310. 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])

311. 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])

312. 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.

313. 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])

314. 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.

315. 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.

316. 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])

317. 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])

318. 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])

319. 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]).

320. 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])

321. 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])

322. 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.

323. 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]

([redacted])

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

325. 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])

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

327. 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])

328. 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:

[redacted]

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

330. 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])

331. 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])

332. 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])

333. 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])

334. 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])

335. 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

336. 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

337. 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

338. 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.

339. 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])

340. 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])

341. 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])

342. At the same time, Lilly "[redacted]"

343. 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])

344. 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])

345. 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])

346. 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])

347. 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])

348. 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])

349. 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])

350. 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])

351. 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])

352. 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])

353. 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]

([redacted])

354. 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])

355. 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)

356. 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])

357. 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])

358. 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.

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

360. 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]

([redacted])

361. 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])

362. 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])

363. 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])

364. 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

365. 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.

366. 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])

367. 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])

368. 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. ([redacted]) 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.

369. Lilly's marketing materials underscore Lilly's emphasis on and insatiable desire to drive off-label marketing. In a 2003 company confidential "[redacted]", 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 "[redacted]" as "[redacted]" reprints while "[redacted]" reprints involve the "[redacted]" or information on unapproved uses. ([redacted])[3]

370. 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. ([redacted])

371. In a February 5, 2003, internal document titled, "[redacted]", Eli Lilly details why it is important to facilitate the study of Zyprexa use in young children and adolescents. Lilly states that, "[redacted]" 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 "[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]) This is clearly just lip service.

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

372. 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])

373. 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

374. 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.

375. 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

376. 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.

377. 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

378. 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

379. 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])

380. 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.

381. 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.

382. 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

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

384. 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.

385. 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

386. 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]

([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.

387. 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])

388. 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.

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