

Exhibit K



DEPOMED, INC., Plaintiff(s), v. IVAX CORPORATION, ET AL., Defendant(s).

No. C-06-0100 CRB (JCS), [Docket Nos. 103/105]

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

2007 U.S. Dist. LEXIS 97835

June 19, 2007, Decided

June 19, 2007, Filed

COUNSEL: [*1] For Depomed, Inc., Plaintiff: Christine Saunders Haskett, Michael Kenneth Plimack, LEAD ATTORNEYS, Covington & Burling LLP, San Francisco, CA; Elena Maria DiMuzio, M. Patricia Thayer, Nathan E. Shafroth, Heller Ehrman LLP, San Francisco, CA.

For Ivax Corporation, a Florida corporation, Ivax Pharmaceuticals, Inc., a Florida corporation, Defendants: Forrest Arthur Hainline, LEAD ATTORNEY, Susanne N. Geraghty, Goodwin Procter LLP, San Francisco, CA; E. Jeffrey Banchemo, Scott Robert Raber, Kastner/Banchemo LLP, San Francisco, CA; Jackie LaRae Toney, Jeffrey James Toney, John Lincoln North, Julie Ann Tennyson, Kristin Elizabeth Goran, Leslie K. Slavich, William Franklin Long, III, Sutherland Asbill & Brennan LLP, Atlanta, GA.

For Ivax Corporation, a Florida corporation, Ivax Pharmaceuticals, Inc., a Florida corporation, Counter-claimants: Forrest Arthur Hainline, Goodwin Procter LLP, San Francisco, CA.

For Depomed, Inc., Counter-defendant: Michael Kenneth Plimack, LEAD ATTORNEY, Christine Saunders Haskett, Covington & Burling LLP, San Francisco, CA; Elena Maria DiMuzio, M. Patricia Thayer, Nathan E. Shafroth, Heller Ehrman LLP, San Francisco, CA.

JUDGES: JOSEPH C. SPERO, United States Magistrate Judge.

OPINION BY: JOSEPH [*2] C. SPERO

OPINION

**ORDER RE IN CAMERA REVIEW RELATING TO
MOTION TO COMPEL**

The Court received a joint letter dated May 23, 2007, in which Defendant seeks to compel the Plaintiff to produce copies of a memorandum denominated the "Heines Memo" (the "Motion to Compel") [Docket Nos. 103/105]. The Court has reviewed the Heines Memo *in camera*, as well as a cover memo from John W. Shell to Dr. Peter Timmins at Bristol-Myers Squibb ("BMS") dated April 16, 1997 (the "Cover Memo") that accompanied the delivery of the Heines Memo to BMS.

Plaintiff transmitted the Heines Memo to BMS. Defendant asserts that this waived the attorney-client privilege for the Heines Memo and related documents. Plaintiff argues that there was no such waiver because of the existence of a common-interest privilege in this case. *See, e.g., Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 115 F.R.D. 308, 310-12 (N.D. Cal. 1987). In order to show a common-interest privilege, Plaintiff must demonstrate a common goal and that the documents or communications in question further that common interest. *See U.S. v. Bergonzi*, 216 F.R.D. 487, 496 (N.D. Cal. 2003).

Here, Plaintiff and BMS entered into a joint development agreement dated July 11, 1996. [*3] This joint development interest clearly created common goals. The only question that remains is whether the communication of the Heines Memo was in furtherance of those goals. Having reviewed the Cover Memo and the Heines Memo *in camera*, the Court finds that the Heines Memo was communicated to BMS to further the parties' common interest. Accordingly, there was no waiver of the attorney-client privilege by communication of the Heines Memo to BMS by Plaintiff.¹ For all of the foregoing reasons, the Motion to Compel is DENIED.

¹ Nor was there any waiver due to production of these documents in discovery, either in this case or in any other case. In a previous case, Plaintiff

produced the documents in question to BMS -- who had every right to review them without waiver under the common-interest privilege. In the instant case, the parties have specifically agreed that the inadvertent production of privileged documents will not constitute a waiver.

IT IS SO ORDERED.

Dated: June 19, 2007

/s/ Joseph C. Spero

JOSEPH C. SPERO

United States Magistrate Judge