UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SERGEANTS BENEVOLENT ASSOCIATION HEALTH AND WELFARE FUND on behalf of itself and all others similarly situated Plaintiff, v. ELI LILLY AND COMPANY Defendant	**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL** **REDACTED VERSION FILED**

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I. INTRODUCTION

1. This is a proposed national class action on behalf of third party payors (self-insured employers, Taft-Hartley funds, non-profit and for-profit health insurers, all of whom bear the ultimate risk for prescription drug expense) against Eli Lilly & Company ("Lilly" or "Defendant") seeking damages and other monetary relief by reason of Lilly's wrongful and illegal marketing, sales and promotional activities for the atypical antipsychotic Zyprexa.

2. From the 1996 product launch of Zyprexa to the present, Lilly engaged in wide-spread fraudulent statements and conduct, and pervasive false and misleading marketing, advertising and promotion of Zyprexa. Lilly deceived physicians, consumers, third party payors, and others regarding the comparative efficacy of Zyprexa to other traditional and atypical antipsychotics. Lilly failed to warn – and affirmatively misled – physicians, consumers, third

party payors, and others in the medical community regarding Zyprexa's association with diabetes, diabetes-related conditions and other adverse effects. And even though Zyprexa is a antipsychotic drug and thereby limited in its FDA-approved indications, Lilly actively marketed and promoted Zyprexa for unapproved uses in several populations where the efficacy and safety of the drug had yet to be established – marketing Zyprexa for the treatment of various conditions or symptoms in children, marketing Zyprexa for treatment in the elderly for dementia, and marketing Zyprexa for treatment of "soccer moms" who experience depressive or other physiological conditions.

3. Lilly's unlawful campaign of marketing, advertising and promoting Zyprexa was highly effective. Although less that one percent of the United States population suffers from diagnosed schizophrenia, and while the drug therapeutic category of antipsychotics has multiple traditional and atypical antipsychotics, within a few short years Zyprexa's annual United States sales exceeded $3 billion, becoming the leading atypical antipsychotic on the market and Lilly's number one prescription product.

4. Lilly could not accomplish the deceptions regarding comparative efficacy, lack of adverse side effects and demand for non-indicated Zyprexa usage on its own. Not only did Lilly itself make false statements and endorse half-truths, but Lilly also retained medical marketing firms and peer physicians paid by Lilly to promote Zyprexa as the comparative and safer choice both for on-label and off-label purposes. Lilly paid public officials who received "gratuities" or financial payoffs in order to foster Zyprexa usage and create faulty and misleading guidelines for antipsychotics usage. Lilly along with other drug manufacturers funded purported non-profit organizations with millions of dollars to lobby for the increased market share and marketing of atypical antipsychotics such as Zyprexa. Thus, Lilly associated itself with a discrete, identifiable

number of medical marketing firms, physicians, public officials and purported charities in order to effectuate the illegal and unlawful purposes of Zyprexa promotion, thereby masking Lilly's direct influence on the deceptive and misleading marketing and promotional campaign for Zyprexa.

5. The devastating consequences of Lilly's unlawful activities regarding the comparative efficacy, safety and off-label usage of Zyprexa resulted in both serious personal injuries to thousands of persons, as well as substantial and unnecessary economic burdens being placed on consumers and third party payors. The personal injury actions are addressed through other actions in this MDL. This Class Action Complaint seeks to address the economic harm suffered by consumers and third party payors.

6. Count I alleges a violation of the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C § 1961 (3). Lilly associated itself with a discrete and identifiable number of medical marketing firms, physicians, public officials and purported charities in order to form RICO associations-in-fact. These enterprises are described in this complaint as the Unlawful Zyprexa Promotion Enterprises. Through the use of these enterprises, Lilly engaged in a pattern of racketeering activity including at least multiple episodes of mail fraud and wire fraud. Consumers and third party payors were injured in their property by reason of these violations by, among other things, having to pay hundreds of millions of dollars for Zyprexa by reason of the unlawful conduct. Plaintiffs seek certification of a nationwide class, and treble damages on behalf of that class.

7. Count II alleges a conspiracy in violation of RICO under 18 U.S.C § 1962 (c). Lilly and its co-conspirators engaged in numerous overt and predicate fraudulent racketeering acts in furtherance of the conspiracy, and by reason of this conduct consumers and third party

payors were injured in their property. Plaintiffs seek certification of a nationwide class, and treble damages on behalf of that class.

8. Count III alleges a violation of state consumer protection law. As a direct result of Lilly's deceptive, unfair, unconscionable, and fraudulent conduct, consumers and third party payors were injured and suffered loss within the meaning of applicable and consumer protection statutes. Plaintiffs seek certification of a nationwide class (or group of classes) and applicable damages on behalf of that class.

9. Count IV alleges common law fraud.

10. Count V seeks relief in the nature of unjust enrichment. As a result of the intended and expected result of the conscious wrongdoings engaged in by Lilly, Lilly profited and benefited at the expense of the consumers and third party payors in the United States.

11. Finally, pursuant to Fed. R. Civ. P. 38, the First Amended Class Action Complaint seeks a jury trial on all issues so triable. Although these purchase claim proceedings are relatively young, given the pendency of this MDL for well over a year and given the interests of justice, proposed interim class counsel are prepared to proceed forward with discovery and a trial at a relative early date.

II. PARTIES

A. Plaintiff

12. Plaintiff Sergeants Benevolent Association Health and Welfare Fund ("SBA Fund" or "Plaintiff") is a citizen of the state of New York, and has its principal place of business at 35 Worth Street, New York, New York. SBA Fund is an "employee welfare benefit plan" and an "employee benefit plan." As such, SBA Fund is a legal entity entitled to bring suit in its own name. SBA Fund is a not-for-profit benefit fund, sponsored by and administered by a Board of

Trustees, established and maintained to provide comprehensive health care benefits to participant-workers, who are employed under various collective bargaining agreements, and to their dependents.

13. SBA Fund has paid all or part of the cost of its participants' purchases of Zyprexa during the Class Period, as defined herein. Pursuant to its plan, Plaintiff, through a pharmacy benefit manager and managed care administrator, purchased prescription drugs for its participants and provided coverage for medical testing and visits to physicians. Each plan participant has a prescription drug plan identification card which he/she presents at a participating pharmacy. Plaintiff has been injured as a result of the unlawful conduct of Defendant as alleged herein.

B. Defendant

14. Defendant Eli Lilly and Company ("Lilly" or "Defendant") is an Indiana corporation and has its principal place of business located at Lilly Corporate Center, Indianapolis, Indiana 46285. At all times relevant hereto, Lilly was engaged in the business of licensing, manufacturing, distributing, and/or selling, either directly or indirectly, through third-parties or related entities, the pharmaceutical prescription drug Zyprexa.

III. JURISDICTION

15. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, because this action arises under the laws of the United States, and 28 U.S.C. § 1964(c), because this action alleges violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962.

16. Plaintiffs also invoke jurisdiction pursuant to 28 U.S.C. § 1332 (d)(2), which provides federal district courts with original jurisdiction over civil actions in which the matter in

controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which "any member of a class of plaintiffs is a citizen of a state different from any defendant."

17. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 (b) and (c), and 18 U.S.C. § 1965 because Defendant transacts business, is found, and/or has agents in this District, and because a substantial portion of part or all of the alleged improper conduct took place in this District. Lilly through its marketing and sales of Zyprexa has transacted substantial business in this District.

IV. FACTS

A. Federal Regulatory Background

18. The backdrop for the facts of this case, and in part the need for Lilly to conspire with others to effectuate its unlawful purposes, stems from two aspects of the federal regulatory regime for pharmaceutical products – the thresholds for FDA drug approval and the restrictions regarding off-label marketing practices.

19. Pharmaceutical companies must apply to the United States Food and Drug Administration ("FDA") for approval to sell a new drug. When the FDA approves a drug product, it also approves the labeling that accompanies the drug. This labeling indicates the manner in which the product is to be used as well as the warnings that must be included with the product.

20. The label and the information provided by the manufacturer about its drug, including contraindications and potential side effects, are relied on by physicians in deciding a course of therapy for their patients. Although physicians are free to prescribe approved drugs as they see fit to treat any condition or symptom, pharmaceutical companies are prohibited from promoting drugs for uses outside of the approved labeling, commonly referred to as "off-label"

uses.

21. Strict federal laws and regulations also govern the required disclosure of adverse side effects associated with any prescription medication as well as the promotion and marketing of drugs for off-label uses.

22. Legal requirements for the content and format of drug labels, like Zyprexa, are codified in 21 CFR 201.57. Serious adverse reactions, which are potentially fatal, must be conspicuously warned of and cannot be buried in a drug's label. 21 C.F.R. 201.57, subsections (e) and (g) provide as follows:

> (e) Warnings.
> Under this section heading, the labeling shall describe serious adverse reactions and potential safety hazards….
>
> The Labeling shall be revised to include a warning as soon as there is reasonable evidence of an association of a serious hazard with the drug; a causal relationship need not have been proved.
>
> (g) (3) The 'Warnings' section of the labeling or, if appropriate, the 'Contraindications' section of the labeling shall identify any potentially fatal adverse reactions.

23. The regulations also obligate a drug manufacturer to advise prescribing physicians, and ultimately the patient, of the need to perform appropriate clinical testing and/or monitoring to prevent against foreseeable side effects from occurring. Subsection (f) of 21 CFR 201.57 states as follows:

> The Precautions labeling shall contain the following:
>
> (1)…any special care to be exercised by the practitioner for safe and effective use of the drug…
>
> (3)…any lab tests that may be helpful in following the patient's response or in identifying possible adverse reactions…

24. The FDA regulates some aspects of the marketing and promotion of prescription

drugs. Under the Food Drug and Cosmetic Act, and the regulations promulgated thereunder, all information provided by a drug manufacturer about its products, whether on- or off-label, whether directed at consumer or physicians, must be fair and balanced. To be fair and balanced, information about a drug manufacturer's products must accurately and fairly represent all relevant data. In practice, this mean a drug manufacturer must present the positive as well as the negative information that it knows about the drug. Pharmaceutical companies may not present half-truths or disclose only select information favorable to their position. They must make full disclosure to meet their obligation of providing fair and balanced information. Lilly was aware of these requirements.

25. At all times relevant hereto, some aspects of Lilly's promotion of its products for off-label uses was also governed by some federal requirements. The general rule was that pharmaceutical companies could only promote their products for uses that had been approved by the FDA. Sales personnel could not discuss off-label uses with physicians during sales visits, and off-label uses were not supposed to be discussed in any promotional event sponsored by Defendant.

B. Schizophrenia and Traditional Antipsychotics

26. Schizophrenia is one of the most complex and challenging of psychiatric disorders. It represents a heterogeneous syndrome of disorganized and bizarre thoughts, delusions, hallucinations, inappropriate affect and impaired psycho-social functioning. Fortunately, schizophrenia is somewhat rare, occurring in only about 1% of the population.

27. There are many clinical presentations of schizophrenia. Despite common misconceptions of schizophrenia as a "split-personality", in fact schizophrenia is a chronic disorder of thought and affect. The Diagnostic and Statistical Manual of Mental Disorders, 4th edition, (DSM-IV) assigns a diagnosis of schizophrenia when a patient suffers two or more of the

following characteristic symptoms: delusions, hallucinations, disorganized speech, grossly disorganized or catatonic behavior and negative symptoms.[1]

28. Although the etiology of schizophrenia is unknown, research has demonstrated various abnormalities in schizophrenic brain structure and function. The cause of schizophrenia is likely multi-factorial, that is, multiple pathophysiologic abnormalities may play a role in producing the similar but varying clinical phenotypes we refer to as schizophrenia.

29. Since the discovery of the effects of antipsychotics, such as chlorpromazine in the 1950s, and the observation that traditional anti-psychotic drugs are post-synaptic dopamine-receptor antagonists, the hypothesis has emerged that dopamine hyperactivity underscores the neurochemical basis for the primary symptoms of schizophrenia.

30. Over the years, treatment of schizophrenia has relied on antipsychotic drugs that target dopamine D2 receptors. The many antipsychotic drugs introduced during the following decades were increasingly potent, as medicinal chemists improved the drugs' affinity for the D2 receptor.

31. The traditional or “typical” antipsychotics include chlorpromazine (Thorazine), fluphenzine (Proxilin), haloperidol (Haldol), loxapine (Loxitane), molindone (Moban), mesoridazine (Serentil), perphenazine (Trilafon), thioridazine (Mellaril), thiothixene (Navane), and trifluoperazine (Stelazine). Until the early 1990’s, the typical antipsychotics were the common drug therapy for schizophrenia.

32. Although there were many traditional antipsychotics, the efficacy of these drugs was similar because they all had similar mechanisms of action. A troubling side effect of typical

[1] Only one of these criteria are required if delusions are bizarre or if hallucinations consist of a voice keeping a running commentary on the persons behavior or two or more voices conversing with each other. To achieve a diagnosis of schizophrenia, schizo-affective or mood disorder must be excluded, and the disorder must not be due to medical disorder or substance use.

antipsychotics was that the blockage of dopaminergic neurotransmission in the basal ganglia caused extrapryamidal syndromes (EPS) such as Parkinsonian effects. A long-lasting movement disorder, tardive dyskinesia, also occurred with prolonged treatment. And as to efficacy, the early promise that these drugs might dramatically improve patients' long term psychosocial and cognitive disabilities was only partially fulfilled.

33. By the 1980s, clozapine was being investigated for the treatment of schizophrenia on the theory that it might be more effective and cause less movement disorder than other antipsychotics. Clozapine was termed an atypical antipsychotic because it had an "atypical index" when measuring its effect on brain activity in different parts of the brain. It was hypothesized that the different effects by clozapine on the areas of the brain that control movement would cause less movement disorder than other antipsychotics. However, the potential of clozapine to cause toxic side effects, including agranulocytosis, limited its prescription to about 10 percent of persons with schizophrenia.

C. Emergence of the Atypical Antipsychotics or Second Generation Antipsychotics (SGA)

34. During the 1990's pharmaceutical companies, acting on the "atypical" hypothesis, introduced newer drugs attempting to capture the enhanced therapeutic effect of clozapine without its toxicity and without the increased EPS caused by traditional antipsychotics. Before 1993, the only atypical antipsychotic in the United States market was clozapine, and due to its toxicity it had very little market share. Ten years later, atypical antipsychotics such as Zyprexa would account for about 90% of all antipsychotic drugs prescribed for all psychiatric purposes, regardless of whether they were approved for those indications or not. The atypical antipsychotics include clozapine (Clozaril), olanzapine (Zyprexa), quetiapine (Seoquel), risperidone (Risperdal), aripiprazole (Abilify), and ziprasidone (Geodon), and are considered the

second generation antipsychotics (SGA). In part, this lawsuit describes how Lilly achieved, through a series of unlawful acts and practices, the largest United States market share for atypical antipsychotics, both for FDA-approved purposes and for unapproved purposes.

35. In late 1993, Risperdal became the first non-clozapine atypical antipsychotic to receive FDA approval. In early 1994, Janssen, a subsidiary of Johnson & Johnson, began marketing and selling Risperdal. During the next couple of years, Janssen heavily marketed and promoted Risperdal for its approved indication, management of the manifestation of psychotic disorders, and for multiple non-approved purposes of the drug, for example, attention deficit-hyperactivity disorder (ADHD), bipolar disorder, and aggression associated with late-onset dementia. By late 1996, Janssen had significant market share for United States antipsychotic drug use, and demonstrated the sales potential of marketing atypical psychotic usage for non-approved indications.

D. FDA Approval Process for Olanzapine

36. Meanwhile, in the early 1990's, Defendant Lilly developed and sought approval for its own atypical antipsychotic, olanzapine (the eventual trade name for which would be Zyprexa). Olanzapine is a selective monoaminergic antagonist with a high affinity binding to the subtypes of serotonin, dopamine and other receptors. Thus, as is the case with other antipsychotics, the proposed efficacy of olanzapine for schizophrenia is mediated through a combination of dopamine and serotonin type II (5HT2) antagonism.

37. In seeking approval of olanzapine for the treatment of psychotic disorders, Lilly submitted two controlled studies showing olanzapine to be superior to placebo in the treatment of psychosis in patients with schizophrenia during short term (6 week) studies. As such, the FDA approval of olanzapine for the treatment of psychotic disorders constituted the regulatory minima traditional for FDA approval – olanzapine had been proven as better than nothing (i.e., a

placebo) during two short term (i.e., 6 week) studies. The FDA approval did not support, and did not constitute, an endorsement by the FDA that olanzapine was in terms of efficacy better than or equal to any other antipsychotic, traditional or atypical.

38. Moreover, the efficacy of olanzapine through two short-term (6 week) controlled trials was limited to inpatients who met the diagnosis criteria in the *Diagnostic & Statistical Manual of Mental Disorders, 3rd Edition, revised* (DSM-III-R) for schizophrenia. Thus, the original approved indication was limited to adults with psychotic disorders.[2]

39. Because the mechanisms of actions for olanzapine were fundamentally the same as other SGAs, the FDA required (and Lilly was constrained to acquiesce) to warnings for Zyprexa that included neuroleptic malignant syndrome (NMS) and tardive dyskinesia (TD).

40. Medical literature dating as far back as the 1950s, and Lilly's own pre-clinical studies of Zyprexa, demonstrated that Zyprexa, like older antipsychotic medications, had the potential to cause diabetes, diabetes-related injuries (e.g. weight gain and hyperglycemia), cardiovascular complications, and other severe adverse effects. By the time Zyprexa was first marketed, the neurochemical bases for the efficacy and side-effects were generally known to Lilly, i.e., effects on dopamine, serotonin, and histamine systems in the brain. Therefore Lilly should have been concerned about Zyprexa causing neurological problems, weight gain, diabetes, pancreatitis, hyperglycemia, cardiovascular complications, and metabolic syndrome. And yet Zyprexa's original label, and all label changes until 2004, did not adequately warn of these adverse effects.

41. Despite having been on notice of the potential for deadly diabetes-related side effects, Lilly opted for the bare minima of clinical trials, of limited duration, such that no side

2 Although a single haloperidol arm was included as a comparative treatment in one of the two trials, this trial did not compare these two drugs over a full range of clinically relevant doses for both.

effects were likely to be revealed.

42. Despite knowing that Zyprexa increased the risks of weight gain, hyperglycemia, other adverse metabolic events, and certain cardiovascular issues, Lilly fought to keep fair and balanced disclosures regarding these risks from the Zyprexa label. During the FDA approval process, two important facts regarding the marketing of Zyprexa became apparent: 1) the need for restraint with respect to claims of efficacy, which according to the FDA had only been minimally demonstrated; and 2) Lilly's aversion to providing warnings about weight gain, much less the potential for diabetes. For example:

- In April 1995, researchers conducting statistical analysis of cardiovascular data from an earlier clinical study noted that although olanzapine dosing did not appear to affect cardiovascular signs, "[redacted]." ([redacted])

- In February 1995, Lilly executives met with FDA officials in a pre-NDA filing meeting to discuss research on olanzapine, including the patient populations being studied and for which approval would be sought. J. Alan Webber, in writing the results of the meeting, noted the FDA's warning about misleading statements regarding treatment of dementia: "[redacted]." In addition, the FDA warned Lilly about tactics and presentation of information about Zyprexa: "[redacted]".

- On August 3, 1995, Lilly prepared the "[redacted]" report to be submitted to the FDA with the NDA application. The summary included pre-February 14, 1995 safety data from approximately 50 completed and ongoing worldwide clinical studies, involving a total of 3201 patients, as well as a review of literature pertaining to the safety of olanzapine. A review of the "[redacted]" from the integrated database showed approximately 950 reported incidences of weight gain – 30% of patients on olanzapine in those

clinical studies.

- A September 13, 1995 marketing presentation prepared by Adelphi International Research Limited highlights the "[redacted]" of Zyprexa as well as some of the "[redacted]" or side effects of the drug as compared to other antipsychotic drugs then offered. While the presentation notes that weight gain "[redacted]," it contains nothing on glucose monitoring or the potential health risks associated with significant weight gain brings. Instead, one "[redacted]" of Zyprexa was that patients on it required no blood monitoring, which was viewed as a "[redacted]." The slide touting this "benefit" states: "…[redacted]."

- On September 4, 1996, Lilly executives discussed the FDA's suggested changes to the Zyprexa draft labeling, disagreeing with the agency's proposal regarding the incidence of weight gain: "[redacted]." The FDA's recommended labeling notation on weight gain read as follows: "[redacted]." In addition to moving the paragraph to the "Adverse Reactions" section, Lilly also wanted to add a sentence: "[redacted]."

- On September 30, 1996, the FDA approved Lilly's NDA for Zyprexa, including draft labeling which was the result of several meetings and calls between the agency and Lilly during September 1996. The agency relented to Lilly's desire to move mention of weight gain to the "Adverse Reactions" section of the labeling and approved the following paragraph: "[redacted]

[redacted]."

43. In September of 1996, the FDA approved Zyprexa for use in the treatment of schizophrenia. Between that time and September 2003, there have been 17 different revisions to Zyprexa's product label. The dates of each revised product label are as follows: 10/2/96; 5/1/97; 8/11/97; 9/30/98; 11/19/98; 6/29/99; 3/17/00; 4/12/00; 8/3/00; 10/27/00; 2/16/01; 11/01; 3/5/02; 5/13/02; 1/24/03; 7/18/03; and 9/16/03. Between October 1996 and early-September 2003, Lilly never provided a prominent warning about the increased risk of diabetes and hyperglycemia and of the need to provide baseline diabetes screening and glucose monitoring until it was forced to do so by the FDA in mid-September of 2003.

44. Since Lilly introduced Zyprexa in 1996, it has been prescribed to more than twelve million people worldwide and became Lilly's top-selling drug. In 2003, approximately seven million prescriptions for Zyprexa were dispensed, resulting in more than $2 billion in sales. Zyprexa was the seventh largest selling drug in the United States by retail sales in 2003. In 2004, Zyprexa sales exceeded $4.4 billion.

45. Crucial to this blockbuster success was Lilly and its co-conspirators' aggressive marketing of Zyprexa, which consisted chiefly of overstating the drug's uses, while understating (if not outright concealing) its life-threatening side effects.

E. Lilly's Pre-Market Planning

46. Long before Lilly brought Zyprexa to an already well-established market for second-generation antipsychotics in September of 1996, Lilly had clearly set its strategy for the success of the new drug: to "[redacted]" and create research, with the help of paid, third party "[redacted]," that "[redacted]" establish Zyprexa as an effective and safe alternative to other similar agents, while downplaying and minimizing the drug's "[redacted]" and potential side

effects, and to promote Zyprexa as a drug that could be used for a broad array of "mood and thought disorder" symptoms, going far beyond the limited indication for schizophrenia that Lilly originally received from the FDA.

47. Prior to Zyprexa's FDA approval, Lilly had a well-developed strategy to expand the use of olanzapine beyond patients with schizophrenia. A 1994 presentation to the "[redacted]" outlined the team's mission, goals, and strategy for promoting utilization of the drug. The goals included ghost writing research and paying "[redacted]" to support Lilly's marketing aims. These "[redacted]," of course, were nothing more than third-party consultants and researchers who were put on Lilly's payroll to support and lend credibility to Lilly's scientific and marketing goals.

48. Among these goals were plans to "[redacted]" while "[redacted]" ([redacted].) Indeed, to begin the process of providing incentives and funding to doctors and researchers, Lilly planned to identify and meet with these "[redacted]" during the fourth quarter of 1995, approximately one year before Zyprexa came to market. ([redacted]) Lilly also trained its sales people as to how to "outline" or to even write articles for the doctors and in fact provided templates of articles that the doctors could submit under their own name. ([redacted])

49. Further, the "[redacted]" set out to "[redacted]"

[redacted]

[redacted].” ([redacted])

50. In a July 20, 1995 Zyprexa presentation again geared towards the “[redacted],” Lilly estimated the schizophrenia drug market at approximately $1 billion at the time, with “[redacted].” ([redacted]) Obviously, there was no possible way Lilly could have ever hoped to turn Zyprexa into drug that could seriously tap into this $3.5 billion market by 2000 without marketing Zyprexa for a whole variety of off-label uses. Lilly’s global long-term marketing strategy in this regard is perhaps best summed up by the Zyprexa slogan it utilized in 1995: “[redacted]” ([redacted])

51. In this regard, it was Lilly’s strategy well before the launch of Zyprexa to market the drug not only for use with children and the elderly but also for a whole variety of symptoms in the broad realm of “[redacted],” a strategy that gave rise to an ongoing pattern of false and misleading conduct in violation of not only FDA regulation but also state and federal fraud law.

52. From the outset, Lilly recognized the need to promote off-label uses as the key to blockbuster success for Zyprexa and included off-label uses in its long-term planning for the drug. For example, in another pre-launch internal strategy document entitled “[redacted]” Lilly set a number of goals for itself prior to launching Zyprexa. One of the main goals identified in this strategy document was to “[redacted]” The new and off-label indications identified by Lilly in this document included:

- “[redacted]”

- “[redacted]”
- “[redacted]”
- “[redacted]”
- “[redacted]”
- “[redacted]”
- “[redacted]”
- “[redacted]”
- “[redacted]”

([redacted].)

53. In order to support these off-label uses, Lilly funded studies that were driven more by the desired outcome than any adherence to scientific principles. For example, at least as early as 1995, Lilly set out to target elderly patients, despite the fact that it knew that “[redacted].” Lilly wanted to sponsor studies of late-onset or geriatric schizophrenia because the data “[redacted]” and “[redacted].” ([redacted].) Lilly also sought to study and promote the use of olanzapine in Alzheimer’s patients, noting “[redacted].” ([redacted])

54. Another proposed study to take place in the U.S. and the Netherlands was designed to provide “[redacted]” that “[redacted].”

([redacted].)

55. Lilly was clear that its goal in examining the potential for Zyprexa was "[redacted]." As Lilly explained, [redacted]." ([redacted].)

56. With such studies, however, Lilly was clearly interested only in what would shower positive attention on the drug, as its strategy entailed having "[redacted]." ([redacted]) Thus, instead of conducting research in good faith to legitimately test the efficacy and safety of olanzapine, Lilly was more closely focused on creating narrowly tailored studies specifically designed to "[redacted]." Such was the sales-first philosophy at Lilly, prior to the launch of Zyprexa.

57. Lilly's clear aim from the outset was to expand the off-label indications for Zyprexa despite the fact that its own pre-launch strategy documents pointed to and highlighted numerous "drawbacks" of the drug, including:

- "[redacted]"
- "[redacted]"
- "[redacted]"
- "[redacted]"

([redacted])

58. Despite this knowledge, Lilly set out to aggressively market Zyprexa for the above-listed off-label uses and set further goals for itself, including:

- "[redacted]."
- "[redacted]"…
- "[redacted]"…
- "[redacted]"…
- "[redacted]"…
- "[redacted]"…
- "[redacted]"…
- Follow "[redacted]."

([redacted])

59. Thus, Lilly's pre-launch commercialization plan was aimed at "[redacted]" and undertaking "[redacted]" such as efforts to "[redacted]"[redacted]." ([redacted])

60. Lilly, however, knew that it could not accomplish all these goals alone and was set on getting as much help as possible from third parties, such as paid '[redacted]," and from its "[redacted]." As Lilly's strategy documents state, in order to make Zyprexa succeed,

Lilly was prepared to "[redacted]." ([redacted].)

61. Prior to launch, Lilly also made certain to focus on positioning Zyprexa for maximum pricing and utilization. The 1994 "[redacted]" presentation noted two strategies on that front: "[redacted]." ([redacted].)

62. Indeed, in another pre-launch marketing strategy document, Lilly identifies a priority goal to "[redacted]" in 1996 and 1997. The number one priority goal of these "[redacted]" was to "[redacted]" ([redacted].) Another stated goal was to "[redacted]." ([redacted]) Thus, even at this early stage, Lilly's "[redacted]" approach to investigating Zyprexa was designed not to legitimately test for efficacy and safety, but instead to market to "[redacted]" and to "[redacted]" and maximize profits.

63. In short, Lilly's pre-launch marketing strategy for Zyprexa could be summarized as follows: result-driven study designs, which will be supported by result-driven selection of paid consultants and researchers, narrowly tailored such that they "[redacted]" only provide support for the efficacy and safety of Zyprexa as an agent capable of combating as wide a variety of disease states and symptoms as possible - and going far beyond the limited indication for psychotic

disorders originally obtained from the FDA – so that Lilly could sell as much of this drug to as many patients at the maximum price possible, despite the known "[redacted]" of the drug.

F. Formation of the Lilly Unlawful Zyprexa Marketing Enterprises

64. Beginning in 1996 and continuing to the present, Lilly implemented a marketing, advertising and promotion campaign by combining its own significant personnel and financial resources with a discreet and identifiable number of medical marketing firms, peer physicians, public officials and purported charities through which Lilly (i) falsely and deceptively oversold the efficacy of Zyprexa as compared to other antipsychotics, (ii) failed to adequately warn of, and affirmatively mislead the medical community regarding the severe side effects of Zyprexa such as weight gain, hyperglycemia, diabetes and cardiovascular effects, and (iii) unlawfully promoted Zyprexa for usage in populations for which it had not received FDA approval and for which the efficacy and side effects had not been established through adequate clinical evidence. These associations-in-fact created by Lilly are denominated in this complaint as the Zyprexa Unlawful Marketing Enterprises. Lilly established these enterprises to accomplish several goals instrumental to a scheme to market Zyprexa through fraudulent, or false and deceptive, claims of efficacy and safety, and for unlawful, off-label purposes.

65. First, Lilly had to create parallel marketing structures that appeared independent from Lilly's ordinary promotion forces – it did so both to avoid federal regulations concerning off-label promotion and to create the façade of independence behind the misleading messages of safety, efficacy and non-indicated usage it wished to promote.

66. Second, to execute successfully its publication strategy, favorable articles had to be generated and published that appeared to emanate from independent physicians, and continuing legal education marketing schemes needed to flood the information market, all of which would give the appearance of independent peer-to-peer credibility.

67. Third, given the predominant usage of antipsychotics in the public sector (primarily Medicaid because of the high population of mentally ill in the Medicaid eligible demographic), to be successful in its unlawful promotional efforts, Lilly corrupted thought leaders in state public agencies to use, and indeed have themselves promote, atypical antipsychotics, including Zyprexa.

68. All of these goals were complimentary and mutually reinforcing. The production of favorable publications helped create a "[redacted]" regarding Zyprexa: peer-to-peer marketing and promotion allowed aggressive sales pitches to continue with the veneer of legitimacy; state public officials were co-opted to promote and over utilize atypical antipsychotics such as Zyprexa and all these effects would spill over to other state Medicaid agencies and to private payor networks.

69. To achieve all these goals, Lilly entered into three sub-enterprises: the Peer-Selling Enterprise, the Publication-Enterprise, and the Public Payor-Enterprise.

1. Peer-Selling Enterprise

70. Defendant's peer-to-peer marketing scheme centered on hosting numerous events where doctors trained and/or approved by Lilly would falsely oversell the efficacy and safety of Zyprexa and would provide favorable information on the off-label use of Zyprexa, often under conditions where physicians would be compensated for attending the presentation. Defendant funded scores of such events between 1996 to present. Because Lilly was prohibited from directly producing such events, it created and controlled a Peer-Selling Enterprise composed of medical marketing firms (the "vendor participants") and several dozen physicians (the "physician participants") who routinely promoted Zyprexa to other physicians in venues all across the country. Defendant maintained sufficient control over the enterprise to select and approve the content of the programs and the physician participants that would deliver the off-

label message. The physicians who attended these events were deceived into thinking that the events were educational in nature and independent from the control of the Defendant.

71. The Peer-Selling Enterprise employed improper and unlawful sales and marketing practices, including: (a) deliberately misrepresenting the safety and medical efficacy of Zyprexa for a variety of off-label uses; (b) knowingly misrepresenting the existence and findings of scientific data, studies, reports and clinical trials concerning the safety and medical efficacy of Zyprexa for both approved indications as well as a variety of off-label uses; (c) deliberately concealing negative findings or the absence of positive findings relating to Zyprexa's and/or its off-label uses; (d) wrongfully and illegally compensating physicians for causing the prescribing Zyprexa; (e) knowingly publishing articles, studies and reports misrepresenting the scientific credibility of data and touting the medical efficacy of Zyprexa for both on-label and off-label uses; (f) intentionally misrepresenting and concealing Defendant's role and participation in the creation and sponsorship of a variety of events, articles and publications used to sell Zyprexa to off-label markets; and (g) intentionally misrepresenting and concealing the financial ties between Defendant and other participants in the Enterprise.

72. Defendant's scheme reaped it significant financial gain. From 1995 to 2004, Defendant's revenues from the sale of Zyprexa soared into the billions. By 2003, about 50% of all Zyprexa prescriptions were for off-label uses. Sales of the drug have grown at a significant rate each year.

73. All of the participants in the Peer Selling Enterprise associated with Defendant with the common purpose of aiding it in marketing Zyprexa for off-label uses and to achieve "market expansion" of these uses. Each of the participants received substantial revenue from the scheme to promote Zyprexa off-label. The more successful these marketing events were, the

more events there would be in the future and the more fees each of the participants would receive for participating in the events. For these reasons, all of the participants knowingly and willingly agreed to assist Defendant in its off-label promotion of Zyprexa, notwithstanding the fact that such a promotional campaign required the systematic repetition of false and misleading statements to, and the commercial bribery (through kickbacks) of, a score or more physicians throughout the United States, and that the promotion of Zyprexa for off-label indications by Defendant was illegal.

74. Lilly controlled the Peer Selling Enterprise. It compensated the other participants for their efforts, and controlled the money flow to the participating vendors and physicians. Lilly closely monitored all events to insure the expected representations related to off-label Zyprexa were made to physicians attending the events.

a. Role of Medical Marketing Firms in Peer-Selling Enterprise

75. Third party medical marketing firms were critical to Lilly's scheme to promote Zyprexa off-label from the scheme's inception. Lilly's marketing plans called for off-label information concerning Zyprexa to be widely disclosed in continuing medical education programs, "consultants' meetings", and other programs where physicians could instruct other doctors how to use Zyprexa for unapproved indications. Bona fide continuing medical education programs and similar educational events were exempt from FDA rules prohibiting off-label promotion because the sponsoring organization—which was often a nonprofit, like a medical school, was independent and was supposed to control the programs' content. In practice, however, these programs were produced with the assistance of third party medical marketing firms, and these firms supplied content and controlled the selection of presenting physicians.

76. Lilly's marketing strategies turned the proper practices for presenting continuing medical education programs on their head. Instead of accredited institutions planning

independent programs and then approaching third party vendors and financial sponsors, Defendant intended to create turnkey medical programs, with financing already included, and then find "independent" institutions that would present the package in the format Lilly and its enterprise created.

77. Among the information the Defendant, the participating vendors and the participating physicians deliberately omitted from the events they sponsored was the following:

- the lack of clinical trial evidence to support Zyprexa's off-label uses;
- negative clinical trial results that demonstrated that Zyprexa was no more effective than other, less costly, medications;
- negative evidence that Zyprexa did not work for off-label conditions;
- information that virtually all publications and studies that allegedly supported Zyprexa's off-label use had been funded by Defendant;
- information that virtually all publications and studies that allegedly supported Zyprexa's off label use had been initiated by Defendant pursuant to a corporate marketing plan designed to increase off-label sales;
- information that the participating doctors who were conducting the peer selling had been paid substantial subsidies to use Zyprexa on their patients for off-label purposes;
- that the events the physicians were attending were neither fair nor balanced and were created to insure the physicians would not hear a fair and balanced examination of Zyprexa for off-label uses;
- information that the events were not funded, as advertised, by an "unrestricted" grant from the Defendant, but that the grants were conditioned upon the

participating vendors and sponsoring institutions putting on presentations that painted the off-label use of Zyprexa in the most favorable light; and

- information with respect to dangerous side effects revealed through Lilly's internal research, adverse event reports, and independent research.

78. Each of the participating vendors was in regular communication with the Defendant. In connection with major medical congresses or conventions of the specialists that were the target of the off-label promotion campaign, the participating vendors coordinated their events to ensure their off-label message reached the most physicians in the most effective manner. All of the participating vendors were also in regular communication with the participating physicians, and individual participating physicians would give the same presentation (or a substantially equivalent presentation) at different participating vendors' events.

79. The planning and coordination of all of these events by the third party medical marketing firms required extensive use of the wires and mails, including the mailing of invitations to physicians, the mailing of proposals to the accrediting institutions, booking of hotels and airplane tickets, the arrangement of meals, the scheduling of teleconference calls, the development and modification of the tactical plans, and the coordination of the content of the presentations on Zyprexa to be presented at the event.

80. Firms that participated in the Peer Selling Enterprise include third party advertisers, proliferation firms and outside consultants such as Creative Street, Inc; Marketplace Management; Lewis & Gore; Harper; Aldephi Research, Millward-Brown Research; GSW; Pramaton, Inc.; Martin Hamblin; Cohn & Wolfe; and Grey Strategic Marketing/Grey Healthcare Group.

b. Role of Physicians

81. One of Lilly's principal strategies for marketing Zyprexa was to target key

physicians to serve as thought leaders. These doctors would promote Zyprexa to their peers through peer selling programs by (i) touting Zyprexa's supposed off-label uses; (ii) claiming that Zyprexa was being widely used by other physicians for off-label uses; (iii) suggesting mechanisms of action that could explain Zyprexa's efficacy, safety profile and use in off-label areas, even though the mechanism of action in any area was not, and still is not, understood; and (iv) claiming that they were privy to the latest clinical data that had not been released yet, but which would support off-label use.

82. To lure physicians to participate in the Peer Selling Enterprise, Defendant approached target doctors and informed them of the Defendant's interest in funding research opportunities and clinical trials at their institutions. Doctors who were willing to speak favorably about Zyprexa could likely receive substantial funds in the form of research grants. Lilly instructed its sales departments to select doctors at the major teaching hospitals to become "Zyprexa experts" who would in turn deliver the Zyprexa message to other physicians to grow Zyprexa sales. This could be done formally to other physicians at marketing events or informally to colleagues within a hospital or medical practice.

83. Having recruited these physicians, the Peer Selling Enterprise created an explosion in the off-label use of Zyprexa by artificially creating the perception that physicians were clinically using Zyprexa and investigating its efficacy in off-label uses on their own initiative, and not as a result of the illegal marketing activities. Defendant developed a stable of physicians to create this perception. Defendant, principally through the vendor participants, paid these physicians to induce them to write journal articles and letters to the editor that favorably discussed the off-label use of Zyprexa. Defendant also paid these physicians (in addition to providing free travel to resorts, free lodging and free meals) to induce them to give talks at

medical education seminars, advisory boards, consultants' meetings, speakers bureaus and similar events that favorably discussed the off-label uses of Zyprexa. The physicians who accepted these benefits and agreed to promote Zyprexa off-label to other doctors were physician participants in the Peer Selling Enterprise. The individual physician participants received tens of thousands of dollars to promote Zyprexa's off-label uses.

84. Physician participants were absolutely critical to the success of the Peer Selling Enterprise and all of the marketing plans drafted by the Defendant and the vendor participants required their participation. The participation of physicians allowed the Defendant and vendor participants to disguise promotional events as educational events or consultants'meetings. Moreover, as noted above, the Defendant and vendor participants knew that peer-to-peer selling was far more persuasive than traditional detailing. By funneling the payments to the physician participants through the vendor participants, the Enterprise could hide the speakers' financial ties with the Defendant, the Enterprise was able to mislead physician-listeners into believing that the speakers were not biased and that the events were not promotional. The large amounts of money the participating physicians received from the Defendant, for speaking and other purposes, was hidden from the physicians who attended events at which the participating physicians spoke.

85. Some physicians participated in the Peer Selling Enterprise by publishing favorable journal articles and letters to the editor about off-label use of Zyprexa. Defendant paid large sums of money, often in the form of research grants, to the physician participants in order to publish such articles. In some cases, the physician was not required to perform any research or even write the article. Marketing firms who were financed by the Defendant ghostwrote articles under the physician participants' names. Physicians merely had to "lend" their names to the articles, in exchange for a payment.

86. Physicians who participated in the Peer Selling Enterprise, either as speakers or as authors, entered into a mutually advantageous relationship with the Defendant. The more favorable a physician's statements were, the more he or she could expect to receive in the form of speaker fees and research grants. Physicians who refused to deliver the favorable off-label message that the Defendant wanted were blackballed and would not receive additional payments.

87. The participating physicians knew that minimal scientific evidence supported the use of Zyprexa for the off-label uses and that the type of clinical evidence that existed was insufficient, under the usual standards in the medical profession, to represent that Zyprexa worked for the unapproved indications.

88. Physician participants worked with, and were retained by, multiple vendor participants. All of the physician participants also had personal relationships with employees of the Defendant, frequently Defendant recommended specific individual participants for events.

89. Some of the physicians that participated in the Peer Selling Enterprise included Dr. Peter Haddad; Dr. William Carter; Dr. Jorge Falero; Dr. Lyle Torguson; Dr. John Buse; Dr. Robert Smith; Dr. Sumer Verma; and Dr. Rory Holman.

90. Plaintiffs do not at this time know the identity of all of the physician participants. The Zyprexa Unlawful Marketing Enterprise sponsored hundreds of events across the country between 1996 and 2004 and the Plaintiffs have only had an opportunity to review the records of a small subgroup of these events. Based on the records reviewed to date, at least one dozen individual physician participants, received $25,000 or more for participating in the Zyprexa Unlawful Marketing Enterprises' activities for the time period indicated below (not counting travel, food, lodging and entertainment benefits they received for events held at resorts or out of town hotels).

c. Role of Pharmacies

91. Another of Lilly's strategies for marketing Zyprexa was to target pharmacies. One vehicle of choice was the pharmacies that serviced long term care facilities. Lilly set up a separate sales division to service the long term care facilities because those facilities encompassed the elderly population as well as children who are treated for behavioral symptoms, both of which Lilly saw as prime target populations for Zyprexa's off label growth. Not surprisingly, the growth of sales in the long term sales division was heavily weighted to pediatric use, all of which was off label, and to off label uses in the elderly population.

92. Long term facilities are not serviced by traditional retail pharmacies. Instead they are serviced by "closed end" pharmacies that service only long term facilities. The long term care pharmacy market is dominated by a few companies, including Omnicare, Pharmerica, and Neighbor Care. Thus the long term care sales representative worked very closely with the long term care pharmacies in marketing Zyprexa off label to physicians. Lilly sales representatives often used unrestricted educational grants to effectuate their off label scheme with the pharmacies.

93. A Lilly sales representative and a pharmacy would agree that the pharmacy would request funding from Lilly in order to present an educational program. The amounts of the educational grants would vary but would be for thousands of dollars. For instance, the sales representative and the pharmacy might agree that the pharmacy would present an educational program for the treatment of dementia. Both the pharmacy and the Lilly sales representative would agree that the program would include a presentation for the off label use of Zyprexa to treat dementia. The Lilly sales representative would then recommend a doctor who Lilly knew would make a presentation on the off label use of Zyprexa for dementia.

94. The Lilly sales representative would then file a form with Lilly headquarters in

Indianapolis requesting that a check be issued to the pharmacy for an educational grant. Lilly headquarters would issue the check in the name of the pharmacy. The pharmacy would then issue a check to the doctor making the presentation. Since the pharmacy theoretically "controlled" the presentation, Lilly considered it a "[redacted]" event that could contain off label information without running afoul of FDA regulations on off label marketing.

95. Each sales representative in the long term care sales division had a quarterly budget of approximately $10,000 to request unrestricted educational grants from Lilly headquarters. Thus Lilly headquarters was able to use the unrestricted grants to funnel a constant flow of money to all parts of the country for purposes of off label marketing to the long term care market of elderly and children populations.

96. Lilly's off label pharmacy scheme may have not escaped detection of the federal government. Lilly recently announced that, in October of 2005, the United States Attorneys Office in the District of Massachusetts issued a subpoena to Lilly seeking documents relating to Lilly's business relationship with a long term care pharmacy and Zyprexa.

97. The long term care division was ultimately shut down by Lilly when it was merged with the hospital sales division in or about June of 2003, which is about the time that Lilly acknowledged the existence of ongoing federal investigations into Lilly' off label marketing activities. Lilly did also ultimately severe the educational grant request process from its sales force.

2. Publication Enterprise

98. In order to execute their publication strategy, Defendant also needed to generate favorable articles about Zyprexa's off-label uses. However, Defendant's apparent control of this strategy had to be kept to an absolute minimum. Articles had to appear as if they emanated from

independent physicians who were investigating Zyprexa independently. To perform these tasks Defendant established a sub-enterprise of the Zyprexa Unlawful Marketing Enterprises, which would create "independent" publications. Like the Peer Selling Enterprise, the Publication Enterprise was an association in fact of medical marketing companies, participating physicians and Defendant, for the purpose of promoting off-label uses of Zyprexa. Alternatively, the Publication Enterprise can be viewed as an enterprise which was separate and distinct from the other Zyprexa Unlawful Marketing Enterprises.

99. Defendant's "publication strategy" required publications from independent physicians when in fact no such publications existed. Defendant created the Publication Enterprise to hire non-physician technical writers to create the necessary articles and then paid actual specialists to be the articles' "[redacted]." This practice is referred to as "[redacted]."

100. In order to monitor the status of publications, and in order to coordinate and execute the ghostwriting plan, marketing firms were necessary. The role played by the firms in assisting the Defendant in creating publications was very similar to the role played by marketing firms in the coordination of peer-to-peer marketing events.

101. Publications that Defendant distributed as part of their "publication strategy," intentionally misrepresented Defendant's role in the creation and sponsorship of the publications. Physicians who reviewed these publications were led to believe that the publications were the independent, unbiased research of the authors of the articles. They were not made aware of the fact that Defendant had in fact solicited these articles or that they had paid significant sums of money in various forms to the physician authors to induce them to make favorable statements about Zyprexa.

102. Even in cases where physician-authors drafted the articles themselves, they did so

under the same system of direction and control through which Defendant controlled speaker content. Physicians were promised grants and other gifts if they wrote favorable articles. If a physician attempted to write a negative article, Defendant would attempt to intervene and have a more favorable draft written. If this failed, Defendant would do their best efforts to suppress the article or restrict its dissemination.

103. For example, on May 14, 2003, Dr. John Buse of the University of North Carolina wrote to the editor of Diabetic Care and complained about an article that represented the "[redacted]" of one of Lilly's competitors. Among other things, Dr. Buse was concerned that the article – written by "[redacted]" – helped a competitor's "[redacted]." ([redacted]) Dr. Buse gave partial disclosure of his own corporate affiliations: "[redacted]" He did not reveal that he and/or his Department had received honoraria, grants, travel expenses, and/or other monetary benefits from his affiliation with Lilly. In an ironic comment about the unfavorable article published in Diabetic Care, Dr. Buse noted "[redacted]." His comment revealed as much about the inner workings of Lilly's Publication Enterprise as it did about this particular article. In a subsequent email correspondence with the editor of Diabetic Care, Dr. Buse attempted to cast dispersion on the results of the published article, noting "[redacted]." ([redacted])

104. Even though he called himself an "[redacted]", Dr. Buse elsewhere acknowledged the financial benefit that his medical department received from Lilly: "[redacted]." ([redacted]) Dr. Buse had plenty to gain from Lilly's funds. They were used for research and other purposes to help Dr. Buse conduct studies, publish articles, and make presentations that helped him as an "[redacted]" to reach the goal of tenure.

105. The final method by which Defendant controlled the stream of published information was through its policy of publishing only favorable results of its own internal trials and suppressing results that were unfavorable. In the case of an early trial that failed to show Zyprexa's efficacy for migraine, the results were never published. In the case of a clinical trial that failed to show Zyprexa's efficacy for bipolar disorder, the publication of results was delayed until the patent life was set to expire, and even then, Defendant never forwarded a copy of the article to DRUGDEX.

106. Although Plaintiffs are aware of the policy of suppressing unfavorable studies because of the express terms of the corporate decisions implementing the Publication Strategy, all information regarding negative studies funded by Lilly remains in the sole possession of Lilly and/or members of the Zyprexa Unlawful Marketing Enterprises. Without access to records of the studies that were funded and the results of those studies, Plaintiffs cannot identify specific negative findings. Defendant has never produced the results of these studies to the public or to

the Plaintiffs and their attorneys.

3. Public Payor Enterprise

107. Beginning in the 1990's and continuing to today, Lilly and other atypical antipsychotic drug manufacturers employed a strategy to capture Medicaid and Medicare markets that involved a focus on a relatively small group of customers – state officials who oversee treatment for many people with serious mental illness. These patients are found in state mental hospitals and state mental health clinics and are on Medicaid, and they are among the largest users of antipsychotic drugs.

108. Lilly entered into agreements with state public officials in, among others, Texas, Tennessee, Pennsylvania and Ohio, paying them substantial sums of money. Lilly directly and indirectly worked with and controlled certain state officials, enlisting them in an ongoing course of conduct to spread falsehoods regarding the efficacy, safety, and side effects of Zyprexa and to promote its off-label use.

109. In addition to influencing and corrupting state officials, Lilly influenced prescribing physicians to over-medicate senior citizens in nursing homes with antipsychotics. The use, as much as about 75% of the long-term care elderly residents in various demographic areas have received psychotropic medications. Lilly also influenced prescribing physicians to over-medicate adolescents in detention centers and other institutions.

G. 1996-2000: Launch of Zyprexa and Operations of the Unlawful Marketing Enterprises

110. Following the September 30, 1996 approval of Zyprexa by the FDA for the treatment of schizophrenia and despite this limited approval market, in eight years, Zyprexa has grown to become the third best-selling drug in the world. In its first full year of sales, Zyprexa's worldwide sales were $500 million dollars in revenue. In 2004, worldwide Zyprexa sales

exceeded $4.4 billion.

111. To achieve such massive sales, for a drug intended to treat an admittedly small market, Lilly, through the use of an enormous sales force and very aggressive marketing techniques, deliberately over-promoted Zyprexa to physicians and patients for symptoms and indications that were completely unrelated to schizophrenia (and, later, to bipolar mania). A Lilly internal email generated in 2001 boasted "[redacted]." ([redacted])

112. The over-promotion of Zyprexa by Lilly was a deliberate and calculated campaign designed to increase sales of the drug without regard for the safety of patients. The campaign also sought to distinguish Zyprexa as expensive but well worth the extra cost given its efficacy – which Lilly claims keeps schizophrenia patients out of the hospital more often than their competitors' drugs. (Lilly 10-Q (Nov. 3, 2005))

113. This over-promotion was not the action of an over-zealous sales force. Rather, Lilly's executives in the US and other countries, along with its scientists, marketing executives, medical staff and hired consultants and subsidiaries all worked together to develop, implement and carry-out this well-designed strategic marketing campaign.

114. The campaign was closely supervised. Every Lilly-sponsored research paper, clinical study, sales representative training session, physician education luncheon and press release was crafted to further the campaign. The control exercised by Lilly over its marketing campaign was most apparent when outside forces began to affect Zyprexa sales. As reports of diabetes and weight gain related to Zyprexa began to escalate, Lilly carefully responded with focused papers and articles, physician-targeted educational seminars, and letters, even when the

"new" message contradicted earlier messages.

115. The sales force was taught how to react to every question and concern in a way that furthered the campaign. During the early years, representatives were taught to ignore, dismiss or evade questions concerning weight gain and hyperglycemia. Later, representatives were taught to acknowledge these side effects but to emphasize that they were present in all schizophrenic medications and a likely consequence of the mental disease itself. Neither position was supported by studies but rather was conceived to lessen any impact of the truth about the serious side effects on sales.

1. Fraudulent and Unlawful Acts Regarding Safety and Efficacy

116. When presenting off-label information about Zyprexa to physicians in response to unsolicited requests for information on unapproved uses, Defendant was required to provide fair and balanced information. Defendant was also required to provide fair and balanced information whenever it engaged in promotional activities. Fair balance was not limited to written materials but all presentations. Defendant knew that whenever they were required to provide fair and balanced information, federal law and industry standards required them to provide any negative information as well as positive information about their drug products.

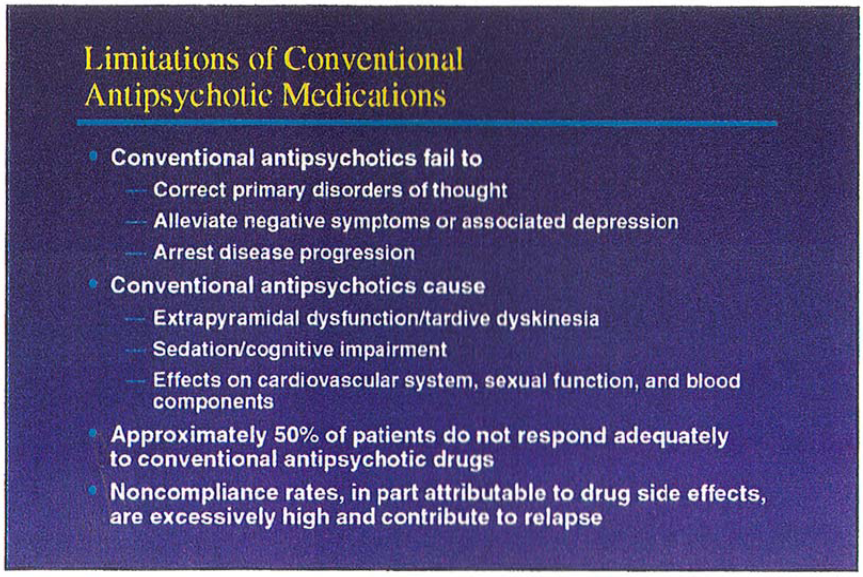
117. Within the medical community, in the context of describing properties of approved prescriptions drugs, the terms "effective" and "efficacy" have specific and well understood meanings. Because the FDA will only find a drug product to be effective if the proposed use is supported by well designed, placebo-controlled clinical trials that establish a causal relationship to a statistically significant degree, a statement that a drug is "effective," or "works," or "has been proven to . . . " is understood to mean that well controlled clinical studies support the use. To make such a statement without such clinical trial proof is misleading. Further, failure to inform physicians that no placebo-controlled clinical trials support a

representation of drug efficacy is a violation of a pharmaceutical company's obligation to disclose.

118. Although Defendant has extensively promoted Zyprexa for off-label purposes, few placebo-controlled, clinical studies have been conducted on off-label uses of Zyprexa. Most of those that have been conducted were negative or inconclusive. Placebo controlled clinical trials for Zyprexa's use for bipolar disorder, unipolar disorder, essential tremor, spasticity, controlled diabetic pain, and panic disorder have all failed to show that Zyprexa is effective for those conditions. Any presentation concerning Zyprexa's use for indications other than those approved by the FDA that purports to rely on clinical or published evidence must also describe those clinical studies that have found that Zyprexa is not effective for off-label uses. Where such information is not provided, any statements about Zyprexa's effectiveness for off-label use is false, misleading, distorted, inaccurate, unfair, imbalanced and omits material facts necessary to be disclosed.

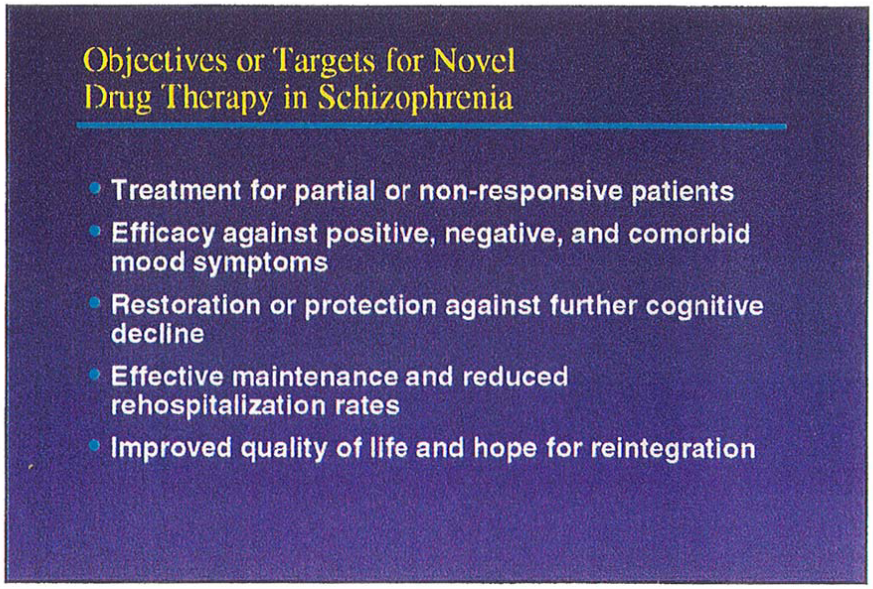
119. In a February 14, 2000 Lilly document entitled "[redacted]", a list appeared of the Lilly-sponsored programs throughout 1999 that specifically "[redacted]." These programs included symposia and audioconferences and involved at least 40 cities. ([redacted])

120. An example of one Lilly presentation stated:



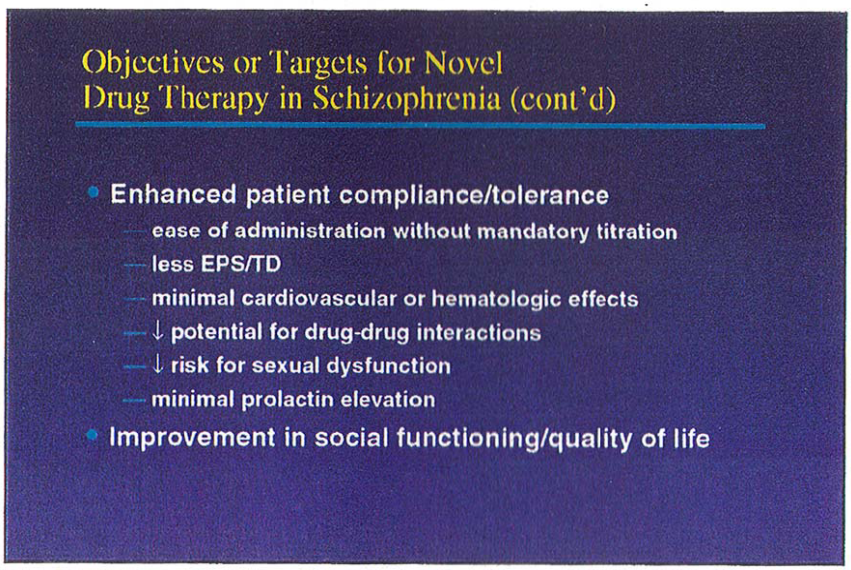
The disadvantages of conventional antipsychotic agents are well documented. These drugs are often ineffective or only minimally effective against the positive symptoms of schizophrenia, and do not affect negative or depressive symptoms or disease progression. Moreover, therapy with conventional antipsychotic drugs is often hampered by significant adverse reactions, both because of their effects on overall health and because of their impact on compliance. As many as half of schizophrenics who are treated with conventional antipsychotic medications do not achieve an adequate response.

121. Another stated:



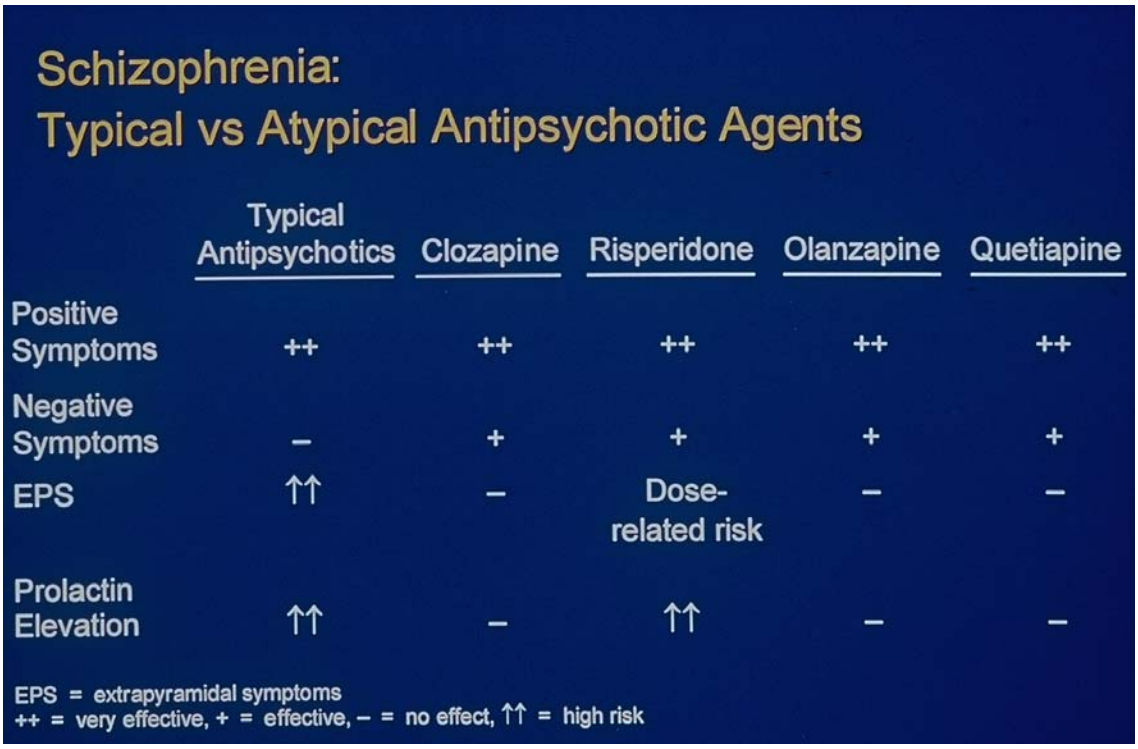
The availability of a new generation of antipsychotic medications represents new hope for effective treatment, even for patients who have been refractory to conventional drugs. Enhanced efficacy would mean improvement in all categories of symptoms as well as protection against disease progression. And, patients who are effectively maintained on medication without rehospitalization have better opportunities for reintegration into society.

122. Yet another noted:



Patients are always more likely to be compliant with regimens that are easy to tolerate and that do not negatively affect quality of life. Likewise, compliance is generally better with drugs that do not require complicated titration and administration schedules. Unlike the dubious benefits of conventional agents, which often appear to have high price tags in terms of side effects and quality of life, the new generation of antipsychotic drugs is likely to offer patients a real chance at improved function and more normal lives.

123. One presentation stated:



124. Federal law and industry standards also prohibited Defendant from misrepresenting scientific evidence that supported (or failed to support) claims that a drug was effective for a specific condition. Thus, anecdotal evidence of a drug's usefulness for a given condition could not be presented as the equivalent of the findings of a well-designed clinical trial. To fail to comply with these standards violated the Defendant's legal duty to provide accurate and non-misleading information.

125. In addition to its failure to warn of the serious and life-threatening illnesses associated with their drug Zyprexa, Defendant also undertook, through the use of intermediary marketing firms, to promote the use of Zyprexa for uses for which it was never approved by the FDA and for which it has never been proven to be safe or effective. This is known as off-label use.

126. In order to gain additional sales and to compete with other antipsychotics such as Risperdal, Lilly undertook a scheme to market and promote Zyprexa for off-label purposes,

including for use in the treatment of children and adolescents, “soccer moms”, and the elderly. Lilly also devised a campaign to market primary care physicians [PCPs] that was used to educate them about the patients in their practices whose symptoms might suggest Zyprexa use, albeit off-label.

127. Defendant employed the services of various third-party marketing firms in order to effectuate their scheme to market Zyprexa for these off-label purposes. These firms undertook the marketing of Zyprexa for off-label uses at the discretion and control of Defendant. The rise in the use of Zyprexa for off-label use is a well documented phenomenon. The promotion of Zyprexa by Defendant and the intermediary marketing firms working with Defendant to promote Zyprexa for off-label uses account in large part for the meteoric rise in Zyprexa sales and in the income derived by Defendant for sales of Zyprexa.

128. Lilly understood that off-label use of Zyprexa was the key to increased sales. Lilly not only promoted off-label use, it carefully tracked Zyprexa’s progress in these markets. On June 9, 2004, Lilly presented a powerpoint slide show entitled, "[redacted]." At slide 44, Lilly presents a breakdown of national sales data (source listed as NDTI 2001)) on Zyprexa use by diagnoses: “[redacted]" By at least 2001, Lilly knew that half of its sales were for non-approved uses. ([redacted])

129. For each patient and physician population, a separate marketing campaign was developed in conjunction with various third-party marketing firms with accompanying promotional materials, educational seminars, training sessions, “[redacted]”, and timely Lilly-sponsored published research and opinion papers.

130. The Zyprexa Unlawful Marketing Enterprises routinely and knowingly provided false, inaccurate, misleading, distorted, unfair and unbalanced information about Zyprexa's use for unapproved indications. Without discovery, Plaintiffs cannot catalog each misrepresentation and/or misleading statement about Zyprexa because Plaintiffs do not possess all transcripts of all meetings. The vast majority of these transcripts is in the possession of the Defendant and/or other members of the Zyprexa Unlawful Marketing Enterprises and has not been produced for the Plaintiffs.

2. Fraudulent and Unlawful Acts Regarding Off-Label Promotions for Elderly Usage

131. From Zyprexa's launch, Lilly's marketing campaign included promotion of the drug for use in the elderly for both dementia symptoms and Alzheimer's disease. This off-label marketing promotion is particularly sinister given the results of a study performed by Lilly in 1995, before Zyprexa was even approved. Lilly learned that olanzapine was ineffective in treating such conditions as dementia and Alzheimer's. In the summary section prepared on August 7, 1996 of study F1D-MC-HGAO, Lilly stated that "[redacted]." ([redacted]) Nevertheless, Lilly promoted Zyprexa for symptoms of dementia and Alzheimer's in the elderly from the product's inception.

132. On February 16, 1995, Lilly met with FDA officials to discuss research on olanzapine in elderly and adolescent patients. In internal notes prepared by Lilly concerning this meeting, Lilly indicates that it was warned about misleading statements concerning the use of Zyprexa for the elderly:

( ) The notes also describe how the FDA went on to warn Lilly to be honest about its data for Zyprexa: “ .” ( )

133. In spite of the FDA’s admonitions, Lilly promoted off-label use of Zyprexa for the elderly to nurses, patients, and pharmacists. In 1999, Lilly gave an " " to a company called Pragmaton in Chicago, Illinois to develop a " " series on " " The project developed into a live presentation by Dr. Sumer Verma. The participants earned professional credits for " ." Specifically, the presentation provided one credit to physicians toward the AMA Physician's Recognition Award; one ACPE credit for pharmacists; and one continuing education credit for nurses. For this presentation, Dr. Verma received a " " from Lilly, " " from Lilly, and endorsement from Lilly’s Speakers Bureau. ( )

134. One of the goals of Dr. Verma’s presentation was to enable participants to " ." In the presentation, Dr. Verma noted that elderly patients were good candidates for anti-psychotics

because they "[redacted]." However, she did not mention that TD was a known side effect of Zyprexa, as Lilly was later required by the FDA to disclose in its labeling. Instead, Dr. Verma simply recommended the prescription of anti-psychotics to treat elderly people who act "[redacted]." ([redacted])

135. In an undated Eli Lilly outline entitled "F[redacted]", Lilly outlines several key areas with regard to expanding the use of Zyprexa among primary care physicians. In the outline, Lilly acknowledges that the FDA's limited Zyprexa indications and label safety concerns may be possible barriers to new uses. Lilly then goes on to question, "[redacted]" ([redacted])

136. In an October 2000 document produced from the files of Lilly's James Delisle, entitled, "[redacted]", Lilly states that "[redacted]" is to "[redacted]" "[redacted]" is the patient who is "[redacted]" and "[redacted]" is the elderly "[redacted]" patient. ([redacted])

137. Lilly then goes on to "[redacted]" – "[redacted]." Here, "[redacted]" is "[redacted]" and "[redacted]" is "[redacted]." Lilly continues by explaining that additional target symptoms will be "[redacted]" and honoraria and primary care preceptorships are included as budget items to implement the strategies. At no time has Zyprexa been approved for agitation, anxiousness, or treatment-resistant depression. Lilly wrongly used market research and not scientific and medical research to uncover "[redacted]

[redacted]" to suggest additional patient markets and promotional themes. ([redacted])

138. In a letter dated August 20, 1999, Acting Director, Dr. Russell Katz, of the Division of Neuropharmacological Drug Products of the U.S. Department of Health and Human Services, told Lilly that its study of olanzapine in patients with bipolar disorder should not include patients with depression. The Acting Director explained that "[redacted]" ([redacted])

139. In a Clinical Investigator's Brochure concerning the 1996 study F1D-MC-H6AO, Lilly submitted a May 2000 summary that states: "[redacted]" ([redacted])

140. Despite studies and data that confirm the lack of efficacy and significant health and safety risks associated with the off-label promotion of Zyprexa for the elderly, Lilly continues to profit from this practice.

3. Fraudulent and Unlawful Acts Regarding Off-Label Promotions for Pediatric Usage

141. In order to gain additional sales and to compete with other antipsychotics such as Risperdal, Lilly undertook a scheme to market and promote Zyprexa for off-label purposes, including for use in the treatment of children suffering from disorders such as depression, anxiety, Attention Deficit Disorder (ADD), Attention Deficit Hyperactivity Disorder (ADHD), and sleep disorders and to generally promote Zyprexa's use in children as a mood stabilizer. Zyprexa is not now and never has been approved by the FDA for any use in children, not even for use in children with schizophrenia and bipolar disorder.

142. Use of Zyprexa for children and adolescents is commonplace. One investigative report concerning the use of antipsychotic medication in treatment centers for troubled children in Westchester, Rockland and Putnam counties in the State of New York, indicated that between 60% and 90% were on some sort of psychotropic drugs. At the St. Agatha Home in Nanuet, New York it has been reported that about 85 of the 100 children are treated with psychotropic drugs. The home's psychiatrist conceded that pharmaceutical representatives visit him about three times a week. The reporter noted that, "[redacted]."

143. An undated Lilly communication marked "[redacted]" underscores the Lilly's efforts to promote Zyprexa use in children despite the lack of FDA approval. "[redacted]" The communication specifically instructs sales personnel: "[redacted]" However, it goes on to provide the sales representatives with a verbatim answer if they

([redacted].) Despite the lack of any clinical trials or FDA approval for the use of Zyprexa in children, Lilly specifically addressed the promotion of pediatricians and trained its sales force on how pediatricians could obtain and prescribe Zyprexa to their young patients.

144. While emphasizing Zyprexa's "[redacted]" Lilly felt it important to include dosages for even of label use. They pointed out that 2.5 mg is a "[redacted]" for "[redacted]" as well as for the treatment of Tourettes Syndrome and stuttering, two more off-label uses. ([redacted]). Lilly's own doctor, Dr. Bruce Kinon, recommended a 2.5 mg starting dose for children because 5mg/day could be "[redacted]." However, in the same e-mail, Dr. Kinon suggested that some adolescents could be treated with up to 20mg/day. ([redacted]).

145. Lilly clearly anticipated eventual approval of Zyprexa for children and adolescents and for indications that far exceeded schizophrenia and bipolar mania. Lilly sponsored several studies in the 1990s to determine the effects of olanzapine on children and adolescents for a variety of symptoms. One study sought to "[redacted]" ([redacted]) Another studied the effect of olanzapine on patients aged 6-16 for "[redacted]." ([redacted]) One study's objective stated

“[redacted]”
([redacted]) Long before Zyprexa was approved for anything related to bipolar disorder in any population, another study proposed “[redacted].”
([redacted]) A similarly designed trial studied the effect of olanzapine on bipolar disorder on patients as young as 5 years old. ([redacted]) (In that study, 2 of 23 patients discontinued due to adverse events and 3 patients reported spontaneous adverse events.)
([redacted])

146. On September 21, 1998, the European Agency for the Evaluation of Medical Products contacted Lilly affiliates regarding the periodic safety update reports it submitted during late 1997 and early 1998. The EAEMP informed Lilly affiliates that “[redacted]” ([redacted]). In an undated document produced from the files of Julie A. Birt of Lilly, “[redacted]”, Lilly details the pediatric use of Zyprexa for conditions that included child onset schizophrenia, bipolar disorder, pervasive development disorder, autism, mental retardation, Tourettes and anorexia nervosa. ([redacted])

147. Zyprexa has never been proven safe or effective for the off-label uses promoted by Defendant and the intermediary marketing firms. As a result children were and continue to be exposed to medication which, at best, is ineffective and, at worst, can and does cause life-threatening illnesses such as diabetes and diabetes-related complications.

148. Children and adolescents remain a powerful market for Lilly's Zyprexa. Pediatric sales of Zyprexa totaled approximately $500 million between 1999 and 2005. On November 1, 2005 Leila Abboud of The Wall Street Journal reported that "[redacted]." Not only does Lilly continue to promote the use of Zyprexa in children for non-approved indications, it is well aware of the success and profitability of this off-label promotion.

4. Fraudulent and Unlawful Acts Regarding Off-Label Promotions for "Donna" and Other Depressed Patients

149. Lilly's global long-term marketing plan is perhaps best summed up by the slogan it adopted in 1995: "[redacted]." This first slogan aptly characterizes Lilly's strategy for Zyprexa from its inception – to make Zyprexa part of the everyday prescribing habits of not only psychiatrists but primary care physicians as well. ([redacted])

150. Lilly encouraged PCPs to prescribe Zyprexa "off-label" for various "[redacted]" patient complaints. Lilly instructed PCPs that "[redacted]" and that "[redacted]." Lilly's marketing materials encourage the PCPs to use the "p[redacted]" to treat for "[redacted]", "[redacted]", "[redacted]", "[redacted]", "[redacted]", "[redacted]" and "[redacted]." The materials also tout that Zyprexa "[redacted]" so that once a patient is put on this powerful antipsychotic, they can be maintained on it. To convince PCPs of the efficacy and safety of Zyprexa for such routine use, Lilly relied upon psychiatrists and primary care physicians who were paid as consultants to

provide “[redacted]” for its aggressive marketing program. ([redacted])

151. In a lengthy overhead training presentation from 1998, Lilly went into great detail about the need to expand the use of its “[redacted]” products in the PCP market in order to maximize profits and remain competitive because of the “significant” role PCPs play in most markets and the fact that “[redacted]” ([redacted]) As an example, Lilly looked at “[redacted]” which included “[redacted]” and imagining “[redacted]”. ([redacted])

152. Lilly also created several promotional characters or typical patient sketches to market Zyprexa to PCPs. Lilly's marketing materials describe, among others, “[redacted]” as a mother of two children in her early 30s' who is “[redacted]”, has “[redacted]” and cannot “[redacted]”. Donna has been on SSRIs for depression in the past but has never been prescribed an anti-psychotic. Lilly encourages her PCP to prescribe Zyprexa for Donna even though she has not been diagnosed with either bipolar mania or schizophrenia. ([redacted]).

153. In preparation for its PCP Marketing Launch in September 2000, Lilly distributed a "[redacted]" which served as a "[redacted]" for sales representatives attempting to implement Lilly's PCP message. Lilly states, "[redacted]

[redacted]". To guide its sales representatives, Lilly created fictional characters such as "[redacted]. Lilly directed its sales representatives to persuade PCPs not to refer patients to psychiatrists because, "[redacted]". At the same time, Lilly directed sales representatives to push Zyprexa's "[redacted]" by telling PCPs that there is no need for blood monitoring when using Zyprexa and that there are no black box warnings on the product. In a section of the guide referred to as "[redacted]", Lilly educates its sales representatives on how to underplay evidence on weight gain and treatment emergent diabetes if the PCP were to raise the issue. ([redacted])

154. Lilly pushed Zyprexa for broad-based treatment of symptoms rather than diagnoses. In internal email correspondence in February 2000, Lilly's Ajay K. Bhardwaj reflected on a presentation on US market research that he attended:

[redacted]

([redacted]) This statement was forwarded to key players at Lilly by Roland Powell of Lilly with a note that it was particularly "[redacted]." ([redacted])

5. Ongoing Refusal to Disclose Known Adverse Effects

155. Less than seven weeks after Zyprexa's approval, Lilly faced charges that it was suppressing side effects. The FDA sent to Lilly a letter on November 14, 1996 outlining labeling pieces and promotional activities considered to be "[redacted]" by the Division of Drug Marketing, Advertising, and Communications (DDMAC). ([redacted])

156. According to the agency, the promotional campaign lacked "[redacted]" in that they "[redacted]" In addition, the materials did not "[redacted]" including weight gain. In conclusion, the letter stated that the labeling pieces "[redacted]." ([redacted])

157. The FDA's letter specifically referenced an interactive teleconference conducted by Dr. Gary Tollefson, Vice President of Lilly Research Laboratories, on October 2, 1996 – two days after FDA approval. The letter states:

[redacted]

( ) The information on weight gain was indeed included in the approved labeling, but as an adverse event, not a therapeutic benefit. Since the product was approved at the time of this teleconference, Dr. Tollefson knew or should have known what information the approved labeling contained and in what section it appeared. His statements were therefore, false and misleading. Further, Dr. Tollefson's misrepresentations about weight gain on the phone conference were belied by Lilly's own study's conclusion. Tollefson claimed that the weight gain was mostly observed in patients whose weights were abnormally low before taking Zyprexa, hence the alleged therapeutic effect. However, Lilly's own study in 1993 concluded that "

." ( ) Dr. Tollefson's interactive telephone conference is an eerie and early compilation of the lies, misrepresentations, data manipulations concerning the risks and benefits of Zyprexa that Lilly has continued to report for more than a decade.

158. Moreover, the FDA complained that the October 1, 1996 teleconference had "

" Dr. Tollefson had said that olanzapine had no Parkinsons-like side effects: "

[redacted]" And: "[redacted]" Years later, however, Lilly admitted on its "[redacted]" for Zyprexa that it could "[redacted]".

159. In the October 1, 1996 conference call, Dr. Tollefson announced that prolactin would not be a problem: "[redacted]"

160. While Dr. Tollefson hawked Zyprexa as an anti-psychotic that did not require blood monitoring, Lilly's own officials doubted it. In the margin of the copy of the Tollefson transcript that was produced from the files of Kelly B. Freeman, a Lilly official hand-wrote next to Dr Tollefson's statement that blood monitoring is "[redacted]". Lilly believed, as early as 1996 that blood glucose monitoring was recommended for patients on Zyprexa. Nevertheless, they allowed their spokesman, Dr. Tollefson, to distinguish Zyprexa from its competitors as a treatment option that did not require monitoring, leaving the impression that Zyprexa was less expensive to prescribe than other anti-psychotics because it did not require blood monitoring.

161. Dr. Tollefson continued: "[redacted]" By contrast, however, Lilly later said that patients should commence with 2.5 to 5 mg on day one. ([redacted]) From the very first days of Zyprexa, and with full knowledge of Lilly's highest executives, scientists and medical officers, Lilly was pushing the envelope with Zyprexa. From day one, Lilly made misleading statements about Zyprexa.

162. Dr. Tollefson was not alone in misleading physicians about Zyprexa. In an October 1, 1996 press release titled "[redacted]" issued by Lilly press spokesperson, Lori Roberts, Lilly said that Zyprexa had "[redacted]," quoting Dr. Gary Tollefson, VP of Lilly's Research Laboratories and "[redacted]." Further, the press release promised that "[redacted]" ([redacted]).

a. Fraudulent and Unlawful Acts Regarding the Suppression of the Risk of Weight Gain

163. Weight gain is an acknowledged side effect of both first and second generation antipsychotic medications. Nearly fifty years of research have linked antipsychotics to weight

gain as a side effect. For example, chlorpromazine and similar conventional antipsychotics have been known to impair glucose metabolism, which can lead to weight gain, following its introduction in the 1940s. Nevertheless, Lilly went to great lengths to conceal this potentially sales-crushing side effect until, at last, confrontation of the weight gain issue became unavoidable.

164. Prior to the launch in 1996, Lilly knew or should have known that Zyprexa causes weight gain. In a Lilly-sponsored study conducted from October 1993 to November 1993 it was found that "[redacted]" – just four weeks. This study was titled "[redacted]" and dated November 30, 1993. Conclusions from later analysis were summarized in "[redacted]" in April 1995. ([redacted])

165. In May 1998, Lilly conducted a European Planners Meeting in Barcelona, Spain on the subject of "[redacted]". At that meeting, Lilly informed participants to "[redacted]" and emphasized the "[redacted]". Lilly stressed that weight gain should not be discussed unless a physician raised the subject, in which case it should be dealt with as a class side effect. ([redacted])

166. Later in 1998, Lilly debated whether it should disclose the risk of weight gain to physicians and patients. After the publication of articles linking Zyprexa with hyperglycemia, Peter Clark proposed in an email dated November 30, 1998 that Lilly add the following statement to its labels: "[redacted]." Mr. Clark's suggestion

was rejected and Lilly decided to continue to ignore the issue of weight gain. ([redacted])

167. At a February 16, 2000 Franchise Team Meeting a Weight Change slide show was given and also distributed to the Zyprexa team electronically. It included a Global Market Research Summary slide: "[redacted]" It continued with "[redacted]." A list of Lilly Marketing initiatives and Medical Research studies to address weight gain followed. ([redacted])

168. Lilly ultimately acknowledged that during a three year study "[redacted]." However, it attempted to minimize this result by characterizing it as a "class effect" and by claiming that "[redacted]." In fact, Lilly's own graphs included with the three year study show that approximately 75% of patients gained weight and that approximately 50% gained over 11 pounds. ([redacted]). Only when Lilly was in danger of losing all credibility on the weight gain issue did Lilly finally own up to the problem. The sales force is now being trained to minimize the importance of weight gain to physicians admitting that up to 56% of patients realized significant weight gain. This document provides a "[redacted]" for discussion of the weight gain issue. ([redacted]).

b. Fraudulent and Unlawful Acts Regarding the Suppression of the Risk of Hyperglycemia and Diabetes

169. While Zyprexa sales continued to escalate exponentially each year, Lilly

continued to hide the adverse effects its drug was having on the elderly, children, those diagnosed with schizophrenia and others.

170. Even before the case reports in the peer-reviewed medical literature became known to the general medical public, Lilly was aware of large numbers of diabetes-related adverse events associated with Zyprexa, as reflected in the adverse event reports ("AERs") on file with the FDA's Medwatch database. The numbers of AERs over the first four years of Zyprexa's market life, showing nearly 200 AERs after 2 years, 400 AERs after 3 years, and nearly 600 diabetes-related AERs in Zyprexa's fourth year of distribution were reported to the FDA and known to Lilly.

171. These numbers are very conservative. It is well understood that for prescriptions drugs, adverse drug event reports only represent between 1% and 10% of the total estimated population of all complications. (*See* Physician Knowledge, Attitude and Behavior Related to Reporting, Archives of Internal Medicine, 1988: 148; 1589-1592; Underreporting of Hemorrhagic Stroke Associated with Phenylpropanolamine, 286(24) JAMA (2001); Rhode Island Physician's Recognition and Reporting of Adverse Drug Reactions, RI Medical Journal 1987: 70:311-316.). The reality of under-reporting is due mainly to the fact that the adverse event reporting system in the U.S. is a voluntary system (i.e. doctors are under no obligation to report an adverse event). As a result, the number of reported complications must be multiplied by a factor of between 10 and 100 in order to arrive at the true estimated number of complications. After adding the unreported complications to the above figures, the true number of diabetes-related adverse events from market introduction in 1996 to year end 2000, is estimated to be as low as 6,000 and as high as 60,000, a staggeringly high number considering the indications being treated and the availability of far safer alternatives.

172. As of September 1998, there were approximately 150 diabetes related AERs, but not a single reference was made to these significant adverse event reports in the label. Indeed, the first time any reference is made in Zyprexa's U.S. label to **any** post-market adverse event of any type is on September 30, 1998. Even then, buried in a portion of the label entitled "[redacted]" and in inconspicuous print, Lilly only warned that "priapism" (prolonged erection) had been an adverse event reported since market introduction that was "[redacted]."

173. Between September 30, 1998 and March 17, 2000, Lilly made three more label changes. Again, after a total of 400 diabetes-related AERs, Lilly still did not add any diabetes-related adverse event to its label, including the post-market adverse event section, but continued to mention, buried deep within the label, that the only adverse event reported was "priapism".

174. On April 12, 2000, Lilly finally included a reference to "diabetic coma" together with priapism as an adverse event that had been reported since Zyprexa's market introduction. In light of the date of this label change, however, this change did not make its way into the 2000 PDR, but is first found in the 2001 PDR. Further, this reference is again buried deep within the label, as inconspicuously as possible, and fails to reference the hundreds of other diabetes-related injuries, namely, diabetic deaths, ketoacidosis not resulting in coma as well as countless cases of diabetes and hyperglycemia.

175. Thus, the sole mention of any diabetes-related conditions in Zyprexa's label from October 1996 to April 12, 2000 was in a list at the end of the product label entitled, "[redacted]" that included such conditions as "[redacted]", "[redacted]," and an "[redacted]" number of pre-market diabetes and hyperglycemia adverse events and a "[redacted]" number of pre-market cases of diabetic

acidosis. Lilly knew by 1996 that Zyprexa's link to diabetes was scientifically well established in the medical literature and in its own clinical trials and that it warranted an adequate warning to the medical community. Even after being confronted by an alarming number of post-marketing AERs, Lilly did nothing to warn the medical community of the true dangers linked to Zyprexa.

176. Lilly simply ignored the reports of adverse events concerning diabetes, elevated glucose levels, and diabetes. In notes taken of a December 14, 1998 ACNP luncheon meeting with Jack Gorman, the writer noted that Jack "[redacted]." Lilly, in fact, had already implemented this marketing strategy, blaming diabetes and hyperglycemia on the schizophrenic population at large, rather than on Zyprexa. Yet, Mr. Gorman did think that patients with over 10% baseline weight "[redacted]." Lilly, however, continued to resist this advice despite mounting Adverse Event Reports. A requirement for blood glucose monitoring could narrow the gap between Zyprexa and its competitors and negatively impact sales. ([redacted])

177. In an internal Lilly email dated February 16, 1999 to Dr. Bruce Kinon of Lilly, Bruce Basson writes that there was a "[redacted]" in glucose and cholesterol levels among olanzapine patients over three years. He calls it a "[redacted]." ([redacted])

178. On August 17, 2000, Eli Lilly's "[redacted]" met to discuss how Lilly should go about dealing with mounting concerns about Zyprexa use, weight gain, and diabetes. David Allison, Ph.D. noted that "[redacted]" and that "[redacted]." ([redacted])

179. Dr. Breier's and Lilly's position that no proof exists that there is a direct link between Zyprexa and diabetes was the subject of much early debate among Lilly doctors and executives including Charles M. Beasley, Paul Berg, Patricia Cavazzoni, Alan Breier and Robert Baker. On October 9, 2000, Dr. Thomas Brodie wrote to Robert Baker on behalf of a group of endocrinologists hired as consultants for Lilly who had met the weekend before with Drs. Breier, Baker and others. He began:

[redacted]

([redacted])

180. That same day, Dr. Robert Baker responded to Dr. Brodie's e-mail, noting

[redacted]

([redacted]) Dr. Baker's seemingly reversed concern that hyperglycemia threatens olanzapine is accurate and indicative of Lilly's true worry – that Zyprexa sales could be affected by widespread knowledge that the drug causes an increased risk of hyperglycemia and diabetes.

181. Dr. Beasley responded to Drs. Breier, Baker, and Berg with his take on the concerns of Lilly's consulting endocrinologists:

( )

182. Dr. Baker's response to Dr. Beasley's e-mail is both chilling and an accurate description of Lilly's marketing cum medical position concerning diabetes.

.'' ( )

183. Just days after the above e-mail exchange, Lilly issued its approved " " dated October 16, 2000. In it, Lilly noted that Zyprexa was implicated in a " " of case reports that related alterations in glucose metabolism with antipsychotics. Addressing this concern, Lilly responded that a large data analysis performed by Lilly " .'' In other words, Zyprexa was no more likely than a placebo to alter glucose metabolism. The document also stated that

[redacted]." ([redacted])

184. Lilly followed up the Standby Statement on December 29, 2000 with the issuance of "[redacted]" to be used by Zyprexa sales representatives in responding to questions about, inter alia, weight gain and increased risk of diabetes. This 30 page manual describes the biological aspects of diabetes and related weight gain and instructs sales representatives on how to assure prescribing physicians that there no reason to believe that use of Zyprexa presents an increased risk for diabetes. ([redacted])

185. Not everyone at Lilly was certain that weight gained while on Zyprexa was unrelated to health problems such as diabetes and cardiovascular risks. On March 21, 2001, and just five months after issuing the Standby Statement, Dr. Beasley stated in an e-mail that

[redacted]

([redacted])

6. Texas Medication Algorithm Project (TMAP) Activities

186. Lilly devised another method of increasing its Zyprexa sales: infiltrating and corrupting the ordinary processes of state government in Texas, Pennsylvania, and elsewhere in order to encourage utilization of Zyprexa. Lilly entered into an association-in-fact with certain

Texas, Pennsylvania, and other state government employees in which they all agreed to affirmatively push the use of Zyprexa and other SGAs for both on- and off-label purposes in return for ongoing payments to state authorities.

187. The market for antipsychotics is largest in state Medicaid agencies because of the overwhelming number of people with severe mental illnesses insured by those programs. Lilly, along with other pharmaceutical companies, recognized that getting Medicaid agencies to endorse and promote the use of expensive atypical antipsychotics would be a boon for the company's bottom line. Further, in addition to increasing state utilization of Zyprexa and other atypical antipsychotics, Lilly knew Medicaid acceptance of the use of Zyprexa would influence the private network of insurance to pay for the drug as well, thereby bringing sales to an even higher level.

188. In 1995, an alliance of individuals from the pharmaceutical industry, the University of Texas, and the mental health and corrections systems of Texas created the Texas Medication Algorithm Project (TMAP), a project funded in part by money from pharmaceutical companies in general and Lilly in particular. TMAP was designed to foster overwhelming use of expensive atypical antipsychotics by producing a set of guidelines and a formulary of specific drugs approved as first and second line treatment for schizophrenia, bipolar disorder, and depression. The guidelines mandate use of the most expensive antipsychotics on the market – specifically Zyprexa and its competitors – by physicians working with the Texas Medicaid agency. On April 1, 1998, Zyprexa was approved "[redacted]" by TMAP. Lilly has used this approval to convince PCPs that Zyprexa is safe to prescribe for "[redacted]" symptoms.

189. The choice of Zyprexa as a first-line option for treatment is not accidental. Lilly

provided kickbacks to Texas state officials involved with TMAP to the tune of at least $175,000 between 1997 and 2004. Records show at least twenty-one separate payments from Lilly to TMAP officials during that period, some of which were deposited directly into the personal accounts of TMAP officials.

190. Once TMAP reached the conclusion it was designed to reach – promoting utilization of atypical antipsychotics for first-line treatment for both on-label and certain off-label indications – Lilly and other pharmaceutical manufacturers provided major funding for the exportation of TMAP to other states. They sponsored TMAP staff, through unrestricted educational grants, as they presented 71 seminars for groups of clinical providers, professional groups, administrators, payers, Medicaid officials, and other stakeholders in an effort to spark interest in implementing TMAP in other states. As a result of the seminars, several states expressed interest in implementing the algorithm project in their own mental health systems, causing the Texas Department of Mental Health and Mental Retardation to note that "[redacted]"

191. In April 2002, senior federal officials established the New Freedom Commission on Mental Health to conduct a "[redacted]." The commission issued recommendations in 2003, including a commendation of TMAP as a "[redacted]" medication treatment plan that "[redacted]." Twenty-five federal agencies, including the Substance Abuse and Mental Health Services Administration (SAMHSA), were instructed to develop a nationwide implementation plan based on those recommendations.

192. TMAP and the national effort have come under fire recently. Allen Jones of the Pennsylvania Office of the Inspector General revealed that "[redacted]

[redacted]." He noted that the "[redacted]" that developed TMAP was actually behind the New Freedom Commission recommendations for a nationwide program and were "[redacted]." Clearly, the goals of TMAP and the proposed nationwide expansion of the program did not include ensuring the best treatment for the mentally ill but instead were focused solely on increasing pharmaceutical company profits and ensuring ongoing payments to state authorities.

7. National Alliance for the Mentally Ill (NAMI) Activities

193. Lilly also utilized a non-profit organization as a front to further its own purposes of increasing market share for atypical antipsychotics and other medications. Lilly's funding and partnering with the National Alliance for the Mentally Ill (NAMI) in the late 1990s and early 2000s was designed to accomplish through a non-profit organization what it could not on its own: giving the appearance of independent analysis and a grassroots movement encouraging the use of atypical antipsychotics by state and private insurers. The scheme worked and Lilly certainly benefited from its significant donations to NAMI. Zyprexa was the leading antipsychotic in the world in 2000, capturing nearly 40% of the global antipsychotic market. A year later, Zyprexa was the sixth highest selling pharmaceutical product in the world, with $3.2 billion in sales.

194. NAMI is a national association of mental health organizations in every state and bills itself as "[redacted]." In reality, this not-for-profit organization readily accepts donations offered by pharmaceutical manufacturers while

“[redacted].”

195. Lilly has been the largest contributor among pharmaceutical manufacturers to NAMI, giving the organization approximately $2.87 million between 1996 and 1999.

196. Lilly “donations” to NAMI were not limited to money. In 1999, Mother Jones Magazine reported that Lilly executive Jerry Radke was “on loan” to NAMI as an executive. Also in 1999, Bob Postlethwait, a Lilly executive who headed the group that produced and marketed Zyprexa (and Prozac), assisted NAMI Indiana in securing government funding for an executive director.

197. Lilly also provided funding for a variety of brochures and programs produced by NAMI highlighting the use of atypical antipsychotics. One such Lilly-funded brochure – “Understanding Schizophenia” – produced by NAMI for patients and families of schizophrenics minimizes the side effects of atypical antipsychotics such as Zyprexa. Another – the 2001 “Access to Effective Medications” brochure produced by NAMI National for legislators and paid for by Lilly – lays out a blueprint for nationwide NAMI lobbying of state governments to reduce or remove any limitations to payments for atypical antipsychotics, again down-playing the side effects of such drugs.

198. Using money from Lilly and other pharmaceutical companies, NAMI – both the various state-level associations and the national organization – has effectively lobbied state and federal governments to increase spending on atypical antipsychotic drugs and to reduce restrictions on access to those pharmaceuticals, thereby protecting pharmaceutical industry profits through the guise of independent, grassroots advocacy. For example, between 1998 and

2000, Lilly gave NAMI Washington State $91,000. During that time, NAMI Washington State, in an effort led by NAMI lobbyist Brad Boswell, lobbied the state legislature for $1 million specifically for atypical antipsychotic drugs. Brad Boswell was Lilly's Washington state lobbyist just prior to his assignment with NAMI Washington State. NAMI also joined a suit initiated by the Pharmaceutical Research and Manufacturers of America (PhRMA) against the state of Michigan in order to increase physician access to higher cost pharmaceuticals – including atypical antipsychotics – under the state's Medicaid program.

199. The U.S. Department of Health and Human Services Office of the Inspector General issued a report in 2002 warning that cozy financial relationships between non-profit advocacy groups and pharmaceutical companies – such as the one between NAMI and Lilly – which result in the generation of revenue for the pharmaceutical companies could be considered illegal under the federal anti-kickback statute.

8. "Success" of the Unlawful Marketing Enterprises

200. The unlawful marketing activities during the years 1996 through 2000 were wildly successful, with Zyprexa moving from no market share to the most market share in antipsychotic prescriptions.

201. Lilly's early marketing efforts were to position itself as the newest SGA and better than Ripserdal. The marketing plan did not distinguish between on-label and off-label purposes, and the plan was successful. Even in the first quarter of sales, Zyprexa was prescribed for numerous off-label purposes, aiding to the overall success of Lilly's Zyprexa launch.

202. Over the next four years – 1997, 1998, 1999, and 2000 – Lilly's ongoing unlawful marketing plan facilitated Zyprexa's meteoric rise. Each year Zyprexa sales increased at double digit rates. The number of off-label prescriptions grew each year. Zyprexa became the number one prescribed antipsychotic for schizophrenia. By 2000, Zyprexa's United States sales totaled

approximately $1.94 billion.

H. 2000: Label Change and FDA Warning

1. FDA Rebuffed Lilly's Attempts to Imply Olanzapine Had Been Approved to Treat Adolescents

203. Lilly sought to increase sales by obtaining FDA approval to treat adolescents with Zyprexa tablets, NDA 20-592. As Dr. Russell Katz of the FDA wrote to Lilly in a letter dated April 6, 2000, the first step was to get the FDA's approval to run a trial study on adolescents:

> You have been advised that the Pediatric Final Rule (63 FR 66632) requires that all applications for new active ingredients, new dosage forms, new indications, new routes of administration, and new dosing regimens are required to contain an assessment of the safety and effectiveness of the product in pediatric patients unless this requirement is waived or deferred. We note that your Proposed Pediatric Study Request was submitted to NDA 20-592 (Zyprexa tablets) on February 25, 2000 and received February 28, 2000. A formal Written Request will be forwarded to you under separate cover.

(Letter from Russell Katz to Gregory Brophy (Apr. 6, 2000)) The FDA reminded Lilly that adolescent treatment was not approved until Lilly first ran "an assessment of the safety and effectiveness." In this slap of the hand, the FDA told Lilly that it would have to meet the FDA's "formal" requirements.

204. In an undated letter that may have been written around November 9, 2000, Dr. Russell Katz of the FDA wrote to Dr. Brophy of Lilly. Dr. Katz basically warned that Zyprexa had not yet been approved for pediatric use and that they did not yet know whether there was "a health benefit" for adolescents:

> Be advised that, as of April 1, 1999, all applications for new active ingredients, new dosage forms, new indications, new routes of administration, and new dosing regimens are required to contain an assessment of the safety and effectiveness of the product in pediatric patients unless this requirement is waived or deferred (63 FR 66632) (21 CFR 314.55 (or 601.27)). FDA is deferring submission of the pediatric assessments of safety and effectiveness

> that may be required under these regulations until we have had an opportunity to more carefully consider the question of whether or not there may be a health benefit from studies in pediatric patients, and if so, in which populations. FDA will inform you on or before June 1, 2001, whether pediatric studies are required under the rule. If FDA determines at that time that pediatric studies are necessary, FDA will also set a specific time at which you must submit the required assessments.

(Letter from Russell Katz to Gregory Brophy (undated), available at www.accessdata.fda.gov)

205. Lilly had been pushing Zyprexa for adolescent use. The FDA reminded Lilly that any such use would be a "new indication[]" that would require formal review. Lilly had not previously submitted "an assessment of the safety and effectiveness of the product in pediatric patients."

2. In 2000, the FDA Approved a New Indication for the Maintenance of Treatment of Schizophrenia, But Rejected Lilly's Attempt to Broaden the Indication to "Psychotic Disorders"

206. Prior to October 2000, Lilly "propose[d] the use of Zyprexa (olanzapine) tablets for the maintenance of treatment response." (Letter from Russell Katz to Gregory Brophy (Oct. 12, 2000)) The FDA only agreed to approve this new indication on the condition that Lilly adopt the FDA's "revisions to the 3 sections of labeling" which required Lilly to specify Zyprexa's narrow indication for schizophrenia. *Id.*

207. It is impossible to ascertain the full extent of the label revisions mandated by the FDA because twenty-three pages of Dr. Katz's October 12, 2000 "action letter" approving this new indication were redacted from the publicly available copy. However, the unredacted material in Dr. Katz's letter illustrates that Lilly tried to broaden the new indication through expansive language in the label.

208. The FDA required Lilly to specify Zyprexa's narrow indication for schizophrenia. It also required Lilly to insert "treatment of schizophrenia" in lieu of "management of the

manifestations of psychotic disorders" in the "CLINICAL PHARMACOLOGY, Clinical Efficacy Data-Schizophrenia" section. Further, the FDA required Lilly to replace "in psychosis" with "in schizophrenia" in the same section. The FDA had Lilly replace "management of the manifestations of psychotic disorders" with the narrower "treatment of schizophrenia" in the "INDICATIONS AND USAGE, Schizophrenia" section. And the FDA required Lilly to replace "Antipsychotic efficacy" with the narrower "Efficacy in schizophrenia" in the "DOSAGE AND ADMINISTRATION, Schizophrenia—Usual Dose" section.

209. These examples demonstrate that Lilly was trying to expand the use of Zyprexa by changing the label to infer that Zyprexa was appropriate for the broader treatment of "psychosis" rather than for the narrower indication of schizophrenia. The FDA rebuffed this attempt to move outside the approved indication. However, Lilly was not to be deterred. Having been denied approval for expansion of the indications for Zyprexa use in the label, Lilly continued to use its network of enterprises for off-label promotion of those indications.

3. In February 2000, the FDA Approved a New Indication to Treat Bipolar Mania and Lilly Rejoiced that There Were No New Safety Issue on Dementia in the Label

210. On February 24, 2000, Lilly's Vice President of Pharmaceutical Products, Alan Breier, announced in an internal email that the FDA had approved olanzapine for treatment of bipolar mania. ([redacted]) It was "[redacted]" and olanzapine was "[redacted]." *Id.* Yet, Mr. Breier mostly enthused over Lilly's ability to keep serious new risks off the label:

[redacted]

[redacted].

([redacted]) Lilly hid the risks and massaged the label to minimize safety concerns. But they were legally and ethically obliged to do just the opposite.

4. In February 2000, European Regulators Asked for a Full Review of Prior Adverse Event Reports

211. Although Lilly had been in possession of adverse event data and internal studies demonstrating the risk of diabetes associated with Zyprexa for years, not until regulatory agencies in Europe and the United States pressured Lilly to provide clinical data, review prior studies, and assess the safety of olanzapine did Lilly do so. Lilly begrudgingly obeyed, but only under compulsion.

212. On February 21, 2000, the European Agency for the Evaluation of Medicinal Products ("EAEMP") sent a telefax to Mr. J.C. Saunder of Eli Lilly Ltd. UK. Specifically, Dr. Juhana Idanpaan-Heikkila of the EAEMP ordered Lilly to step up its review of risk factors and provide that information to the EAEMP: "[redacted]." ([redacted])

213. Further, the EAEMP requested full review of all known cases of diabetic ketoacidosis: "[redacted]."

([redacted]) Lilly was aware of numerous instances of diabetic ketoacidosis. In an NDA Periodic Report, Lilly had previously reported three incidents of ketoacidosis from April 1 to June 30, 1998. ([redacted]) In another Periodic Adverse Drug Event Report, Lilly had previously reported five instances of diabetic acidosis and two instances of diabetic coma between September 30 and December 30, 1997. ([redacted]) Lilly had failed to clearly disclose those instances to the European regulatory authorities.

214. Rather than provide critical information as it arrived, Lilly waited for regulatory authorities in both Europe and the United States to demand a thorough accounting of the risks of olanzapine.

5. In May 2000, the FDA Asked Lilly to Look at Larger Patient Pools and Conduct a Thorough Assessment of Previous Studies But Lilly Spun the Science According to Its Marketing Strategy

215. The FDA evidently did not trust the research done by Lilly on diabetes and hyperglycemia, in part, because of the small numbers of patients treated in each study. Consequently, on May 1, 2000, the FDA sent Lilly "[redacted]." ([redacted]) The FDA basically told Lilly that it needed credible data on diabetes and hyperglycemia.

216. Specifically, the FDA asked for the following information, apparently not trusting that Lilly had previously and fully disclosed these harms:

[redacted]

( ) In addition, the FDA had required a "

." *Id.* The FDA also wanted "

." *Id.*

217. Nearly three months later, Lilly partially responded to the FDA's request of May 1, 2000. Gregory T. Brophy, Director of Lilly's US Regulatory Affairs, sent a letter to the FDA on July 31, 2000. Dr. Brophy attached a "Note to Reviewer" to his letter. The Note to Reviewer stated: "

." ( )

218. As part of its July 31, 2000 response to the FDA, Lilly submitted an analysis of 78 controlled trials. In addition, Lilly provided "

." ( ) However, most of the information was misleading, especially as it pertained to full disclosure of the risks of prolactin, weight gain, and hyperglycemia.

219. Lilly misled the FDA on prolactin. In " " of the " ", Lilly suggested that Zyprexa did not elevate prolactin levels, writing

[redacted].” ([redacted]) Lilly implied that olanzapine did not produce heightened prolactin levels. But Lilly’s own proposed label of October 2000 admitted the risk of heightened prolactin: “[redacted].” In July 2000, however, Lilly said that risperidone was “[redacted].”

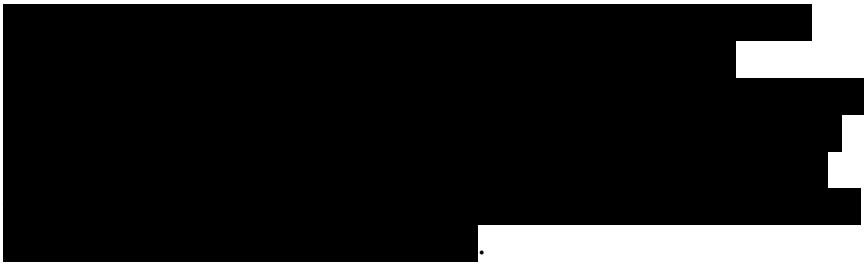
220. Lilly also misled the FDA on weight gain. In “[redacted]” of the “[redacted]” submitted on July 31, 2000, Lilly admitted that [redacted].” Sticking to formula, Lilly deflected responsibility from its own drug and dispersed blame among the class as a whole. Lilly spent nearly an entire page discussing study after study on—of all things—clozapine’s association with weight gain. In a subsequent short paragraph, Lilly mentioned that “[redacted]” and “[redacted].” These bare references to olanzapine masked the fact that olanzapine was among the top one or two atypical antipsychotics for weight gain. Lilly’s discussion of clozapine only clouded the picture.

221. In “[redacted]” of its July 31, 2000 attachment, Lilly told the FDA that “[redacted].” ([redacted]) But Lilly downplayed the

results:

Lilly absurdly suggested that all patients enrolled in studies gain weight and, therefore, it was not olanzapine's fault if those patients gained weight too. Lilly did not mention that its own 1993 study had shown "[redacted]" and consistent weight gain among olanzapine patients. ([redacted]) Nor did Lilly mention the possibility that olanzapine caused weight gain. Instead, Lilly practiced its blame-the-victim marketing strategy on the FDA.

222. Lilly tried to hide the likelihood of hyperglycemia, blaming it on pre-disposed factors among schizophrenic patients. In the "[redacted]" attached to its July 31, 2000 letter, Lilly told the FDA:



223. Lilly effectively blamed the victims. To Lilly, it was the pre-disposed factors that made hyperglycemia more likely – not olanzapine. What this explanation intentionally overlooked was that increased incidence of diabetes in Zyprexa users appeared in studies in which *all* subjects were diagnosed schizophrenics. Since Zyprexa increased the incidence of diabetes over placebo when both the Zyprexa group and the placebo group were schizophrenics, Lilly's assertion that schizophrenics are pre-disposed to diabetes did nothing to exonerate Zyprexa. Lilly was aware of this fact but continued to push the pre-disposition explanation rather than admit to the dangers associated with its blockbuster drug.

224. In "[redacted]," Lilly claimed that hyperglycemia simply occurred in the population at large and that olanzapine produced no risk of hyperglycemia:

[redacted]

([redacted]) Lilly claimed that olanzapine led to no more hyperglycemia than a placebo, and it said that 78 trials supported this conclusion. In actuality, Lilly knew that hyperglycemia occurred more often under olanzapine than in placebo.

225. Almost one year later, on May 21, 2001, Lilly sent a second letter to the FDA to complete its response to the original FDA letter of May 1, 2000 requesting further information on the risks of diabetes and hyperglycemia. ([redacted]) Gregory T. Brophy, the director of Lilly's U.S. Regulatory Affairs, sent the FDA a "[redacted]." He attached a "[redacted]" ("[redacted]") to his letter. ([redacted])

226. The Note summarized Lilly's additional research. Lilly had analyzed data from an "[redacted]" database with thousands of patients on antipsychotics. Lilly concluded from this database that hazard ratios for diabetes were 3.5 for conventional antipsychotics, 3.1 for atypical antipsychotics, and 3.0 for olanzapine. In addition, Lilly analyzed a British database called the "[redacted]" with 8 million patients from the United Kingdom. Lilly found that [redacted]." The hazard ratio for atypical antipsychotics was 3.3.

227. On top of analyzing these larger pools, Lilly summarized its own clinical trials. That showed "[redacted]." In essence, this was an admission that patients on olanzapine had higher levels of glucose. Lilly finally concluded that "[redacted]." This was another admission. But, as usual, Lilly deflected responsibility by pointing its finger at competitors and older antipsychotics with similar problems.

228. Lilly's response to the FDA's inquiries was of a piece with its overall strategy for dealing with concerns that Zyprexa was associated with diabetes. Whether responding to the FDA or prescribing doctors, Lilly consistently employed the two dodges of pre-disposition and class effect to deflect inquiries about what its own studies had demonstrated that Zyprexa increases the incidence of diabetes in patients who take it. An internal Lilly memorandum confirms this fact, stating "[redacted]." ([redacted])

6. In October 2000, the FDA Required Lilly to Add the Risks of Diabetic Coma and Neuroleptic Malignant Syndrome to the Label and to Delete Language That Suggested Olanzapine Did Not Increase Glucose Levels

229. On May 9, 2000, Lilly submitted a "[redacted]" to the FDA. ([redacted], reporting that "[redacted]".) Lilly claimed that this label change was based on [redacted]." ([redacted]) According to Lilly, this label

change was not connected to the FDA's letter of May 1, 2000 because Lilly had received that letter one day *after* proposing the May 9, 2000 label change.

230. Specifically, Lilly sought two changes to the Zyprexa label in its proposal of May 9, 2000:

Id. On July 31 2000, Gregory Brophy, Director of US Regulatory Affairs at Lilly, repeated this same offer to change the label in a letter to the FDA. ( )

231. The phrase "diabetic coma" was inserted into the label after the FDA approved it via a letter to Lilly dated October 11, 2000. However, the FDA rejected Lilly's proposed "

." As a result, there were no changes in the ADVERSE REACTIONS, Additional Findings Observed in Clinical Trials, Laboratory Changes section from 1996 until at least January 2004. That section remained precisely the same from 1996 through 2003.

232. The reason why the FDA rejected Lilly's proposed change to that section in 2000 was because Lilly's proposed revision was misleading. In essence, Lilly tried to say that olanzapine caused no increase in glucose levels. This is the text that Lilly proposed:

This summary suggested that random glucose levels were the same in olanzapine patients as a placebo. If Lilly had its way, this misleading statement would have been inserted into the ADVERSE REACTIONS, Additional Findings Observed in Clinical Trials, Laboratory Changes section. But the FDA said, "no."

233. On October 11, 2000, Dr. Russell Katz, Director of the Division of Neuropharmacological Drug Products, Office of Drug Evaluation I, FDA Center for Drug Evaluation and Research, wrote to Gregory T. Brophy, Director of US Regulatory Affairs, regarding the October 2000 proposed label change. Dr. Katz felt that the paragraph on glucose levels would be misleading:

The FDA characterized Lilly's proposed statement as "[redacted]" for the label. To Dr. Katz and the FDA, Olanzapine was not as safe as Lilly made it out to be. There was simply not enough data and analysis to support Lilly's proposed revision to the label. And the FDA would not permit Lilly to use the label as a marketing device to infer "[redacted]"

that was not proven to exist.

234. As a result of the FDA's refusal in 2000, the ADVERSE REACTIONS, Additional Findings Observed in Clinical Trials, Laboratory Changes section was not revised until years later when the FDA approved language that told the truth—i.e., olanzapine increased the level of glucose. The olanzapine label that was ultimately revised on September 20, 2005 warned:

[redacted]

This is what the FDA was looking for all along. But Lilly did not provide it in October 2000 when it denied that olanzapine led to glucose increases.

235. In his letter of October 11, 2000, Dr. Russell Katz of the FDA approved a new warning for Neuroleptic Malignant Syndrome (NMS). Dr. Katz said the following addition to the "[redacted]" section was "[redacted]," pending Lilly's submission of 20 paper copies of the "[redacted]":

[redacted]

In other words, from October 2000 onwards, Lilly would have to warn about NMS on the label. This was a first.

236. Dr. Katz approved the addition of "[redacted]" to the label warnings in his letter dated October 11, 2000. This addition to the "[redacted]" section was "[redacted]" pending submission of "[redacted]." Lilly was obligated to insert the term "[redacted]" into the "[redacted]" subsection of the "ADVERSE

REACTIONS" section. As a result, the label subsequently warned:

> Adverse events reported since market introduction which were temporally (but not necessarily causally) related to ZYPREXA therapy include the following: allergic reaction (e.g., anaphylactoid reaction, angioedema, pruritus or urticaria), diabetic coma, pancreatitis, and priapism.

(Zyprexa Zydis Label (revised 2003) ("action date" of Jan. 14, 2004)) The term "diabetic coma" had not previously appeared in this section until the FDA's requirement of October 11, 2000.

I. 2001-2002: Ongoing Operations of the Unlawful Marketing Enterprises

237. Despite the mounting evidence known to Lilly regarding the adverse weight gain, hyperglycemia, diabetes, cardiovascular, and other risks of Zyprexa, the lack of superior comparative efficacy of Zyprexa to other antipsychotics and the recklessness of their off-label promotions, in the early 2000's Lilly continued its ongoing operation of the Zyprexa Unlawful Marketing Enterprises and planned to further market Zyprexa for use in patients for whom the drug's approval was never intended. According to an internal document, Lilly decided that "[redacted]" These new indications included "[redacted]." ([redacted])

238. In order to reach those goals, Lilly undertook a massive strategy change in late 2000 and began to target primary care physicians with the aim of increasing their utilization of Zyprexa. ([redacted]) The strategy encouraged physicians to focus on symptoms and behaviors rather than diagnoses, emphasizing how Zyprexa is "[redacted]." ([redacted]) Suppression of side effects and metabolic risks continued to be part and parcel of the plan.

1. Continued and Growing Knowledge of Adverse Side Effects

239. As Lilly continued to downplay the risks of Zyprexa to consumers, doctors, and the FDA, more and more of its own studies and clinical trials conclusively demonstrated the life-threatening risks associated with the use of its drug.

240. In a study entitled "[redacted]" with an amended protocol dated March 9, 2001, Lilly noted "[redacted]" and that "[redacted]." ([redacted])

241. While most of the attention to date had been on the glucose and metabolic side effects of Zyprexa, they were not the only risks of which Lilly was aware. In March 2001, Ernie Anand of Lilly brought to the attention of some of his colleagues an article on atypical antipsychotic cardiovascular risk. He noted that it was "[redacted]" and that the "[redacted]." In response, Dr. Charles Beasley stated that [redacted]." In the same breath, however, Dr. Beasley pointed out:

[redacted]

(.)

242. An April 6, 2001 Lilly internal analysis of its UK General Practice Research database (GPRD) found that patients treated with either conventional or atypical antipsychotics had a higher risk of developing diabetes during exposure to the drug. The risk was found to be higher for those taking atypicals such as olanzapine and risperidone than for those taking conventional antipsychotics. As the study states, "

." ( ) The study also notes that

( ) This study was forwarded for discussion in an e-mail sent by John Holcombe on April 9, 2001, where he calls it "the most recent version of the epidemiological data from the GPRD regarding antipsychotic drug use and dia." (219615 6)

243. The companion study entitled "

" analyzed a prescription claim database and concluded

." ( ) The study abstract, dated

April 18, 2001, also noted [redacted] ." ([redacted]) Further, the authors stated, [redacted] " ([redacted])

244. On April 12, 2002, Lilly conducted a Policy Committee Meeting on the Zyprexa safety overview, addressing clinical data on weight gain and diabetes in connection with Zyprexa use. In summarizing the clinical data on diabetes, Lilly draws attention to a "[redacted] " Continuing on metabolic issues, Lilly states that "[redacted] " and that "[redacted] ." Instead of working to protect patients from these effects, Lilly focused on continuing sales, concluding "[redacted] ." ([redacted])

2. Suppression of Side Effects and Risks

245. In early 2001, Lilly was well aware that Zyprexa was among the worst of the antipsychotics in terms of weight gain. In a "[redacted] " slide set presentation dated February 2001, Lilly stated that the main "[redacted] " of olanzapine, as compared to its competitors, were weight gain, sedation, value for money, and reduction of depressive episodes.

In fact, Zyprexa ranked at the very bottom of its competition on weight gain and ability to avoid sedation. ([redacted])

246. Despite this knowledge, Lilly attempted to avoid or minimize the issue, misleading physicians as to the degree, manageability, and incidence of weight gain in olanzapine patients. Further, Lilly adopted a campaign summed up by the words "[redacted]," instructing its sales force to tell psychiatrists and physicians that "[redacted]." ([redacted])

247. In a February 8, 2001 presentation for the "[redacted]," Lilly instructed sales representatives on how to address mounting concerns among prescribing physicians about Zyprexa use and weight gain, hyperglycemia, and diabetes. Market research indicated "[redacted]." ([redacted]) Accordingly, Lilly directed the force to "[redacted]." [redacted]. ([redacted]) Sales representatives were thus instructed to "[redacted]" with them to handle the objections of the two types of physicians. ([redacted])

248. The "[redacted]" [redacted]:

- [redacted].

[redacted]

- [redacted].’
  - [redacted].

[redacted]

[redacted]

[redacted]

([redacted]) [redacted]

[redacted]:

[redacted].

[redacted]

  - o [redacted].
  - o [redacted].

([redacted])

249. Overall, the strategy appeared to work for Lilly. Initial market research showed a “[redacted]” ([redacted])

250. In March 2001, Lilly further revised its “[redacted]

[redacted]e" to help its sales force when "[redacted]." ([redacted]) The strategy guide notes "[redacted]." ([redacted]) Despite the stated differences in blood glucose for patients on Zyprexa and the known connection between increased blood glucose and diabetes, Lilly continued to tell physicians that "[redacted]." ([redacted])

251. Concurrently, Lilly developed other materials "[redacted]" based on the company's belief that "[redacted]." ([redacted]) These materials, including slide sets, studies, physician management tools, and trainings, were designed to "[redacted]," provide data to "[redacted]" for use in presentations on Zyprexa and weight gain or hyperglycemia/diabetes, and provide "[redacted]." ([redacted])

252. In a June 20, 2001 "[redacted]." ([redacted].) Part of McKinsey's

recommended strategy entailed Lilly acknowledging weight gain, diabetes, and hyperglycemia as "[redacted]" rather than avoiding the issue. However, a second part involved a new "[redacted]" aimed at emphasizing Zyprexa's efficacy "[redacted]" while showing diabetes risk was a class effect rather than one limited to olanzapine. This strategy was to be used in the United States, Canada, France, and the UK. ([redacted]) Lilly followed the second part to the letter, but continued to omit a warning about the "[redacted]" of diabetes and hyperglycemia for years to come.

253. Lilly instead continued to sidestep questions about the risk of treatment-emergent diabetes while on olanzapine. In two marketing presentations from 2001, Lilly informed its sales force "[redacted]!" Regarding diabetes, Lilly states

[redacted]:

1) [redacted]
2) [redacted]
3) [redacted]
4) [redacted]
5) [redacted]!

([redacted].) Not addressing the "[redacted]" unless raised by a physician is both a violation of the mandate of fair and balanced information and a willful omission of material fact, especially given Lilly knew that many PCPs were not aware of the issue.

254. Concurrently, and in line with its avoidance of the "[redacted]," Lilly continued to emphasize that treatment with Zyprexa was "[redacted]" and "[redacted]," promoting the claim in marketing brochures in October 2001. ([redacted])

255. In April 2002, the Japanese government forced Lilly to revise its label in Japan and warn of the risk of treatment-emergent diabetes. Even after the Japanese government mandated that Lilly include warnings of the risk of diabetes (after only nine adverse event reports), Lilly continued to omit any warning of diabetes from its Zyprexa label in the United States.

256. Notably, Lilly knew long before April 2002 that the Japanese government had serious concerns about Zyprexa's safety. In an email dated September 25, 2001 (only about 3 months after Zyprexa was launched in Japan), Takashi Taniguchi, a representative of Eli Lilly's Japanese affiliate, directed an email to Lilly's Timothy F. Parshall and several other Lilly insiders concerning "[redacted]". Due to its' significance, Mr. Parshall subsequently forwarded the email to Lilly's Jared G. Kerr. In the email, Mr. Taniguchi stated:

[redacted]:

[redacted]?

[redacted]?

[redacted]
[redacted]
[redacted]."
([redacted].)

257. Despite this substantial evidence linking Zyprexa use with diabetes and/or hyperglycemia, Lilly continued to down-play these problems. In mid-2002, a Lilly market research analyst wrote:

([redacted])

258. Lilly's suppression or manipulation of side effects and risks of olanzapine did not go unnoticed. On June 15, 2002, Eli Lilly's Dennis G. West sent an email to Dr. John Newcomer, a one-time Lilly consultant, concerning a mailing Lilly sent to physicians focusing on positive statements about Zyprexa made by John Buse, M.D, another consultant for Lilly. The email also related to previous discussions between Mr. West and Dr. Newcomer relating to Zyprexa use and its relationship to glucose/insulin irregularities. Mr. West stated:

[redacted]

([redacted]) Lilly did not make a change in their warnings to this effect until September of ‘03.

259. Dr. Newcomer immediately took exception to Mr. West's comments and accused Lilly of engaging in a "[redacted]." Specifically, Dr. Newcomer stated,

[redacted]

([redacted])

260. The sales force raised a similar concern shortly thereafter. In internal email correspondence dated September 13, 2002 with the subject line “[redacted]” sales representative Jerry D. Clewell asked

[redacted]

( ) Despite Dr. Newcomer's concern that Lilly was playing fast and loose with study results and the connection between olanzapine use and diabetes and questions from the sales force about such connections, Lilly stuck to the party line. Robert Browne, Senior Outcomes Research Advisor for Lilly, responded that he had not heard of any such plans to send " " to physicians. ( )

3. Off-Label Promotion to Primary Care Physicians

261. Lilly began promoting Zyprexa to primary care physicians in September 2000. ( ) The strategy, building on the 1996-2000 off-label campaign to target various forms of depression, sought to position Zyprexa as a " " and " " References to this positioning abound in Lilly's internal documents, testifying to the strength of the effort directed at the PCP market.

262. In an undated overhead training presentation entitled " ", Lilly identified the " " for opening the door to the elderly market for Zyprexa: " " ( ) Lilly instructed the sales force that patient profiles " " and that the focus should be on " " such as " " rather than

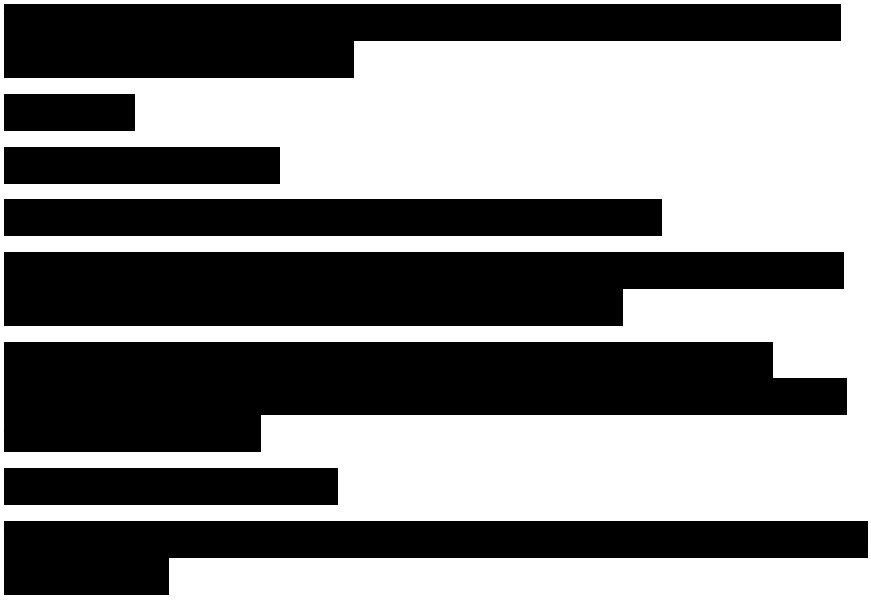
diagnoses. ( ) Incredibly, Lilly went so far as to direct its sales representatives to misrepresent the uses for which Zyprexa had received FDA approval, stating it was " " ( ) Zyprexa has never been approved for use in the treatment of dementia.

263. In 2001, Lilly's Michael Bandick (Brand Manager of Zyprexa) met with sales representatives to detail the positive aspects of the Pierre Tran study on Zyprexa, published in the Journal of Clinical Psychopharmacology in 1997, and encourage them to promote the drug to " " ( ) Bandick directed the sales representatives to rely upon the Tran study, which favored Zyprexa over Risperdal, but not to give it to customers. In a mock discussion with a physician following Bandick's intro, sales representatives were encouraged to market to physicians who don't prescribe antispsychotics by telling the physician that " " ( )

264. Likewise, a February 20, 2001 presentation authored by Bandick reemphasized Lilly's plan to " The strategy entailed an " ", " " and " " ( )

265. Lilly reinforced this message at a March 12, 2001 presentation to the Zyprexa sales force, starring Michael Bandick, stating that Lilly " " ( ) Further, while noting the desire to

promote Zyprexa to the elderly, Bandick made certain to emphasize that the nursing home population was not the only target the team was after:



([redacted])

266. In a draft internal marketing document, dated April 10, 2001, Lilly focuses on expanding the market of Zyprexa by "[redacted]" The strategy is to establish Zyprexa as a "[redacted]" This is to be done by: "[redacted]" "[redacted]" "[redacted]" The strategy is to provide PCP's with patient profiles: "[redacted]" "[redacted]" "[redacted]" The document goes on to say that "[redacted]", the patient with mood problems, is the future of Zyprexa use by primary care physicians. The internal marketing document also proposes a post-marketing "[redacted]" – a Clinical Trial Not Intended for Registration – with an internally written protocol. Third party vendors Parexcel,

The Lewis Group, and/or Covance are suggested. The document also lists "[redacted]" as: "[redacted]" "[redacted]" "[redacted]" and "[redacted]" ([redacted])

267. Lilly even implied that PCPs had a duty to prescribe antipsychotics as part of "[redacted]" A Lilly slide set dated June 14, 2001 and titled "[redacted]" tells a story of "[redacted]" Lilly insisted that "[redacted]" was necessary for a broad range of symptoms, including "[redacted]" Further, the PCP's "[redacted]" ([redacted])

268. To assist sale representatives in encouraging PCPs to prescribe olanzapine for treatment of symptoms not necessarily caused by schizophrenia, Lilly prepared a "[redacted]", Lilly painted a picture of a good candidate for Zyprexa:

[redacted]

[redacted]

([redacted]) In this manner, Lilly encouraged PCPs to use Zyprexa for the treatment of symptoms rather than diagnoses.

269. In spite of Lilly's suppression of the risks of diabetes, by late 2001, even primary care physicians were raising concerns over the connection to glucose irregularities, hyperglycemia, and diabetes. The September 2001 Hyperglycemia/Diabetes Data on Demand Resource Guide states that it was developed because "[redacted]" Accordingly, the sales force was to emphasize that "[redacted]", that diabetes is common and has lots of risk factors, and that giving a drug should be based on the risks/benefits equation. Further, sales reps should "[redacted]" ([redacted])

270. Lilly encouraged its sales representatives to view physicians as fitting into one of five market segments based on their prescribing patterns: High Flyers; Rule Bounds; Skeptical Experimenters; Selective Majority; or Systematic Conservatives. High Flyers, for example, were those who "[redacted]" while the Selective Majority "[redacted]" Sales representatives were encouraged to provide PCPs in this group with "[redacted]" ([redacted])

271. Lilly recognized that those in the Rule Bound, Systematic Conservatives, and Selective Majority groups would not typically prescribe Zyprexa and that PCPs would have to be coached into writing these prescriptions: "[redacted]

[redacted]

272. Lilly made no secret of its desire to sell Zyprexa beyond its indicated and approved use. In a May 21, 2002 email marked "[redacted]", Robert Graham of Lilly told his colleagues that as a follow-up to recent discussions about the challenges ahead for Zyprexa, it was important to remember that Zyprexa is an "[redacted]" and that "[redacted]

273. Lilly's efforts to promote Zyprexa for use as a general mood stabilizer in the treatment of depression have resulted in tremendous revenue for the company. Depression-related sales of Zyprexa from 1999 to 2005 reached nearly $3 billion.

4. Manipulation of Studies

274. While Lilly promoted Zyprexa to primary care physicians for a variety of illnesses and down-played the risks of adverse metabolic events, the company also sought to suppress side effect information by manipulating and spinning studies, clinical trials, and reports from academia and the field.

275. Lilly addressed its deficiencies with publications, hoping to hide the severity of Zyprexa's side effects. A Lilly email correspondent said that the focus of the Zyprexa Product Team was to "[redacted]" Studies were treated as marketing tools rather than sincere research efforts into the health risks, leading one

Lilly executive to note in April 2001:

( ) He went on to state the "

" ( )

276. As noted, many of the approximately 125 manuscripts, articles, and chapters already published dealt with treatment of the elderly and adolescents with Zyprexa, evidence of Lilly's continued targeting of those populations. ( )

277. In an attempt to diminish concerns over the cardiac risks of olanzapine, Lilly engaged an international PR firm to ' ' write a paper for the March/April 2001 edition of the Progress in Neurology and Psychiatry supplement. On February 23, 2001, Kerrie Mitchell of Cohn & Wolfe emailed Lilly colleagues to inform them

( )

278. On May 3, 2001, Lilly's Michele Sharp emailed Robert Baker, James Gregory, and others to discuss Zyprexa studies and interactions with the FDA regarding the results of

those studies - particularly whether to hide them or not.

([redacted])

279. Lilly's manipulation of Zyprexa studies is exemplified in a December 19, 2001 email, in which Robert Thompson documented a meeting between Dr. Robert Smith of the NYU Department of Psychiatry and Lilly researchers, who advised Smith on changes to protocol design of proposed study funded by Lilly: "[redacted]" The recommended changes to make the study "[redacted]" included cherry-picking participants, e.g. more stringent exclusion criteria of patients in order to reduce the number and rate of treatment-emergent diabetes as well as terminating certain patients from the protocol early rather than simply switching their medications: "[redacted]" Lilly also encouraged the study to be designed according to marketing needs in determining which antipsychotics to involve in the trial:

( )

5. Off-Label Promotion to the Elderly

280. Following the trend it began in the 1996-2000 period, in the next few years Lilly continued to encourage utilization of Zyprexa in the elderly and for any symptoms that might be categorized as relating to dementia. In an undated overhead training presentation entitled " ", Lilly identified the " " for opening the door to the elderly market for Zyprexa: " " ( ) Lilly instructed the sales force that patient profiles " " and that the focus should be on " " such as " " rather than diagnoses. ( ) Further, Lilly directed its sales representatives to misrepresent the uses for which Zyprexa had received FDA approval, stating it was " " ( )

281. In October 2000, Lilly emphasized its " " to " " In particular, Lilly wanted to target elderly patients who are " " and " ". ( )

[redacted])

282. In addition, Lilly's consultants recommended that they target non-Alzheimer elderly patients with dementia. For example, on May 2, 2001, McKinsey & Co. presented their "[redacted]" Identifying at least eleven different patient types, McKinsey included three separate profiles targeting the elderly: Patient 2 with "[redacted]"; Patient 5 with "[redacted]"; and Patient 11 with "[redacted]". The consultants suggested Lilly "[redacted]" in the use of Zyprexa for Patient 2 – elderly patients with non-Alzheimer's mild dementia – leading to the assumption that Lilly already had a large off-label market share among that population. ([redacted])

283. Lilly took this advice to heart. In a June 29, 2001 presentation, Lilly highlighted the "[redacted]" patient profile. Martha, like Donna, is another fictional Lilly character: a widow having "[redacted]" and who "[redacted]". She is "[redacted]", "[redacted]" In other words, Martha may be experiencing dementia or mild Alzheimer's, or any number of health concerns associated with age and declining health, but there is absolutely no indication that Martha is schizophrenic or bipolar. Yet Lilly sees Martha as a great business opportunity because Lilly can persuade primary care physicians to prescribe an antipsychotic to "[redacted]" No doubt there are millions of people in the United States who fit Martha's profile and who are not psychotic, schizophrenic, or bipolar. But one of Lilly's goals was to get as many unsuspecting elderly patients on Zyprexa as possible and Lilly saw marketing to primary care physicians as the optimum way to accomplish that their scheme. ([redacted])

284. Lilly did not let up on the push to prescribe Zyprexa for the treatment of

dementia, noting in an October 31, 2001 brochure that olanzapine is the "[redacted]" ([redacted])

285. A year later, Zyprexa Brand Manager, Michael Bandick, reiterated the dementia-treatment strategy when informing numerous Lilly marketing representatives about a "[redacted]" letter issued by its competitor, Janssen, with regard a Risperdal Cerebrovascular Warning in Canada. Bandick noted that the Risperdal label change was "[redacted]" Bandick's directive provides further evidence of Lilly's off-label promotion of Zyprexa to doctors for treatment patients for dementia - a condition for which Zyprexa was not approved. ([redacted])

6. Changing the Message

286. Despite Lilly's best efforts to encourage utilization of Zyprexa, primary care physicians raised concerns over the connection to glucose irregularities, hyperglycemia, and diabetes. Lilly noted in September 2001 that "[redacted]" ([redacted]) While still instructing the sales force to emphasize the "[redacted]" message and highlight the multiple risk factors for diabetes, the company began to contemplate a message shift.

287. Lilly had been conducting large scale market research into physician prescribing patterns and their perceptions of Zyprexa and its side effects for quite some time. The "[redacted]" tasked with the research conducted polls of 100 primary care physicians and 240 psychiatrists in three different waves, February 2001, July 2001 and January 2002. Following the third wave, the team reported that physicians increasing concern that Zyprexa caused both

weight gain and diabetes was influencing their prescribing habits. ([redacted])

288. In a January 28, 2002 email on "[redacted]" to Thomas Reck, Katharine Armington, Diana Caldwell, Robert Baker, and Donald Hay, Cassandra Mehlman of Marketplace Management writes about "[redacted]" She asks:

[redacted]

([redacted])

289. As Lilly looked to change its message to physicians and psychiatrists about hyperglycemia and diabetes and their relationship to Zyprexa in early 2002, the company engaged consultants at Harper to hold strategy sessions with focus groups. In a report dated March 12, 2002, Harper presented the results of one such strategy session. Stated "[redacted]" included determining "[redacted]", determining "[redacted]", evaluating "[redacted]". The conclusions and recommendations note "[redacted]" and that "[redacted]

[redacted]” Further, “[redacted]

[redacted]” ([redacted])

290. While Lilly contemplated a message change, questions from the field on how to address diabetes and hyperglycemia continued to come in. On June 21, 2002, Kristine Healey sent an email to Vicki Hoffmann stating “[redacted]

[redacted]” Ms. Hoffman’s response included the following:

[redacted]

([redacted])

291. On August 12, 2002, Eli Lilly rolled out its' [redacted]. In the plan, Lilly emphasized that “[redacted]” and notes that a substantial number of psychiatrists either do not prescribe or discontinue use of Zyprexa due to association with weight gain and diabetes. ([redacted]) A concurrent strategy brief outlined the short- and long-term plans for continuing sales of Zyprexa, noting that “[redacted]” The

takeaway message on weight gain: "[redacted]" The takeaway message on diabetes: "[redacted]" ([redacted])

292. The overwhelming concerns of doctors over the side effects of Zyprexa compelled Lilly to shift its marketing strategy, though they held fast to the "[redacted]" message. On October 14, 2002, Lilly updated a document entitled "[redacted]" emphasizing: "[redacted]" The strategy directed sales representatives to "[redacted]" ([redacted])

7. Failure to Disclose Adverse Side Effects

293. During 2001-2003, Lilly continued to fail to adequately disclose the mounting evidence and knowledge it had regarding the side effects and lack of comparative efficacy of Zyprexa, both for on-label and off-label purposes.

294. The ongoing refusal of Lilly to make these disclosures was all the more egregious given the mounting evidence known to it.

295. Between August 3, 2000 and July 18, 2003, Lilly made 9 more label changes. For a single drug to undergo as many label changes as Zyprexa underwent is highly irregular. Additionally, the greater the number of label changes the less effective the warnings contained in

those changes are because most doctors do not read the changes to a drug's label after the first one or two. This is known as "[redacted]". The only change made to the label containing a warning about diabetes-related injuries occurred in November of 2001, when "[redacted]" was added, however, it too was buried in the "[redacted]" section. Again, because of the date of this change, the new label did not appear in the upcoming 2002 PDR, but rather was first published in the 2003 PDR.

296. As with the "[redacted]" report, the "[redacted]" reference is again buried deep within the label and is virtually unrecognizable. Further, this reference also fails to include any mention of the mountain of post-market adverse events reports of diabetes, hyperglycemia, diabetic deaths, and ketoacidosis. The egregiousness of this conduct is highlighted when juxtaposed against the fact that during this time, the medical literature continued to identify the connection between the drug and diabetes-related illness and that Lilly's foreign labels were being changed to warn about these very complications.

J. 2001-2002: Major Warning Signs Abroad

1. Japan and UK Label Changes

297. Another reason why Zyprexa's U.S. label should have had a prominent warning of diabetes and diabetes-related injuries and a warning for appropriate monitoring significantly in advance of the disseminated warning in March 2004, is evident from Lilly's labeling changes outside of the United States. Lilly was forced to change its label in the United Kingdom and Japan in April 2002 because of the mounting reports of diabetes-related injuries. Indeed, after only 9 AERs in Japan and 40 AERs in the U.K., Lilly changed its label in those foreign countries to warn about the possible association between these injuries and Zyprexa. However, Lilly failed to change its label in the U.S. at the same time.

298. Additionally, the medical literature indicates that Eli Lilly was or should have

been aware of Zyprexa's association and/or causal relationship and/or potential to cause diabetes-related injuries significantly prior to the forced label change by the FDA. Prior to 2001, there were over 50 articles that showed a likely association between SGAs and the development of diabetes-related injuries.

299. This well documented class effect was ignored by Lilly in its clinical trials, in its label and in its subsequent marketing effects. Articles published since the marketing of Zyprexa demonstrate that the incidence of diabetes-related adverse events is greater with Zyprexa than any other drug in its class – another fact known to Lilly, but ignored.

300. In December of 2000, the British Journal of Psychiatry printed a review of 52 studies involving 12,649 patients. It concluded: "[redacted]." As another example, an April 2001 study entitled *Antipsychotic Metabolic Effects: Weight Gain, Diabetes Mellitus, and Lipid Abnormalities*, concluded that "[redacted]"

301. By January of 2000, Lilly was becoming inundated with reports – particularly from international regulatory authorities –of patients who suffered serious adverse health events after having taken Zyprexa, even for very brief periods of time.

302. For example, on or about January 1, 2000, according to a document produced from the files of Lilly's Julie A. Birt titled, "[redacted]" Lilly responded to a formal inquiry

from Switzerland's Health Authority regarding numerous adverse health events in patients using Zyprexa and undisclosed potential side-effects by reviewing all "[redacted]" information potentially relating to hyperglycemia in patients treated with Zyprexa. Notwithstanding the document cases leading to Switzerland's inquiry, after supposedly analyzing the available AER data, Lilly concluded that no action was warranted, but did concede that "[redacted]" ([redacted])

303. Later that year, in or about July 2000, Lilly had been put on notice from the European Agency for the Evaluation of Medicinal Products, *Human Medicines Evaluation Unit* ("[redacted]"), that it had serious concerns about adverse events reported in connection with Zyprexa use. In particular, the EAEMP emphasized that a periodic safety report covering the period September 26, 1997 through March 1998, revealed, *inter alia*, that numerous adverse reactions to Zyprexa had been reported and that "[redacted]" At the same time, the EAEMP also noted that while Zyprexa is not authorized for use in children, numerous adverse reactions in children had been reported. ([redacted])

304. Notwithstanding, Lilly persisted in refusing to acknowledge and/or disclose Zyprexa's problems in the United States even though the company admitted to these problems overseas after being forced to do so by several foreign governments, including Japan and the UK. For example, in preparation for Zyprexa's launch in Japan in or about June 2001, Lilly representatives, at the direction of the company's senior level managers in Indianapolis, attempted to persuade Japan's Ministry of Health and Welfare ("[redacted]") (Japan's drug regulating authority) not to adhere to its request that Zyprexa's package insert include a warning

that blood glucose monitoring be conducted in certain patients due to the reports of diabetes and hyperglycemia. Lilly's main concern was that such a disclosure would drive down demand for the drug. In fact, in an email dated October 5, 2000, with a caption emphasizing the words "[redacted]", "[redacted]", and "[redacted]", Masashi Takahashi, a Lilly representative in Japan, discussed the MHW's request "[redacted]". Mr. Takahashi goes on to state that "[redacted]" ([redacted])

305. Moreover, in further preparation for Lilly's Zyprexa launch in Japan, Maseo Amano of Lilly's Zyprexa Product Team informed Dr. Charles M. Beasley, Jr., Lilly's "[redacted]", (in an e-mail dated October 11, 2000) that the MHW Evaluation Center ("[redacted]") contacted Lilly's Kobe, Japan office and wanted to know as soon as possible whether Lilly knew of any severe cases of diabetic coma and diabetic ketoacidosis in connection with Zyprexa use. In particular, Mr. Amano informed Mr. Beasley that in response Lilly faxed 3 groups of documents to the EC including: 1) supporting documents for adding diabetic coma and diabetic ketoacidosis to the package insert, 2) ADR reports on Ketoacidosis submitted previously to the EC, and 3) A study titled, "[redacted]", which had already been submitted to the EC. In a subsequent related email, Masashi Takahashi emphasized, "[redacted]"

[redacted]" ([redacted])

306. Meanwhile, as Lilly was undertaking damage control in Japan, in November 2000, at the request of the Malaysian Regulatory Authority, Lilly was forced to send a "[redacted]" letter to Malaysian physicians advising them of a change in Zyprexa's package insert and an increased risk of hyperglycemia and/or diabetes as it relates to Zyprexa use. Notably, this "[redacted]" letter advised Malaysian physicians to monitor patients with risk factors for the development of diabetes. ([redacted])

307. By the end of the year 2000, Lilly was regularly receiving reports of new onset diabetes and/or hyperglycemia in connection with Zyprexa use. In response, on or about December 14, 2000, Lilly conducted a three hour meeting at which the company and its senior management discussed how to respond to rising concerns among physicians in the United States about Zyprexa use, Diabetes, and Weight Gain. In discussing its' strategy, Lilly emphasized that were 2 groups of physicians "[redacted]" and that "[redacted]". ([redacted]) During a discussion on "[redacted]", Lilly noted concern about "[redacted]". On the subject of weight gain, Lilly instructed meeting participants to "[redacted]". When discussing "[redacted]" Lilly informed meeting participants of what would become its' strategy. ([redacted]) Namely, that notwithstanding the numerous reports of serious adverse health events from around the world, representatives should emphasize that "[redacted]". ([redacted])

308. Despite the company's intensive marketing efforts, by March 2001, Lilly international representatives were becoming overwhelmed by the "[redacted]" about the connection between Zyprexa and Diabetes. Representatives of Lilly's "[redacted]" raised these concerns in internal emails. One such representative, Jacques Mosseri, wrote that Lilly should address the issue by "[redacted]". ([redacted])

309. On or about May 5, 2001, the American Psychiatric Association held a conference on Glucose Control and Diabetes Mellitus During Antipsychotic Treatment in New Orleans. The conference was chaired by John W. Newcomer, M.D. – a onetime Lilly consultant – and attended by numerous other reputable panelists. More importantly, upon information and belief, numerous senior Lilly representatives attended the conference as evidenced by the production of a conference itinerary produced from the files of Lilly's Diana Streevey King. The conference's stated objective was to educate participants on how to recognize clinical and laboratory signs of diabetes mellitus, in addition to identifying antipsychotic medications that can increase the risk of hyperglycemia. ([redacted])

310. Rather than utilizing the important educational information presented at the May 5, 2001 conference, Lilly continued its strategy which was to attempt to discredit any and all evidence relating Zyprexa use to diabetes and/or hyperglycemia and to fight any attempts by third parties to facilitate an appropriate label change in the United States.

311. For example, in a Lilly handout distributed sometime in 2001, Lilly directed representatives on how to deal with escalating concerns about Zyprexa use and diabetes and hyperglycemia, all the while disregarding the widespread concerns about serious adverse health events, including reports of several deaths. In the face of this substantial evidence to the

contrary, Lilly persisted in downplaying Zyprexa's potential side-effects by taking the untenable position that less than 1% of users have been known to have diabetes and that diabetes generally occurs more frequently in patients with schizophrenia and bi-polar disorder. Lilly further directed its representatives on how to dismiss and downplay the significance of forced label changes for Zyprexa in the EU and Japan. ([redacted])

312. Similarly, in a November 29, 2001, Lilly "[redacted]" document addressing "[redacted]", Lilly states, "[redacted]" ([redacted]). In summarizing "[redacted]", Lilly admits that it is common knowledge among prescribing physicians that Zyprexa is known to present a higher risk of weight gain and metabolic change as compared to other atypical antipsychotics.

313. In or about March 2002, Lilly learned that the Japanese government was going to require that Zyprexa's label be changed to include precautions and warnings about the potential for diabetes and/or hyperglycemia.

314. In an email dated March 20, 2002, regarding the Japanese label change authored and sent by Lilly's Jared G. Kerr, Mr. Kerr states "[redacted]" Lilly's Anne Bille, upon learning from Lilly Japan that the Japanese regulatory authorities were concerned about the high incidence of hyperglycemia in Japan (and elsewhere) during Zyprexa therapy and that the Japanese authorities requested expedited reports and an in-person meeting with Lilly senior representatives to discuss the issue, responded that "[redacted]". ([redacted]

[redacted])

315. In response to the forced Zyprexa label change in Japan, on or about April 15, 2002, Lilly's Kristen Lynn Anderson and Ashish Kalgaonkar authored a memorandum to all Business to Business Internal and External Lilly Personnel regarding how to "[redacted]" discuss with "[redacted]" Japan's decision to force a Zyprexa label change which was aimed at informing physicians *not* to use Zyprexa in patients with diabetes or in patients with a history of diabetes and that a warning statement would be added that some patients may experience a marked increase in glucose during Zyprexa administration. As set forth in the April 15, 2002 memorandum, Lilly's message was that it "[redacted]" with the conclusion drawn by the Japanese regulators notwithstanding reports of several deaths in connection with Zyprexa use and severe hyperglycemia. Further, the memorandum emphasized that "[redacted]" The Lilly memorandum also highlights 6 "[redacted]" while emphasizing the safety and cost effectiveness of Zyprexa and that the label change in Japan "[redacted]" ([redacted]). Finally, the Lilly memorandum states "[redacted]". ([redacted])

316. Nonetheless, the Japanese label change rocked Zyprexa's foundation. Following the announcement of the label change, *at the request of the FDA*, on or about April 12, 2002, Lilly performed an "[redacted]". The analysis was based upon 13 serious adverse event reports of hyperglycemia, including 2 deaths from diabetic coma, in

patients taking Zyprexa in Japan. Rather than taking responsibility for properly investigating these serious adverse events in order to prevent future tragedies, in an effort to save Zyprexa's brand image, Lilly continued its strategy which was to discredit and dismiss these reports while claiming, for example, that the Japanese cases were anecdotal; the Japanese patients were injured due to other pre-existing risk factors; and the events in Japan were due to unspecified confounding causation factors. In addition, Lilly took the extraordinary step of claiming that because the Japanese Zyprexa package insert had a stronger warning regarding diabetes than in the U.S., Japanese physicians were, therefore, more likely to blame glucose-related adverse events on Zyprexa than America doctors. ([redacted])

317. However, Lilly's own internal analysis of the Japanese adverse event reports conflicted with its discredit and dismiss strategy. In a separate document prepared in April 2002 and presented to the FDA titled "[redacted]", Lilly summarized 13 individual "[redacted]" in Japan. According to this Lilly report, **9 of these cases demonstrated a causal relationship among Japanese patients who took Zyprexa and subsequent diabetes-related problems** – events which ultimately led to the forced change in Zyprexa's Japanese label. ([redacted]).

318. Lilly and its Vice President of the Pharmaceutical Division, Dr. Alan Breier, understood the delicate dance concerning the Zyprexa label in the US versus the very different label concerning diabetes in Japan. When a US Lilly "[redacted]", Dr. Richard Perry from Georgia State, was asked by Eli Lilly Japan to give a lecture in Japan in March 2003, he e-mailed Lilly and asked how he was to reconcile the two countries different Zyprexa labels with respect to diabetes. Tsutomu Ishihara of Eli Lilly Japan e-mailed Dr. Perry the following advice:

“[redacted]” . Next, Neil Aubuchon, Product Team leader for Japan Zyprexa, e-mailed Dr. Perry. He told Dr. Perry that he would need to double check Dr. Perry’s slides on the subject before he shows them. ([redacted])

319. Dr. Breier is sent the entire e-mail chain by Neil Aubuchon to “[redacted]” Mr. Aubuchon tells Dr. Breier that the information in the e-mails would only be “[redacted]” ([redacted])

320. As a result of these inconsistent positions among the Lilly entities, a physician attending a lecture in Japan concerning Zyprexa would hear something very different about the causal link between Zyprexa and diabetes than a physician attending a lecture in the US - - even if the same thought leader gave both lectures. It is no surprise that Lilly was “[redacted]” because it needed to protect its US Zyprexa market and the billions of dollars it generated.

321. The US Lilly sales force was also trained how to deal with the warning differences between the Japanese and US labels. In a May 2003 Lilly sales training document, Lilly instructs sales representatives how to answer unsolicited questions concerning the Japanese label change that warns physicians in Japan not to use Zyprexa in patients with pre-existing diabetes and that some patients may experience a marked increase in blood glucose during Zyprexa administration. Lilly tells sales representatives to use the following verbatim response:

([redacted])

322. On June 26, 2002, the Cleveland Clinic Foundation reported the results of the VA study on the "[redacted]" The study concluded that "[redacted]" ([redacted])

323. At the same time, in June 2002, Lilly submitted to Health Canada's, Central Nervous System, Bureau of Pharmaceutical Assessment a report titled, "[redacted]" The report noted that there was a statistically significant difference in the incidence of treatment-emergent glucose elevations between olanzapine and haloperidol in the schizophrenia studies and that the incidence of treatment-emergent glucose elevations was significantly higher for subjects receiving olanzapine that possessed higher baseline BMIs. More importantly, the report also included reference to numerous cases of hyperglycemic adverse events and disclosed that there were 895 such cases out of 19,664 reports in the olanzapine spontaneous database - or 4.6% (much less than the estimates Lilly gave to its' sales representatives for marketing purposes). Moreover, the report revealed that approximately 12.5% of the cases (or 2,453 out of 19,664) reported weight gain and 177 of them also reported a glucose-related adverse event. ([redacted])

324. On or about July 1, 2002, the Mexican government requested that Eli Lilly revise its package insert regarding hyperglycemia for Zyprexa. ([redacted])

325. Shortly thereafter, in or about August 2002, Lilly completed negotiation with the Australian Regulatory Board (TGA) with regard to a required label change for Zyprexa in Australia. According to internal Lilly emails, the negotiations that led to the label change began in March of 2001. The label change required Lilly to disclose, *inter alia*, "[redacted]" ([redacted])

326. On July 1, 2002, Duke University issued a Press Release about a finding linking Zyprexa to early onset diabetes. The researchers – Elizabeth A. Koller, M.D. from the FDA, and Murali Doraiswamy, M.D. from Duke – analyzed the FDA's adverse drug report database, MedWatch (which receives only 10% of adverse drug reports). They identified 289 cases of diabetes in patients who had been prescribed Zyprexa. The researchers reported:

327. The researchers also emphasized that the evidence from pre-marketing trials was also alarming: "[redacted]"

328. On or about August 1, 2002, Craig A. Hartman, Lilly's Manager of Investor

Relations, received comments back from Lilly's Patrizia Cavazzoni, Lilly's Medical Director, on a letter directed to a stock market analyst who had requested a response to the recently released Koller study which suggested that antipsychotic use may precipitate diabetes in psychotic patients. The analyst had also inquired as to recent reports of a possible label change for this class of drugs in the United States. In her comments to Mr. Hartman, Ms. Cavazzoni states, "[redacted]" ([redacted])

329. On October 2, 2002, Jared G. Kerr, Critical Issues – Customer Response Team – Zyprexa Product Team, reported to Lilly's Joe Jansen and Patrizia Cavazzoni on Lilly's review of 907 AERs suggestive of hyperglycemia or diabetes. Mr. Kerr notes that "[redacted]" Mr. Kerr then goes on to perpetuate Lilly's discredit and dismiss strategy by alleging that the presence of factors other than Zyprexa use contributed to the high incidence of hyperglycemia and/or diabetes in these patients. ([redacted])

330. On or about October 1, 2002, published reports confirmed that Health Canada had received reports that Zyprexa was suspected as the cause of four diabetes-related deaths. ([redacted])

331. On October 8, 2002, Eli Lilly's Patrick Toalson R.Ph., distributed a confidential internal report titled, "[redacted]" This document was produced with the assistance and participation of, *inter alia*,

numerous Lilly neuroscience employees and the Zyprexa Product Team. The October 8, 2002 report references and provides access to, *inter alia*, many of the independent articles and studies that were published to date concerning the use of atypical antipsychotics and the prevalence of hyperglycemia and diabetes. This document is significant because it demonstrates that long before that point in time, Lilly had devoted a substantial amount of time and resources to detailing the widespread association between use of Zyprexa and increased risk for hyperglycemia and diabetes, while, at the same time, continuing to assert to physicians that there was no known association between Zyprexa use and those medical conditions. ([redacted])

332. On or about October 15, 2002, Dr. Russell Katz and Steve Hardeman of the FDA took part in a conference call with Eli Lilly representatives Alan Breier (Vice President and Zyprexa Team Leader), Gregory Brophy (Director, US Regulatory Affairs), Melanie Bruno (Senior Regulatory Research Scientist) and Patrizia Cavazzoni (Medical Director). The purpose of the conference call was to discuss the FDA's concerns about glucose "[redacted]" connected with Zyprexa use. Dr. Katz noted that the FDA had concerns about Lilly's use of data and methodologies with regard to reports of treatment emergent diabetes. Dr. Katz concluded that the FDA was awaiting the results of the VA study in its efforts to determine its position with regard to glucose dysregulation and Zyprexa. ([redacted])

333. Shortly thereafter, on or about October 17, 2002, top Lilly officials met with top FDA officials to discuss glucose-related issues and Zyprexa. Lilly prepared for this meeting with a document titled "[redacted]" Handwritten notes on the Preparation Document produced from the files of Lilly's Laura Fudzinski recorded that "[redacted]

[redacted]” The Preparation Document coached Lilly officials on how to respond to FDA inquiries about label changes in other countries. Lilly officials were told that the FDA might ask, “[redacted]” As detailed in the Preparation Document, Lilly officials were supposed to tell the FDA that “[redacted]” Contrary to its representations, Lilly knew there was a risk that olanzapine would cause diabetes. Specifically, Lilly's own consultant, Dr. Buse, thought that Lilly needed to study whether patients taken off olanzapine, and then put back on olanzapine, would experience worsening diabetes. Handwritten notes, presumably summarizing the meeting between FDA and Lilly officials, records: “[redacted]”. In other words, Lilly's own consultant was concerned about Zyprexa’s potential diabetic “[redacted]” and that such potential had not been “[redacted]” even as late as October 2002. FDA officials in attendance at this meeting included: Dr. Russell Katz, Division Director; Dr. Thomas Laughren, Medical Team Leader; Dr. Judy Racoosin, Safety Physician; Jerry Boem (Safety Physician Reports); Steve Hardemans (Project Manager); Paul Andresayo (Zyprexa Review). The Lilly officials in attendance at this meeting included: Dr. Alan Breier (VP, Research Fellow, Zyprexa Team Leader); Gregory Brophy (Director, US Regulatory Affairs); Melanie Bruno (Senior Regulatory Research Scientist); Dr. Patrizia Cavazzoni (Medical Director); Dr. Missy Sowell (Clinical Research Physician, Endocrinologist); Laura

Fludzinski (Symbiax Team Leader). And consultant Dr. John Buse of UNC attended. ([redacted])

2. Koro Study

334. An August 2002 article by Koro, et al, entitled Assessment of independent effect of olanzapine and risperidone on risk of diabetes among patients with schizophrenia; population based nested case-control study, published in the British Medical Journal, 325 BMJ 1-5 (2002), reviewed the pertinent medical literature and published the results of a study, which attempted to quantify the increased association between olanzapine and diabetes. The Koro study involved a population of 19,637 schizophrenic patients, in which 451 cases of diabetes were reported. After adjusting for personal risk factors and concomitant drug use, patients taking olanzapine were concluded to have significantly increased risk of developing diabetes than non–users of antiphyschotics (odds ratio 5.8, 95% confidence interval 2.0 to 16.7) and than those taking conventional antipsychotics (4.2, 1.5 to 12.2). Based on these significant statistics, the Koro study concluded that; "[redacted]"

K. 2003-2004: Ongoing Operations of the Unlawful Marketing Enterprises

335. By 2003, doctors had become so comfortable with the safety of the newer atypical medicines that they had become among the biggest selling in the world, with some physicians using them to treat a wide range of conditions, including schizophrenia, depression, dementia in the elderly and certain pediatric behavioral problems. Indeed, some psychiatrists prescribed cocktails of antipsychotics to patients with persistent behavioral problems.

1. Due to the Prospect of Slumping Sales Resulting From Widespread Reports About Zyprexa's Causal Relationship With Weight Gain and Diabetes, Lilly Decides To Embrace Weight Gain and Diabetes

336. In an effort to salvage Zyprexa's "[redacted]" status and knowing that it could

no longer run from the overwhelming evidence indicating that Zyprexa use is linked to numerous cases of new onset diabetes, hyperglycemia and other glucose related adverse events (including substantial weight gain), in late 2001 into early 2002, Eli Lilly changed the course of its' marketing strategy.

337. This new marketing strategy was driven not by concern for patient safety, but by Lilly's bottom line – as noted by Citigroup Smith Barney in 2001, Zyprexa's continued success was crucial to Lilly because "[redacted]" ([redacted])

338. With regard to weight gain, for example, Lilly decided to"[redacted]" but that due to the extraordinary benefits Zyprexa offers, the risks of such potential side effects are worth taking. In other words, Lilly directed its sales representatives that "[redacted]" ([redacted])

339. With regard to diabetes, Lilly noted it [redacted]" However, Lilly emphasized that the issue was manageable such that "[redacted]" to be conveyed to physicians included the idea that "[redacted]"; [redacted]; "[redacted]; and "[redacted]

[redacted]” ([redacted])

340. At the same time, Lilly “[redacted]”

341. These initiatives included a sales representative implemented promotional DVD for use with customers, which standardizes much of the diabetes message (population risk, comparable rates, and treatment options for diabetes) through the use of thought leaders and internal physicians to answer difficult questions and deliver key messages:

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

([redacted])

342. In 2002, Lilly spent a considerable amount of time and resources implementing the initiatives underlying its’ new marketing strategy which started to reach prescribing physicians in early 2003 at which point Zyprexa sales were suffering seriously due to the drug’s association with weight gain, diabetes and other adverse glucose related events. For example, in a 2003 “[redacted]”, Lilly admitted that

[redacted] Indeed, Lilly recognized during this time period that its market studies revealed that 91-100% of psychiatrists in the United States associated Zyprexa use with weight gain. ([redacted])

343. In fact, Lilly was acutely aware that an increasing number of physicians were either avoiding prescribing Zyprexa in the acute phase or switching to another drug in the longer term due to the fear that Zyprexa caused diabetes. ([redacted])

344. In embarking upon its' new marketing strategy, Lilly conceded that it must "[redacted]" what its sales representatives say and how they say it. "[redacted]" ([redacted])

345. In its' 2003 Zyprexa Retail Resource Guide, Lilly unveiled its' "[redacted]" which in effect was a "[redacted]" This message directed sales representatives on how to

[redacted]

[redacted]

([redacted])

346. Underscoring just how dramatic of a shift Lilly's new marketing strategy was, Lilly expressly *empathized* with its sales representatives that retraining themselves to proactively address weight gain in dialogues with customers "[redacted]" ([redacted])

347. At this time, Lilly was also forced to revisit its stance on diabetes. Although the company had known for years that weight gain is an accepted risk factor for diabetes, Lilly would still not acknowledge that Zyprexa-caused weight gain was a hyperglycemia and diabetes risk factor or that Zyprexa could cause hyperglycemia and diabetes. ([redacted])

348. In a document dated June 23, 2003 titled, "[redacted]" Lilly sets forth a game plan aimed at reversing Zyprexa's negative association with onset of diabetes. The document emphasized, "[redacted]" At this point in time, Lilly designated Tom Hardy (U.S. Brand Manager), Mike Bandick, Kelly Copes-Anderson, Mike Magdycz, Jill Welch, McKinsey Representative, Chuck Feehan, and Dr. Richard Petty as the "[redacted]" charged with reversing the negative publicity on weight gain and diabetes vis-a-vis Zyprexa use. ([redacted])

349. Likewise, in a Lilly document titled, "[redacted]", believed to be created and distributed in or about July 2003, Lilly instructed all sales representatives on how to ensure that physicians aren't "[redacted]" on how to interpret public commentary on the causal link between

Zyprexa & diabetes. Lilly gave sales representatives a Zyprexa promotional letter drafted by a Dr. Breier and instructed them that Dr. Breier's letter can be used in conjunction with a "[redacted]" to reinforce key points. Incredibly, Lilly went so far as to direct its sales representatives on how to respond to questions such as "[redacted]" The canned response was that although Lilly provided certain indemnity for physicians related to Prozac, "[redacted]". "[redacted]" ([redacted])

350. Industry response to the Dr. Breier promotional letter was swift. On July 22, 2003, Dr. Douglas Berv emailed Dr. Breier and stated the following:

[redacted]

([redacted])

351. In an e-mail dated June 6, 2003, a summary appears of a voicemail that Alan

Breier, M.D., Vice President of Lilly's Pharmaceutical Division, recorded and sent to Lilly's sales and marketing force. It answers a series of questions concerning Zyprexa:

([redacted])

352. On July 29, 2003, Dr. Breier issued a statement to the sales force that reiterated his voicemail of a month earlier. On Lilly's behalf, he professes that it is "[redacted]" However, his statement continues to deflect

problems away from Zyprexa. Lilly continues to blame the incidence of diabetes on a two to four fold increase of diabetes among patients with schizophrenia and serious mental illness and the growing rate of diabetes in the US. Lilly acknowledges that the area needs more research, but nevertheless, emphatically states that " [redacted] " ([redacted])

353. Apparently, Lilly continued to discuss the issue and deny the causal link until someone else presented "[redacted]". In September 2005, The National Institute of Mental Health released the results of its Clinical Antipsychotic Trial of Interventional Effectiveness (CATIE) study. The study showed what Lilly had known and denied for years, that Zyprexa patients experienced greater weight gain and increases in measures of glucose and lipid metabolism than patients using other antipsychotics. (Eli Lilly & Company 10-Q filing dated November 3, 2005)

354. In an August 6, 2003 email from Lilly's Manager of Zyprexa Marketplace Management, Michael W. Magdycz, R.Ph., Mr. Magdycz presented additional issues strategy for sales representatives on Zyprexa. The issues strategy specifically addressed concerns about Zyprexa use, weight gain, and fear of diabetes. Based upon its' own "[redacted]", Lilly emphasized that "[redacted]' (emphasis in original). Lilly further stated that "[redacted]" ([redacted])

355. By September of 2003, Lilly had shifted its Zyprexa marketing strategy. At that point, Lilly admitted in internal documents, for example, that weight gain was now "[redacted]

[redacted]" for Zyprexa. Lilly's new approach to dealing with Zyprexa's serious potential side effects only occurred after the company lost all credibility with physicians as a result of its past denials – a fact gleaned from Lilly's own extensive polling of physicians who were highly critical of Lilly for insisting in the face of contrary evidence that weight gain was "[redacted]". ([redacted])

356. Lilly's new marketing strategy with regard to diabetes included the development of a "comparable rates" message, *i.e.*, individuals who suffer from mental illness are predisposed to develop diabetes and that the risk of developing diabetes is comparable between all conventional and atypical antipsychotics. ([redacted]) In effect, Lilly blames *the disease* rather than Zyprexa.

357. Lilly knew that diabetes [redacted]." However, the "[redacted]" to be conveyed included the idea that "[redacted]"; "[redacted]"; "[redacted]"; and "[redacted]" ([redacted])

358. As set forth in Lilly's "[redacted]" dated March 2, 2003, Lilly directed sales representatives on how to disseminate this new message to its' customers:

([redacted])

359. Similarly, in a Lilly internal document dated March 2, 2003 titled "[redacted]", Lilly directed sales representatives on how to deal with doctors who raise concerns or questions about Zyprexa's potential side effects in light of the Japan label change, adverse event reports, and numerous related studies. Lilly emphasized at that point, "[redacted]". ([redacted])

360. At the same time Lilly was attempting to win back the support of prescribing physicians, the company continued its' attempts to persuade authorities on diabetes that there is no definitive causal connection between Zyprexa use and diabetes. On January 24, 2003, Diabetes Care magazine informed Lilly that its' manuscript entitled "[redacted]" – one of the by-products of Lilly's new marketing initiatives – had been rejected for publication. In reviewers' comments explaining the basis for rejection, Lilly

was criticized for utilizing improper criteria and protocols while also failing to conduct studies involving “fasting” glucose baseline lab work. Moreover, the reviewers emphasized that Lilly “[redacted]” ([redacted])

361. Likewise, on or about December 15, 2003, Eli Lilly's Alan Breier, M.D. (Chief Medical Officer and Vice President, Medical) and Patrizia Cavazzoni, M.D. (Director, Therapeutic Area - Neuroscience - Global Product Safety), directed a letter to Richard Kahn, PhD, Chief Medical and Scientific Officer of the American Diabetes Association ("ADA"). The letter was in response to a recently held "[redacted]" which was sponsored by the ADA. The letter criticized the ADA Conference for what it perceived to be lack of consideration for Lilly's "[redacted]” ([redacted])

362. In a further effort to reverse Zyprexa’s negative association with weight gain and diabetes, in a document believed to be dated January 9, 2004, Eli Lilly announced “[redacted]”, which was apparently part of the plan to reverse the negative association between Zyprexa use, weight gain and diabetes. In this document, Lilly acknowledged that many prescribing physicians have commented on Lilly's lack of credibility on these issues because the company has minimized and down-played the weight gain issues for years. This document makes clear that part of Project 180 was to force not only sales representatives, but

Lilly DMs, MDs and other high-level Lilly representatives to call upon physicians whose Zyprexa prescriptions had decreased. ([redacted])

2. Lilly Initiates Its Illegal Off-Label Marketing Campaign To Make Up For Zyprexa's Slumping Sales And Lost Market Share

363. In the face of the prospect of slumping sales and negative publicity surrounding serious side effects of Zyprexa, Lilly continued to prepare marketing tools and to train its Zyprexa sales representatives to market Zyprexa for a myriad of off-label uses in direct contravention of federal law and in reckless disregard for the health and safety of the public.

364. Despite Lilly's "promise" to acknowledge weight gain, they continue to train the sales force to counteract concerns about weight gain by claiming that "[redacted]" and, that according to the FDA approved package inserts, a greater than 7% increase in weight from baseline to endpoint occurred with Risperdol, Seroquel, Geodon, Abilify, and Depakote as well as with Zyprexa. ([redacted])

365. Even as late as 2003, Lilly continues to minimize the risk of diabetes and offers "[redacted]" suggestions to it sales force. These suggestions and tips are to be used to counteract any negative statements by physicians. For example, to reference the physician's own clinical experience to persuade him or her that their patient population is larger or sicker than the patient's seen in individual clinical studies that link diabetes to Zyprexa – "[redacted]" ([redacted])

366. For example, in a March 11, 2003 internal Eli Lilly document titled, "[redacted]" Lilly details several alleged open-label studies and case reports in asserting that Zyprexa use in young children and adolescents has shown to be effective

in the treatment for child-onset schizophrenia, bipolar disorder, pervasive development disorders (PDD), attention deficit hyperactivity disorder (ADHD), Tourette's disorder, and anorexia nervosa. ( ) Upon information and belief, Lilly distributed this document to sales representatives as part of its push to market Zyprexa off-label for treatment of these disorders.

367. Lilly's marketing materials underscore Lilly's emphasis on and insatiable desire to drive off-label marketing. In a 2003 company confidential " ", Lilly discusses how sales representatives should handle unsolicited questions and the types of materials they may distribute to customers in response to questions about off-label uses for Zyprexa. It is telling that Lilly refers to promotional materials that can be freely distributed at any time because they " " as " " reprints while " " reprints involve the " " or information on unapproved uses. ( )[3]

368. It is telling that Lilly refers to such off-label informational materials as 'diamond' - the most prized and coveted gem. Indeed, it is no accident that Lilly chose to call its freely distributable information only a 'star' reprint. ( )

369. In a February 5, 2003, internal document titled, " ", Eli Lilly details why it is important to facilitate the study of Zyprexa use in young children and adolescents. Lilly states that, " " and that

3 Lilly feigns compliance with federal law's limitations on off-label marketing by purporting to place strict limits on the dissemination of "diamond" reprints. For example, in using diamond reprints, the sales force " " and can " " However, in a scripted HCP/sales rep conversation, Lilly instructs that when an HCP asks an unsolicited question during a group presentation about an off-label use that the rep knows is answered in a diamond reprint, he or she should " " ( ) This is clearly just lip service.

"[redacted]". Lilly emphasized the importance of "[redacted]" ([redacted])

370. In a March 11, 2003 internal Eli Lilly document titled, "[redacted]" Lilly details several supposed open-label studies and case reports in asserting that Zyprexa use in young children and adolescents has shown to be effective in the treatment for child-onset schizophrenia, bipolar disorder, pervasive development disorders (PDD), attention deficit hyperactivity disorder (ADHD), Tourette's disorder, and anorexia nervosa. It is believed that Lilly distributed this document to sales representatives as part of its push to market Zyprexa off-label for treatment of these disorders. ([redacted])

371. In furtherance of its' off-label marketing push, as set forth in a 2003 company confidential "[redacted]" guide, Lilly instructs its' sale representatives on the materials they may distribute to customers in response to questions about off-label uses for Zyprexa. The Good Promotional Practice guide reveals a great deal about Lilly's off-label marketing methods. Lilly refers to promotional materials that can be freely distributed (because the information relates to Zyprexa use for approved purposes) at any time as "[redacted]" reprints while "[redacted]" reprints involve the "[redacted]" or information on unapproved uses. Lilly emphasized that when using diamond reprints, the sales force "[redacted]" and can "[redacted]" **However, in a scripted HCP/sales rep conversation, Lilly instructs that when an HCP asks an unsolicited question during a group presentation about an off-label**

use that the rep knows is answered in a diamond reprint, he or she should "[redacted]

[redacted]" ([redacted])

L. 2003-2004: Regulatory Agencies Became Skeptical, Denied Expansive Indications and Required Label Warnings

372. Lilly's press release dated September 17, 2003 announcing the forced label change by the FDA. This change was only made after the FDA required Lilly to include in the Zyprexa label a warning about the risk of developing diabetes and hyperglycemia and the need for baseline screening and glucose monitoring. Furthermore, this label change was easily and readily made; as evidenced by the fact that Zyprexa's revised label containing the new warnings was actually approved by Lilly only 24-hours before the September 17, 2003 press release. Further, despite the FDA's mandate that Lilly immediately warn physicians about the new label change, Lilly waited 6 additional months – until March 1, 2004 – to send out a "Dear Doctor Letter" advising of the new warnings for diabetes and hyperglycemia.

373. Prior to the September 2003/March 2004 label change, Zyprexa's label did not warn of diabetes or hyperglycemia. Despite the mandates of 21 CFR 201.57, prior to March 2004, Eli Lilly wholly failed to (a) properly warn about the increased risk of hyperglycemia, diabetes, and diabetes-related injuries and (b) advise about the need for appropriate screening and glucose monitoring to prevent against such complications. That such a warning is required is evident from multiple sources.

1. European Regulators Rejected Lilly's Proposed Indication for Treatment of Recurrence of Bipolar Disorder

374. On May 26, 2003, European regulatory authorities issued a "[redacted]" According to the Report, Lilly had tried to get a new indication for the treatment of recurrence of bipolar disorder. But the European

regulators refused—"[redacted]" ([redacted]) The European regulators would not allow Lilly to expand Zyprexa's indication without first proving its efficacy in treatment of depressive episodes. Lilly had not done that but, inexplicably, expected that indication.

375. To be safe, the European regulators required Lilly to change its label to clarify Zyprexa's narrow indication for manic episode only:

([redacted]) The European regulators clarified that olanzapine could only be "[redacted]" if it was "[redacted]" But Lilly's "[redacted]" There was no proof that olanzapine helped with depression. Indeed, unknown to the regulators, Lilly's own studies showed that olanzapine had no effect on depression. However, the regulators held firm on the need for scientific evidence of efficacy.

2. FDA Rejected Lilly's Proposed Indication to Treat Cognitive Impairment Schizophrenia

376. On June 13, 2003, Lilly pushed for a new indication to treat Cognitive Impairment in Schizophrenia (CIAS). In a "[redacted]" of this date and titled "[redacted]" Lilly laid out its

plans to get FDA approval for a new indication to treat CIAS. ([redacted]) At that time, "[redacted]. But first, the FDA asked Lilly in an April 23, 2003 meeting to prove that Zyprexa actually *worked* for this type of treatment. In other words, "[redacted]". ([redacted]) The FDA checked Lilly's ambitious marketing plans by simply asking for the science to back up Lilly's claims but the science was not there.

3. Lilly Sought Approval for Two New Indications – Schizophrenia With Higher Doses and Borderline Personality Disorder – Over Skepticism of US and European Regulators

377. On November 21, 2003, Lilly produced a draft document titled "[redacted]" in which Lilly laid out its plans to push for two new indications. Specifically, Lilly wanted the FDA to approve Zyprexa for (i) use in higher doses of up to 40 mg to treat schizophrenia, and (ii) use in the treatment of borderline personality disorder. ([redacted])

378. Regarding the higher doses for schizophrenia indication, Lilly put together a "[redacted]" Lilly "[redacted]". Lilly also conducted a "[redacted]" that had been "[redacted]" to test the safety of such high doses through the "[redacted]" Lilly found that "[redacted]" In other words, higher doses did not provide greater effectiveness. But Lilly still wanted approval. For Lilly, marketing and sales

trumped science almost every time.

379. Regarding the treatment of borderline personality disorder ("BPD"), Lilly sought FDA approval for this totally new indication. Lilly "discussed" phase three studies with the FDA and proposed efficacy measures with the ZAN-BPD scale. Since there were "[redacted]" Lilly found it "[redacted]" Lilly had met with the FDA to "[redacted]" on November 9, 2001 and August 14, 2002. The FDA told Lilly that longer-term studies might be necessary.

380. The European regulatory authority, the CPMP, also required "[redacted]" to support this new BPD indication in Europe. Even with the longer-term data, the FDA had fundamental concerns over [redacted]" and planned to discuss it an advisory committee meeting. In other words, there were serious concerns about whether any drug could support the proposed indication of BPD with its wide variety of symptoms.

4. The FDA Required Lilly to Warn of Pancreatitis in an Early 2003 Label Change

381. On January 11, 2002, Lilly "[redacted]" ([redacted])

382. One year later, on January 10, 2003, "[redacted]" ([redacted]) Some of the information that Lilly had proposed on triglycerides was objectionable to the FDA thus Lilly had to take it out. The warning of pancreatitis stayed on the label,

however.

383. On March 6, 2003, Lilly "[redacted]" with a warning of pancreatitis on the label ([redacted])

5. In Late 2003, the FDA Required Lilly to Warn of Treatment-Emergent Diabetes and Hyperglycemia in a Late 2003 Label Change

384. On February 24, 2003, Steven Hardeman of the FDA sent an email to John Roth of Lilly requesting further information about the risks that olanzapine posed for treatment-emergent diabetes. ([redacted]) Mr. Hardeman noted that the FDA "[redacted]" The FDA figured out the misleading manner in which Lilly had been comparing itself to clozapine instead of simply describing the effects of olanzapine. The FDA asked them to stop:

([redacted]) Apparently, the FDA had previously asked Lilly for data excluding clozapine. Mr. Hardeman wrote, "[redacted]" Although the question had been asked, and asked again, in a previous meeting, Mr. Handeman once more queried Lilly about olanzapine without the cluttering comparison with clozapine.

385. On June 20, 2003, in a document titled "[redacted]" ([redacted]), Lilly noted that since the FDA's letter

of inquiry, it had submitted to the FDA on October 2, 2002 an "[redacted]" ([redacted]) And Lilly said that since then its "[redacted]". In this document dated June 20, 2003, Lilly reviewed some recent studies including the one with "[redacted]" Lilly found that 1.6% of the olanzapine patients developed treatment-emergent diabetes as opposed to .59% of the haloperidol patients and .95% of the divalproex patients. ([redacted])

386. Even though there were differences between olanzapine and other drugs, Lilly tried to convince the FDA that "[redacted]" Therefore, Lilly discouraged the FDA from the "[redacted]" ([redacted]) Lilly used this rationale:

[redacted]

([redacted]) Even at this late stage in 2003, Lilly tried to disperse responsibility to the class at large. And it fell back on the strategy of denial: "[redacted]" Lilly failed to come clean on its own.

387. Around September 2003, the FDA told Lilly that "[redacted]" ([redacted]) The FDA's conclusions

were based on "[redacted]" *Id*. The end result was the "[redacted]" The FDA had finally looked at the data for itself, concluding atypicals did create a risk of hyperglycemia, in spite of Lilly's contrary conclusions.

388. Around September 2003, the FDA gave Lilly its "[redacted]" They included the following points, verbatim:

- [redacted]
- [redacted]

([redacted])

389. As late as 2004, Lilly played off diabetes as a problem among the general population and schizophrenics: "[redacted]" ([redacted]) Lilly still claimed that diabetes had no link to olanzapine.

390. Finally, in a letter dated September 15, 2003, the FDA "requested" that Lilly "[redacted]

[redacted]" as a "labeling revision" to NDAs 20-592 and 21-086. ([redacted]) On September 16, 2003, Lilly "revised" the labeling sheet or "information" for Zyprexa Zydis. ([redacted]) Lilly drafted a new label including this warning and sent the revised label to the FDA on September 18, 2003. The FDA approved the label drafted by Lilly, with slight modifications.

391. Regarding the modifications, Dr. Russell Katz of the FDA wrote to Michele Sharp of Lilly on December 23, 2003 with the FDA's suggestions on how to further revise the warnings in Lilly's draft label. Dr. Katz stated:

[redacted]

In other words, Lilly had to revise the "WARNINGS" and submit a final draft to the FDA before they would become official. As to the revisions, the FDA told Lilly precisely what to do. In the subsection on hyperglycemia and diabetes, under the "WARNINGS" section, the FDA required Lilly to strikeout the following language from Lilly's proposed warning: "[redacted]" Apparently, the FDA thought this had not been proven and perhaps there were some differences among the class of atypicals. Lilly would not be allowed to make its claim, on the label, that there were no differences among the atypicals when it came to hyperglycemia.

392. Also significant, the FDA required Lilly to insert language in the "WARNINGS" section regarding the necessity of blood glucose testing for "[redacted]

[redacted]" Lilly had put this into the proposed language that it submitted to the FDA. But the FDA, in its December 23, 2003 letter, required Lilly to say that such testing should be started at "[redacted]" ([redacted]) Merely saying that such testing should begin "at baseline," as Lilly had proposed, was not sufficient for the FDA.

393. After all the revisions were taken into account, the FDA required Lilly to adopt the following "WARNING" about hyperglycemia and diabetes mellitus in its label:

[redacted]

([redacted])(undated letter from Russell Katz of FDA to Brophy of Lilly) ("[redacted]")))

394. The revised label also included a warning about weight gain in the "[redacted]" section. The warning may have been added to the label much earlier. It read:

This warning was somewhat improved over Lilly's earlier misrepresentations that weight gain either never occurred as the result of olanzapine or that it only occurred in 6% of patients. Here, Lilly admitted that long-term studies showed weight gain among 56% of patients. But even this admission was a far cry from Lilly's internal study of 1993 that showed "uniform" and consistent weight gain among virtually all of the olanzapine patients.

395. It took months for Lilly to implement these label changes regarding hyperglycemia and diabetes. On the "action date" of January 14, 2004, the "[redacted]" to the Zyprexa Zydis label became effective with a "literature revised" date of 2003. (www.accessdata.fda.gov.) It contained all of the language listed above in the "warnings" section of the label. In addition to the label revisions, the FDA also required Lilly to issue a "[redacted]" about "[redacted]

[redacted]" ([redacted]) The "Dear Doctor" letter did not go out until March 1, 2004, over two months after the FDA made it clear in December that the letter would have to go out. To make sure that Lilly followed through, the FDA had required Lilly to send "[redacted]" to MEDWATCH and another copy to the FDA for its NDA file on olanzapine. ([redacted])

396. The Dear Doctor letter told physicians about the "[redacted]" atypical antipsychotics. ([redacted]) The letter said:

[redacted]

The letter came from Dr. Paul Eisenberg, Vice President, Global Product Safety of Eli Lilly and Company. As usual, Lilly hid itself among its competitors and reminded physicians that "[redacted]" had to adopt the same warning. Lilly's letter made no mention of the increased and unique risks posed by olanzapine.

397. On November 17, 2003, Ludmila Kryzhanovskaya of Lilly wrote in an internal email to Joan Shen that Lilly had begun to collect data from patients on fasting glucose and lipid levels and triglycerides. Apparently, Lilly had not been collecting that information in the past. The internal email suggested that Lilly had started collecting that data only under compulsion from the FDA:

[redacted]

[redacted]

([redacted]) It should be surprising that Lilly waited years, until asked by the FDA, to gather data on a significant and alarming side effect that had already attracted so much attention. But with Lilly, this omission was unfortunately not surprising.

398. On December 4, 2003, Lilly "approved" a document titled "[redacted]" that was produced from the files of Lilly employee Rebecca Schaub. ([redacted]) Lilly had just made the following change to its "[redacted]": "[redacted]" The label would reflect the risk of "[redacted]" among olanzapine patients. Lilly inserted other warnings to disclose risks that were previously swept under the carpet: "[redacted]" Two-and-a-half-years earlier, Lilly had suggested that only risperidone – not olanzapine – produced higher prolactin levels. ([redacted]) But, here, Lilly finally admitted the truth without the misleading mask of marketing.

6. In March 2003, If Not Earlier, Canadian Regulators Required Lilly to Warn of NMS, TD, Hyperglycemia, Hyperprolactinemia, Weight Gain, and Other Effects But Required Very Little Warning About the Elderly

399. When Canadian regulators approved olanzapine on March 17, 2003 for the treatment of bipolar mania in Canada, they also required warnings in the Product Monograph ("PM"). Those same warnings may have been on the label of earlier indications approved in Canada. The "[redacted]" section of the PM included Neuroleptic Malignant Syndrome and

Tardive Dyskinesia. The "[redacted]" section included Hyperglycemia, Transaminase Elevations, Hematologic Indices, Hypotension and Syncope, Seizures, Priapism, Hyperprolactinemia, Uric Acid, Weight Gain, and other effects.

400. In the "[redacted]" section, the PM warned of the risks posed by pre-existing diabetes:

401. This precaution followed Lilly's strategy of hiding its risks by dispersing them throughout the entire class of antipsychotics. According to Lilly, it was not just olanzapine that posed a risk. It was "[redacted]" as well.

402. The PM recognized in the "[redacted]" section that weight gain occurred in 29% of patients compared with 3% of placebo (p. 29):

Even this was misleading. Lilly knew from its own study around 1993, or 1995 at the latest, that nearly all patients had uniformly gained weight. ([redacted]) Also, by referring only to those patients who gained over 7% of their body weight in a very short time of 6 weeks (with more time, that percentage would have been higher), Lilly minimized the high prevalence of weight gain. It was misleading for Lilly to withhold this full disclosure at such a

late stage and to pretend that weight gain affected only a minority of patients.

403. The Canadian regulators did not require adequate warnings about the elderly, and Lilly did not offer anything stronger. The PM of early 2003 said that Zyprexa could be administered to the elderly with caution. This was shocking in light of the adverse event reports and other data available to Lilly regarding the risks of olanzapine in elderly patients. The "[redacted]" subsection of the "[redacted]" section in the Canadian PM simply said:

This "[redacted]" implied that treatment among the elderly was acceptable. The precaution said nothing of the risks. It merely stated the obvious—i.e., the elderly are generally at risk. This approved language implied that Zyprexa had been, and could be, used for treatment of the elderly.

404. Elsewhere, Lilly's label further implied that Zyprexa was suitable for treatment of the elderly. In "[redacted]" subsection of the "[redacted]" section, Lilly recommended a "[redacted]" for elderly patients:

Instead of warning of the dangers, as it would soon be required to do in a black box warning in the United States, Lilly used the Canadian label as a marketing opportunity to recommend the right doses.

7. In May 2004, European Regulators Chided Lilly for Inappropriate Analyses and Demanded Warnings of TD, Weight Gain, Hyperglycemia, and Diabetes

405. On May 26, 2003, European regulatory authorities issued a "[redacted]" ([redacted]) The European regulators required Lilly to change its label to reflect the risk of tardive dyskinesia. The regulators told Lilly that "[redacted]" (p. 3). In their report, the rapporteurs said this issue was "[redacted]" because the regulators and Lilly did not see eye-to-eye (p. 45). Lilly tried to explain that these tremors were "[redacted]" (p. 44). In direct disagreement, the regulators held that "[redacted]" and that whether "[redacted]" ([redacted]). Lilly should have known that TD was fit for a warning label, especially since it had been required years earlier by the American regulators.

406. Regarding weight gain, the European regulators asked Lilly to address the "[redacted]" and whether that plateau was simply the result of "[redacted]" ([redacted]). After reviewing Lilly's response, the regulators concluded that "[redacted]" ([redacted]). In other words, Lilly was required to mention weight gain in the label. Lilly was compliant: "[redacted]

[redacted]

[redacted]” (p. 65). This matter was “[redacted]” to the extent that Lilly was cooperative in making the change.

407. On treatment-emergent diabetes (TED), the regulators were harsh and critical of Lilly’s response to their question about the “[redacted]” of all patients including those “[redacted]” (p. 49). Lilly had tried to come up with other explanations for treatment-emergent diabetes among a sample of 9 patients. The regulators did not accept Lilly’s rationale, and chided Lilly for an inappropriate analysis:

[redacted]

([redacted]) ([redacted]); ([redacted]) ([redacted]).

408. Lilly was up to the same old tricks—i.e., blaming pre-disposing risk factors on a problem that was associated with olanzapine—but the regulators would have none of it. If TED arose in patients with “[redacted]” then it seemed that olanzapine must have been the cause. Consequently, European regulators required the following warning to be added to the European label:

[redacted]

The regulators dropped the first several words of this warning, which had been proposed by Lilly: "[redacted]" ([redacted]). Lilly had been able to keep this blame-the-class language in its FDA-approved labels but it was rejected by European regulators who said that their cleaner version "[redacted]" ([redacted]).

409. In choosing this warning, the regulators rejected Lilly's watered-down suggestions and blame-the-class language. In fact, the regulators directly pointed out a link between weight gain and diabetes that Lilly had been loathe to admit:

These objective regulators hit the nail on the head, and they succinctly summarized Lilly's entire marketing strategy: "[redacted]" Lilly's goal was marketing but the European regulators rightly sought scientific honesty and clear communication of the risk factors. Due to Lilly's differences on the language that should be used in the label to warn about diabetes, the regulators considered this issue to be "[redacted]" (p. 55).

8. In January 2004, the FDA Required Lilly to Add Warnings Regarding Treatment of the Elderly

410. The FDA proposed a revision to the "Symbax" "[redacted]" ([redacted]) Around June 2003, Lilly prepared a document in response titled "[redacted]" Lilly proposed language that would have blamed pre-existing factors – not

olanzapine – for any CVAEs:

In other words, Lilly wanted to say that olanzapine itself posed no risk for CVAEs. Around November 2003, Lilly provided "[redacted]" to the FDA upon a "[redacted]"

411. Among the additional information provided to the FDA, Lilly summarized a study in which "[redacted]" This study seemed to show heightened risk of CVAEs among olanzapine patients, contrary to Lilly's earlier proposed language.

412. On December 17, 2003, Michele Sharp of Lilly wrote the FDA to ask for a "[redacted]" ([redacted]) Ms. Sharp attached a "[redacted]" ([redacted]) In the Note, Ms. Sharp said, "[redacted]:

But this proposed warning suggested that the elderly were "[redacted]" factors. The fact that 3.5% of elderly vs. 1.5% of placebo patients experienced death, per the study noted above, did make its way into the label. That statistic appears in the current label in the "[redacted]" section.

413. In addition, Ms. Sharpe recommended the addition of the following language in the "[redacted]" subsection of the "[redacted]" section under the paragraph headed "[redacted]" to recommend "[redacted]" when treating elderly patients:

This precaution did not tell physicians that they should not prescribe Zyprexa to elderly patients with dementia. It merely said to use "[redacted]" when doing so and, to that extent, it condoned

the deadly treatment.

414. The "[redacted]" section of the label approved by the FDA on the "[redacted]" of January 14, 2004 warned that "[redacted]" This later became a black box warning on "[redacted]" The black box appeared on literature "[redacted]" on September 30, 2005, if not earlier and contains warnings that are much stronger than anything suggested by Ms. Sharp. For example, the Zyprex Zydis warning in the literature revised on September 30, 2005 simply says that "[redacted]"

M. 2004: Diabetes Consensus Statement

415. In February of 2004, the American Diabetes Association, the American Psychiatric Association, the American Association of Clinical Endocrinologists, and the North American Association for the Study for Obesity issued a Consensus Development Statement regarding antipsychotics drugs, obesity and diabetes. Among other things, the Consensus Statement observed that there is "[redacted]" that the treatment of atypical antipsychotics can cause a rapid increase in body weight, and that olanzapine was one of the worst offenders. The Consensus Statement also observed that numerous case reports had documented the onset and exacerbation of diabetes, including the occurrence of hyperglycemic crises, following the initiation of therapy with many atypical antipsychotics, including olanzapine. Further more, the Consensus Statement observed that clozapine and olanzapine caused the greatest weight gain and are associated with the greatest increases in total cholesterol, LDL cholesterol, and triglycerides and with decreased HDL cholesterol.

416. The Consensus Statement acknowledged that diabetes is a very serious disease that afflicts millions of Americans. Some of the more common complications of diabetes are

heart disease, stroke, circulatory problems, leading to amputation of limbs, neuropathy, and retinopathy. Obviously, a drug such as Zyprexa that both causes the onset of diabetes and exacerbates both its onset and the complications associated with it in those predisposed poses a very serious public health risk-particularly when the medical community is not adequately warned of these side effects.

417. The Consensus Statement concluded:

- [redacted]
- "[redacted]"

418. The Consensus Statement supported these claims:

[redacted]

- [redacted] "[redacted]"
- [redacted] "[redacted]"

N. 2004 and 2005: Further Public Disclosure

1. Government investigations

419. In March of 2004, the U.S. Attorney for the Eastern District of Pennsylvania commenced an investigation into Lilly's marketing practices concerning Zyprexa. This is the second investigation into Lilly's marketing and promotional practices in the last few years. As Lilly's SEC filings also report, Lilly received a grand jury subpoena for documents from the Office of Consumer Litigation, Department of Justice concerning the marketing and promotional practices with respect to a different Eli Lilly drug.

2. Black Box Warning

420. In April of 2005, the FDA determined that the treatment of behavioral disorders in elderly patients with dementia with atypical (second generation) antipsychotic medications is associated with increased mortality. In a total of seventeen placebo controlled trials performed with olanzapine (Zyprexa), aripiprazole (Abilify), risperidone (Risperdal), or quetiapine (Seroquel) in elderly demented patients with behavioral disorders, fifteen showed numerical increases in mortality in the drug-treated group compared to the placebo-treated patients. Although the atypical antipsychotics are FDA approved for the treatment of schizophrenia, none have been approved for the treatment of behavioral disorders in patients with dementia. As a result of the findings, the agency required the manufacturers, including Lilly, to include a Boxed Warning in their labeling describing this risk in that these drugs were not approved for this indication.

3. CATIE Results

421. In September of 2005, a severe blow was dealt to Lilly's unlawful marketing efforts for Zyprexa, and indeed for much of the pharmaceutical industry-sponsored programs that sought to foster the reckless use of atypical antipsychotics.

422. On September 22, 2005, the results of the Clinical Antipsychotic Trials of Intervention Effectiveness (CATIE) study were published in the New England Journal of Medicine. The CATIE study was initiated by the National Institute of Mental Health (NIMH) to compare the relative effectiveness of second generation (atypical) antipsychotic drugs as compared with that of older agents started years earlier, the study was conducted between January 2001 and December 2004 at scores of clinical sights across the United States. Unlike the work of TMAP and its progeny, the CATIE study was not financed by the pharmaceutical industry.

423. The CATIE study grew out of concerns that had emerged regarding the SGAs.

424. First, although clozapine was introduced after studies indicated that it had more efficacy than first-generation drugs, the other new antipsychotic agents were marketed after studies showed efficacy that was only comparable to that of placebos. Thus, the issue of whether they, like clozapine, were truly more effective remained largely unanswered. Second, although the newer drugs fulfilled their promise of causing less movement disorder, new problematic side effects - severe weight gain, often accompanied by type 2 diabetes mellitus and hypercholesterolemia - emerged. Weight gain had occurred with the older drugs, although it was generally less substantial. Third, the cost of newer medications caused payers to question their purported value.

425. Therefore, the National Institute of Mental Health undertook a multisite, double-blind comparison between an older drug, perphenazine, and a series of the newer drugs; clozapine was omitted because it had already been observed to have superior efficacy.

426. The CATIE results were revealing. No SGA – including Zyprexa provided the majority of patients a treatment that lasted the full 18 months of the study. About two thirds of

the Zyprexa patients discontinued the studied medication prior to the end of the 18 month study period. In addition, the times to discontinuation because of intolerable side effects were similar among all the groups. Thus, treating schizophrenia, even with new-generation drugs, is only partially effective and is associated with problematic side effects. Olanzapine was also associated with notable metabolic effects. Thirty percent of the patients receiving olanzapine gained more than 7 percent of their body weight during the trials, as compared with 7 to 16 percent of those receiving the other drugs. There were comparable problems revealed in measured blood glucose, cholesterol, triglyceride, and glycosylated hemoglobin levels.

4. Release of Further Dementia Issues

427. In October of 2005, the article *Dementia Drugs Can Increase Death Risks* concluded that,

5. Lilly's Ongoing Payments to Public Officials

428. As reported by the Atlanta Constitution on October 20, 2005,

[redacted]

6. About-Face by SAMHSA

429. The article *Government Drops Corrupt Mental Illness Drug Program* published by the Government Accountability Project on October 24, 2005 states:

[redacted]

O. Summary of the Unlawful Marketing Enterprises

430. Zyprexa and the other SGAs were developed with the intent that they would be as or more effective than first-generation antipsychotic and result in fewer and less severe side effects. The principal concern with the side effects of SGAs were extra-pyramidal side effects such as dystonic reactions (involuntary muscle spasms or contractions), drug-induced Parkinsonism, akathisia (restlessness, rocking motions, etc.), and tardive dyskinesia (repetitive, purposeless involuntary movements).

431. Zyprexa, in all of its formulations, has only received FDA approval for the treatment of schizophrenia and bipolar mania. Despite this limited approved market, in just seven years, Zyprexa has grown to become the third best selling drug in the world. Zyprexa's worldwide sales in 1997, its first full year on the market, accounted for approximately $500 million in revenue. In 2004, worldwide Zyprexa sales exceeded $4.4 billion.

432. Lilly-through the use of a massive sales force and other various marketing

techniques-deliberately over-promoted Zyprexa to physicians and downplayed its risks, resulting in Zyprexa's meteoric rise. Presently this one drug accounts for over one third of Eli Lilly's total net sales.

433. Zyprexa is defective because it directly or indirectly causes new onset diabetes and diabetes-related injuries (i.e. hyperglycemia, hypoglycemia, ketoacidosis, and pancreatitis) and/or can exacerbate and aggravate a person's pre-existing diabetes or diabetes-related injuries. Pancreatitis is a very serious ailment affecting the function of the pancreas that is sometimes untreatable and life threatening. Ketoacidosis is an acute condition with a mortality rate approaching 50%

434. Lilly failed to adequately warn about Zyprexa's known association with diabetes and diabetes-related injuries and of the need to provide baseline screening and monitoring to prevent against such complications from occurring. Lilly failed to adequately test Zyprexa despite knowing of a well-established effect for causing hypoglycemia and diabetes. In the limited testing conducted by Lilly, they failed to inform the medical community that Zyprexa was especially insidious with respect to these side effects.

435. Given the number of the AERs in the U.S., the U.S. label change in September 2003/March 2004 – a change, though far overdue, was still not adequate to warn of the significant and potentially catastrophic risks – and should have been made far earlier. This is specifically supported by 21 CFR 201.57(e)'s requirement that "[redacted]" (emphasis added).

436. The appropriate warnings were not added to the label for purely financial reasons. Lilly did not want to hurt Zyprexa's souring sales. During the time that Lilly refused to change

its label warning about the risk of diabetes related injuries and the need to monitor patients on Zyprexa, Lilly was able to reap billions of dollars in revenue each year.

437. Defendant did not adequately warn health care consumers, including Plaintiff, of the risk of diabetes, hyperglycemia, diabetic ketoacidosis, or other serious injuries caused by Zyprexa.

438. Defendant misrepresented and failed to appropriately warn health care consumers, including Plaintiff, and the medical and psychiatric communities of the dangerous risk of developing diabetes, pancreatitis, hyperglycemia, diabetic ketoacidosis, and diabetic coma, as well as other severe and permanent health consequences caused by Zyprexa, and consequently placed its profits above the safety of its customers.

439. Defendant aggressively marketed and sold Zyprexa by misleading potential users about the product and by failing to adequately warn users of serious dangers which the Defendant knew or should have known resulted from the use of Zyprexa. Defendant widely and successfully marketed Zyprexa throughout the United States in order to induce widespread use. This marketing campaign resulted in numerous individuals taking Zyprexa and suffering serious injuries as a result, all at a time when other safer, efficacious drugs were available.

440. Had individuals known the risks and dangers associated with Zyprexa, and had the Defendant disclosed such information, consumers would not have taken Zyprexa nor been subject to its catastrophic side effects and Plaintiff would not have suffered the payment for the prescriptions or the payment of medical expenses related thereto.

441. On information and belief, as a result of the manufacturing, marketing, selling and distributing of Zyprexa, the Defendant has reaped millions of dollars in profits at the expense of the health of individuals such as the Plaintiff's members.

442. Plaintiff and members of the Class were injured as a direct and proximate result of Defendant's scheme to market Zyprexa for the above-listed off-label uses. As a result of Defendant's actions and those of the intermediary marketing firms, Plaintiff and the Class paid all or part of the cost of Zyprexa for off-label uses for which they would not have paid absent Defendant's illegal conduct.

443. In 2003, Robert Rosenschenck authored an article published in the Journal of the American Medical Association entitled "Effectiveness and Cost of Olanzapine and Haloperidol Treatment of Schizophrenia" and based on a study of 309 patients at seventeen VA hospitals. The study concluded the therapeutic benefits of Zyprexa were only marginally, if at all, better than those of haldol/benzotropine combination therapy. The study also noted, however, that Zyprexa patients incurred $3,000 to $9,000 higher treatment costs than the haldol/benzotropine patients. The higher costs were due to the greater cost of the drug – more than $8 per day for Zyprexa compared to approximately $0.10 per day for the combination therapy – and greater hospitalization due to weight gain and diabetes suffered by the Zyprexa patients.

444. As reported by the San Fransisco Sunday Chornicle on October 23, 2005,

> The priciest drug, Eli Lilly & Co's Zyprexa, cost Medi-Cal an average of $399.26 per prescription, according to the state Department of Health Services. Perphenazine, the generic used as a comparison in the study, cost just $65.14 per prescription on average… Zyprexa was prescribed more than 35 times more often than perphenazine in the 12 months ended June 30. Some 623,447 prescriptions were filled for Zyprexa, compared with 17,353 for perphenazine. Nationwide, Medicaid programs purchase an estimated 60 to 75 percent of antipsychotic drugs. Many individuals with psychotic symptoms are classified as disabled and rely on Medicaid to pay for their medication.

V. CLASS ACTION ALLEGATIONS

445. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this

class action on behalf of itself and a class, defined as:

> All entities in the United States and its territories that, for purposes other than resale, purchased, reimbursed, and/or paid for Zyprexa during the period from September 1996 through the present. For purposes of the Class definition, entities "purchased" Zyprexa if they paid some or all of the purchase price.

446. Excluded from the Class are (a) Defendant and any entity in which Defendant has a controlling interest, their legal representatives, officers, directors, assignees, and successors, and (b) any co-conspirators. Also excluded from the class is any judge or justice to whom this action is assigned, together with any relative of such judge or justice within the third degree of relationship, and the spouse of any such person.

447. The Class consists of numerous entities throughout the United States, making individual joinder impractical, in satisfaction of Rule 23(a)(1). The disposition of the claims of the Class members in a single class action will provide substantial benefits to all parties and to the Court.

448. The claims of the Plaintiff are typical of the claims of the Class as required by Rule 23(a)(3), in that the Plaintiff is an entity that, like all Class members, purchased and/or paid for Zyprexa. Such Plaintiff, like all Class Members, has been damaged by Defendant's misconduct, in that, among other things, Plaintiff paid for Zyprexa to treat condition's for which the drug had not been demonstrated to be medically effective or safe, and for which the drug was not FDA-approved, and which are associated with complications and adverse side effects which were known to Defendant and not disclosed by Defendant.

449. The factual and legal bases of Defendant's misconduct are common to all members of the Class and represent a common thread of fraud and other misconduct resulting in injury to Plaintiff and all members of the Class. These include:

- whether persons who took Zyprexa are at increased risk of developing pancreatitis, diabetes, hyperglycemia, diabetic ketoacidosis and diabetic coma, as well as other severe and permanent injuries;
- whether, in marketing and selling Zyprexa, the Defendant failed to disclose the dangers and risks to the health of persons ingesting the drug;
- whether the Defendant failed to warn adequately of the adverse effects of Zyprexa;
- whether the Defendant falsely and fraudulently misrepresented in their advertisements, promotional materials and other materials, among other things, the safety, potential side effects and convenience of Zyprexa;
- whether the Defendant knew or should have known that the ingestion of Zyprexa leads to serious adverse health effects;
- whether the Defendant adequately tested Zyprexa prior to selling it;
- whether the Defendant continued to manufacture, market, distribute, and sell Zyprexa notwithstanding their knowledge of the drug's dangerous nature;
- whether the Defendant knowingly omitted, suppressed and/or concealed material facts about the unsafe and defective nature of Zyprexa from government regulators, the medical community and/or the consuming public.
- whether Zyprexa is medically necessary for uses not approved by the FDA;
- whether Defendant engaged in a fraudulent and/or deceptive scheme of improperly marketing and selling Zyprexa for conditions for which it is not safe or medically efficacious;

- whether Defendant engaged in a fraudulent and/or deceptive scheme of improperly marketing and selling Zyprexa to treat conditions for which the drug was not approved by the FDA;
- whether Defendant is liable to the Class Members for damages for conduct actionable under the Consumer Protection Statutes of the 50 States;
- whether Defendant is liable to Class Members for damages for conduct actionable under the RICO statute;
- whether Defendant is liable to Class Members for damages for conduct actionable as common law fraud;
- whether Defendant unjustly enriched itself at the expense of Class Members;
- whether Defendant engaged in a pattern or practice that directly caused Plaintiff and Class Members to pay for Zyprexa prescriptions that were non-medically necessary uses;
- whether Defendant engaged in a pattern and practice that directly caused Plaintiff and Class Members to pay for Zyprexa prescriptions that were for non-FDA approved uses and
- whether Defendant engaged in a pattern of deceptive and/or fraudulent activity with the intent to defraud Plaintiff and Class Members.

450. Plaintiff will fairly and adequately represent and protect the interests of the Class, as required by Rule 23(a)(4). Plaintiff has retained counsel with substantial experience in the prosecution of nationwide class actions. Plaintiff and their counsel are committed to the vigorous prosecution of this action on behalf of the Class and have the financial resources to do so. Neither Plaintiff nor counsel has any interest adverse to those of the Class.

451. Plaintiff and members of the Class have suffered, and will continue to suffer, harm and damages as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy under Rule 23(b)(3). Absent a class action, most members of the Class likely would find the cost of litigating their claims to be prohibitive, and will have no effective remedy at law. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication.

VI. FIRST CLAIM FOR RELIEF: VIOLATION OF 18 U.S.C § 1962(C)

452. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

453. Defendant is a "person" within the meaning of 18 U.S.C. § 1961(3) who conducted the affairs of enterprises, the Zyprexa Unlawful Promotion Enterprises, through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

454. The Zyprexa Unlawful Marketing Enterprises are associations-in-fact within the meaning of 18 U.S.C. § 1961(4), consisting of Defendant, including its employees and agents, and the marketing firms employed by Defendant to promote Zyprexa for off-label uses. The Zyprexa Unlawful Marketing Enterprises are ongoing organizations that function as continuing units. The Enterprises were created and/or used as tools to effectuate a pattern of racketeering activity. The Defendant is a "person" distinct from the Zyprexa Unlawful Marketing Enterprises.

455. Defendant and the other members of the Zyprexa Unlawful Marketing Enterprises created and maintained systematic links for a common purpose-to aid in marketing Zyprexa for

off label uses. Each of the participants in the Zyprexa Unlawful Marketing Enterprises received substantial revenue from the scheme to promote Zyprexa off-label. Such revenue was exponentially greater than it would have been if Zyprexa was marketed appropriately. All participants were aware of Defendant's control over the activities of the Zyprexa Unlawful Marketing Enterprises promoting Zyprexa off-label. Furthermore, each portion of the enterprise benefited from the existence of other parts.

456. The Zyprexa Unlawful Marketing Enterprises engaged in and affected interstate commerce, because, *inter alia*, it marketed, sold, purchased, or provided Zyprexa to thousands of individuals throughout the United States.

457. Defendant has exerted control over the Zyprexa Unlawful Marketing Enterprises and management of the affairs of the Zyprexa Unlawful Marketing Enterprises.

458. Defendant has conducted and participated in the affairs of the Zyprexa Unlawful Marketing Enterprises through a pattern of racketeering activity that includes acts indictable under 18 U.S.C. § 1341 (mail fraud), 1343 (wire fraud), 1952 (use of interstate facilities to conduct unlawful activity).

459. Defendant used thousands of mail and interstate wire communications to create and manage its fraudulent scheme. Defendant's scheme involved national marketing and sales plans and programs, and encompassed physicians, medical marketing firms, and victims across the country.

460. Defendant's use of the mails and wires to perpetrate its fraud involved thousands of communications, including, but not limited to:

a. marketing and advertising materials about the off-label uses of Zyprexa for which the drug is not proven to be safe, medically efficacious, and useful, such materials

being sent to doctors across the country;

b. communications, including financial payments, with the vendor and physician participants discussing and relating to the publication of articles misrepresenting off-label uses of Zyprexa;

c. communications with vendor and physician participants that fraudulently misrepresented that Zyprexa was scientifically prove to be safe, medically efficacious, and useful for off-label purposes;

d. communications with health insurers and patients, including Plaintiff, inducing payments for Zyprexa to be made based on misrepresentations concerning the safety, efficacy, and usefulness of Zyprexa; and

e. receiving the proceeds of Defendant's improper scheme.

461. In addition, Defendant's corporate headquarters have communicated by United States mail, telephone, and facsimile with various local district managers, medical liaisons, and pharmaceutical representatives in furtherance of Defendant's scheme.

462. Defendant's pattern of racketeering activity includes acts indictable as mail fraud under 18 U.S.C. § 1341 and wire fraud under U.S.C. § 1343. Defendant's fraudulent scheme consisted of, *inter alia*: deliberately misrepresenting the uses for which Zyprexa was safe and effective so that Plaintiff and members of the Class paid for this drug to treat symptoms for which it was not scientifically proven to be safe and effective actively concealing and causing others to conceal, information about the true safety and efficacy of Zyprexa to treat conditions for which it had not been approved by the FDA.

463. In implementing its fraudulent scheme, Defendant was acutely aware that Plaintiff and members of the Class depended on the honesty and integrity of Defendant in representing

the medical efficacy of Zyprexa's uses. It is impractical and unduly expensive for the Class Members to perform their own clinical trials or assemble all known medical evidence relating to Zyprexa's uses. Class Members also rely on federal law obligating Defendant to provide fair and balanced information about their drug products and reasonably presume that when making such marking of Zyprexa was conducted, it complied with Defendant's obligations under federal law.

464. Defendant's scheme was calculated to ensure that Plaintiff and the Class would pay for Zyprexa to treat uses which Defendant knew were not necessarily treatable with Zyprexa.

465. The conduct of the Zyprexa Unlawful Marketing Enterprises described above constitutes "racketeering activity" within the meaning of 18 U.S.C. § 1961(1). Defendant decision for the Zyprexa Unlawful Marketing Enterprises to routinely conduct its transactions in such a manner constitutes a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5).

466. Defendant's fraudulent marketing scheme depended upon its concealing its involvement in off-label promotion of Zyprexa. Indeed, the Unlawful Marketing Enterprises were created precisely to make it appear to the public that Defendant did not have a hand in any discussions or promotion of off-label use. Additionally, as described above, Defendant had the Unlawful Marketing Enterprises perform off-label promotion in the semblance of legitimate consultants' meetings, continuing education seminars, journal articles, and medical education events. Also as described above, Defendant's involvement was hidden because Defendant hid its financial connections with the physician participants and used the vendor participants as payment intermediaries. These activities and others described above concealed Defendant's fraudulent promotional activities and Plaintiff could not have discovered the scheme alleged herein earlier in the exercise of reasonable diligence. Indeed, much of the scheme to this day remains

concealed by Defendant.

467. The earliest Plaintiff could have reasonably become aware of the fraudulent marketing scheme was 2005.

468. Any applicable statutes of limitations have been tolled by Defendant's knowing and active concealment and denial of the facts alleged herein. Plaintiff has been kept in ignorance of vital information essential to the pursuit of these claims, without any fault or lack of diligence on their part. Plaintiff could not reasonably have discovered the fraudulent nature of Defendant's conduct. Accordingly, Defendant is estopped from relying on any statute of limitations to defeat any of Plaintiff's claims.

469. The above described racketeering activities amounted to a common course of conduct intended to deceive and harm Plaintiff and the Class. Each such racketeering activity was related, had similar purposes, involved the same or similar participants and methods of commission, and had similar results affecting similar victims, including Plaintiff and the members of the Class. Defendant's racketeering activities are part of their ongoing business and constitute a continuing threat to the property of Plaintiff and the Class.

470. Plaintiff and members of the Class have been injured in their business and property by reason of these violations in that Plaintiff and members of the Class have made millions of dollars in payment for Zyprexa that they would not have made had Defendant not engaged in its pattern of racketeering activity. By reason of the unlawful acts engaged in by Defendant, Plaintiff and the Class have suffered ascertainable loss and damages.

471. Plaintiff's and members of the Class' injuries were directly and proximately caused by Defendant's racketeering activity as described above.

472. By virtue of these violations of 18 U.S.C. § 1962(c), Defendant is liable to

Plaintiff and the Class for three times the damages Plaintiff and the Class have sustained, plus the cost of this suit, including reasonable attorney's fees.

VII. SECOND CLAIM FOR RELIEF: VIOLATION OF U.S.C. § 1962(D) BY CONSPIRING TO VIOLATE 18 U.S.C. § 1962(C)

473. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

474. Section 1962(d) of RICO provides that it "shall be unlawful for any person to conspire to violate any of the provision of subsection (a), (b), or (c) of this section."

475. Defendant has violated § 1962(d) by conspiring to violate 18 U.S.C. § 1962(c). The object of this conspiracy has been and is to conduct or participate in, directly or indirectly, the conduct of the affairs of the Zyprexa Unlawful Marketing Enterprises described previously through a pattern of racketeering activity.

476. Defendant's co-conspirators have engaged in numerous overt and predicate fraudulent racketeering acts in furtherance of the conspiracy, including material misrepresentations and omissions designed to defraud Plaintiff and the Class of money.

477. The nature of the above-described Defendant's co-conspirators' acts, material misrepresentations, and omissions in furtherance of the conspiracy gives rise to an inference that they not only agreed to the objective of an 18 U.S.C. § 1962(d) violation of RICO by conspiring to violate 18 U.S.C. § 1962(c), but they were aware that their ongoing fraudulent and extortionate acts have been and are part of an overall patter of racketeering activity.

478. As a direct and proximate result of Defendant's overt acts and predicate acts in furtherance of violating 18 U.S.C. § 1962(d) by conspiring to violate 18 U.S.C. § 1962(c), Plaintiff and the Class have been and are continuing to be injured in their business or property as set forth more fully above.

479. Defendant sought to and has engaged in the commission of and continues to commit overt acts, including the following unlawful racketeering predicate acts:

a) Multiple instances of mail and wire fraud violations of 18 U.S.C. §§ 1341 and 1342;

b) Multiple instances of mail fraud violation of 18 U.S.C. §§ 1341 and 1346;

c) Multiple instances of wire fraud violations of 18 U.S.C. §§ 1341 and 1346;

d) Multiple instances of unlawful activity in violation of 18 U.S.C. § 1952.

480. Defendant's violations of the above federal laws and the effects thereof detailed above are continuing and will continue. Plaintiff and members of the Class have been injured in their property by reason of these violations in that Plaintiff and members of the Class have made millions of dollars in payments for Zyprexa that they would not have made had Defendant not conspired to violate 18 U.S.C. § 1962(c).

481. By reason of the unlawful acts engaged in by Defendant, Plaintiff and the Class have suffered ascertainable loss and damages. Injuries suffered by Plaintiff and members of the Class were directly and proximately caused by Defendant's racketeering activity as described above.

482. By virtue of these violations of 18 U.S.C. § 1962(d), Defendant is liable to Plaintiff and the Class for three times the damages Plaintiff and the Class have sustained, plus the cost of this suit, including reasonable attorney's fees.

VIII. THIRD CLAIM FOR RELIEF: VIOLATION OF STATE CONSUMER PROTECTION STATUTES

483. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

484. Defendant engaged in unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of the state consumer protection statutes listed below

when it failed to adequately warn consumers and the medical community of the risk of serious diabetes related side effects associated with its product Zyprexa and when it undertook to market Zyprexa for purposes for which it was not FDA approved and for which it was not found to be safe or effective. As a direct result of Defendant's deceptive, unfair, unconscionable, and fraudulent conduct, Plaintiff and members of the Class were injured in that they paid millions of dollars for Zyprexa that they would not have paid had Defendant not engaged in unfair and deceptive conduct.

485. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Alaska Stat. § 44-1522, *et seq.*

486. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ariz. Rev. Stat. § 44-1522, *et seq*.

487. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ark. Code § 4-88-101, *et seq*.

488. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq*.

489. Defendant has engaged in unfair competition or unfair or deceptive acts or practices or has made false representations in violation of Colo. Rev. Stat. § 6-1-105, *et seq*.

490. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 42-110b, *et seq*.

491. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of 6 Del. Code § 2511, *et seq*.

492. Defendant has engaged in unfair competition or unfair or deceptive acts or practices or made false representations in violation of D.C. Code § 28-3901, *et seq*.

493. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Fla. Stat. § 501.201, *et seq*.

494. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ga. Stat. §10-1-392, *et seq*.

495. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Haw. Rev. Stat. § 480, *et seq*.

496. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Idaho Code § 48-601, *et seq*.

497. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of 815 ILCS § 50511, *et seq*.

498. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ind. Code Ann. § 24-5-0.5.1, *et seq*.

499. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Iowa Code § 714.1 b, *et seq*.

500. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Kan. Stat. § 50-623, *et seq*.

501. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ky. Rev. Stat. § 367.110, *et seq*.

502. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of La. Rev. Stat. § 51:1401, *et seq*.

503. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation Mass Gen L. Ch. 93A, *et seq*.

504. Defendant has engaged in unfair competition or unfair or deceptive acts or

practices in violation of Md. Com. Law Code § 13-101, *et seq*.

505. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Mich. Stat. § 445.901, *et seq*.

506. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Minn. Stat. § 8.31, *et seq*.

507. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Vernon's Missouri Stat. § 407.010, *et seq*.

508. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Mont. Code § 30-14-101, *et seq*.

509. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Neb. Rev. Stat. § 59-1601, *et seq*.

510. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Nev. Rev. Stat. § 598.0903, *et seq*.

511. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.H. Rev. Stat. § 358-A:1, *et seq*.

512. Defendant has engaged in unfair competition or unfair, unconscionable or deceptive acts or practices in violation of N.J. Rev. Stat. § 56:8-1, *et seq*.

513. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.M. Stat. § 57-12-1, *et seq*.

514. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349 *et seq*.

515. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1, *et seq*.

516. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.D. Cent. Code § 51-15-01, *et seq*.

517. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ohio Rev. Stat. § 1345.01, *et seq*.

518. Defendant has engaged in unfair competition or unfair or deceptive acts or practices or made false representations in violation of Okla. Stat. 15 § 751, *et seq*.

519. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Or. Rev. Stat. § 646.605, *et seq*.

520. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of 73 Pa. Stat. § 201-1, *et seq*.

521. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of R.I. Gen. Laws. § 6-13.1-1, *et seq*.

522. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. Code Laws § 39-5-10, *et seq*.

523. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of S.D. code Laws § 37-24-1, *et seq*.

524. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Tenn. Code § 47-18-101, *et seq*.

525. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Tex. Bus. & Com. Code § 17.41, *et seq*.

526. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Utah Code. § 13-11-1, *et seq*.

527. Defendant has engaged in unfair competition or unfair or deceptive acts or

practices in violation of 9 Vt. § 2451, *et seq*.

528. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Va. Code § 59.1-196, *et seq*.

529. Defendant has engaged in unfair competition or unfair, deceptive or fraudulent acts or practices in violation of Wash. Rev. Code. § 19.86.010, *et seq*.

530. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of West Virginia Code § 46A-6-101, *et seq*.

531. The unfair and deceptive acts and practices of Defendant has directly, foreseeable, and proximately caused or will cause damages and injury to Plaintiff and the members of the Class.

532. The actions and failures to act of Defendant, including the false and misleading representations and omissions of material facts regarding the side effects and the off-label use(s) for Zyprexa and the above described course of fraudulent conduct and fraudulent concealment, constitute acts, uses, or employment by Defendant of unconscionable commercial practices, deception, fraud, false pretenses, misrepresentations, and the knowing concealment, suppression or omission of material facts with the intent that others rely upon such concealment, suppression, or omission of material facts in connection with the sale of merchandise of Defendant in violation of the consumer protection statutes listed above

533. Physicians relied upon Defendant's misrepresentations and omission in prescribing Zyprexa to patients for FDA approved uses as well as for "off-label" uses. By reason of the unlawful acts engaged in by Defendant, Plaintiff and the Class have suffered ascertainable loss and damages. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff and the Class were damaged by paying for these prescriptions.

534. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff and members of the Class are entitle to compensatory damages, treble damages, attorneys' fees and costs of suit.

IX. FOURTH CLAIM FOR RELIEF: COMMON LAW FRAUD

535. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

536. Defendant made misrepresentations and omissions of facts material to Plaintiff's and Class members' decisions to purchase Zyprexa by, *inter alia*, (a) deliberately misrepresenting the uses for which Zyprexa was safe and effective so that Plaintiff and members of the Class paid for this drug to treat symptoms for which it was not scientifically proven to be safe and effective; (b) actively concealing, and causing others to conceal, information about the true safety and efficacy of Zyprexa to treat conditions for which it had not been approved by the FDA, and (c) actively and knowingly failing to provide adequate and accurate information concerning the dangerous side effects associated with Zyprexa.

537. Defendant knew at the time that it made these misrepresentations and omission that they were false or that Defendant had failed to disclose facts it was obligated to disclose in order to make its other representations not misleading. Defendant was aware that its physicians would rely on these misrepresentations and omissions, and that such representations were material in the decision to prescribe or purchase Zyprexa.

538. Plaintiff and the Class reasonably relied upon Defendant's misrepresentations and omissions of material fact. Plaintiff and the Class had no reason to doubt the veracity or scientific validity of the information Defendant promoted through its marketing and sales strategies.

539. Defendant's misrepresentations and omissions of material fact directly and proximately caused Plaintiff's and the Class's damages.

540. By virtue of the fraud they perpetrated on Plaintiff and the Class, Defendant is liable to Plaintiff and the Class for all damages Plaintiff and the Class have sustained, plus punitive damages, plus the cost of this suit, including attorney's fees.

X. FIFTH CLAIM FOR RELIEF: UNJUST ENRICHMENT

541. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

542. As an intended and expected result of their conscious wrongdoing as set forth in this Complaint, Defendant has profited and benefited from payments Plaintiff and the Class made for Zyprexa.

543. In exchange for the payments they made for Zyprexa, and at the time it made these payments, Plaintiff and the Class expected that the drug was a safe and medically effective treatment for the condition, illness, disorder, or symptom for which it was prescribed.

544. Defendant has voluntarily accepted and retained these payments with full knowledge and awareness that, as a result of their wrongdoing, Plaintiff and the Class paid for Zyprexa when they otherwise would not have done so. The failure of Defendant to provide Plaintiff and the Class with the remuneration they expected enriched Defendant unjustly.

545. Plaintiff and the Class are entitled in equity to seek restitution of Defendant's wrongful profits, revenues and benefits to the extent and in the amount, deemed appropriate by the Court; and such other relief as the Court deems just and proper to remedy Defendant's unjust enrichment.

V. DEMAND FOR RELIEF

546. WHEREFORE, Plaintiff and the Class demand judgment against Defendant in

each claim for relief, jointly and severally, as follows:

a) On Plaintiff's and the Class' RICO claims, three times the damages Plaintiff and the Class have sustained as a result of Defendant's conduct, such amount to be determined at trial, plus Plaintiff's costs in this suit, including reasonable attorneys' fees;

b) On Plaintiff's and the Class' Consumer Fraud Act claims, compensatory damages, three times the damages Plaintiff and the Class have sustained as a result of Defendant's conduct, such as amount to be determined at trial, plus Plaintiff's costs in this suit, including reasonable attorney's fees;

c) On Plaintiff's and the Class' common law fraud claim, compensatory damages, punitive damages, such amounts to be determined at trial, plus Plaintiff's cost in this suit, including all reasonable attorneys' fees;

d) On Plaintiff's and the Class' claim for unjust enrichment, recovery in the amount of Plaintiff's and the Class' payment for Zyprexa to treat conditions for which it was not approved by the FDA, such amount to be determined at trial, plus Plaintiff's costs in this suit, including all reasonable attorney's fees;

e) Awarding Plaintiff and the Class other appropriate equitable relief;

f) Awarding Plaintiff its costs and expenses in this litigation, including reasonable attorneys' fees and expert fees; and

g) Awarding Plaintiff and the Class such other and further relief as may be just and proper under the circumstances.

VI. DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b) Plaintiffs demand a trial by jury on all issues so triable.

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