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19 Attorneys for *Lupin Pharmaceuticals, Inc.*
 20 *and Lupin Limited*

21 **IN THE UNITED STATES DISTRICT COURT**
 22 **IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA**
OAKLAND DIVISION

23 DEPOMED, INC., a California corporation,
 24 Plaintiff and Counterdefendant,

25 v.

26 LUPIN PHARMACEUTICALS, INC., a
 Virginia corporation, and LUPIN LIMITED, an
 27 Indian corporation,
 28 Defendants and Counterclaimants.

Case No. 09-CV-05587-PJH

**CONSENT INJUNCTION AND
 DISMISSAL ORDER**

Honorable Phyllis J. Hamilton

1 This action for alleged patent infringement (the “Litigation”) has been brought by Plaintiff
2 Depomed, Inc. (“Depomed”) against Defendants Lupin Pharmaceuticals, Inc. and Lupin Limited
3 (collectively, “Lupin”) for alleged infringement of United States Patent Nos. 6,635,280,
4 6,340,475, and 6,488,962 (collectively the “Depomed Patents”). Depomed’s commencement of
5 the Litigation was based on its receipt of notice from Lupin Limited that Lupin Limited had filed
6 Abbreviated New Drug Application (“ANDA”) No. 91-664 with the United States Food and Drug
7 Administration containing a certification pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV) directed to
8 the Depomed Patents and seeking approval to market 500 mg and 1000 mg metformin tablets as a
9 generic version of Glumetza[®].

10 Depomed and Lupin have agreed to enter into a good faith final settlement agreement (the
11 “Settlement and License Agreement”) regarding this Litigation on the expectation and belief that
12 this would eliminate the substantial litigation costs that would otherwise be incurred by both
13 Depomed and Lupin during the Litigation, while also serving the public interest by saving judicial
14 resources and avoiding the risks to each of the parties associated with infringement. The
15 Settlement and License Agreement will afford Depomed and Lupin the procompetitive
16 opportunity to more productively use money and other resources that would have been spent in
17 the continued prosecution and defense of this Litigation, to the benefit of the parties and
18 consumers alike, such as by investing more money in pharmaceutical research and development.

19 Each of Depomed and Lupin acknowledge there is significant risk to each of them
20 associated with the continued prosecution of this Litigation and have consented to entry of this
21 order through a final settlement as reflected herein. The Court, upon the consent and request of
22 Depomed and Lupin, hereby issues the following Order.

23 Depomed and Lupin now consent to this Consent Injunction and Dismissal Order and
24 IT IS HEREBY ORDERED that:

- 25 1. Subject matter jurisdiction, personal jurisdiction, and venue are all proper in this
26 Court.
- 27 2. In this Litigation, Depomed has charged Lupin with infringement of the Depomed
28 Patents in connection with Lupin Limited’s submission of ANDA No. 91-664 directed to generic

1 tablets containing 500 mg or 1000 mg of metformin per tablet to the U.S. Food and Drug
2 Administration (“FDA”).

3 3. In response to Depomed’s charges of patent infringement, Lupin has alleged
4 certain defenses and counterclaims, including that the Depomed Patents are invalid or not
5 infringed. The Court has not adjudicated Depomed’s charges of patent infringement or Lupin’s
6 defenses and counterclaims.

7 4. Lupin has agreed that each of the defenses and counterclaims set forth in its
8 Answer, Affirmative Defenses and Counterclaims, including the allegations and averments
9 contained therein, should be dismissed, without prejudice.

10 5. Lupin, their officers, agents, servants, employees and attorneys, and those persons
11 in active concert or participation with them who receive actual notice of this Order by personal
12 service or otherwise, are hereby enjoined from manufacturing, using, offering to sell or selling
13 within the United States and its territories and possessions, including the Commonwealth of
14 Puerto Rico (the “Territory”), or importing into the Territory, any generic tablet product
15 containing 500 mg or 1000 mg of metformin per tablet that is the subject of ANDA No. 91-664
16 until:

17 (a) February 1, 2016; or

18 (b) At such earlier date as may be permitted by the Settlement and License
19 Agreement that the Parties have entered into.

20 6. Depomed and Lupin each expressly waives any right to appeal or otherwise move
21 for relief from this Consent Injunction and Dismissal Order.

22 7. All claims and defenses as between Depomed and Lupin are hereby dismissed
23 without prejudice.

24 8. This Court retains jurisdiction over Depomed and Lupin for purposes of enforcing
25 this Consent Injunction and Dismissal Order.

26 9. The Clerk of the Court is directed to enter this Consent Injunction and Dismissal
27 Order forthwith.
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IT IS SO STIPULATED.

McDERMOTT WILL & EMERY LLP

By: /s/ William G. Gaede, III
William G. Gaede, III
Attorneys for Depomed, Inc.

RAKOCZY MOLINO MAZZOCHI SIWIK LLP

By: /s/ Paul J. Molino
Paul J. Molino
*Attorneys for Lupin Pharmaceuticals, Inc.
and Lupin Limited*

SIGNATURE ATTESTATION

Pursuant to General Order 45.X(B), I hereby attest that concurrence has been obtained from Paul J. Molino indicated by a “conformed” signature (/s/) within this e-filed document.

/s/ William G. Gaede, III
William G. Gaede, III

IT IS SO ORDERED.

DATED: 3/27/12

