

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5802

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

James F. Hurst (*Admitted Pro Hac Vice*)
David J. Doyle (*Admitted Pro Hac Vice*)
Samuel S. Park (*Admitted Pro Hac Vice*)
Stephanie S. McCallum (*Admitted Pro Hac Vice*)
WINSTON & STRAWN LLP
35 W. Wacker Drive
Chicago, IL 60601-9703
Telephone: 312-558-5600
Facsimile: 312-558-5700
Email: jhurst@winston.com; ddoyle@winston.com;
spark@winston.com; smccallum@winston.com

Nicole M. Norris (SBN 222785)
WINSTON & STRAWN LLP
101 California Street, Suite 3900
San Francisco, CA 94111-5894
Telephone: 415-591-1000
Facsimile: 415-591-1400
Email: nnorris@winston.com

Charles B. Klein (*Admitted Pro Hac Vice*)
Mathew A. Campbell (*Admitted Pro Hac Vice*)
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, D.C. 20007
Telephone: 202-282-5000
Facsimile: 202-282-5100
Email: cklein@winston.com

Jeffrey I. Weinberger (SBN 56214)
David M. Rosenzweig (SBN 176272)
Grant A. Davis-Denny (SBN 229335)
MUNGER, TOLLES & OLSON LLP
355 Grand Avenue
Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
Facsimile: (213) 687-3702
Email: jeffrey.weinberger@mto.com;
david.rosenzweig@mto.com;
grant.davis-denny@mto.com

Michelle Friedland (SBN 234124)
MUNGER, TOLLES & OLSON LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105-2907
Telephone: (415) 512-4000
Facsimile: (415) 512-4077
Email: michelle.friedland@mto.com

Attorneys for Defendant
ABBOTT LABORATORIES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SAFEWAY INC; WALGREEN CO.; THE)
KROGER CO.; NEW ALBERTSON'S, INC.;)
AMERICAN SALES COMPANY, INC.; AND)
HEB GROCERY COMPANY, LP,)
Plaintiffs,)
v.)
ABBOTT LABORATORIES,)
Defendant.)

Case No. C07-5470 (CW)
Related per November 19, 2007 Order to
Case No. C04-1511 (CW)

**SECOND STIPULATION REGARDING
DEPOSITION OF MILES WHITE**

DATE:
TIME:
PLACE:
JUDGE: Honorable Claudia Wilken

(Caption continued on next page)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEIJER, INC. & MEIJER DISTRIBUTION,)
INC., ROCHESTER DRUG CO-OPERATIVE,)
INC., AND LOUISIANA WHOLESALE)
DRUG COMPANY, INC., ON BEHALF OF)
THEMSELVES AND ALL OTHERS)
SIMILARLY SITUATED,)

Plaintiffs,)

v.)

ABBOTT LABORATORIES,)

Defendant.)

Case No. C07-5985 (CW)
(Consolidated Cases)

Related per November 30, 2007 Order to
Case No. C04-1511 (CW)

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

Plaintiffs,)

v.)

ABBOTT LABORATORIES,)

Defendant.)

Case No. 07-6120 (CW)

Related per December 5, 2007 Order to
Case No. C04-1511 (CW)

1 Whereas, the direct purchaser plaintiffs in the above-captioned actions (but not plaintiff
2 GSK) have notified Abbott that they intend to notice the deposition of Abbott’s Chairman and CEO,
3 Miles White.

4 Whereas, Abbott has no intent to produce Mr. White for deposition absent a court order
5 requiring the deposition to take place and has expressed its intent to move for a protective order to
6 prevent that deposition from occurring.

7 Whereas, the direct purchaser plaintiffs dispute that sufficient grounds exist to support such a
8 protective order.

9 Whereas, Abbott requested that the direct purchaser plaintiffs not formally notice the
10 deposition of Mr. White until the end of fact discovery;

11 Whereas, the direct purchaser plaintiffs and Abbott previously stipulated and this Court
12 Ordered that this dispute would be addressed following the close of fact discovery;

13 Whereas the direct purchaser plaintiffs and Abbott seek additional time to try to resolve this
14 issue without the need for Court intervention;

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

16 1. Any notice of deposition for Mr. White must be served by the seventh
17 calendar day following the date on which any party declares that further negotiations concerning Mr.
18 White’s deposition are futile.

19 2. Within two business days after service of the deposition notice for Mr. White,
20 the parties will jointly contact Judge Zimmerman’s chambers to request the earliest possible hearing
21 date for Abbott’s motion for protective order and will coordinate on an expedited schedule for letter
22 briefs.

23 3. Abbott will not oppose the deposition of Mr. White based on the timing of the
24 notice or on the ground that the fact discovery period has closed. But Abbott reserves its right to
25 raise any other objection to the deposition. Abbott also will not seek to alter other deadlines in the
26 case based on the pendency of this dispute or any scheduling of Mr. White’s deposition.

27 4. If Abbott ultimately is ordered to produce Mr. White for deposition, the
28 parties will cooperate in scheduling a deposition date convenient for the parties and witness,

1 regardless of the date indicated in the deposition notice. Each party retains all rights to appeal any
2 order on the production of Mr. White, and the direct purchaser plaintiffs do not agree to postpone
3 Mr. White's deposition during the pendency of any appeal of an order commanding Mr. White's
4 production.

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

7 /s/ Scott E. Perwin

8 Scott E. Perwin
9 KENNY NACHWALTER, PA
10 1100 Miami Center
11 201 South Biscayne Blvd.
12 Miami FL 33131
13 *Attorneys for Safeway, Inc.*

/s/ Stephanie S. McCallum

Stephanie S. McCallum
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, IL 60622
Attorneys for Defendant Abbott Laboratories

14 /s/ John D. Radice

15 John D. Radice
16 KAPLAN FOX & KILSHEIMER LLP
17 850 Third Avenue
18 New York, NY 10011
19 *Attorneys for Meijer, Inc*

/s/ Eric L. Cramer

Eric L. Cramer
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103-6305
Attorneys for Rochester Drug Co-Operative, Inc

21 /s/ Bruce E. Gerstein

22 Bruce E. Gerstein
23 Noah W. Silverman
24 GARWIN GERSTEIN & FISHER LLP
25 1501 Broadway, Suite 1416
26 New York, NY 10036
27 *Attorneys for Louisiana Wholesale Drug
28 Company, Inc*

/s/ Monica L. Rebuck

Monica L. Rebuck
HANGLEY ARONCHICK SEGAL & PUDLIN
30 N. Third Street, Suite 700
Harrisburg, PA 17101
Attorneys for Rite Aid, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED

3/9/09

Dated: _____



Judge Claudia Wilken
United States District Court
Northern District of California

1
2
3 **GENERAL ORDER 45 ATTESTATION**

4 I, Stephanie S. McCallum, am the ECF User whose ID and password was used to file this SECOND
5 STIPULATION REGARDING DEPOSITION OF MILES WHITE. In compliance with General
6 Order 45, X.B., I hereby attest that the above counsel, counsel for Plaintiffs, concurred in this filing.

7
8 Dated: March 5, 2009

/s/ Stephanie S. McCallum

Stephanie S. McCallum
WINSTON & STRAWN LLP
Counsel for Defendant

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5802