaintiff,
vs.
ELI LILLY AND COMPANY,
Defendant.
Case No. 3AN-06-05630 Civil

STATUS HEARING

Pages 1 through 54

Date Hearing Held:
JUNE 22, 2007

than the -- more than you, Mr. Sanders. You know, I found the documents. It'll just make my life a little bit easier.

Before we talk about Mr. Taurel, I want to talk about -- I've gone over the various pleadings about the scheduling order and the protective order, and so this is what I think should be used. As to the scheduling order, a lot of what you have is the same. As to -- there's a provision in the Lilly scheduling order about the nature of the case to which the State has no objection, and so let's use that nature of the case heading and the content.

The portion that deals with discovery, I would like to use the State's version of how discovery is to proceed under the scheduling order, with the exception that Provision C1, who may be present, the Lilly version is going to be used instead of F1 in the State's order, I think. But other than that, I would use the rest of the State's order on discovery.

And then I think -- I didn't see anything different in the discovery master

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, Plaintiff, vs. ELI LILLY AND COMPANY, Defendant.	Case No. 3AN-06-5630 CIV

SUBMISSION OF PROTECTIVE ORDER AS ORDERED BY THE COURT ON JUNE 22, 2007

Based upon the Court's June 22, 2007 ruling, the parties are submitting a Protective Order for the Court's signature.

DATED this 19 day of July, 2007.

FELDMAN ORLANSKY & SANDERS
Counsel for Plaintiff

BY _____
Eric T. Sanders
AK Bar No. 7510085

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Certificate of Service
I hereby certify that a true and correct copy of **Submission of Protective Order as Ordered By the Court on June 22, 2007** was served by messenger on:

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Lane Powell LLC
301 West Northern Lights Boulevard, Suite 301
Anchorage, Alaska 99503-2648

By Peggy S Crowe
Date 7/19/07

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RIDDER

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

UNOPPOSED MOTION FOR EXTENSION OF TIME

Defendant Eli Lilly and Company, by and through counsel, hereby moves the court for an extension of time until Monday, August 6, 2007, to file its response to Plaintiff's Motion to Compel Discovery.

Defendant's counsel spoke with plaintiff's counsel, who indicated that plaintiff does not oppose this extension of time.

DATED this 18th day of July, 2007.

LANE POWELL LLC
Attorneys for Defendant

By
for Brewster H. Jamieson, ASBA No. 8411122

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I certify that on July 18, 2007, a copy of the foregoing was served by hand on:

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Feldman Orlansky & Sanders
500 L Street, Suite 400
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Nanci L. Biggerstaff, CPS, PLS
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, Plaintiff, vs. ELI LILLY AND COMPANY, Defendant.	)	FILED IN OPEN COURT 7-12-07 Case No. 3AN-06-5630 CIV

REQUEST FOR ORAL ARGUMENT ON PLAINTIFF'S MOTION TO COMPEL DISCOVERY

Plaintiff, State of Alaska, by and through its undersigned counsel, requests oral argument on its Motion to Compel Discovery pursuant to Alaska Civil Rule 77(e).

DATED this 10 day of July, 2007.

FELDMAN ORLANSKY & SANDERS
Counsel for Plaintiff

BY _____
Eric T. Sanders
AK Bar No. 7510085

GARRETSON & STEELE
Matthew L. Garretson
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RICHARDSON, PATRICK, WESTBROOK
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I hereby certify that a true and correct copy of the foregoing **Request for Oral Argument on Plaintiff's Motion to Compel** was served by messenger on:

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By Peggy S Crowe
Date 7/12/07

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3AN-06-05630 CI
	)	
ELI LILLY AND COMPANY,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL DISCOVERY

I. INTRODUCTION

This case involves Lilly's conduct related to the prescription drug Zyprexa. The State has brought various claims for relief against Lilly in connection with the use of Zyprexa in Alaska's Medicaid program, the most pertinent of which for the purposes of this motion include Lilly's failure to warn physicians and payors like the State of the inherent risks of Zyprexa and Lilly's fraud, misrepresentation and deception in the marketing of Zyprexa. On February 8, 2007, the State served its first sets of Interrogatories and Requests for Production on Lilly which, for the most part, focused on Lilly's marketing of Zyprexa for use by Medicaid programs generally; Lilly's marketing and communications regarding the use of Zyprexa within Alaska; its communications with national organizations in positions to influence the use of Zyprexa in Alaska; and

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which sought information regarding investigations by other states and federal agencies into Lilly's marketing practices. Lilly has stone-walled any meaningful response to most of the State's discovery requests.[1]

This Memorandum is submitted in support of Plaintiff's Motion to Compel discovery. The issues requiring legal discussion are addressed below along with the specific discovery issues.

II. THE STATE'S SPECIFIC REQUESTS AND LILLY'S OBJECTIONS

A. Interrogatory Nos. 1, 2, 3, 6, 8, 9, 10 and 11 and corresponding Request for Production Nos. 1, 2, 3, 9, 11, 12, 13, and 14.

Among other things, the State's interrogatories and requests for production seek information regarding Lilly's marketing of Zyprexa for use in Medicaid programs and communications with representatives of public payors involved with the prescription of Zyprexa in Alaska. Specifically, the State's discovery requests call for Lilly to identify its employees (or representatives) involved in such communications and to produce documents relating or referring to such communications, including communications with:

- Representatives of Alaska's Medicaid program (Interrogatory No. 1, Request for Production No. 1);

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[1] Copies of defendant's relevant responses served on March 12, 2007, are attached hereto. Exhibit A is Eli Lilly and Company's Objections and Responses to Plaintiff's First Interrogatories to Defendant and Exhibit B is Eli Lilly and Company's Objections and Responses to Plaintiff's First Requests for Production to Defendant.

- Representatives of other public payors in Alaska (Interrogatory No. 2, Request for Production No. 2);
- Members of any organization, committee or authority responsible for determining which prescription drugs will be on any Alaska formulary, pharmaceutical and therapeutics list or preferred drug list (Interrogatory No. 3, Request for Production No. 3); and
- Employees or representatives of Alaska's executive or legislative branch of government (Interrogatory No. 6, Request for Production No. 9).

The State's Complaint includes claims for failure to warn, fraud, misrepresentation and unfair trade practices. Evidence that Lilly misled public payors and representatives of the State regarding the risks and benefits of Zyprexa is relevant to those claims. Requiring Lilly to identify its employees who engaged in communications with public payors and representatives of the State (and to produce documents relating or referring to such communications) is clearly likely to lead to the discovery of relevant evidence.

The State's interrogatories and requests for production also seek information regarding Lilly's communications with organizations which could influence the State and prescribing physicians within the State regarding the use of Zyprexa. Thus, the State's discovery requests also call for Lilly to identify its employees (or representatives) involved in such communications and to produce documents relating or referring to such communications, including communications with:

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- Patient advocacy groups (Interrogatory No. 8, Request for Production No. 11);
- The American Psychiatric Association or any of its work groups (Interrogatory No. 9, Request for Production No. 12);
- Employees, representatives, members or participants in the Texas Medication Algorithm Project (TMAP) (Interrogatory No. 10, Request for Production No. 13); and
- Comprehensive NeuroScience (CNS) (Interrogatory No. 11, Request for Production No. 14).

These organizations can influence the prescription of Zyprexa by either advocating that no restrictions be placed on the use of psychiatric drugs or by publishing recommended criteria for the use of Zyprexa and other drugs. If Lilly misled or improperly influenced these organizations regarding the risks and benefits of Zyprexa resulting in the increased use of Zyprexa, that would be relevant to the State's claims. Thus, evidence of Lilly's contacts and communications with those organizations is likely to lead to the discovery of relevant evidence.

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Lilly's responses to the requests noted above include 11 general objections,[2] and include the specific objection that the information is not relevant because the State has allegedly limited the focus of its inquiry to Lilly's conduct aimed at Alaska physicians. This is simply incorrect. While the State made reference in its Memorandum to misrepresentations or other conduct directed to physicians, it was not expressly or by implication indicating it was relying only upon such proof in pursuing its claims. Lilly's conduct directed to State employees, representatives and others within Alaska is directly relevant to the State's claims and Lilly's defenses. Lilly's activities and communications with all parties listed above are relevant, as they were all part and parcel of Lilly's communications stream regarding Zyprexa. Lilly communicated with, by and through organizations and parties beyond prescribing physicians and state officials in an effort to promote Zyprexa in Alaska and obfuscate the safety issues surrounding its use. Such communications were critical components of Lilly's promotion of Zyprexa. The State is

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[2] Before addressing any of the State's specific discovery requests, Lilly sets forth 18 general objections to those requests, and then incorporates several of them into each answer to an interrogatory or request for production. Some of the objections are merely statements or reservations of rights. Regardless, this method of "answering" discovery requests is inappropriate. General objections to discovery are disfavored under both Rules 33 and 34. "The 'mere recitation of the familiar litany that an interrogatory or a document production request is "overly broad, burdensome, oppressive and irrelevant" will not suffice.'" *PLX, Inc. v. Prosystems, Inc.*, 220 F.R.D. 291, 293 (N.D. W. Va. 2004) (quoting *Momah v. Albert Einstein Medical Center,* 164 F.R.D. 412, 417 (E.D.Pa.1996)). General objections, unaccompanied by specific explanations, are ineffective and may result in waiver of the objection. *See generally Pulsecard, Inc. v. Discover Card Servs., Inc.*, 168 F.R.D. 295 (D. Kan. 1996); *White v. Beloginis,* 53 F.R.D. 480, 481 (S.D.N.Y.1971).

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entitled to such communications as they are likely to lead to the discovery of admissible evidence.

Rule 26(b)(1) of the Alaska Rules of Civil Procedure provides:

> Parties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of the other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.[3]

Parties are generally entitled to discover all information relevant to a claim or defense, without regard to the ultimate admissibility of such information so long as the request is reasonably calculated to lead to the discovery of admissible evidence. Generally, a request for discovery should be considered relevant if there is "any possibility" that the information sought may be relevant to the claim or defense of any party.[4] "[R]elevancy

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[3] Alaska's discovery rules are substantially similar, and in some cases identical to, the Federal Rules of Civil Procedure. Thus, Alaska courts routinely rely upon federal court decisions interpreting and applying analogous federal rules in reaching decisions. *Langfeldt-Haaland v. Saupe Enterprises, Inc.*, 768 P.2d 1144, 1147 (Alaska 1989) (dissent); *Drickerson v. Drickerson*, 546 P.2d 162, 167 n.9 (Alaska 1976). Rules 26 through 37 of the Alaska Rules of Civil Procedure are the substantial equivalent of the corresponding federal rules. *Bachner v. Pearson*, 479 P.2d 319, 323 & n.6 (Alaska 1970).

[4] *Sonnino v. University Kansas Hosp. Authority*, 220 F.R.D. 633, 646 (D. Kan. 2004).

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at trial and relevancy for purposes of discovery are two different matters," and relevancy for purposes of discovery is "to be construed liberally."[5]

Under these guideposts, the State's requests seek information that is clearly relevant to the subject matter of the action and to its claims and Lilly's defenses in this action. The State has asserted common law and statutory claims which require it to demonstrate, among other things, Lilly's knowledge of Zyprexa's risks, that Lilly did not communicate those risks adequately to others, and that Lilly's communications regarding Zyprexa were misleading or false in other respects.

B. Interrogatory No. 4 and corresponding Request for Production No. 7.

The State has requested the identities of Lilly's sales representatives in Alaska from October 1996 to the present and a database of "call notes" generated by those sales representatives. The electronic database of call notes consist of brief reports generated by sales representatives shortly after they make sales presentations to physicians and thus contain contemporaneous evidence of what Lilly's sales force told prescribing physicians about Zyprexa.[6] That evidence is clearly relevant to the State's failure to warn, fraud and unfair trade practice claims. Lilly has responded by incorporating essentially the same general objections as those indicated previously, and further responded by stating the

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[5] *Doe v. Alaska Superior Court, Third Judicial Dist.*, 721 P.2d 617, 620-21 (Alaska 1986).

[6] The process of making sales presentations to physicians is often referred to in the pharmaceutical industry as "detailing" and sales representatives are often referred to as "detailmen."

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request is premature because the State has not identified the specific physicians who prescribed Zyprexa which resulted in injury for which the State is claiming damages.

However, the State's request cannot be conditioned upon or limited by its identification of specific prescribing physicians in Alaska. The State's Unfair Trade Practice and Consumer Protection (UTPA) claims are not limited to prescriptions which resulted in injury to anyone and include misleading conduct by Lilly which violated the Act without regard to any subsequent injury. Misleading and improper detailing of any Alaska physician falls within the ambit of such a violation, even if the physician did not ultimately write a Zyprexa prescription. Thus, limiting the State's discovery to actual prescribing physicians does not afford the State full discovery of relevant and admissible evidence of Lilly's communications and conduct regarding Zyprexa. Moreover, Lilly clearly has information regarding which physicians it detailed in Alaska regarding Zyprexa, and should be compelled to produce all such information. In addition, the electronic call notes database contains a "field" of data indicating the state in which the physician lives and thus Lilly can easily retrieve all of the call notes relating specifically to communications with Alaska physicians regarding Zyprexa. This information is relevant and admissible evidence of Lilly's knowledge, communications and conduct related to Zyprexa.

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C. Interrogatory No. 7 and corresponding Request for Production No. 10.

The State has requested the identities of those responsible for developing and implementing marketing programs to support access to Medicaid recipients and any documents regarding the same. Lilly's specific objection is again based on its improper assertion that the State is only entitled to discovery of Lilly's conduct directed specifically to physicians, thereby rendering any other activities or communications irrelevant. As stated above, this is simply incorrect. Lilly's activities and communications aimed at access by or promotion for the State's Medicaid population are central to the State's claims. The crux of the State's common law and statutory claims are that Lilly's misconduct resulted in increased Medicaid expenditures and these requests seek information and documents related to marketing programs that may have directly resulted in those increased expenditures. Such information is clearly relevant to the State's claims.

D. Interrogatory Nos. 12 and 13.

The State has requested specific financial information on an annual basis related to sales of Zyprexa both globally and in Alaska. Again, Lilly has incorporated a number of its general objections (12 of them) and only specifically objected that the information sought is unduly burdensome, overly broad and irrelevant to any claims for relief in the litigation. However, Lilly has failed to define its burden in relation to producing this information.

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A party resisting discovery on grounds the discovery is overly broad or burdensome must set forth facts "demonstrating that the time and expense involved in responding to discovery is *unduly* burdensome," thus imposing an obligation on the party "to provide sufficient detail in terms of time, money and procedure required to produce the requested documents."[7] This showing requires more than the mere assertion of the party or its attorney.[8]

Lilly is a publicly traded company, and is therefore required to maintain and periodically report similar information to that requested by the State. Thus, any claim that the request is unduly burdensome is specious. Moreover, the information is relevant to the subject matter of this action. Evidence of Lilly's sales and profits for Zyprexa is relevant to establish Lilly's state of mind and motive to engage in fraud, misrepresentation and unfair trade practices. The State believes that Lilly's conduct in this case was motivated by financial gain and the information requested is clear evidence of this motivation. Further, to the extent the requested information shows increasing financial gains after certain promotional conduct complained of by the State was

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[7] *Superior Film of America, Inc. v. UCB Films, Inc.*, 219 F.R.D. 649, 651 (D. Kan. 2004).

[8] *See Chubb Integrated Serv. Sys. Ltd. v. Nat'l Bank of Washington*, 103 F.R.D. 52, 60-61 (D.D.C. 1984) ("An objection must show specifically how an interrogatory is overly broad, burdensome, or oppressive, by submitting affidavits or offering evidence which reveals the nature of the burden.").

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implemented, it is clear evidence of the result of the conduct. Lilly should be required to produce the requested information.

E. Interrogatory Nos. 19 and 20 and corresponding Request for Production Nos. 19 and 20.

The State has requested the identification of any civil or criminal investigations or actions involving Lilly and Zyprexa and the identities of involved Lilly employees or representatives and any corresponding witness statements, testimony or other documents related thereto. Lilly resists disclosure by invoking 14 of its general objections. Lilly also asserts claims of attorney-client privilege and work product protection, yet fails to demonstrate how either concept applies to the particular information sought. Rule 26(b)(5), Alaska R. Civ. P., requires a party withholding information it claims is privileged or subject to protection as work product to "make the claim expressly" and "describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection." It is Lilly's burden to establish its entitlement to either form of protection from disclosure.[9] Lilly has supplied no information in its responses fulfilling the burden imposed on it by Rule 26(b)(5) or demonstrating the applicability of the attorney-client privilege or work product doctrine to the documents withheld in discovery.

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[9] *See Plate v. State*, 925 P.2d 1057, 1066 ("The party asserting the privilege bears the burden of proving that the contested communication is protected by the privilege.").

The information requested by the State is clearly relevant and a potential source of admissible evidence related to the State's claims or Lilly's defenses. Upon information and belief, Lilly's Zyprexa-related conduct is currently the subject of a number of civil and criminal investigations nationwide, and factual information which has come to light in those investigations may certainly be relevant and admissible evidence related to the State's claims in this action. Further, this factual information would not likely be subject to claims of privilege.[10] Additionally, even if such information was properly the subject of work product protection, that protection is not absolute, and may be overcome if a party can demonstrate substantial need for the information and an inability to obtain the substantial equivalent of the information without undue hardship.[11]

The Court should require Lilly to comply with the State's requests or to satisfy its burden under Rule 26(b)(5) to demonstrate the applicability of any privilege or protection.

F. Request for Production Nos. 4, 5, and 6.

The State has requested documents related to Zyprexa-related communications between Lilly sales representatives, Lilly "thought leaders" or consultants, or any other Lilly-retained or paid medical doctor and any healthcare providers in Alaska. Lilly again

[10] *Upjohn Co. v. United States*, 449 U.S. 383, 395-396 (1991) ("The [attorney client] privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney.").

[11] *See* Rule 26(b)(3), Alaska R. Civ. P.; *see also FEC v. Christian Coalition*, 178 F.R.D. 61 (E.D. Va. 1998); *Suggs v. Whitaker*, 152 F.R.D. 501 (M.D.N.C. 1993).

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seeks to limit the production of such documents to physicians the State identifies for it. As discussed above, however, discovery related to Lilly's conduct beyond the limitations Lilly seeks to impose is clearly relevant and appropriate in light of the State's claims and Lilly's defenses in this case. To the extent Lilly employees, consultants, or other retained "thought leaders" communicated with any Alaska physicians, the communications are relevant. Again, the State's claims for violations of its UTPA are not conditioned upon a physician actually writing a prescription for Zyprexa, but only require proof that Lilly's conduct had the capability to mislead. Thus, all Lilly conduct aimed at physicians in Alaska with respect to Zyprexa is relevant to the subject matter, claims and defenses in this case, and is properly the subject of discovery.

G. Interrogatory Nos. 5, 15, 16, 17, and 18 and Request for Production Nos. 8, 15, 17, and 18.

With regard to these particular requests, Lilly has either agreed to produce documents or directed the State to the documents it has previously produced in the Zyprexa multidistrict litigation, *In re Zyprexa Products Liability Litigation*, MDL 1596. However, Lilly's production of documents in the MDL was not by particular subjects or topics or in response to particular discovery requests. Rather, the production was based upon particular witnesses' custodial files. Thus, there is the very real possibility that the State's requests, which are not related to specific Lilly witnesses or their custodial files, require responsive documents which have not been previously produced. Moreover, if

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such documents have been previously produced, they are now among the millions of pages of information in the MDL depository.

In its responses, Lilly has stated that it has produced approximately 15 million pages of materials available in the MDL depository. Where Lilly refers the State to these documents in response to the State's specific requests in this case, Lilly should be required to do so with some specificity, by referring the State to particular bates ranges which it believes properly respond to the State's requests. Referring a requesting party to millions of pages of documents without some specificity related to the party's request is insufficient to comply with the letter and spirit of the rules.[12]

The Court should establish a date certain for Lilly to either specifically designate by bates ranges the documents it asserts are responsive to the State's requests and previously produced in the MDL or produce the documents the State has requested.

III. CONCLUSION

For the reasons stated above and in its Motion to Compel, the State requests that the Court grant its Motion in all respects and set a deadline by which Lilly must supplement its discovery responses with all information and documents responsive thereto.

[12] *Fidelity Nat'l Title Ins. Co. of New York v. Intercounty Nat'l Title Ins. Co.*, 2002 WL 1433584 (N.D. Ill. 2002) (stating party's summary referral of requesting party to a warehouse containing documents insufficient to comply with discovery obligations); *Wagner v. Dryvit Systems, Inc.*, 208 F.R.D. 606, 610-612 (D. Neb. 2001) (directing plaintiff to a massive repository of records insufficient).

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Dated this 10 day of July, 2007.

FELDMAN, ORLANSKY & SANDERS
Counsel for Plaintiff

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I hereby certify that a true and correct copy of **Memorandum in Support of Plaintiff's Motion to Compel Discovery** was served by messenger on:

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By Peggy S. Crowe
Date 7/12/07

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

ELI LILLY AND COMPANY'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT

Defendant Eli Lilly and Company ("Lilly" or "Defendant") hereby answers and objects to Plaintiff's First Interrogatories to Defendant ("Request" or "Interrogatories") as follows:

PRELIMINARY STATEMENT

Lilly notes that there is a multi-district litigation captioned *In Re Zyprexa Products Liability Litigation*, MDL 1596, pending in the Eastern District of New York before the Honorable Jack Weinstein (the "MDL"). Lilly has produced approximately fifteen million pages of materials, with indices or objective coding, pursuant to the terms of MDL Case Management Order (CMO) No. 2.[1] Consistent with the Court's direction and the parties'

[1] The MDL Plaintiffs' Steering Committee has acknowledged the comprehensiveness of Lilly's document production in the MDL. *See* Declaration of Melvyn I. Weiss in Opposition to Motion to Dissolve Multidistrict Litigation and/or Motion to Dissolve the Plaintiff Liaison Committee, Motion to Stay Settlement of Any MDL Cases Pending Hearing of These Motions and in Support of the Motion to Lift the Stay on Discovery, a copy of which is attached as Exhibit A. Further elaboration is provided by The Plaintiffs' Steering Committee Memorandum Summarizing the Status and Location of Information Obtained by the Committee in These MDL 1596 Proceedings, to which Plaintiff may have access upon entry of an appropriate protective order. In addition, Judge Weinstein has entered an Order stating, in pertinent part: "In order to reduce transactional costs and the burdens on state courts, I have ruled that these materials shall be made available free of charge to litigants in state cases." *See* Memorandum on Cooperation Between Federal and State Judges, MDL 1596 (JBW), dated January 18, 2007, attached as Exhibit B.

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intent in the MDL to conduct discovery as efficiently and expeditiously as possible, Lilly's responses to the MDL document requests, together with documents provided in response thereto, may be made available to Plaintiff's counsel here, upon entry of and subject to an appropriate protective order. By making MDL discovery responses and production documents available to Plaintiff, Lilly does not waive any objections applicable in this case, including objections to the discoverability and/or admissibility of the MDL production documents in this action. Lilly reserves the right to object to the production and admissibility of information and documents to the extent these discovery requests seek documents and information about adverse events not at issue; concern any Lilly product other than Zyprexa® (hereinafter "Zyprexa"); seek documents and information about events that took place after the dates of the Zyprexa prescriptions to Alaska's Medicaid recipients which Plaintiff claims were the cause of the damages it is seeking in this matter, or in any event, after September 1, 2004; are not limited to contacts with the physician(s) that issued the Zyprexa prescriptions to Plaintiff's Medicaid recipients which Plaintiff claims were the cause of the damages it is seeking in this matter; or seek documents and information concerning doses, formulations or products containing Zyprexa not used by Plaintiff's Medicaid recipients. Lilly's investigation into the issues raised in this case and presented by these discovery requests is continuing. Zyprexa is a prescription medication that Lilly has developed over the course of many years. Marketing and promotional materials are voluminous, because Zyprexa has been on the market for over ten years. Further, the breadth and scope of the discovery requests are extensive. To the extent further investigation is necessary in responding to these requests, Lilly will conduct a reasonable search of the MDL collection.

Lilly's responses and production are made in a good faith effort to facilitate an efficient discovery process. By making these responses and/or producing documents, Lilly does not waive any objection it may have under state law as to the discoverability or admissibility of such evidence. Each specific response, and any documents produced in connection with a specific response, is subject to all objections as to competence, relevance, materiality, propriety and admissibility available under state law, and any other objection that would require the exclusion of any statement or document if made by any witness present and testifying in court. Lilly reserves all such objections and shall raise them at trial as warranted by the applicable law and the facts of this case.

The General Objections and Responses set forth below are intended to preserve Lilly's legitimate objections to discovery and to aid in its defense of Plaintiff's claims against Lilly. To the extent Plaintiff has questions concerning the applicability of a specific objection or wishes further clarification as to the scope of any related production, Lilly invites Plaintiff to meet and confer in a good faith effort to resolve any issues that may arise. Lilly notes that except for facts expressly admitted in these responses to discovery requests, Lilly intends no incidental or implied admissions. The fact that Lilly has answered or objected to any discovery request or any part thereof should not be taken as an admission by Lilly that it accepts or admits the existence of any facts set forth or assumed by such discovery request, or that such answer or objection constitutes admissible evidence. The fact that Lilly has answered all or part of any discovery request is not intended as, and shall not be construed to be, a waiver of any objection to any request.

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GENERAL OBJECTIONS

Lilly makes the following General Objections which are in addition to, and incorporated within, each of the Specific Responses set forth below:

1. Lilly objects to these discovery requests to the extent they seek information and/or documents which are neither relevant to the claims or defenses of any party nor calculated to lead to the discovery of admissible evidence, including but not limited to information about adverse events not at issue; concern any Lilly product other than Zyprexa; seek information or documents that were prepared after the date(s) of the Zyprexa prescriptions to Alaska's Medicaid recipients that Plaintiff claims were the cause of the damages it is seeking in this matter and/or, in any event, after September 1, 2004; are not limited to contacts with physician(s) who issued the prescriptions to Plaintiff's Medicaid recipients that Plaintiff claims caused the damages it is seeking in this matter; or seek information concerning doses, formulations or products containing Zyprexa not used by Plaintiff's Medicaid recipients.

2. Lilly objects to these discovery requests, both individually and as a whole, on the ground that they are overly broad, burdensome and oppressive. Responding to these discovery requests as currently drafted would be unreasonably difficult and expensive.

3. Lilly objects to these discovery requests on the ground that no distinction is made between privileged and non-privileged information, documents, and/or trial preparation materials and, therefore, these requests call for information and material which is beyond the scope of permissible discovery and which is protected from disclosure by the attorney-client privilege and the attorney work product doctrine. In setting forth its responses, Lilly does not waive the attorney-client privilege, work product doctrine, or other privilege or immunity

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from disclosure that may attach to information called for in, or responsive to, these discovery requests. Moreover, in answering all or any portion of any discovery request, Lilly neither admits the existence of any facts set forth or assumed by the request, nor concedes the relevance or materiality of the request or the subject matter to which the request refers.

4. Lilly objects to these discovery requests to the extent they seek information and/or documents, the disclosure of which would violate privacy rights of non-parties including, but not limited to, those privacy rights guaranteed by the Federal and state constitutions as well as Federal and state statutes and regulations. Lilly objects to the disclosure of personal identifying information pertaining to those who reported adverse events, participated in clinical trials or took Zyprexa for any reason at any time. Lilly is precluded from disclosing the identities of patients, hospitals or health care professionals (or any third party) who report events covered by the adverse event process. *See* 21 C.F.R. § 20.63(f). The federal regulations specifically provide that any state laws to the contrary are preempted. *See* 21 C.F.R. § 20.63(f)(2). Therefore, state and federal laws and regulations preclude Lilly from producing any personal identifying information in response to these requests. *See* 21 C.F.R. § 20.63(f); 21 C.F.R. § 803.9; *see also* Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. § 1320d-2, *et seq.* To the extent that documents containing information protected from disclosure by federal or state law are produced, Lilly will redact such documents to remove personal identifying information before such documents are made available to Plaintiff.

5. Much of the information sought herein is highly confidential and proprietary and consists of valuable commercial information, trade secrets, or business confidential materials, the disclosure of which would be highly prejudicial to Lilly and the value of which

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cannot be calculated as money damages. Lilly objects to these discovery requests to the extent they seek information and/or documents which are protected as trade secrets by applicable law or include proprietary or confidential commercial information or studies provided by investigators that Lilly does not have the right to produce. Some of the Zyprexa information and documents requested seek highly sensitive commercial information. Lilly specifically objects to these requests to the extent that they seek information or documents that Lilly has gathered relating to its competitors, which is proprietary, highly confidential, and the disclosure of which would compromise its business interests because, among other reasons, Zyprexa is a currently distributed medicine. The documents described above are privileged and protected from disclosure under Alaska law including, but not limited to, Alaska Statutes 45.50.910 *et seq.*, Alaska Rule of Evidence 508 and Alaska Civil Rule of Procedure 26(c)(7). To the extent such information is discoverable, it will be produced only upon entry of and subject to an appropriate protective order.

6. Lilly objects to these discovery requests to the extent they seek information and/or documents about Zyprexa located in countries other than the United States. Lilly is a U.S.-based company with headquarters in Indianapolis, Indiana. Lilly's global pharmacovigilance is coordinated through Lilly's corporate headquarters in the U.S. The vast majority of information and documents relating to the safety and efficacy of Zyprexa are located in the U.S. (in the New Drug Application ("NDA") and individual custodial files). Lilly, however, has a presence in 25 different countries, including offices, laboratories and clinical sites. As a result, such requests are overly broad, harassing, and unduly burdensome, and request documents that are neither relevant to the claims or

defenses, and Lilly objects to providing information and/or producing documents maintained outside of the United States.

7. Lilly objects to these discovery requests to the extent they are vague and ambiguous.

8. Lilly objects to these discovery requests to the extent they require Lilly to collect and/or supply documents and/or information that is in the public domain or otherwise obtainable by Plaintiff as easily from other sources as from Lilly.

9. Lilly objects to these discovery requests to the extent they require Lilly to provide confidential, personal information about its employees, clinical trial investigators, and other third parties who have provided confidential, personal information to Lilly, on the grounds that such discovery requests are overbroad and seek information, and/or documents, that are not relevant to the claims or defenses of any party.

10. Lilly objects to these discovery requests to the extent that they purport to impose upon Lilly obligations with respect to the production of information and/or documents different from, or beyond, those imposed by the applicable rules and any Court order.

11. Lilly objects to these discovery requests to the extent that they presume that Zyprexa is defective in some manner or that Zyprexa caused injuries to Plaintiff's Medicaid recipients.

12. Except for facts expressly admitted in these responses to discovery requests, Lilly intends no incidental or implied admissions. The fact that Lilly has answered all or a part of any discovery request is not intended as, and shall not be construed to be, a waiver of any objection to any discovery request.

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13. Lilly objects to any discovery request seeking information or documents that were prepared after the date(s) of the Zyprexa prescriptions to Alaska's Medicaid recipients that Plaintiff claims were the cause of the damages it is seeking in this matter or relating to, referring to or embodying events occurring after September 1, 2004, as overly broad, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Because Zyprexa is currently a marketed product, providing information and/or producing documents created or generated after this date range through the present is unduly burdensome, harassing and the relevance, if any, is outweighed by the substantial burden.

14. Lilly objects to the extent Plaintiff's discovery requests herein are duplicative of deposition and document production discovery.

15. Lilly objects to the extent Plaintiff's discovery requests herein are unintelligible and therefore not susceptible to a meaningful response.

16. Lilly's investigation into the facts of this case is continuing and discovery is not yet complete. Lilly continues its investigation, discovery and preparation for trial, including the collection and review of numerous documents. Lilly anticipates that it will discover additional facts, witnesses and evidence which are not set forth herein, but which may be responsive to one or more discovery requests. Therefore, Lilly reserves the right to:

(a) amend or supplement these responses as it continues discovery in this case and obtains additional facts, witnesses and evidence;

(b) conduct further discovery regarding facts, witnesses and evidence which are not mentioned in this response; and

(c) produce any additional evidence at trial or in connection with any pre-trial proceeding.

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17. Lilly objects to these discovery requests to the extent they seek information and/or documents about products other than Zyprexa and any related or similar drugs, because such requests are overly broad and seek information which is neither relevant to the claims or defenses of any party nor to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence. Zyprexa is produced in different formulations, including Zyprexa tablets, Zyprexa IntraMuscular ("IM"), and Zyprexa® Zydis® (orally disintegrating tablets). Intra-muscular Zyprexa is designed to be injected intramuscularly and is a formulation different than the tablet form. Zyprexa Zydis is a formulation of Zyprexa that dissolves in the mouth on contact with saliva. For purposes of discovery in this case, Lilly will produce responsive, non-privileged information and documents related to the formulation(s) ingested by Plaintiff's Medicaid recipients whose prescriptions plaintiff claims was the cause of the damages plaintiff is seeking in this matter.

18. Lilly objects to these discovery requests to the extent they seek information and/or documents that deal in any way with uses and/or dosages of Zyprexa which are in clinical research and development. Such requests are overly broad, seek information which is neither relevant to the claims or defenses of any party nor calculated to lead to the discovery of admissible evidence, and may seek commercially sensitive, proprietary information protected from disclosure. For discovery purposes in this case, however, Lilly will produce any non-privileged, safety-related information and documents pertaining to uses of Zyprexa which are in clinical development in its possession that have been produced in the MDL. Lilly, however, reserves the right to raise any and all objections to the use or admission of such documents in connection with this case.

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OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1. Identify any and all Lilly employees responsible for communicating with any employee or representative of Alaska's Medicaid program regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa from October 1996 to the present and describe the "chain of command" or order of authority of reporting relationships from the level of such employees to the Chief Executive Officer of Lilly.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13, and 16 as if set forth fully herein. Lilly also objects to this request on relevance grounds. Pursuant to the Court's order, Plaintiff recently filed its Memorandum Describing Claims and Proofs, setting forth the claims it seeks to prove in this lawsuit and the means by which it seeks to prove them. Therein, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, interrogatories relating to communications between Lilly and any person or entity other than the physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients which Plaintiff claims were the cause of the damages it is seeking in this matter are not relevant to any of the claims in this lawsuit, nor reasonably calculated to the discovery of admissible evidence. Lilly also objects to the phrase "any and all Lilly employees" responsible for communicating with any employee or representative of Alaska's Medicaid program" as overbroad. Lilly also objects to the phrase "regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa" as vague and undefined.

INTERROGATORY NO. 2. Identify any and all Lilly employees responsible for communicating with any employee or representative of any public payer in Alaska other than Alaska's Medicaid program regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa from October 1996 to the present and describe the "chain of command" or

order of authority of reporting relationships from the level of such employees to the Chief Executive Officer of Lilly.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13 and 16 as if set forth fully herein. Lilly also objects to this request on relevance grounds. In its Memorandum Describing Claims and Proofs, setting forth the claims it seeks to prove in this lawsuit and the means by which it seeks to prove them, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, interrogatories relating to communications between Lilly and any person or entity other than physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients which plaintiff claims were the cause of the damages it is seeking in this matter are not relevant to any of the claims in this lawsuit, nor reasonably calculated to the discovery of admissible evidence. Lilly further objects to this interrogatory on relevance grounds as there is no claim in the Complaint relating to "any public payer in Alaska other than Alaska's Medicaid program." Lilly also objects to the phrase "regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa" as vague and undefined.

INTERROGATORY NO. 3. Identify the Lilly employees responsible for communicating with any member of any organization, committee or authority responsible for determining what prescription drugs will be on any formulary, pharmaceutical and therapeutics list, or any preferred drug list in Alaska from October 1996 to the present regarding the use of Zyprexa and describe the "chain of command" or order of authority of reporting relationships from the level of such employees to the Chief Executive Officer of Lilly.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13 and 16 as if set forth fully herein. Lilly also objects to this request on relevance grounds. In its Memorandum Describing Claims and Proofs, setting forth the claims it seeks to prove

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in this lawsuit and the means by which it seeks to prove them, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, interrogatories relating to communications between Lilly and any person or entity other than physicians prescribing the Zyprexa prescriptions to Alaska's Medicaid recipients which plaintiff claims were the cause of the damages it is seeking in this matter are not relevant to any of the claims in this lawsuit, nor reasonably calculated to the discovery of admissible evidence. Lilly also objects to the phrase "regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa" as vague and undefined. Lilly also objects to the phrases "committee, group or other authority which determines what prescription drugs may be on any pharmaceutical and therapeutics list, or preferred drug list in Alaska" as vague and undefined.

To the extent that the information sought by this interrogatory is deemed relevant to the any claim in this lawsuit, the identities of the persons or entities "responsible for determining what prescription drugs will be on any formulary, pharmaceutical and therapeutics list, or any preferred drug list in Alaska" are known to the Plaintiff and should be stated by name.

INTERROGATORY NO. 4. Identify any and all employees of Lilly who acted as sales representatives in promoting the sale and use of Zyprexa in Alaska from October 1996 to the present and describe the "chain of command" or order of authority of reporting relationships from the level of such employees to the Chief Executive Officer of Lilly.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13 and 16 as if set forth fully herein. Lilly also objects to this request as overbroad, unduly burdensome, and premature, as Plaintiff has not produced information sufficient to identify

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physicians who issued the prescriptions giving rise to Plaintiff's claims in this lawsuit. Lilly also objects to the phrase "promoting the sale and use of" as vague and undefined. Lilly objects to the phrase "from the level of such employees to the Chief Executive Officer of Lilly" as overbroad and unduly burdensome.

INTERROGATORY NO. 5. Identify any and all employees of Lilly or any other organization, including but not limited to any third party marketing entities, responsible for the development and implementation of Zyprexa marketing programs for use by sales representatives in Alaska from October 1996 to the present and describe the "chain of command" or order of authority of reporting relationships from the level of such marketing employees or marketing entities to the Chief Executive Officer at Lilly.

Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13 and 16 as if set forth fully herein. Lilly also objects to the phrase "third party marketing entities" as vague and undefined. Lilly further objects to the phrase "from the level of such employees to the Chief Executive Officer of Lilly" as overbroad and unduly burdensome. Subject to and without waiving these objections, Lilly responds that information responsive to this interrogatory is included in Zyprexa-related organizational charts contained in Lilly's MDL collection and/or MDL depositions describing the organizational structure at Lilly, to which Plaintiff may have access upon entry of an appropriate protective order.

INTERROGATORY NO. 6. Identify any employee or agent of Lilly who was responsible for lobbying or communicating with any employee or representative of Alaska's executive or legislative branch of government regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa from October 1996 to the present and describe the "chain of command" or order of authority of reporting relationships from the level of such Lilly employees or agents to the Chief Executive Officer of Lilly.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13 and 16 as if set forth fully herein. Lilly also objects to this request on relevance grounds. In its Memorandum Describing Claims and Proofs, setting forth the claims it seeks to prove

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in this lawsuit and the means by which it seeks to prove them, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, interrogatories relating to communications between Lilly and any person or entity other than physicians prescribing the Zyprexa prescriptions to Alaska's Medicaid recipients which plaintiff claims were the cause of the damages it is seeking in this matter are not relevant to any of the claims in this lawsuit, nor reasonably calculated to the discovery of admissible evidence. Lilly also objects to the phrases "lobbying or communicating with" and "regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa" as vague and undefined. Lilly also objects to the phrase "from the level of such employees to the Chief Executive Officer of Lilly" as overbroad and unduly burdensome.

INTERROGATORY NO. 7. Identify any and all Lilly employees or others, including but not limited to any third party marketing entities, responsible for developing and implementing marketing programs to support access to Zyprexa for Medicaid recipients from October 1996 to the present and describe the "chain of command" or order of authority of reporting relationships from the level of such employees to the Chief Executive Officer of Lilly.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13 and 16 as if set forth fully herein. Lilly also objects to this interrogatory on relevance grounds. In its Memorandum Describing Claims and Proofs, setting forth the claims it seeks to prove in this lawsuit and the means by which it seeks to prove them, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, interrogatories relating to marketing programs directed to any person or entity other than physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients which

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Plaintiff claims were the cause of the damages it is seeking in this matter are not relevant to any of the claims in this lawsuit, nor reasonably calculated to the discovery of admissible evidence. Lilly also objects to the terms "third party marketing entities," "responsible for," "marketing programs," and "access" as vague and undefined. Lilly also objects to the phrase "from the level of such employees to the Chief Executive Officer of Lilly" as overbroad and unduly burdensome.

INTERROGATORY NO. 8. Identify any and all Lilly employees responsible for interacting and communicating with patient advocacy groups such as the National Alliance for the Mentally Ill (NAMI), the National Depression and Mood Disorder Association (NDMDA) and the Depression and BiPolar Support Alliance (DBSA) from October 1996 to the present regarding the use of Zyprexa and describe the "chain of command" or order of authority of reporting relationships from the level of such employees to the Chief Executive Officer of Lilly.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 14 and 16 as if set forth fully herein. Lilly also objects to this interrogatory on relevance grounds. In its Memorandum Describing Claims and Proofs, setting forth the claims it seeks to prove in this lawsuit and the means by which it seeks to prove them, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, interrogatories relating to communications between Lilly and any person or entity other than physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients which Plaintiff claims were the cause of the damages it is seeking in this matter are not relevant to any of the claims in this lawsuit, nor reasonably calculated to the discovery of admissible evidence. Lilly also objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to the discovery of admissible evidence, as there is no allegation in the complaint relating or referring to patient advocacy groups, including

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but not limited to those set forth in this interrogatory. Lilly also objects to the phrase "from the level of such employees to the Chief Executive Officer of Lilly" as overbroad and unduly burdensome

INTERROGATORY NO. 9. Identify any and all Lilly employees responsible for communicating with the American Psychiatric Association or any of its work groups from October 1996 to the present regarding the development of practice guidelines for the treatment of any conditions, diseases or symptoms that recommended or referred to Zyprexa and describe the "chain of command" or order of authority of reporting relationships from the level of such employees to the Chief Executive Officer of Lilly.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13 and 16 as if set forth fully herein. Lilly also objects to this interrogatory on relevance grounds. In its Memorandum Describing Claims and Proofs, setting forth the claims it seeks to prove in this lawsuit and the means by which it seeks to prove them, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, interrogatories relating to communications between Lilly and any person or entity other than physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients which Plaintiff claims were the cause of the damages it is seeking in this matter are not relevant to any of the claims in this lawsuit, nor reasonably calculated to the discovery of admissible evidence. To the extent that physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients which plaintiff claims were the cause of the damages it is seeking in this matter are members of the American Psychiatric Association or any of its work groups, Lilly objects to this interrogatory as overbroad, unduly burdensome, and premature, as Plaintiff has not produced information sufficient to identify physicians who issued the prescriptions giving rise to plaintiff's claims in this lawsuit. Lilly also objects to the phrase "from the level of

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such employees to the Chief Executive Officer of Lilly" as overbroad and unduly burdensome

INTERROGATORY NO. 10. Identify any and all Lilly employees responsible for communicating with any employees, representatives, members or participants in the Texas Medication Algorithm Project (TMAP) from October 1996 to the present regarding the use of Zyprexa and describe the "chain of command" or order of authority of reporting relationships from the level of such employees to the Chief Executive Officer of Lilly.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13 and 16 as if set forth fully herein. Lilly also objects to this interrogatory on relevance grounds. In its Memorandum Describing Claims and Proofs, setting forth the claims it seeks to prove in this lawsuit and the means by which it seeks to prove them, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, interrogatories relating to communications between Lilly and any person or entity other than physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients which Plaintiff claims were the cause of the damages it is seeking in this matter are not relevant to any of the claims in this lawsuit, nor reasonably calculated to the discovery of admissible evidence. Lilly also objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to the discovery of admissible evidence, as there is no allegation in the complaint relating or referring to the Texas Medication Algorithm Project (TMAP). Lilly also objects to the phrase "from the level of such employees to the Chief Executive Officer of Lilly" as overbroad and unduly burdensome

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INTERROGATORY NO. 11. Identify any and all Lilly employees responsible for communicating with Comprehensive NeuroScience (CNS) from October 1996 to the present regarding the development of Expert Consensus Guideline Series (ECGS) which relate or refer to the use of Zyprexa and describe the "chain of command" or order of authority of reporting relationships from the level of such employees to the Chief Executive Officer of Lilly.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13 and 16 as if set forth fully herein. Lilly also objects to this interrogatory on relevance grounds. In its Memorandum Describing Claims and Proofs, setting forth the claims it seeks to prove in this lawsuit and the means by which it seeks to prove them, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, interrogatories relating to communications between Lilly and any person or entity other than physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients which Plaintiff claims were the cause of the damages it is seeking in this matter are not relevant to any of the claims in this lawsuit, nor reasonably calculated to the discovery of admissible evidence. Lilly further objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to the discovery of admissible evidence, as there is no allegation in the complaint referring or relating to CNS and/or the development of ECGS relating or referring to the use of Zyprexa. Lilly also objects to the phrase "from the level of such employees to the Chief Executive Officer of Lilly" as overbroad and unduly burdensome

INTERROGATORY NO. 12. With respect to sales of Zyprexa worldwide from October 1996 to the present, for each year state the:

a. Revenue from such sales;
b. Cost of product sold;
c. Gross margin;

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d. Operating Expenses;
e. Other Expenses; and
f. Income before taxes.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13 and 16 as if set forth fully herein. Lilly objects to the terms in subparts a-f in their entirety as vague and undefined. Lilly also objects to this interrogatory, including all of its subparts, on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, and seeks information that is not relevant to any of the claims set forth or relief sought in this lawsuit

INTERROGATORY NO. 13. State the annual revenue from sales of Zyprexa in Alaska from October 1996 to the present and the gross margin and income before taxes from such sales.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13 and 16 as if set forth fully herein. Lilly objects to the terms "annual revenue," "gross margin," "income before taxes," and "in Alaska" as vague and undefined. Lilly also objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, and sees information that is not relevant to any of the claims set forth or relief sought in this lawsuit.

INTERROGATORY NO. 14. Identify the individuals who created and/or maintained the documents that were produced in the Zyprexa MDL with the following beginning Bates Numbers:

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13, 14, and 16 as if set forth fully herein. Lilly objects to the terms "created and/or maintained" as vague and undefined. Subject to and without waiving these objections, Lilly will provide, where available, the identity of the custodian or document database from whom/which each document was obtained. Further subject to and without waiving these

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objections, upon execution of an appropriate protective order, Plaintiff may have access to the MDL collection, which contains information on document custodians.

a. FRMR SLSREP 0013

ANSWER: The beginning Bates Number set forth in this subpart does not correspond to the Bates Number of any document produced in the Zyprexa MDL.

b. ZY200057299

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained and made available to sales representatives in Lilly's Knowledge Management database.

c. ZY200061996

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained and made available to sales representatives in Lilly's Knowledge Management database.

d. ZY200083203

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained and made available to sales representatives in Lilly's Knowledge Management database.

e. ZY200083385

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained and made available to sales representatives in Lilly's Knowledge Management database.

f. ZY200083405

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ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained and made available to sales representatives in Lilly's Knowledge Management database.

g. ZY200083622

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained and made available to sales representatives in Lilly's Knowledge Management database.

h. ZY200084171

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained and made available to sales representatives in Lilly's Knowledge Management database.

i. ZY200085380

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained and made available to sales representatives in Lilly's Knowledge Management database.

j. ZY200098766

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained and made available to sales representatives in Lilly's Knowledge Management database.

k. ZY200098771

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained and made available to sales representatives in Lilly's Knowledge Management database.

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1. ZY200099448

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained and made available to sales representatives in Lilly's Knowledge Management database.

m. ZY200184971

ANSWER: On information and belief, the document identified by the beginning Bates Number set forth in this subpart was maintained in the files of Patrick A. Toalson.

n. ZY200185119

ANSWER: Lilly has not yet identified the individual[s] who created and/or maintained the document identified by the beginning Bates Number set forth in this subpart. Lilly is continuing its investigation, and will supplement its response if and when additional information is obtained.

o. ZY200189276

ANSWER: Lilly has not yet identified the individual[s] who created and/or maintained the document identified by the beginning Bates Number set forth in this subpart. Lilly is continuing its investigation, and will supplement its response if and when additional information is obtained.

p. ZY200191250

ANSWER: Lilly has not yet identified the individual[s] who created and/or maintained the document identified by the beginning Bates Number set forth in this subpart. Lilly is continuing its investigation, and will supplement its response if and when additional information is obtained.

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q. ZY200392579

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained in the files of James L. Gahmer.

r. ZY200583203

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained in the files of Michael Magdycz.

s. ZY201238586

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained in the files of Michael Magdycz.

t. ZY201859615

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained in the files of Janet L. Bielman.

u. ZY202358139

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained in the files of Krisann M. Van Hoosen.

v. ZY202362607

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained in the files of Krisann M. Van Hoosen.

w. ZY207005722

ANSWER: The document identified by the beginning Bates Number set forth in this subpart was maintained in the files of Michele Sharp.

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INTERROGATORY NO. 15. With respect to the document produced by Lilly in the Zyprexa MDL with beginning Bates Number ZY207005722 which notes in the second Q&A that the FDA told Lilly it believed there was a causal relationship between the use of Zyprexa and the development of diabetes, please:

a. Identify the representative of the FDA who informed Lilly that the agency believed there was a causal relationship;

b. Identify the employees or representatives of Lilly to whom that statement was made;

c. State the date on which the statement was made; and

d. Identify all documents which relate, refer to or embody the communication from the FDA that it believed there was a causal relationship between the use of Zyprexa and development of diabetes.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, and 16 as if set forth fully herein. Lilly also objects to this interrogatory on the grounds that it mischaracterizes the document by suggesting that the FDA took the position that "there was a causal relationship between the use of Zyprexa and the development of diabetes." Subject to and without waiving these objections, Lilly will respond to this interrogatory by making available documents contained in Lilly's MDL collection concerning interactions with the FDA upon entry of an appropriate protective order.

INTERROGATORY NO. 16. With respect to the document produced by Lilly in the Zyprexa MDL with beginning Bates Number ZY201859615 which refers to an Endocrine Advisory Board please:

(a) Identify the members of the Endocrine Advisory Board referred to in the document;

(b) State whether there was a meeting of the Endocrine Advisory Board which preceded the creation of the document and formed the basis for its creation and, if so:

(c) State the date of the meeting of the Endocrine Advisory Board;

Identify the members of the Endocrine Advisory Board who attended the meeting;

(d) Identify the employees or representatives of Lilly who attended the meeting; and

(e) Identify all documents relating or referring to the Endocrine Advisory Board meeting.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, and 16 as if set forth fully herein. Subject to and without waiving these objections, Lilly will respond to this interrogatory by making available documents contained in Lilly's MDL collection related to the Endocrine Advisory Board, upon entry of an appropriate protective order.

INTERROGATORY NO. 17. With respect to the document produced by Lilly in the Zyprexa MDL with beginning Bates Number ZY200581528, which notes that Lilly's "advisors" had informed the company that it looked "foolish" taking the position that there is no differential risk of diabetes among atypical antipsychotics in spite of the differences in weight gain, please:

(a) Identify the "advisors" who so informed Lilly;

(b) Identify the Lilly employees or representatives who were so informed; and

(c) Identify all documents relating, referring to or embodying any communication with or from Lilly's "advisors" that the company looked "foolish" taking the position there was no differential risk of diabetes among atypical antipsychotics.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, and 16 as if set forth fully herein. Subject to and without waiving these objections, Lilly will respond to this interrogatory by making available documents contained in Lilly's MDL collection concerning communications with advisory board members, upon entry of an appropriate protective order.

INTERROGATORY NO. 18. Identify any and all members of the Global Product Labeling Committee from October of 1996 to the present, and for each state the following:

(a) Whether the member was an employee of Lilly;

(b) If the member was an employee of Lilly, state the dates of membership on the Global Product Labeling Committee and the employee's position or title at Lilly during the period of membership on the committee; and

(c) If the member was not an employee of Lilly, state the member's relationship to Lilly and the member's capacity or relationship to the committee.

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ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, 13, 14, and 16 as if set forth fully herein. Lilly also objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, upon entry of an appropriate protective order, Plaintiff may have access to the MDL Collection, which includes documents containing information responsive to this interrogatory.

INTERROGATORY NO. 19. Identify any civil or criminal investigations or actions of or against Lilly, including but not limited to any whistleblower action or any state or federal governmental authority investigation or action, related in any way to Zyprexa, including but not limited to any such investigation or action related to the marketing or promotion of Zyprexa.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, and 16 as if set forth fully herein. Lilly objects to this interrogatory on relevance grounds, as the information it seeks is not relevant to any of the claims in this lawsuit and is therefore not reasonably calculated to lead to the discovery of admissible evidence. Lilly also objects to the terms "whistleblower action," and "marketing or promotion," as vague and undefined. Lilly also objects to this interrogatory as overbroad and unduly burdensome, as "any civil . . . actions . . . against Lilly . . . . . related in any way to Zyprexa" includes, by its terms, personal injury actions pending against Lilly in many jurisdictions. Lilly also objects to this interrogatory to the extent it seeks confidential information or information protected from disclosure by the attorney-client privilege and attorney work product doctrine. Lilly further responds that non-confidential information relevant to this interrogatory is contained in Lilly's filings with the Securities and Exchange Commission, which filings are publicly available.

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INTERROGATORY NO. 20. For any investigation or action identified in response to interrogatory 19 above, identify any and all individual employees or representatives of Lilly involved in such investigation or action and state for each:

(a) The role of the individual employee or representative of Lilly in the investigation or action; and

(b) Whether the individual or representative of Lilly gave any statement or testimony, whether oral or in writing, including any deposition or sworn testimony, in the investigation or action.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 16 as if set forth fully herein. Lilly also objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege and attorney work product doctrine. Lilly objects to the terms "involved in such investigation or action" and "role of the individual employee or representative" as vague and undefined. Lilly further objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 21. If Lilly purchased insurance or reinsurance which covered in any manner the development, manufacture, advertisement, or sale of Zyprexa, please identify each policy by number, indicating the dates and amounts of coverage and the insurers involved.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 11, 13, 14, 16, 17, and 18 as if set forth fully herein. Subject to and without waiving these objections, Lilly states that it has no such policies.

INTERROGATORY NO. 22. If any insurer identified in the response to interrogatory 21 has denied coverage in any respect, please state the grounds for the denial of coverage.

ANSWER: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 11, 13, 14, 16, 17, and 18 as if set forth fully herein. Subject to and without waiving these objections, see Lilly's response to Interrogatory No. 21.

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DATED this 12th day of March, 2007.

LANE POWELL LLC
Attorneys for Defendant

By _____
Brewster H. Jamieson, ASBA No. 8411122

I certify that on March 12, 2007, a copy of the foregoing was served by mail on:

Eric T. Sanders, Esq.
Feldman Orlansky & Sanders
500 L. Street, Suite 400
Anchorage, Alaska 99501-5911

_____

009867.0038/159228.1

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VERIFICATION

I, Philip E. Brewer, being duly sworn, state that I am Team Leader, Global Operations – Registration, Coordination and Maintenance, Global Regulatory Affairs for Eli Lilly and Company and am authorized by Eli Lilly and Company, a corporation, to make this verification on its behalf. The facts stated in the foregoing Defendant Eli Lilly and Company's answers to the foregoing First Set of Interrogatories have been assembled by authorized employees, attorneys and outside counsel. I am not personally familiar with some of the information contained therein, but am aware that it has been gathered from people who are knowledgeable regarding the subject matter at the request of and with the direction of counsel to Eli Lilly and Company. I am informed and verify that the facts stated therein are true and correct to the best of my knowledge, information and belief.

Philip E. Brewer, Ph.D.

Subscribed and sworn before me
this 9th day of March, 2007

NOTARY PUBLIC

Lana Dishman
My Commission Expires:
February 8, 2015
Resident of Johnson County

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re: ZYPREXA PRODUCTS LIABILITY LITIGATION	MDL-1596
THIS DOCUMENT RELATES TO: ALL CASES	

DECLARATION OF MELVYN I. WEISS IN OPPOSITION TO MOTION TO DISSOLVE MULTIDISTRICT LITIGATION AND/OR MOTION TO DISSOLVE THE PLAINTIFF LIAISON COMMITTEE, MOTION TO STAY SETTLEMENT OF ANY MDL CASES PENDING HEARING OF THESE MOTIONS AND IN SUPPORT OF THE MOTION TO LIFT THE STAY ON DISCOVERY

MELVYN I. WEISS, an attorney duly admitted to practice in the Courts of this State and District, declares as follows:

1. I am a founding partner of Milberg Weiss Bershad & Schulman LLP and make this declaration based upon my personal knowledge and the files and records maintained by my firm and by the Plaintiffs' Steering Committee ("PSC") in the above-captioned matter (*In re Zyprexa Products Liability Litigation*, MDL No. 1596).

2. I am the Chairman of the Zyprexa PSC and was appointed by this Court on June 15, 2004.

3. Petitioners' motion should be denied because:

a. the proposed settlement is not a class action settlement, nor is it a global settlement of all cases in MDL 1596;

b. the PSC has vigorously prosecuted this case since formation of the MDL; and

c. dissolution of the PSC at this juncture will harm, not help, other litigants not participating in the proposed settlement and the Court has already concluded that it is premature to address establishing a new PSC (Nov. 9, 2005 Conference before Judge Weinstein at Transcript p. 26).

4. After the above-referenced MDL was transferred to this Court by the Judicial Panel on Multidistrict Litigation ("JPML"), the Court held a status conference and appointed a thirteen firm PSC in PTO #1 (copy attached as Exhibit A hereto) to, *inter alia*, conduct pre-trial discovery. The powers and duties of the PSC were enumerated in PTO #1.

5. Since its formation, the PSC diligently and effectively assembled a generic liability case against Eli Lilly & Company ("Lilly"), which it feels is extremely strong and is as thorough as any generic liability case built in any other MDL. The PSC has:

a. Established a document depository in Denver, Colorado that contains a high-tech computer network for reviewing and coding documents at a cost to the members of the PSC of nearly $60,000 in computer equipment alone. All documents produced to the depository by Lilly and by third parties to date have been reviewed and coded by PSC member firms and other firms assisting in the litigation.

i. During the entire review process the depository was staffed full-time by a paralegal supplied by PSC member Burg Simpson Eldredge Hersh & Jardine.

ii. The depository contains 12 separate computer terminals on which attorneys reviewed the documents and entered coding information into a database maintained by the PSC.

iii. The depository also houses dozens of boxes of documents produced in paper format by Lilly and third parties. These paper documents were reviewed and those documents that warranted inclusion in the PSC's database were scanned and added to the database and were then coded.

iv. In addition to the area in which the 12 computer terminals are located, the depository also has separate offices where lawyers often worked on briefs over discovery disputes with Lilly and conducted telephonic hearings with Special Discovery Master Woodin.

v. Approximately 1,064 attorney days were expended at the depository reviewing, analyzing and coding documents.

b. Reviewed approximately between 4 and 6 million pages of documents produced by Lilly and third parties thus far in the litigation. Every document that has been produced by Lilly has been reviewed and coded. Those documents that have been deemed most significant have then been further reviewed by the PSC and entered into a separate OCR database so that Plaintiffs' attorneys who have cases pending the MDL can text-search those documents in addition to reviewing coding.

c. Propounded written discovery on Lilly in the form of document requests and Interrogatories.

d. Engaged Lilly in numerous discovery disputes over Lilly's Interrogatory and document responses and its document production, requiring a half dozen hearings before the late Magistrate Judge Chrein and over a dozen conferences and teleconferences before Special Discovery Master Peter Woodin. The PSC also filed an appeal to this Court of one of the key discovery rulings concerning production of the sales call notes of Lilly's sales representatives for Zyprexa.

e. Served deposition notices pursuant to Fed. R. Civ. P. 30(b)(6) on several topics, including the structure of Lilly's Information Technology department and identification, description and function of Lilly's computer systems and databases, and the structure and function of Lilly's Regulatory Affairs Department, Pharmacovigilence Department and Sales and Marketing Departments. These deposition notices resulted in the PSC taking the depositions of approximately 15 different Lilly employees as company designees.

6. The prosecution of these cases, the extensive meet and confer process and the filing of motions before the discovery Special Masters was a full-time job for many firms on the PSC. Over 100 letters were exchanged by counsel addressing substantive discovery issues in the meet and confer process. In addition, over 100 letters were exchanged between counsel, the Court and/or the Discovery Special Master concerning substantive issues regarding discovery and the litigation.

7. Through lengthy meet and confer negotiations, the parties were able to negotiate compromises pertaining to many litigation and discovery matters. Examples include the following:

a. **Case Management Orders**: The parties were able to negotiate and compromise on agreements to stipulate to numerous Case Management Orders, including orders or substantial portions of orders concerning confidentiality, document production protocols and formats, filing and discovery procedures and plaintiff fact sheets.

b. **Electronic Databases**: In September 2004, Lilly disclosed that it had 31 electronic databases that contained information relating to Zyprexa. The PSC had to understand and learn about each of these databases through Lilly's voluntarily production of information and through the deposition process, and to negotiate not only what databases would be produced but the manner of their production since many were kept using customized software. Production of a small number of these databases was disputed, and brought by the parties to the Special Masters for resolution.

c. **Meet and Confer on Document Responses**: Lilly responded to plaintiffs' 91 requests for documents with 17 general objections and numerous specific objections to each request. The PSC firms spent many months meeting and conferring to define and narrow the scope of Lilly's objections to understand as best as possible what Lilly intended to produce and what it intended to withhold. On October 19, 2004, the PSC wrote a 21 page letter outlining the successful progress made in narrowing and

identifying particular disputes, and setting forth the agreements reached to narrow the specific objections for each of the 91 requests.

d. **Meet and Confer on Interrogatory Responses**: The PSC served 49 written Interrogatories on Lilly, and made substantial progress through the meet and confer process in obtaining responses to those Interrogatories objected to by Lilly. As a result of this process, Lilly served supplemental responses to the PSC's Interrogatories.

e. **Rule 30(b)(6) Deposition Notices**: The PSC served three Rule 30(b)(6) deposition notices on Lilly that were designed to obtain a full understanding of Lilly's corporate structure and the manner in which it functioned overall and in the key areas of regulatory, pharmacovigilance and sales and marketing with regard to Zyprexa. Because the notices were highly particularized, the negotiations between the PSC to further define and tailor the requests and identify appropriate witnesses within Lilly took several months. The parties met over two days in Philadelphia to negotiate these matters, and prior to and over the course of the depositions exchanged approximately 40 letters on the topic. The depositions were for the most part concluded and, as intended, provide an excellent foundation for further discovery.

8. While many disputes were resolved voluntarily by the parties after extensive meet and confer between counsel, the PSC was required to bring a substantial number of the disputes before Special Master Woodin that required extensive briefing and hearings. These matters are, *inter alia*:

a. **Production of Adverse Event Backup Files**: Approximately 40 boxes of hard copy adverse event reports for Zyprexa were reviewed, coded into an electronic database and analyzed for diabetes-related injuries. The PSC sought the backup files for these reports, and succeeded in having backup files for 50 exemplar reports produced that provided a wealth of information on key issues in the case. The PSC has filed a further motion to obtain the backup files for all relevant Adverse Event Reports.

b. **Electronic Database Production**: The PSC filed motions for production of disputed electronic databases which required individualized treatment, including:

- Production of Lilly's Adverse Event Database;
- Production of Lilly's sales call notes database of sales call entries made by its sales representatives;
- Production of Lilly's "thought leader" and "consultants" database;
- Production of several of Lilly's clinical trial databases;
- Production of Lilly's Sales Force Alignment database;
- Production of Lilly's database that tracks distribution of Zyprexa samples used to promote the drug; and
- Production of Lilly's label tracking database.

c. **Custodial File Production**: Numerous issues arose during the litigation that had to be resolved by Special Master Woodin regarding Lilly's production of their employees' custodial files, including issues regarding the manner, format and pace of production of these files.

d. **Discovery Scheduling Order**: The parties and Special Master Woodin spent numerous discovery hearings on disputes regarding the timing of production of documents and responses, which resulted in a final discovery schedule that was adopted by the Court.

e. **Foreign Documents**: The PSC successfully obtained the Special Master's order requiring production of key documents held by Lilly overseas with its Japanese and United Kingdom affiliates, pertaining primarily to decisions to change labels to include diabetes warnings nearly two years before Lilly placed those warnings in its United States label.

f. **Document Redactions**: The PSC disputed Lilly's redactions to its document production, and filed a motion before Special Master Woodin for an *in camera* review of hundreds of exemplars of suspect redactions.

g. **Confidentiality Designations**: The PSC has challenged Lilly's confidentiality designations for hundreds of key documents.

h. **Rule 30(b)(6) Depositions**: The PSC brought a motion seeking additional time for depositions on Rule 30(b)(6) deponents.

9. Before late Magistrate Judge Chrein the PSC argued motions or discovery disputes relating to *inter alia*:

a. The scope of information that would be included in the Plaintiff's Fact Sheet.

b. Disputes relating to the conduct of witnesses and counsel during depositions regarding instructions not to answer questions.

c. Two separate hearings concerning the scope of the confidentiality order governing confidential documents and the disclosure of those materials to plaintiffs and experts.

d. Issues relating to Lilly's preservation and production of electronic evidence, which were ultimately reduced to a Pre-Trial Order.

e. The production of Lilly's detail representatives' call notes.

f. The PSC also served a subpoena on the FDA, after which the PSC moved to compel production and enforcement of the subpoena and the FDA cross-moved to quash. The PSC fully briefed that motion and was successful in having the motions transferred from the federal district court in Maryland (where the FDA is located) to the MDL so that this Court could rule on the motions.

10. The PSC also served subpoenas on third parties with relevant information about Zyprexa, such as Lilly's outside public relations firm and IMS (a vendor of electronic prescription data).

11. The PSC retained and has been working with the foremost experts in the fields of psychiatry, diabetes care, statistics and obesity, endocrinology, diabetes epidemiology, and others to prepare them to create their Rule 26 reports. The Science and Expert Committee met almost weekly on these discovery efforts.

12. The PSC also established a Zyprexa Plaintiffs' counsel website containing essential information about the litigation that was and remains available to all counsel who have cases in the MDL. The website contains all the Court's key orders, lists of counsel, and other essential information about the litigation.

13. The PSC also held several seminars throughout the litigation updating PSC members regarding the status of the litigation and litigation strategy. One key seminar held in the Fall of 2004 at the Denver depository was made available live through access on the PSC's Zyprexa website, and was structured to be interactive with internet viewers who could pose questions remotely to the presenters.

14. In sum, the PSC in the instant MDL has fought Lilly at every turn to make a complete and appropriate production of information to which the Plaintiffs are entitled. The PSC spent hundreds of thousands of dollars in hard costs as well tens of thousands of hours in preparing the generic liability case for trial. The PSC committed to these costs well before there was any prospect of settlement and at a time when there was a great deal of financial risk to their firms from this massive litigation. This PSC has undertaken its duties and responsibility with the utmost professionalism, and has zealously represented not only the interests of the members' clients, but all people injured by Zyprexa.

15. Even after settlement discussions were initiated, the PSC continued to aggressively pursue discovery of Lilly, including taking depositions and filing motions.

16. The proposed settlement is a private settlement between Lilly and approximately 8,100 people who were injured by Zyprexa. It is not a class action settlement, nor is it a global settlement of all cases in the MDL.

17. My firm has no clients involved in this settlement.

18. The PSC has vigorously prosecuted this case from the day it was formed. On November 2, 2005, in advance of the most recent hearing, the PSC wrote to the Court to request that the stay on discovery be lifted. *See* Exhibit B hereto (Nov. 2, 2005 letter from Michael London).

19. In light of all of the above, there is no need to (a) stay the settlement; (b) disband the PSC that has vigorously prosecuted this action and has created an excellent discovery package for other Plaintiffs' counsel; or (c) dissolve this MDL. Accordingly, the instant motion should be denied.

Dated: New York, New York
December 1, 2005

Melvyn I. Weiss

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

In re: ZYPREXA
PRODUCTS LIABILITY LITIGATION
----------x

MEMORANDUM ON
COOPERATION BETWEEN
FEDERAL AND STATE
JUDGES

THIS DOCUMENT RELATES TO:

ALL ACTIONS

04-MD-1596 (JBW)

----------x

JACK B. WEINSTEIN, Senior United States District Judge:

To: All state judges handling "Zyprexa-diabetes" cases
Re: Plaintiffs' Attorneys' Fees in "Zyprexa-diabetes" Cases

1. Before me are hundreds of cases against Eli Lilly & Company involving claims of diabetes-related injuries allegedly arising from the use of the antipsychotic drug Zyprexa. These cases were transferred to my court for discovery and other pretrial purposes by the federal Judicial Panel on Multidistrict Litigation from federal district courts in all of the states. Some of those cases were removed from state courts. There are motions to remand pending in this court. A number of "Zyprexa-diabetes" cases are pending in state courts.

2. Federal MDL plaintiffs' steering committees have assembled large collections of documents produced by Eli Lilly and conducted many depositions. These documents, deposition exhibits, and deposition transcripts are maintained by the current plaintiffs' steering committee in a depository in Mount Pleasant, South Carolina. In order to reduce transactional costs and the burdens on state courts, I have ruled that these materials shall be made available free of charge to litigants in state cases . *See In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2006 WL 3495667 *3 (E.D.N.Y. Dec. 5, 2006) ("All materials obtained by PSC I and PSC II in pretrial discovery . . . . have been available free of charge to state and federal plaintiffs who agree to adhere to the terms of the protective, case management, and other orders that have been issued by

this court"). Many of the state plaintiffs' attorneys have taken advantage of the federal depository in preparing their state cases.

3. Plaintiffs' steering committees are presently being compensated for their work in assembling documents and conducting depositions through mechanisms that to date do not impose any costs for this work on state plaintiffs or their attorneys. *See id.* at *8 ("The issue of assessing state cases with the costs of a discovery process that benefits all cases, state and federal, should, in the first instance, be left to state court judges.").

4. Some twenty thousand federal cases have been settled. The settlement agreements that have been reached by Eli Lilly & Company and the federal plaintiffs' steering committees include all or most of the state "Zyprexa-diabetes" cases.

5. Because of the enormous savings in transaction costs due to work by the plaintiffs' steering committees, and for other reasons, I have limited the fees available to plaintiffs' attorneys in federal MDL cases. *See In re Zyprexa Prods. Liab. Litig.*, 424 F. Supp. 2d 488 (E.D.N.Y. 2006) ("Limiting fees is particularly appropriate in the instant litigation since much of the discovery work the attorneys would normally have done on a retail basis in individual cases has been done at a reduced cost on a wholesale basis by the plaintiffs' steering committee."). I believe that those fee limits should, if possible, be applied in the state cases for a number of reasons:

A) Much of the preparatory work in state cases has already been done on a national basis, by the federal plaintiffs' steering committees, leaving less justification for high fees in individual state cases.

B) As part of the process of settlement, extensive liens from Medicare and Medicaid have been limited and controlled through national negotiations in this court involving the cooperation of all fifty states and the federal

government. *See In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2006 WL 3501263 (E.D.N.Y. Dec. 4, 2006) ("In compliance with this court's instructions . . . all fifty states as well as the federal government have resolved their Medicare and Medicaid liens."); *In re Zyprexa Prods. Liab. Litig.*, 451 F. Supp. 2d 458 (E.D.N.Y. 2006) (Memorandum Order & Judgment Regarding Liens and Disbursement Procedures). These negotiated lien settlements will probably accrue to the benefit of the state plaintiffs without the need for individual negotiations by state attorneys.

C) The nature of the plaintiffs in these state and federal cases, who allegedly are schizophrenics suffering from diabetes, places them in sad and difficult situations. It is desirable that as much of the recovery as practicable go to the plaintiffs themselves.

6. Despite my strong sense that similar fee limitations in state and federal cases is a fair and equitable result for all Zyprexa-diabetes plaintiffs and their attorneys, I have decided not to impose any fee limitations in state cases. I leave this question to your esteemed discretion.

7. I believe that the relevant fee decisions have been furnished to you, but in case you do not have copies on hand I am attaching them to this memorandum. You will note that in the Memorandum & Order on Common Benefit Fund and Continuing Applicability of Orders of Court and Special Masters of December 5, 2006, the suggestion is made that the MDL court in this case can limit fees in some, if not all, cases pending in state courts. *In re Zyprexa*, 2006 WL 3495667 at *13-15. A cooperative arrangement among state and federal judges limiting fees would be desirable.

8. Fees have been capped at 35%, though they can be varied upward to a maximum of 37.5% and downward to 30% in individual cases on the basis of special circumstances. *In re Zyprexa*, 424 F. Supp. 2d at 491. When individual matrices were provided by type of case, fees

were limited to 20% in certain small, lump-sum claims. *Id.*

9. I believe that a reasonable solution to the fee problem can be arranged for cases that have been and will be settled by negotiation among counsel with the supervision and consent of the concerned state and federal judges.

10. Evidentiary hearings at the state and national level may be desirable.

11. I should very much appreciate your views. I would be happy to visit with you by a telephone conference, at your convenience.

12. This memorandum is being filed and docketed so that judges, parties, and attorneys can respond.

Jack B. Weinstein

Hon. Jack B. Weinstein

Dated: January 18, 2007
Brooklyn, New York

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Case No. 3AN-06-05630 CI

ELI LILLY AND COMPANY'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO DEFENDANT

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Defendant Eli Lilly and Company ("Lilly) hereby serves the following Objections and Responses to Plaintiff's First Requests for Production to Defendant.

PRELIMINARY STATEMENT

Lilly notes that there is a multi-district litigation captioned *In re Zyprexa Products Liability Litigation*, MDL 1596, pending in the Eastern District of New York before the Honorable Jack Weinstein (the "MDL"). Lilly has produced approximately twelve million pages of materials, with indices or objective coding, pursuant to the terms of Case Management Order (CMO) No. 2.[1] Consistent with the Court's direction and the parties' intent in the MDL to

[1] The MDL Plaintiffs' Steering Committee has acknowledged the comprehensiveness of Lilly's document production in the MDL. *See* Declaration of Melvyn I. Weiss in Opposition to Motion to Dissolve Multidistrict Litigation and/or Motion to Dissolve the Plaintiff Liaison Committee, Motion to Stay Settlement of Any MDL Cases Pending Hearing of These Motions and in Support of the Motion to Lift the Stay on Discovery, a copy of which is attached as Exhibit A. Further elaboration is provided by The Plaintiffs' Steering Committee Memorandum Summarizing the Status and Location of Information Obtained by the Committee in These MDL 1596 Proceedings, to which Plaintiff may have access upon entry of an appropriate protective order. In addition, Judge Weinstein has entered an Order stating, in pertinent part: "In order to reduce transactional costs and the burdens on state courts, I have ruled that these materials shall be made available free of charge to litigants in state cases." *See* Memorandum on Cooperation Between Federal and State Judges, MDL 1596 (JBW), dated January 18, 2007, attached as Exhibit B.

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conduct discovery as efficiently and expeditiously as possible, Lilly's responses to the MDL document requests, together with documents provided in response thereto, may be made available to Plaintiff's counsel here, upon entry of and subject to an appropriate protective order agreed upon by the parties and entered in this matter.

By making MDL discovery responses and production documents available to Plaintiff, Lilly does not waive any objections applicable in this case, including objections to the discoverability and/or admissibility of the MDL production documents in this action. Lilly reserves the right to object to the production and admissibility of information and documents to the extent these discovery requests seek documents and information about adverse events not at issue; concern any Lilly product other than Zyprexa® (hereafter "Zyprexa"); seek documents and information about events that took place after the dates that prescribing physicians issued the Zyprexa prescriptions for Alaska's Medicaid recipients that plaintiff claims were the cause of the damage that plaintiff seeks in this matter or, in any event, after September 1, 2004; are not limited to contacts with physicians that prescribed the Zyprexa prescriptions for Alaska's Medicaid recipients that Plaintiff claims were the cause of the damages that it seeks in this matter; or seek documents and information concerning doses, formulations or products containing Zyprexa not used by Alaska's Medicaid recipients. Lilly's investigation into the issues raised in this case and presented by these discovery requests is continuing. Zyprexa is a prescription medication that Lilly has developed over the course of many years. There are voluminous marketing and promotional materials because Zyprexa has been on the market for more than ten years. Further, the breadth and scope of

the discovery requests are extensive. To the extent further investigation is necessary in responding to these requests, Lilly will conduct a reasonable search of the MDL collection.

Lilly's responses and production are made in a good faith effort to facilitate an efficient discovery process. By making these responses and/or producing documents, Lilly does not waive any objection it may have under state law as to the discoverability or admissibility of such evidence. Each specific response, and any documents produced in connection with a specific response, is subject to all objections as to competence, relevance, materiality, propriety and admissibility available under state law, and any other objection that would require the exclusion of any statement or document if made by any witness present and testifying in court. Lilly reserves all such objections and shall raise them at trial as warranted by the applicable law and the facts of this case.

The General Objections and Responses set forth below are intended to preserve Lilly's legitimate objections to discovery and to aid in its defense of Plaintiff's claims against Lilly. To the extent Plaintiff has questions concerning the applicability of a specific objection or wishes further clarification as to the scope of any related production, Lilly invites Plaintiff to meet and confer in a good faith effort to resolve any issues that may arise. Lilly notes that except for facts expressly admitted in these responses to discovery requests, Lilly intends no incidental or implied admissions. The fact that Lilly has answered or objected to any discovery request or any part thereof should not be taken as an admission by Lilly that it accepts or admits the existence of any facts set forth or assumed by such discovery request, or that such answer or objection constitutes admissible evidence. The fact

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that Lilly has answered all or part of any discovery request is not intended as, and shall not be construed to be, a waiver of any objection to any request.

GENERAL OBJECTIONS

1. Lilly makes the following General Objections which are in addition to, and incorporated within, each of the Specific Responses set forth below:

2. Lilly objects to these discovery requests to the extent they seek information and/or documents which are neither relevant to the claims or defenses of any party nor calculated to lead to the discovery of admissible evidence, including but not limited to information about adverse events not at issue; concern any Lilly product other than Zyprexa; seek documents and information about events that took place after prescribing physicians issued the Zyprexa prescriptions to Alaska's Medicaid recipients that Plaintiff claims were the cause of the damages that Plaintiff seeks in this matter or, in any event, after September 1, 2004; are not limited to contacts with physicians that prescribed the Zyprexa prescriptions for Alaska's Medicaid recipients that Plaintiff claims were the cause of the damages that it seeks in this matter; or seek information concerning doses, formulations or products containing Zyprexa not used by Plaintiff's Medicaid recipients.

3. Lilly objects to these discovery requests, both individually and as a whole, on the ground that they are overly broad, burdensome and oppressive. Responding to these discovery requests as currently drafted would be unreasonably difficult and expensive.

4. Lilly objects to these discovery requests on the ground that no distinction is made between privileged and non-privileged information, documents, and/or trial preparation materials and, therefore, these requests call for information and material which is beyond the

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scope of permissible discovery and which is protected from disclosure by the attorney-client privilege and the attorney work product doctrine. In setting forth its responses, Lilly does not waive the attorney-client privilege, work product doctrine, or other privilege or immunity from disclosure that may attach to information called for in, or responsive to, these discovery requests. Moreover, in answering all or any portion of any discovery request, Lilly neither admits the existence of any facts set forth or assumed by the request, nor concedes the relevance or materiality of the request or the subject matter to which the request refers.

5. Lilly objects to these discovery requests to the extent they seek information and/or documents, the disclosure of which would violate privacy rights of non-parties including, but not limited to, those privacy rights guaranteed by the federal and state constitutions as well as federal and state statutes and regulations. Lilly objects to the disclosure of personal identifying information pertaining to those who reported adverse events, participated in clinical trials or took Zyprexa for any reason at any time. Lilly is precluded from disclosing the identities of patients, hospitals or health care professionals (or any third party) who report events covered by the adverse event process. *See* 21 C.F.R. § 20.63(f). The federal regulations specifically provide that any state laws to the contrary are preempted. *See* 21 C.F.R. § 20.63(f)(2). Therefore, state and federal laws and regulations preclude Lilly from producing any personal identifying information in response to these requests. *See* 21 C.F.R. § 20.63(f); 21 C.F.R. § 803.9; *see also* Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. § 1320d-2, *et seq.* To the extent that documents containing information protected from disclosure by federal or state law are

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produced, Lilly will redact such documents to remove personal identifying information before such documents are made available to Plaintiff.

6. Much of the information sought herein is highly confidential and proprietary and consists of valuable commercial information, trade secrets, or business confidential materials, the disclosure of which would be highly prejudicial to Lilly and the value of which cannot be calculated as money damages. Lilly objects to these discovery requests to the extent they seek information and/or documents which are protected as trade secrets by applicable law or include proprietary or confidential commercial information or studies provided by investigators that Lilly does not have the right to produce. Some of the Zyprexa information and documents requested seek highly sensitive commercial information. Lilly specifically objects to these requests to the extent that they seek information or documents that Lilly has gathered relating to its competitors, which is proprietary, highly confidential, and the disclosure of which would compromise its business interests because, among other reasons, Zyprexa (olanzapine) is a currently distributed medicine. The documents described above are privileged and protected from disclosure under Alaska law including, but not limited to, Alaska Statutes 45.50.910 et seq, Alaska Rule of Civil Procedure 26, and Alaska Evidence Rule 508. To the extent such information is discoverable, it will be produced only upon entry of and subject to an appropriate protective order.

7. Lilly objects to these discovery requests to the extent they seek information and/or documents about Zyprexa located in countries other than the United States. Lilly is a U.S.-based company with headquarters in Indianapolis, Indiana. Lilly's global pharmacovigilance is coordinated through Lilly's corporate headquarters in the U.S. The

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vast majority of information and documents relating to the safety and efficacy of Zyprexa are located in the U.S. (in the NDA and individual custodial files). Lilly, however, has a presence in 25 different countries, including offices, laboratories and clinical sites. As a result, such requests are overly broad, harassing, and unduly burdensome, and request documents that are neither relevant to the claims or defenses, and Lilly objects to providing information and/or producing documents maintained outside of the United States.

8. Lilly objects to these discovery requests to the extent they are vague and ambiguous.

9. Lilly objects to these discovery requests to the extent they require Lilly to collect and/or supply documents and/or information that is in the public domain or otherwise obtainable by Plaintiff as easily from other sources as from Lilly.

10. Lilly objects to these discovery requests to the extent they require Lilly to provide confidential, personal information about its employees, clinical trial investigators, and other third parties who have provided confidential, personal information to Lilly, on the grounds that such discovery requests are overbroad and seek information, and/or documents, that are not relevant to the claims or defenses of any party.

11. Lilly objects to these discovery requests to the extent that they purport to impose upon Lilly obligations with respect to the production of information and/or documents different from, or beyond, those imposed by the applicable rules and any Court order.

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12. Lilly objects to these discovery requests to the extent that they presume that Zyprexa is defective in some manner or that Zyprexa caused injuries to Plaintiff's Medicaid recipients.

13. Except for facts expressly admitted in these responses to discovery requests, Lilly intends no incidental or implied admissions. The fact that Lilly has answered all or a part of any discovery request is not intended as, and shall not be construed to be, a waiver of any objection to any discovery request.

14. Lilly objects to any discovery request seeking documents created or generated after September 1, 2004 through the present date as overly broad, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Because Zyprexa is currently a marketed product, providing information and/or producing documents created or generated after that date through the present is unduly burdensome, harassing and the relevance, if any, is outweighed by the substantial burden.

15. Lilly objects to the extent Plaintiff's discovery requests herein are duplicative of deposition and interrogatory discovery conducted in the MDL.

16. Lilly objects to the extent Plaintiff's discovery requests herein are unintelligible and therefore not susceptible to a meaningful response.

17. Lilly's investigation into the facts of this case is continuing and discovery is not yet complete. Lilly continues its investigation, discovery and preparation for trial, including the collection and review of numerous documents. Lilly anticipates that it will discover additional facts, witnesses and evidence which are not set forth herein, but which may be responsive to one or more discovery requests. Therefore, Lilly reserves the right to:

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(a) amend or supplement these responses as it continues discovery in this case and obtains additional facts, witnesses and evidence;

(b) conduct further discovery regarding facts, witnesses and evidence which are not mentioned in this response; and

(c) produce any additional evidence at trial or in connection with any pre-trial proceeding.

18. Lilly objects to these discovery requests to the extent they seek information and/or documents about products other than Zyprexa and any related or similar drugs, because such requests are overly broad and seek information which is neither relevant to the claims or defenses of any party nor to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence. Zyprexa comes in different formulations including: a Zyprexa tablet, Intra-muscular Zyprexa ("IM") and Zydis® (orally disintegrating tablets). Intra-muscular Zyprexa is designed to be injected intramuscularly and is a formulation different than the tablet form. Zyprexa Zydis is a formulation of Zyprexa that dissolves in the mouth on contact with saliva. For purposes of discovery in this case, Lilly will produce responsive, non-privileged information and documents related to the formulation(s) ingested by Plaintiff's Medicaid recipients.

19. Lilly objects to these discovery requests to the extent they seek information and/or documents that deal in any way with uses and/or dosages of Zyprexa which are in clinical research and development. Such requests are overly broad, seek information which is neither relevant to the claims or defenses of any party nor calculated to lead to the discovery of admissible evidence, and may seek commercially sensitive, proprietary information protected from disclosure. For discovery purposes in this case, however, Lilly will produce any non-privileged, safety-related information and documents pertaining to uses of Zyprexa which are in clinical development in its possession. Lilly, however, reserves the

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right to raise any and all objections to the use or admission o[illegible]n documents in connection with this case.

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Produce any and all documents relating to, referring to or embodying any communications between Lilly or any employee or representative of Lilly and any employee or representative of Alaska's Medicaid program regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa from October 1996 to the present.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13 and 16 as if set forth fully herein. Lilly also objects to this request on relevance grounds. Pursuant to the Court's order, Plaintiff recently filed its Memorandum Describing Claims and Proofs, setting forth the claims it seeks to prove in this lawsuit and the means by which it seeks to prove them. Therein, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, requests relating to documents reflecting communications between Lilly and any person or entity other than physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients that Plaintiff claims were the cause of the damages it seeks in this matter are not relevant to any of the claims in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence. Lilly also objects to the phrase "regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa" as vague and undefined.

REQUEST FOR PRODUCTION NO. 2: Produce any and all documents relating to, referring to or embodying any communications between Lilly or any employee or representative of Lilly and any employee or representative of any public payer in Alaska

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other than Alaska's Medicaid program regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa from October 1996 to the present.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13 and 16 as if set forth fully herein. Lilly also objects to this request on relevance grounds. In its Memorandum Describing Claims and Proofs, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, requests seeking documents reflecting or relating to communications between Lilly and any person or entity other than physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients that Plaintiff claims were the cause of the damages it seeks in this matter are not relevant to any of the claims in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence. Lilly also objects to the term "public payer" and the phrase "regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa" as vague and undefined.

REQUEST FOR PRODUCTION NO. 3: Produce any and all documents relating to, referring to or embodying any communications between Lilly or any employee or representative of Lilly and any member of any committee, group or other authority which determines what prescription drugs may be on any formulary or pharmaceutical and therapeutics list, or preferred drug list in Alaska from October 1996 to the present regarding the use of Zyprexa.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13 and 16 as if set forth fully herein. Lilly also objects to this request on relevance grounds. In its Memorandum Describing Claims and Proofs, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, requests seeking

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documents reflecting or relating to communications between Lilly and any person or entity other than physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients that Plaintiff claims were the cause of the damages it seeks in this matter are not relevant to any of the claims in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence. Lilly further objects to this request on relevance grounds as there is no claim in the Complaint relating to "any public payer in Alaska other than Alaska's Medicaid program." Lilly also objects to the phrases "committee, group or other authority which determines what prescription drugs may be on any formulary or pharmaceutical and therapeutics list, or preferred drug list in Alaska" as vague and undefined. Further, to the extent that documents of the nature sought in this request should be deemed relevant to any claim in this lawsuit, the identities of "committees, groups and/or authorities" that determine the prescription drugs for inclusion on Alaska's formularies, pharmaceutical and therapeutics list and/or preferred drug list are known to the defendant and should be stated by name. Lilly also objects to the phrase "use of Zyprexa" as vague and undefined

REQUEST FOR PRODUCTION NO. 4: Produce any and all documents relating to, referring to or embodying any communications between Lilly's sales representatives and healthcare providers in Alaska from October 1996 to the present relating or referring to the efficacy, benefits, risks or costs associated with the use of Zyprexa, including but not limited to any and all e-mails, letters, reprints, brochures, powerpoint or computer presentations, audiotapes, videotapes, CDs and DVDs.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13 and 16 as if set forth fully herein. Lilly also objects to the phrase "regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa" as vague and undefined. Lilly further objects to these requests as premature to the extent Plaintiff has not produced

information sufficient to identify physicians who issued the prescriptions giving rise to Plaintiff's claims in this lawsuit.

REQUEST FOR PRODUCTION NO. 5: Produce any and all documents relating to, referring to or embodying any communications between any "thought leaders", outside speakers or consultants retained or paid by Lilly and healthcare providers in Alaska between October 1996 to the present regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa, including but not limited to: transcripts of any presentations by such thought leaders, outside speakers or consultants and any audiotapes, CDs or DVDs of such presentations.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13 and 16 as if set forth fully herein. Lilly also objects to the phrase "regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa" as vague and undefined. Lilly further objects to these requests as overbroad, unduly burdensome, and premature, as Plaintiff has not produced information sufficient to identify physicians who issued the prescriptions giving rise to Plaintiff's claims in this lawsuit.

REQUEST FOR PRODUCTION NO. 6: Produce any and all documents relating to, referring to or embodying any communications between any medical doctor that is a regular employee of Lilly and any healthcare provider in Alaska between October 1996 and the present regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 9, 12, 13 and 16 as if set forth fully herein. Lilly also objects to the phrases "any medical doctor that is a regular employee of Lilly" and "regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa" as vague and undefined. Lilly further objects to these requests as overbroad, unduly burdensome, and premature, as Plaintiff has not produced information sufficient to identify physicians who issued the prescriptions giving rise to Plaintiff's claims in this lawsuit.

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REQUEST FOR PRODUCTION NO. 7: Produce an electronic, searchable database copy of all call notes generated by any sales representative in Alaska between October 1996 to the present which relate or refer to Zyprexa.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 4, 5, 7, 12, 13 and 16 as if set forth fully herein. Lilly also objects to the phrase "generated by sales representatives in Alaska" as vague and undefined. Lilly further objects to these requests as overbroad, unduly burdensome, and premature, as Plaintiff has not produced information sufficient to identify physicians who issued the prescriptions giving rise to Plaintiff's claims in this lawsuit.

REQUEST FOR PRODUCTION NO. 8: Produce color copy samples of any and all advertisements for Zyprexa which appeared in medical journals published in the United States between October 1996 to the present.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 7, 12, 13 and 16 as if set forth fully herein. Lilly also objects to the term "samples" as vague and undefined. Subject to and without waiving these objections, Lilly states that promotional materials submitted to the FDA are contained in the MDL collection, to which Plaintiff may have access subject to the entry of an appropriate protective order.

REQUEST FOR PRODUCTION NO. 9: Produce any and all documents relating to, referring to or embodying any communications between Lilly or any employee or representative of Lilly and any employee or representative of Alaska's executive or legislative branch of government regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa from October 1996 to the present.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 12, 13 and 16 as if set forth fully herein. Lilly also objects to this request on relevance grounds. In its Memorandum Describing Claims and Proofs, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for

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damages are representations to prescribing physicians. Accordingly, requests seeking documents reflecting or relating to communications between Lilly and any person or entity other than physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients that it claims were the cause of the damages Plaintiff seeks in this matter are not relevant to any of the claims in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence. Further, to the extent that documents of the nature sought in this request should be deemed relevant to any claim in this lawsuit, Lilly objects to this request to the extent to which it seeks documents relating to, referring to, or embodying and communications between Lilly and any employee of any branch or department of Alaska's government other than its Division of Medicaid. Lilly also objects to the phrase "regarding the efficacy, benefits, risks or costs associated with the use of Zyprexa" as vague and undefined

REQUEST FOR PRODUCTION NO. 10: Produce any and all documents relating to, referring to or embodying the development and implementation of marketing programs to support access to Zyprexa for Medicaid recipients from October 1996 to the present.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 12, 13, and 16 as if set forth fully herein. Lilly also objects to this request on relevance grounds. In its Memorandum Describing Claims and Proofs, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, requests seeking documents reflecting or relating to communications between Lilly and any person or entity other than physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid

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recipients that Plaintiff claims were the cause of the damages it seeks in this matter are not relevant to any of the claims in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence. Further, to the extent that documents of the nature sought in this request should be deemed relevant to any claim in this lawsuit, Lilly objects to this request to the extent to which it seeks documents relating to, referring to, or embodying the development of marketing programs in any state other than Alaska and/or in any other country. Lilly also objects to the phrase "development and implementation of marketing programs to support access to Zyprexa for Medicaid recipients" as vague and undefined.

REQUEST FOR PRODUCTION NO. 11: Produce any and all documents relating to, referring to or embodying any communications between Lilly or any employee or representative of Lilly and any employee or representative of any patient advocacy groups such as the National Alliance for the Mentally Ill (NAMI), the National Depression and Mood Disorder Association (NDMDA) and the Depression and Bipolar Support Alliance (DBSA) from October 1996 to the present regarding Zyprexa.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 12, 13 and 16 as if set forth fully herein. Lilly further objects to this request on relevance grounds. In its Memorandum Describing Claims and Proofs, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, requests seeking documents reflecting or relating to communications between Lilly and any person or entity other than physicians who prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients that Plaintiff claims were the cause of the damages it seeks in this matter are not relevant to any of the claims in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence. Lilly further objects to this request as overbroad, unduly

burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, as there is no allegation in the complaint relating to patient advocacy groups, including NAMI, the NDMDA, or the DBSA. Lilly also objects to the phrase "patient advocacy groups" as vague and undefined.

REQUEST FOR PRODUCTION NO. 12: Produce any and all documents relating to, referring to or embodying any communication between Lilly or any employee or representative of Lilly and any employee or representative of the American Psychiatric Association, or any of its work groups, regarding the development of practice guidelines for the treatment of any condition, disease or symptoms that related or referred to Zyprexa from October 1996 to the present.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 12, 13 and 16 as if set forth fully herein. Lilly also objects to this request on relevance grounds. In its Memorandum Describing Claims and Proofs, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, requests seeking documents reflecting or relating to communications between Lilly and any person or entity other than physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients that Plaintiff claims were the cause of the damages it seeks in this matter are not relevant to any of the claims in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence. To the extent that physicians prescribing Zyprexa to Alaska's Medicaid recipients are members of the American Psychiatric Association or any or its work groups, Lilly objects to this request as overbroad, unreasonably burdensome, and premature, as Plaintiff has not produced information sufficient to identify physicians who issued the prescriptions giving rise to plaintiff's claims in this lawsuit. Lilly further objects to this

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request as overbroad, unduly burdensome, and not reasonably calcu... discovery of admissible evidence, as there is no allegation in the complaint related to communications with the American Psychiatric Association or any of its work groups. Lilly also objects to the phrase "regarding the development of practice guidelines for the treatment of any condition, disease or symptom that related or referred to Zyprexa" as vague and undefined.

REQUEST FOR PRODUCTION NO. 13: Produce any and all documents relating to, referring to or embodying any communications between Lilly or any employee or representative of Lilly and any employees, representatives, members of, or participants in, the Texas Medication Algorithm Project (TMAP) from October 1996 to the present regarding the use of Zyprexa.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 12, 13, and 16 as if set forth fully herein. Lilly also objects to this request on relevance grounds. In its Memorandum Describing Claims and Proofs, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, requests seeking documents reflecting or relating to communications between Lilly and any person or entity other than physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients that Plaintiff claims were the cause of the damages it seeks in this matter are not relevant to any of the claims in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence. Lilly further objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, as there is no allegation in the complaint relating to the Texas Medication Algorithm Project. Lilly also objects to the phrases "employees, representatives, members of, or participants in,

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the Texas Medication Algorithm Project (TMAP)" and "regarding the use of Zyprexa" as vague and undefined.

REQUEST FOR PRODUCTION NO. 14: Produce any and all documents relating to, referring to or embodying any communication between Lilly or any employee or representative of Lilly and Comprehensive NeuroScience (CNS) from October 1996 to the present regarding the development of Expert Consensus Guideline Series (ECGS) which relate or refer to the use of Zyprexa.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 12, 13 and 16 as if set forth fully herein. Lilly also objects to the phrase "which relate or refer to the use of Zyprexa" as vague and undefined. Lilly also objects to this request on relevance grounds. In its Memorandum Describing Claims and Proofs, Plaintiff explicitly set forth that the only alleged misrepresentations about which it would submit evidence in support of its claims for damages are representations to prescribing physicians. Accordingly, requests seeking documents reflecting or relating to communications between Lilly and any person or entity other than physicians that prescribed the Zyprexa prescriptions to Alaska's Medicaid recipients that Plaintiff claims were the cause of the damages it seeks in this matter are not relevant to any of the claims in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence. Lilly further objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, as there is no allegation in the complaint relating to communications with CNS regarding the development of ECGS relating or referring to the use of Zyprexa.

REQUEST FOR PRODUCTION NO. 15: Produce any and all documents identified in response to Plaintiff's accompanying interrogatories.

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RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 5, 12, 13, and 16 as if set forth fully herein. Subject to and without waiving these objections, Lilly will produce relevant documents in its possession.

REQUEST FOR PRODUCTION NO. 16: Produce any and all documents produced to Plaintiff in the Zyprexa MDL.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 5, 12, 13 and 16 as if set forth fully herein. Subject to and without waiving these objections, Lilly states that responsive documents are contained in the MDL collection, to which Plaintiff may have access subject to the entry of an appropriate protective order.

REQUEST FOR PRODUCTION NO. 17: Produce any and all documents generated by or reviewed by the Global Product Labeling Committee which relate or refer to Zyprexa, including but not limited to any meeting agendas, proposed label changes, minutes or memoranda.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 5, 6, 7, 12, 13, 16 and 18 as if set forth fully herein. Lilly also objects to the phrase "reviewed by" in this context as vague and undefined. Lilly further objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Lilly states that responsive documents are contained in the MDL collection, to which Plaintiff may have access subject to the entry of an appropriate protective order.

REQUEST FOR PRODUCTION NO. 18: Produce any and all documents submitted to, generated by or reviewed by the Policy Committee which relate or refer to Zyprexa, including but not limited to "pre-reads", meeting agendas, minutes or memoranda.

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RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 5, 6, 7, 12, 13 and 16 as if set forth fully herein. Lilly also objects to the phrase "reviewed by," in this context, and the term "pre-read," as vague and undefined. Lilly further objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Lilly states that responsive documents are contained in the MDL collection, to which Plaintiff may have access upon execution of an appropriate protective order.

REQUEST FOR PRODUCTION NO. 19: Produce any and all documents produced in any civil or criminal investigation or action identified in response to accompanying interrogatory 19 which were not previously produced in the Zyprexa MDL.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, and 16 as if set forth fully herein. Lilly further objects on the ground that this request seeks documents which are neither relevant to the claims or defenses of any party nor calculated to lead to the discovery of admissible evidence. Lilly also objects to this request to the extent that it seeks information that includes proprietary information, trade secrets, and other confidential commercial information. Lilly also objects to requests for collection of documents produced in other settings for different and specific purposes that are not relevant, nor calculated to lead to the discovery of admissible evidence, in this litigation. By way of further response, and subject to and without waiver of the foregoing objections, Lilly states that where documents are otherwise responsive to plaintiffs' non-objectionable discovery requests, they will be produced.

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REQUEST FOR PRODUCTION NO. 20: Produce copies of any statement or transcript of testimony by any individual identified in response to accompanying interrogatory 19.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, and 16 as if set forth fully herein. Lilly further objects on the ground that this request seeks documents which are neither relevant to the claims or defenses of any party nor calculated to lead to the discovery of admissible evidence. Lilly also objects to this request to the extent that it seeks information that includes proprietary information, trade secrets, and other confidential commercial information. Lilly also objects to requests for statements or testimony taken in other settings for different and specific purposes that are not relevant, nor calculated to lead to the discovery of admissible evidence, in this litigation.

REQUEST FOR PRODUCTION NO. 21: Produce all policies of insurance which may provide coverage for any of the claims asserted by the Plaintiff in this action.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 5, 13 and 16 as if set forth fully herein. Lilly further objects to this request as irrelevant to any claim set forth or relief sought in Plaintiff's complaint. Subject to and without waiving these objections, Lilly has no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 22: If an insurer who may provide coverage for claims asserted by the Plaintiff has limited or denied coverage in any respect, please produce any documents which explain its position.

RESPONSE: Lilly incorporates General Objection Nos. 1, 2, 5, 13 and 16 as if set forth fully herein. Lilly further objects to this request as irrelevant to any of the claims set forth or relief sought in plaintiff's complaint. Subject to and without waiving these objections, Lilly has no documents responsive to this request.

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DATED this 12th day of March, 2007.

LANE POWELL LLC
Attorneys for Defendant

By _____
Brewster H. Jamieson, ASBA No. 8411122

I certify that on March 12, 2007, a copy of the foregoing was served by mail on:

Eric T. Sanders, Esq.
Feldman Orlansky & Sanders
500 L. Street, Suite 400
Anchorage, Alaska 99501-5911

_____

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re: ZYPREXA PRODUCTS LIABILITY LITIGATION	MDL-1596
THIS DOCUMENT RELATES TO: ALL CASES	

DECLARATION OF MELVYN I. WEISS IN OPPOSITION TO MOTION TO DISSOLVE MULTIDISTRICT LITIGATION AND/OR MOTION TO DISSOLVE THE PLAINTIFF LIAISON COMMITTEE, MOTION TO STAY SETTLEMENT OF ANY MDL CASES PENDING HEARING OF THESE MOTIONS AND IN SUPPORT OF THE MOTION TO LIFT THE STAY ON DISCOVERY

MELVYN I. WEISS, an attorney duly admitted to practice in the Courts of this State and District, declares as follows:

1. I am a founding partner of Milberg Weiss Bershad & Schulman LLP and make this declaration based upon my personal knowledge and the files and records maintained by my firm and by the Plaintiffs' Steering Committee ("PSC") in the above-captioned matter (*In re Zyprexa Products Liability Litigation*, MDL No. 1596).

2. I am the Chairman of the Zyprexa PSC and was appointed by this Court on June 15, 2004.

3. Petitioners' motion should be denied because:

a. the proposed settlement is not a class action settlement, nor is it a global settlement of all cases in MDL 1596;

b. the PSC has vigorously prosecuted this case since formation of the MDL; and

c. dissolution of the PSC at this juncture will harm, not help, other litigants not participating in the proposed settlement and the Court has already concluded that it is premature to address establishing a new PSC (Nov. 9, 2005 Conference before Judge Weinstein at Transcript p. 26).

4. After the above-referenced MDL was transferred to this Court by the Judicial Panel on Multidistrict Litigation ("JPML"), the Court held a status conference and appointed a thirteen firm PSC in PTO #1 (copy attached as Exhibit A hereto) to, *inter alia*, conduct pre-trial discovery. The powers and duties of the PSC were enumerated in PTO #1.

5. Since its formation, the PSC diligently and effectively assembled a generic liability case against Eli Lilly & Company ("Lilly"), which it feels is extremely strong and is as thorough as any generic liability case built in any other MDL. The PSC has:

a. Established a document depository in Denver, Colorado that contains a high-tech computer network for reviewing and coding documents at a cost to the members of the PSC of nearly $60,000 in computer equipment alone. All documents produced to the depository by Lilly and by third parties to date have been reviewed and coded by PSC member firms and other firms assisting in the litigation.

i. During the entire review process the depository was staffed full-time by a paralegal supplied by PSC member Burg Simpson Eldredge Hersh & Jardine.

ii. The depository contains 12 separate computer terminals on which attorneys reviewed the documents and entered coding information into a database maintained by the PSC.

iii. The depository also houses dozens of boxes of documents produced in paper format by Lilly and third parties. These paper documents were reviewed and those documents that warranted inclusion in the PSC's database were scanned and added to the database and were then coded.

iv. In addition to the area in which the 12 computer terminals are located, the depository also has separate offices where lawyers often worked on briefs over discovery disputes with Lilly and conducted telephonic hearings with Special Discovery Master Woodin.

v. Approximately 1,064 attorney days were expended at the depository reviewing, analyzing and coding documents.

b. Reviewed approximately between 4 and 6 million pages of documents produced by Lilly and third parties thus far in the litigation. Every document that has been produced by Lilly has been reviewed and coded. Those documents that have been deemed most significant have then been further reviewed by the PSC and entered into a separate OCR database so that Plaintiffs' attorneys who have cases pending the MDL can text-search those documents in addition to reviewing coding.

c. Propounded written discovery on Lilly in the form of document requests and Interrogatories.

d. Engaged Lilly in numerous discovery disputes over Lilly's Interrogatory and document responses and its document production, requiring a half dozen hearings before the late Magistrate Judge Chrein and over a dozen conferences and teleconferences before Special Discovery Master Peter Woodin. The PSC also filed an appeal to this Court of one of the key discovery rulings concerning production of the sales call notes of Lilly's sales representatives for Zyprexa.

e. Served deposition notices pursuant to Fed. R. Civ. P. 30(b)(6) on several topics, including the structure of Lilly's Information Technology department and identification, description and function of Lilly's computer systems and databases, and the structure and function of Lilly's Regulatory Affairs Department, Pharmacovigilence Department and Sales and Marketing Departments. These deposition notices resulted in the PSC taking the depositions of approximately 15 different Lilly employees as company designees.

6. The prosecution of these cases, the extensive meet and confer process and the filing of motions before the discovery Special Masters was a full-time job for many firms on the PSC. Over 100 letters were exchanged by counsel addressing substantive discovery issues in the meet and confer process. In addition, over 100 letters were exchanged between counsel, the Court and/or the Discovery Special Master concerning substantive issues regarding discovery and the litigation.

7. Through lengthy meet and confer negotiations, the parties were able to negotiate compromises pertaining to many litigation and discovery matters. Examples include the following:

a. **Case Management Orders**: The parties were able to negotiate and compromise on agreements to stipulate to numerous Case Management Orders, including orders or substantial portions of orders concerning confidentiality, document production protocols and formats, filing and discovery procedures and plaintiff fact sheets.

b. **Electronic Databases**: In September 2004, Lilly disclosed that it had 31 electronic databases that contained information relating to Zyprexa. The PSC had to understand and learn about each of these databases through Lilly's voluntarily production of information and through the deposition process, and to negotiate not only what databases would be produced but the manner of their production since many were kept using customized software. Production of a small number of these databases was disputed, and brought by the parties to the Special Masters for resolution.

c. **Meet and Confer on Document Responses**: Lilly responded to plaintiffs' 91 requests for documents with 17 general objections and numerous specific objections to each request. The PSC firms spent many months meeting and conferring to define and narrow the scope of Lilly's objections to understand as best as possible what Lilly intended to produce and what it intended to withhold. On October 19, 2004, the PSC wrote a 21 page letter outlining the successful progress made in narrowing and

identifying particular disputes, and setting forth the agreements reached to narrow the specific objections for each of the 91 requests.

d. **Meet and Confer on Interrogatory Responses**: The PSC served 49 written Interrogatories on Lilly, and made substantial progress through the meet and confer process in obtaining responses to those Interrogatories objected to by Lilly. As a result of this process, Lilly served supplemental responses to the PSC's Interrogatories.

e. **Rule 30(b)(6) Deposition Notices**: The PSC served three Rule 30(b)(6) deposition notices on Lilly that were designed to obtain a full understanding of Lilly's corporate structure and the manner in which it functioned overall and in the key areas of regulatory, pharmacovigilance and sales and marketing with regard to Zyprexa. Because the notices were highly particularized, the negotiations between the PSC to further define and tailor the requests and identify appropriate witnesses within Lilly took several months. The parties met over two days in Philadelphia to negotiate these matters, and prior to and over the course of the depositions exchanged approximately 40 letters on the topic. The depositions were for the most part concluded and, as intended, provide an excellent foundation for further discovery.

8. While many disputes were resolved voluntarily by the parties after extensive meet and confer between counsel, the PSC was required to bring a substantial number of the disputes before Special Master Woodin that required extensive briefing and hearings. These matters are, *inter alia*:

a. **Production of Adverse Event Backup Files**: Approximately 40 boxes of hard copy adverse event reports for Zyprexa were reviewed, coded into an electronic database and analyzed for diabetes-related injuries. The PSC sought the backup files for these reports, and succeeded in having backup files for 50 exemplar reports produced that provided a wealth of information on key issues in the case. The PSC has filed a further motion to obtain the backup files for all relevant Adverse Event Reports.

b. **Electronic Database Production**: The PSC filed motions for production of disputed electronic databases which required individualized treatment, including:

- Production of Lilly's Adverse Event Database;
- Production of Lilly's sales call notes database of sales call entries made by its sales representatives;
- Production of Lilly's "thought leader" and "consultants" database;
- Production of several of Lilly's clinical trial databases;
- Production of Lilly's Sales Force Alignment database;
- Production of Lilly's database that tracks distribution of Zyprexa samples used to promote the drug; and
- Production of Lilly's label tracking database.

c. **Custodial File Production**: Numerous issues arose during the litigation that had to be resolved by Special Master Woodin regarding Lilly's production of their employees' custodial files, including issues regarding the manner, format and pace of production of these files.

d. **Discovery Scheduling Order**: The parties and Special Master Woodin spent numerous discovery hearings on disputes regarding the timing of production of documents and responses, which resulted in a final discovery schedule that was adopted by the Court.

e. **Foreign Documents**: The PSC successfully obtained the Special Master's order requiring production of key documents held by Lilly overseas with its Japanese and United Kingdom affiliates, pertaining primarily to decisions to change labels to include diabetes warnings nearly two years before Lilly placed those warnings in its United States label.

f. **Document Redactions**: The PSC disputed Lilly's redactions to its document production, and filed a motion before Special Master Woodin for an *in camera* review of hundreds of exemplars of suspect redactions.

g. **Confidentiality Designations**: The PSC has challenged Lilly's confidentiality designations for hundreds of key documents.

h. **Rule 30(b)(6) Depositions**: The PSC brought a motion seeking additional time for depositions on Rule 30(b)(6) deponents.

9. Before late Magistrate Judge Chrein the PSC argued motions or discovery disputes relating to *inter alia*:

a. The scope of information that would be included in the Plaintiff's Fact Sheet.

b. Disputes relating to the conduct of witnesses and counsel during depositions regarding instructions not to answer questions.

c. Two separate hearings concerning the scope of the confidentiality order governing confidential documents and the disclosure of those materials to plaintiffs and experts.

d. Issues relating to Lilly's preservation and production of electronic evidence, which were ultimately reduced to a Pre-Trial Order.

e. The production of Lilly's detail representatives' call notes.

f. The PSC also served a subpoena on the FDA, after which the PSC moved to compel production and enforcement of the subpoena and the FDA cross-moved to quash. The PSC fully briefed that motion and was successful in having the motions transferred from the federal district court in Maryland (where the FDA is located) to the MDL so that this Court could rule on the motions.

10. The PSC also served subpoenas on third parties with relevant information about Zyprexa, such as Lilly's outside public relations firm and IMS (a vendor of electronic prescription data).

11. The PSC retained and has been working with the foremost experts in the fields of psychiatry, diabetes care, statistics and obesity, endocrinology, diabetes epidemiology, and others to prepare them to create their Rule 26 reports. The Science and Expert Committee met almost weekly on these discovery efforts.

12. The PSC also established a Zyprexa Plaintiffs' counsel website containing essential information about the litigation that was and remains available to all counsel who have cases in the MDL. The website contains all the Court's key orders, lists of counsel, and other essential information about the litigation.

13. The PSC also held several seminars throughout the litigation updating PSC members regarding the status of the litigation and litigation strategy. One key seminar held in the Fall of 2004 at the Denver depository was made available live through access on the PSC's Zyprexa website, and was structured to be interactive with internet viewers who could pose questions remotely to the presenters.

14. In sum, the PSC in the instant MDL has fought Lilly at every turn to make a complete and appropriate production of information to which the Plaintiffs are entitled. The PSC spent hundreds of thousands of dollars in hard costs as well tens of thousands of hours in preparing the generic liability case for trial. The PSC committed to these costs well before there was any prospect of settlement and at a time when there was a great deal of financial risk to their firms from this massive litigation. This PSC has undertaken its duties and responsibility with the utmost professionalism, and has zealously represented not only the interests of the members' clients, but all people injured by Zyprexa.

15. Even after settlement discussions were initiated, the PSC continued to aggressively pursue discovery of Lilly, including taking depositions and filing motions.

16. The proposed settlement is a private settlement between Lilly and approximately 8,100 people who were injured by Zyprexa. It is not a class action settlement, nor is it a global settlement of all cases in the MDL.

17. My firm has no clients involved in this settlement.

18. The PSC has vigorously prosecuted this case from the day it was formed. On November 2, 2005, in advance of the most recent hearing, the PSC wrote to the Court to request that the stay on discovery be lifted. *See* Exhibit B hereto (Nov. 2, 2005 letter from Michael London).

19. In light of all of the above, there is no need to (a) stay the settlement; (b) disband the PSC that has vigorously prosecuted this action and has created an excellent discovery package for other Plaintiffs' counsel; or (c) dissolve this MDL. Accordingly, the instant motion should be denied.

Dated: New York, New York
December 1, 2005

Melvyn I. Weiss

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

In re: ZYPREXA
PRODUCTS LIABILITY LITIGATION
----------x

MEMORANDUM ON
COOPERATION BETWEEN
FEDERAL AND STATE
JUDGES

THIS DOCUMENT RELATES TO:

ALL ACTIONS

04-MD-1596 (JBW)

----------x

JACK B. WEINSTEIN, Senior United States District Judge:

To: All state judges handling "Zyprexa-diabetes" cases
Re: Plaintiffs' Attorneys' Fees in "Zyprexa-diabetes" Cases

1. Before me are hundreds of cases against Eli Lilly & Company involving claims of diabetes-related injuries allegedly arising from the use of the antipsychotic drug Zyprexa. These cases were transferred to my court for discovery and other pretrial purposes by the federal Judicial Panel on Multidistrict Litigation from federal district courts in all of the states. Some of those cases were removed from state courts. There are motions to remand pending in this court. A number of "Zyprexa-diabetes" cases are pending in state courts.

2. Federal MDL plaintiffs' steering committees have assembled large collections of documents produced by Eli Lilly and conducted many depositions. These documents, deposition exhibits, and deposition transcripts are maintained by the current plaintiffs' steering committee in a depository in Mount Pleasant, South Carolina. In order to reduce transactional costs and the burdens on state courts, I have ruled that these materials shall be made available free of charge to litigants in state cases . *See In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2006 WL 3495667 *3 (E.D.N.Y. Dec. 5, 2006) ("All materials obtained by PSC I and PSC II in pretrial discovery .... have been available free of charge to state and federal plaintiffs who agree to adhere to the terms of the protective, case management, and other orders that have been issued by

this court"). Many of the state plaintiffs' attorneys have taken advantage of the federal depository in preparing their state cases.

3. Plaintiffs' steering committees are presently being compensated for their work in assembling documents and conducting depositions through mechanisms that to date do not impose any costs for this work on state plaintiffs or their attorneys. *See id.* at *8 ("The issue of assessing state cases with the costs of a discovery process that benefits all cases, state and federal, should, in the first instance, be left to state court judges.").

4. Some twenty thousand federal cases have been settled. The settlement agreements that have been reached by Eli Lilly & Company and the federal plaintiffs' steering committees include all or most of the state "Zyprexa-diabetes" cases.

5. Because of the enormous savings in transaction costs due to work by the plaintiffs' steering committees, and for other reasons, I have limited the fees available to plaintiffs' attorneys in federal MDL cases. *See In re Zyprexa Prods. Liab. Litig.*, 424 F. Supp. 2d 488 (E.D.N.Y. 2006) ("Limiting fees is particularly appropriate in the instant litigation since much of the discovery work the attorneys would normally have done on a retail basis in individual cases has been done at a reduced cost on a wholesale basis by the plaintiffs' steering committee."). I believe that those fee limits should, if possible, be applied in the state cases for a number of reasons:

A) Much of the preparatory work in state cases has already been done on a national basis, by the federal plaintiffs' steering committees, leaving less justification for high fees in individual state cases.

B) As part of the process of settlement, extensive liens from Medicare and Medicaid have been limited and controlled through national negotiations in this court involving the cooperation of all fifty states and the federal

government. *See In re Zyprexa Prods. Liab. Litig.*, No. 04-MD-1596, 2006 WL 3501263 (E.D.N.Y. Dec. 4, 2006) ("In compliance with this court's instructions . . . all fifty states as well as the federal government have resolved their Medicare and Medicaid liens."); *In re Zyprexa Prods. Liab. Litig.*, 451 F. Supp. 2d 458 (E.D.N.Y. 2006) (Memorandum Order & Judgment Regarding Liens and Disbursement Procedures). These negotiated lien settlements will probably accrue to the benefit of the state plaintiffs without the need for individual negotiations by state attorneys.

C) The nature of the plaintiffs in these state and federal cases, who allegedly are schizophrenics suffering from diabetes, places them in sad and difficult situations. It is desirable that as much of the recovery as practicable go to the plaintiffs themselves.

6. Despite my strong sense that similar fee limitations in state and federal cases is a fair and equitable result for all Zyprexa-diabetes plaintiffs and their attorneys, I have decided not to impose any fee limitations in state cases. I leave this question to your esteemed discretion.

7. I believe that the relevant fee decisions have been furnished to you, but in case you do not have copies on hand I am attaching them to this memorandum. You will note that in the Memorandum & Order on Common Benefit Fund and Continuing Applicability of Orders of Court and Special Masters of December 5, 2006, the suggestion is made that the MDL court in this case can limit fees in some, if not all, cases pending in state courts. *In re Zyprexa*, 2006 WL 3495667 at *13-15. A cooperative arrangement among state and federal judges limiting fees would be desirable.

8. Fees have been capped at 35%, though they can be varied upward to a maximum of 37.5% and downward to 30% in individual cases on the basis of special circumstances. *In re Zyprexa*, 424 F. Supp. 2d at 491. When individual matrices were provided by type of case, fees

were limited to 20% in certain small, lump-sum claims. *Id.*

9. I believe that a reasonable solution to the fee problem can be arranged for cases that have been and will be settled by negotiation among counsel with the supervision and consent of the concerned state and federal judges.

10. Evidentiary hearings at the state and national level may be desirable.

11. I should very much appreciate your views. I would be happy to visit with you by a telephone conference, at your convenience.

12. This memorandum is being filed and docketed so that judges, parties, and attorneys can respond.

Jack B. Weinstein

Hon. Jack B. Weinstein

Dated: January 18, 2007
Brooklyn, New York

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, Plaintiff,	)	FILED IN OPEN COURT 7-12-07
v.	)	Case No. 3AN-06-05630 CI
ELI LILLY AND COMPANY, Defendant.	)	

PLAINTIFF'S MOTION TO COMPEL DISCOVERY

The State of Alaska, through its undersigned counsel, hereby moves the Court for an Order compelling defendant to answer Plaintiff's First Interrogatories and Requests for Production or, in the alternative, granting such other relief as the Court may deem just and proper.

The grounds for the motion are that defendant has failed to adequately respond to the State's interrogatories and requests for production, as required by the Alaska Rules of Civil Procedure. Specific insufficiencies are particularly set forth in the State's Memorandum in Support of its Motion to Compel. Plaintiff also requests costs and attorney's fees in bringing this motion.

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The undersigned hereby certifies and affirms in accordance with Rule 37(a)(2)(A), Alaska R. Civ. P., that further consultation with opposing counsel to attempt to resolve the matters contained in said motion would serve no useful purpose.

DATED this 10 day of July, 2007

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Certificate of Service
I hereby certify that a true and correct copy of **Plaintiff's Motion to Compel Discovery** was served by messenger on:

Brewster H. Jamieson
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By Peggy S. Crowe
Date 5/12/07

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