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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

11 **IN AND FOR THE COUNTY OF MARICOPA**

12 State of Arizona, ex rel. Terry Goddard,
13 Attorney General,

14 Plaintiff,

15 vs.

16 Eli Lilly and Company,

17 Defendant.
18

Case No.

CV 2008-024260

COMPLAINT

19 1. Plaintiff, State of Arizona, brings this action for injunctive and other relief against
20 Defendant Eli Lilly and Company, an Indiana corporation, for violating the Arizona Consumer
21 Fraud Act, A.R.S. § 44-1521, *et seq.*, as follows:

22 **JURISDICTION AND PARTIES**

23 2. The Superior Court has jurisdiction to enter appropriate orders both prior to and
24 following a determination of liability pursuant to A.R.S. §§ 44-1528, 44-1531 and 44-1534.

25 3. Venue is appropriate in Maricopa County pursuant to A.R.S. § 12-401.

26 4. Plaintiff Terry Goddard is the Attorney General of the State of Arizona, and is
27 authorized to seek a judgment which enjoins fraudulent or unlawful business acts or practices,
28 including any misrepresentation, concealment or suppression of a material fact, and which



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awards civil penalties, restitution and other relief for such acts. A.R.S. § 44-1521, *et seq.*

5. Defendant Eli Lilly and Company (“Lilly” or “Defendant”) is an Indiana corporation that conducts business nationwide, including in the State of Arizona; its principal place of business is Lilly Corporate Center, Indianapolis, Indiana 46285. At all times mentioned herein, Lilly has engaged in trade or commerce affecting consumers by advertising, soliciting, selling, promoting and distributing prescription drugs, including Zyprexa®, in the State of Arizona.

FACTUAL ALLEGATIONS

6. Zyprexa® belongs to a class of drugs traditionally used to treat schizophrenia and commonly referred to as “atypical antipsychotics.” When these drugs were first introduced to the market in the 1990s, it was hypothesized that they might be used as long-term treatment for schizophrenia without posing the same risks as first-generation antipsychotics. More specifically, experts thought that atypical antipsychotics would be less likely to produce extrapyramidal symptoms (“EPS”) and tardive dyskinesia (“TD”).

7. While these drugs may reduce the risk of EPS and TD associated with first-generation antipsychotics, they also produce dangerous side effects, including weight gain, hyperglycemia, diabetes, cardiovascular complications, and other severe conditions. Zyprexa® has been shown to pose a high risk of weight gain, hyperglycemia, and diabetes.

8. Lilly began marketing Zyprexa® to health care professionals for the treatment of schizophrenia in 1996. Since then, the Food and Drug Administration (“FDA”) has approved Zyprexa® for, *inter alia*, the treatment of acute mixed or manic episodes of bipolar I disorder and for maintenance treatment in bipolar disorder.

9. In late 2000, Lilly began an aggressive marketing campaign called “Viva Zyprexa!” As part of that campaign, the company marketed Zyprexa® for a number of uses for which it was not approved by the FDA. For example, Lilly marketed Zyprexa® for pediatric use, for use at high dosage levels, for the treatment of symptoms rather than diagnosed conditions, and for the treatment and/or chemical restraint of patients suffering from dementia.

10. Through this Viva Zyprexa! campaign, and all of the company’s efforts to

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1 promote Zyprexa® for uses for which it was not approved by the FDA, Lilly misrepresented the
2 drug's approved uses, its safety, and its effectiveness.

3 **ALLEGATIONS OF VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT**

4 11. Plaintiff re-alleges and incorporates by reference allegations contained in each of
5 the preceding paragraphs as though fully set forth herein.

6 12. A.R.S. § 44-1528 and other provisions of the Arizona Consume Fraud Act, A.R.S.
7 § 44-1521, *et seq.* authorizes the Attorney General to bring an action to enjoin a defendant from
8 engaging in a method, act, or practice that is unlawful under A.R.S. § 44-1522, and to seek other
9 appropriate relief.

10 13. By misrepresenting that Zyprexa® had characteristics, uses benefits and qualities
11 that it does not have and engaging in the acts and practices described above in connection with
12 the sale and advertisement of Zyprexa®, Lilly has engaged in the act, use or employment of
13 deception, deceptive acts or practices, fraud, false pretense, false promise, misrepresentation or
14 concealment, suppression or omission with the intent that others rely on such concealment
15 and/or suppression or omission in violation of A.R.S. § 44-1522.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, the State of Arizona, through its Attorney General respectfully requests
18 that a judgment and order be entered that:

19 A. Permanently enjoins Lilly from making any false, misleading or deceptive
20 representation regarding any of its pharmaceutical products in violation of all applicable laws
21 and regulations.

22 B. Directs Lilly to pay civil penalties in an amount of up to \$10,000, for each willful
23 violation of A.R.S. § 44-1522.

24 C. Awards Plaintiff costs and attorneys fees, pursuant to A.R.S. § 44-1534.

25 D. Grants all other relief as the Court deems appropriate.

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DATED this 7 day of October, 2008.

TERRY GODDARD
ATTORNEY GENERAL



Noreen R. Matts
Dena Rosen Epstein
Assistant Attorneys General
Attorneys for the State of Arizona

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