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James B. Gottstein, Esq., Law Project for Psychiatric Rights, Inc.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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In re: ZYPREXA ) 04-MDL-1596 (JBW)  
PRODUCTS LIABILITY LITIGATION )  
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THIS DOCUMENT RELATES TO: )  
\_\_\_\_\_  
ALL CASES )  
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**DECLARATION OF JAMES B. GOTTSSTEIN**  
**IN SUPPORT OF RESPONSE TO ORDER TO SHOW CAUSE**

The undersigned, James B. Gottstein, declares:

1. I am an attorney in solo private practice in Anchorage, Alaska. I am not a party to the above-litigation, but I am the respondent to an Order to Show Cause issued by this court on January 4, 2007. I have personal knowledge of the matters asserted herein.
2. I represent and advocate for individuals diagnosed with mental illness and the rights of psychiatric patients. I am the president and a founder of The Law Project for

Psychiatric Rights, Inc. (“PsychRights”), a non-profit public interest law firm whose primary mission is to undertake strategic litigation against forced drugging and electroshock. One such case is *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006), in which the Alaska Supreme Court last year held that it was unconstitutional to forcibly drug someone unless the trial court finds by clear and convincing evidence that it is in the person’s best interest and there are no less intrusive alternatives available. I have written and presented articles explaining my work and the approach of our organization, including *How the Legal System Can Help Create a Recovery Culture in Mental Health Systems*, attached as Exhibit 1 hereto, and *Report on Multi-Faceted Grass-Roots Efforts To Bring About Meaningful Change To Alaska’s Mental Health Program*, attached as Exhibit 2 hereto.

3. In the work I have done, Zyprexa has been an important focus of concern, as it is one of the most-prescribed neuroleptic drugs, taken by an estimated two million people, according to reports I have read. In the course of doing the *Myers* case, I obtained documents concerning Zyprexa previously not generally available to the public, that Robert Whittaker, author of *Mad in America*, had gotten through FOIA requests. I had these documents analyzed by Grace E. Jackson, M.D., perhaps the most knowledgeable expert on psychopharmacology with respect to mechanisms of action of these drugs in the brain and body. I posted these Zyprexa documents and Dr. Jackson’s analysis on the PsychRights website in early 2003.

4. I continue to work on cases furthering the PsychRights mission. As set forth in the articles referred to above, I undertake cases as opportunities present themselves to do

this. *In re: Guardianship of B.B.* is one such case. I undertook representation of B.B. after being contacted by Dr. David Egilman, who was previously unknown to me, about Zyprexa documents. He was interested in the documents on our website, and told me of his work on Zyprexa and related drugs, and the fact that he had a number of Zyprexa documents due to his service as an expert in the above-referenced case. I agreed that I was interested in these documents, and he advised that they were subject to a protective order. (I later learned this order is referred to as CMO-3, a document I saw for the first time when Lilly counsel sent it to me with a letter late on December 14 that I received on December 15, after I had already disseminated the documents to various third parties.)

5. I was convinced that the Zyprexa Documents would be important in my continuing legal advocacy work described above, and also important to provide to others interested in these issues once I had obtained them. I promptly began to identify and enter into an appropriate case for these purposes, and on December 6, 2006, I entered an appearance in *In the Matter of the Guardianship of B.B.*, Alaska Superior Court Case No. 3AN-04-545 P/G and filed a petition on behalf of my client for various relief, including relief concerning the administration of psychotropic drugs. I also on that date served notices of deposition for four individuals I intended to depose in this case, including Dr. David Egilman. I served these Notices upon opposing counsel, and had subpoenas duces tecum issued for these four individuals. Per local practice, copies of subpoenas themselves are not served on opposing counsel, but the deposition notice must identify any documents sought.

6. Dr. Egilman had informed me that his obligation to comply with the protective order required that he give the producing party, Eli Lilly, written notice and a reasonable opportunity to object. I was absolutely clear on multiple occasions with Dr. Egilman that he should produce the documents in compliance with CMO-3, and I suggested he seek help from legal counsel. Dr. Egilman likewise expressed his intent to satisfy the requirements of the protective order. In fact, Dr. Egilman gave Lilly notice the same day he received the subpoena for the documents at issue, by faxing a copy of the documents I sent him to Lilly's General Counsel, Richard Armitage. Lilly counsel Brewster Jamieson later provided me with a copy of Dr. Egilman's fax to Mr. Armitage, showing Armitage's December 6 receipt stamp. See attached Exhibit 3. We discussed the fact that the protective order was unclear about what a reasonable time was. Dr. Egilman indicated that three business days could be construed as sufficient notice to comply. Dr. Egilman told me that he heard nothing from Lilly that day, or for the rest of the week, and had heard nothing from Lilly by the close of the third business day (fifth day) after he had sent notice to Lilly. The following day, he sent me the first documents.

7. I regularly disseminate important documents I obtain in the course of my legal advocacy work to those who can also make use of them, and in particular, I often post documents on my website. It has been, and remains, my understanding that there is no reason why I cannot lawfully do so. When I received the Zyprexa documents pursuant to my subpoena I promptly made copies available to a number of third parties, including the New York Times and experts I have worked with, and others. I believe the articles and editorial published by the New York Times based on these documents, as well as other

responses from those who have seen them, vindicate my belief that making these documents publicly available, as I was entitled to do, served an important public interest.

8. Lilly first asked me not to disseminate the Zyprexa Documents by letter sent late Thursday, December 14, and received by me on December 15. I did not send out any Zyprexa Documents received after receiving this request, and I declined all subsequent requests from news media, public officials and others for copies of them. I also promptly, diligently and in good faith complied with directives from the court regarding the documents, as outlined in my December 22 Certificate of Compliance and subsequent supplements, attached hereto as Exhibit 4.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is made and executed by me in Brooklyn, New York, on this 16<sup>th</sup> day of January, 2007.

**James B.  
Gottstein, Esq.**

James B. Gottstein

Digitally signed by James B. Gottstein, Esq.  
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Date: 2007.01.15 22:30:54 -09'00'