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ABBOTT LABORATORIES

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **OAKLAND DIVISION**

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20 SAFEWAY INC; WALGREEN CO.; THE
21 KROGER CO.; NEW ALBERTSON'S,
INC.; AMERICAN SALES COMPANY,
22 INC.; AND HEB GROCERY COMPANY,
LP,

23 Plaintiffs,

24 vs.

25 ABBOTT LABORATORIES,

26 Defendant.

CASE NO. C 07-5470 (CW)

Related per November 19, 2007 Order to Case
No. C 04-1511(CW)

**STIPULATION REGARDING
PLAINTIFFS' 30(b)(6) DEPOSITIONS AND
THE USE OF RELATED EVIDENCE AT
TRIAL**

Judge: Honorable Claudia Wilken

27 (*Caption continued on next page*)
28

1 MEIJER, INC. & MEIJER
2 DISTRIBUTION, INC.; ROCHESTER
3 DRUG CO-OPERATIVE, INC.; AND
4 LOUISIANA WHOLESALE DRUG
COMPANY, INC., ON BEHALF OF
THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED,

5 Plaintiffs,

6 vs.

7 ABBOTT LABORATORIES,

8 Defendant.

CASE NO. C 07-5985 (CW)
(Consolidated Cases)

Related per November 30, 2007 Order to Case
No. C 04-1511 (CW)

9 RITE AID CORPORATION; RITE AID
10 HDQTRS CORP.; JCG (PJC) USA, LLC;
11 MAXI DRUG, INC D/B/A BROOKS
12 PHARMACY; ECKERD
CORPORATION; CVS PHARMACY,
INC.; AND CAREMARK LLC,

13 Plaintiffs,

14 vs.

15 ABBOTT LABORATORIES,

16 Defendant.

CASE NO. C 07-6120 (CW)

Related per December 5, 2007 Order to Case
No. C 04-1511 (CW)

17
18 Whereas, Abbott and Plaintiffs in the above-captioned dispute whether Abbott is entitled
19 to further Rule 30(b)(6) depositions or testimony from Plaintiffs, and Abbott has indicated it
20 intends to file a motion to compel regarding the issue;

21 Whereas, all parties seek to avoid burdening the Court with a motion to compel such
22 depositions and/or testimony;

23 **IT IS HEREBY STIPULATED AND AGREED:**

24 1. Subject to Paragraph 5, Plaintiffs will not introduce at trial, through their
25 employees or former employees, evidence on any of the topics listed below.

26 Topic (3): *Purchases of all other ARV drugs [other than Norvir and Kaletra] from*
27 *January 1, 2003 to the present, including dates, prices, and quantities of all such*
28 *purchases. [Except for Louisiana Wholesale Drug, Rochester Drug Cooperative,*

STIPULATION RE 30(b)(6) DEPOSITIONS AND THE
USE OF RELATED EVIDENCE
CASE NOS. 07-5470,
07-5985, 07-6120

1 *Meijer Inc, and Meijer Distribution, Inc., as to the Lexiva and Reyataz data they*
2 *produced.]*

3 *Topic (8): The composition of the relevant market(s) for purposes of Plaintiff's*
4 *antitrust claims in this case.*

5 *Topic (9): The safety, efficacy, and relative benefits and side effects of any ARV*
6 *drugs.*

7 *Topic (10): The interchangeability or substitutability of Protease Inhibitors in HIV*
8 *treatment regimens.*

9 *Topic (11): The type and amount of all damages sought by Plaintiff in this case*
10 *[except to the extent testified to by Plaintiff's 30(b)(6) witness].*

11 *Topic (12): The terms and conditions on which Plaintiff or its assignor purchased*
12 *Norvir and Kaletra from Abbott, including whether any such purchases were*
13 *subject to resale under "cost plus" contracts [except to the extent the terms of*
14 *Plaintiff's purchases from Abbott were testified to by Plaintiff's 30(b)(6) witness].*

15 *Topic (14): Price changes of all ARV drugs other than Norvir and Kaletra, from*
16 *January 1, 2003 to the present.*

17 *Topic (16): The dates, prices, quantities, and terms and conditions applicable to*
18 *all ARV drug purchases by Plaintiffs' assignors from Abbott for which Plaintiffs*
19 *are claiming [damages] in this case.*

20 2. Subject to Paragraph 5, Plaintiffs will not introduce at trial, through their
21 employees or former employees, evidence on any of the bulleted subtopics listed below. To the
22 extent any topic is broader than the bulleted subtopics, Plaintiffs are not precluded from
23 introducing at trial, through their employees or former employees, any evidence other than
24 evidence of the bulleted subtopics.

25 *Topic (4): All communications regarding the December 2003 Norvir price*
26 *increase, including communications with Abbott, complaints or comments from*
27 *customers or other third parties, and communications with the press or*
28 *government agencies or officials.*

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- Whether any patient or customer ever complained to or otherwise communicated with [Plaintiff] or any of its employees or agents about the price of Norvir after the 2003 price increase.
- Whether any doctor ever complained to or otherwise communicated with [Plaintiff] or any of its employees or agents about the price of Norvir after the 2003 price increase.
- Whether any pharmacist ever complained to or otherwise communicated with [Plaintiff] or any of its employees or agents about the price of Norvir after the 2003 price increase.
- Whether [Plaintiff] complained to or otherwise communicated with the press about the price of Norvir after the 2003 price increase.
- Whether [Plaintiff] complained to or otherwise communicated with any government agency or official about the price of Norvir after the 2003 price increase.
- Whether third parties other than patients, customers, doctors, or pharmacists ever complained to [Plaintiff] or any of its employees or agents about the price of Norvir after the 2003 price increase.
- Whether [Plaintiff] complained to Abbott about the price of Norvir after the 2003 price increase.

Topic (5): *All communications regarding the pricing of boosted PIs from January 1, 2003 to the present.*

- Whether any manufacturer of boosted Protease Inhibitors (other than Abbott) ever complained to or otherwise communicated with [Plaintiff] or any of its employees or agents about the price of Norvir after the 2003 price increase.
- Whether any manufacturer of boosted Protease Inhibitors ever complained to or otherwise communicated with [Plaintiff] or any of its employees or

1 agents that it was losing business to Kaletra as a result of the 2003 Norvir
2 price increase.

- 3 • Whether any manufacturer of boosted Protease Inhibitors ever complained
4 to or otherwise communicated with [Plaintiff] or any of its employees or
5 agents that patients were switching to Kaletra from other boosted Protease
6 Inhibitors as a result of the 2003 Norvir price increase.
- 7 • Whether [Plaintiff] communicated to patients, customers, doctors, the
8 press, or government officials about the pricing of boosted PIs from
9 January 1, 2003 to the present.

10 *Topic (6): Any knowledge of patients who were switched to Kaletra from a*
11 *different boosted PI regimen, or physicians who changed prescribing practices, as*
12 *a result, in whole or in part, of the December 2003 Norvir price increase.*

- 13 • Whether patients switched to Kaletra from other boosted PI regimens as a
14 result of the 2003 Norvir price increase.
- 15 • Whether patients stopped taking Norvir as a result of the 2003 Norvir price
16 increase.
- 17 • Whether doctors changed their prescribing practices as a result of the 2003
18 Norvir price increase.
- 19 • Whether any formularies restricted access to Norvir as a result of the 2003
20 Norvir price increase.
- 21 • Whether any private insurers adjusted their copayment requirements for
22 Norvir as a result of the 2003 Norvir price increase.
- 23 • Whether [Plaintiff] experienced any increase in its sales of Kaletra as a
24 result of the 2003 Norvir price increase.
- 25 • Whether [Plaintiff] experienced any decrease in its sales of boosted PIs
26 other than Kaletra as a result of the 2003 Norvir price increase.

27 *Topic (7): Any effects of the December 2003 Norvir price increase, including but*
28 *not limited to effects on sales and/or prescriptions for Norvir, for Kaletra, for*

1 *other boosted PIs, and for other ARV drugs.*

- 2 • Whether the 2003 Norvir price increase affected [Plaintiff's] sales of
3 Lexiva.
- 4 • Whether the 2003 Norvir price increase affected [Plaintiff's] sales of
5 Reyataz.
- 6 • Whether the 2003 Norvir price increase affected [Plaintiff's] sales of
7 Kaletra.
- 8 • Whether the 2003 Norvir price increase affected [Plaintiff's] sales of any
9 boosted PI.
- 10 • Whether the 2003 Norvir price increase affected [Plaintiff's] sales of
11 Norvir.
- 12 • Whether the 2003 Norvir price increase affected [Plaintiff's] sales of any
13 ARV drug.
- 14 • Whether the 2003 Norvir price increase caused the research and
15 development of any specific boosted PI(s) to be halted or slowed.

16 *Topic (13): The pricing of Kaletra relative to the pricing of other boosted PIs,*
17 *from January 1, 2003 to the present.*

- 18 • Whether the 2003 Norvir price increase affected price competition among
19 boosted PIs.
- 20 • Whether the 2003 Norvir price increase affected price competition among
21 ARV drugs
- 22 • Whether Kaletra is overpriced compared to other boosted PIs.

23 3. These stipulations do not preclude Plaintiffs from offering evidence on the above topics
24 through expert witnesses (except that those experts may not rely in forming their opinions upon
25 information from current or former employees of Plaintiffs that, if testified to by such individuals,
26 would be prohibited testimony pursuant to this stipulation, or on any of Plaintiffs' documents
27 unless such documents are disclosed with Plaintiffs' opening expert reports), Abbott employees,
28 GSK employees, or any third party witnesses who are permitted to testify at trial.

1 4. Abbott will serve, and Plaintiffs agree to answer, additional interrogatories
2 regarding the assignment agreements under which Plaintiffs bring their claims in these cases.
3 Plaintiffs agree to answer the interrogatories within fourteen days. Within five days of receiving
4 Plaintiffs' sworn answers, Abbott will communicate any follow-up questions to Plaintiffs. The
5 parties agree to work in good faith to resolve issues related to any follow up-questions, but, if the
6 parties are unable to reach agreement on any such issues, the parties may seek relief from the
7 Court.

8 5. These stipulations do not preclude Abbott from introducing at trial portions of any
9 depositions given by a Plaintiff in response to an Abbott Rule 30(b)(6) deposition notice to it. If
10 Abbott introduces evidence from a Plaintiff's Rule 30(b)(6) deposition at trial, these stipulations
11 will not preclude that Plaintiff from offering testimony of its current and/or former employees in
12 rebuttal to the Rule 30(b)(6) deposition testimony that Abbott has introduced. Both sides reserve
13 all their rights to object to or otherwise challenge any such testimony.

14 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:**

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

March 17, 2009

DATED: ~~March 13, 2009~~


Claudia Wilken
Judge Wilken
United States District Court
Northern District of California

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GENERAL ORDER 45 ATTESTATION

I , Michelle Friedland, am the ECF User whose ID and password was used to file this Joint Stipulation Regarding Plaintiffs' 30(b)(6) Depositions and the Use of Related Evidence at Trial. In compliance with General Order 45, X.B., I hereby attest that the counsel listed above concurred in this filing.

DATED: March 13, 2009

/s/ Michelle Friedland
Michelle Friedland