

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 99-MDL-1317-SEITZ/GARBER

IN RE TERAZOSIN HYDROCHLORIDE  
ANTITRUST LITIGATION

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**This Document Relates to:**

*Louisiana Wholesale Drug Co., Inc.  
v. Abbott Laboratories*

*Case No. (S.D. Fla.) 98-3125*

*Valley Drug Company v. Abbott  
Laboratories, et al.*

*Case No. (S.D. Fla.) 99-7143*

*Sherman Act Class Direct Purchaser Cases*

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**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT is made and entered into as of the 19th day of February, 2002 by and between Defendant IVAX Pharmaceuticals, Inc. ("IVAX ") (formerly known as Zenith Goldline Pharmaceuticals, Inc.) and Plaintiffs in the class actions Louisiana Wholesale Drug Co., Inc. v. Abbott Laboratories, et al., S.D. Fla. Case No. 98-3125; and Valley Drug Co. v. Abbott Laboratories, et al., S.D. Fla. Case No. 99-7143 (the parties are collectively referred to as the "Sherman Act Class Plaintiffs" or "Plaintiffs", and the matters are collectively referred to as the "Class Action"), which were consolidated under Case No. 99-MDL-1317 Seitz/Gerber;

WHEREAS, Plaintiffs have alleged, among other things, that IVAX's agreement with Defendant Abbott Laboratories ("Abbott") dated March 31, 1998 was illegal under Section 1 of

the Sherman Act, 15 U.S.C. § 1, and caused Plaintiffs and other members of the proposed Class to incur significant damages;

WHEREAS, IVAX denies each and every one of Plaintiffs' allegations of unlawful conduct and has asserted a number of defenses to Plaintiffs' claims;

WHEREAS, Plaintiffs and IVAX agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by IVAX or of the truth of any of the claims or allegations alleged in the Class Action;

WHEREAS, arm's-length settlement negotiations have taken place between counsel for Plaintiffs and IVAX, and this Settlement Agreement, including its exhibits, which embodies all of the terms and conditions of the settlement between IVAX and the Sherman Act Class Plaintiffs, both individually and on behalf of the Class, has been reached, subject to the final approval of the Court;

WHEREAS, Plaintiffs' counsel have concluded, after extensive discovery and investigation of the facts and after carefully considering the circumstances of the Class Action and the applicable law, that it would be in the best interests of the Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation, particularly complex litigation such as this, and to assure a benefit to the Class and further, that Plaintiffs' counsel consider the settlement set forth herein to be fair, reasonable, and adequate;

WHEREAS, IVAX has concluded, despite the belief of IVAX that it is not liable for the claims asserted and has good defenses thereto, that it will enter into this Settlement Agreement solely to avoid the further expense, inconvenience and burden of this protracted litigation, and the distraction and diversion of its personnel and resources, and thereby to put to rest this

controversy with valued business customers, and to avoid the risks inherent in uncertain complex litigation;

WHEREAS, IVAX and Plaintiffs have each had the full opportunity to examine the facts and circumstances surrounding their respective decisions to accept the terms of the Agreement and have not relied upon any representations (or the lack thereof) made by the other concerning the circumstances leading to this agreement; and

WHEREAS, the Court certified a Class consisting of the following members on September 20, 2001, as amended by the Court's order on September 28, 2001: "all entities who purchased Hytrin, also known by the chemical name terazosin hydrochloride, directly from Abbott at any time during the period commencing March 31, 1998, through August 13, 1999."

NOW THEREFORE, it is agreed by and among the undersigned, on behalf of IVAX and the Sherman Act Class Plaintiffs, that the Class Action and all actions consolidated therein and all claims of the Sherman Act Class Plaintiffs be settled, compromised and dismissed on the merits and with prejudice as to IVAX and, except as hereinafter provided, without costs as to Plaintiffs or IVAX, subject to the approval of the Court, on the following terms and conditions:

1. **Reasonable Best Efforts to Effectuate This Settlement.** Counsel for the undersigned agree to recommend approval of this Settlement Agreement by the Court and to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Settlement Agreement.

2. **Motion for Preliminary Approval.** Promptly following execution of this Settlement Agreement, Sherman Act Class Plaintiffs shall file with the Court a motion for preliminary approval of the settlement.

In the event that the Court preliminarily approves the settlement, Sherman Act Class Plaintiffs shall, in accord with the order of preliminary approval, provide Class members with notice of the settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs' counsel will recommend notice to the Class by means of (i) direct mail and (ii) publication in not more than two trade publications.

3. **Motion for Final Approval and Entry of Final Judgment.** If the Court preliminarily approves this Settlement Agreement, counsel for the Sherman Act Class Plaintiffs shall submit a motion for final approval of this Settlement Agreement by the Court, after appropriate notice to the Class, and shall seek entry of an order and final judgment:

- a. finally approving this Settlement Agreement and its terms as being a fair, reasonable and adequate settlement as to Plaintiffs and the Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms;
- b. directing that, as to IVAX, the Class Action be dismissed with prejudice and, except as provided for herein, without costs;
- c. reserving exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of this settlement; and
- d. determining pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal shall be final and appealable.

4. This Settlement Agreement shall become final upon the occurrence of all of the following:

- a. neither IVAX nor the Class has availed itself of the right to withdraw from the Settlement Agreement pursuant to paragraph 15 hereof;
- b. it is approved by the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure;
- c. entry, as provided for in paragraph 3 herein, is made of the final judgment of dismissal with prejudice as to IVAX against all Class Plaintiffs and

members of the Class who have not timely excluded themselves from the Class Action; and

- d. the time for appeal from the Court's approval of this Settlement Agreement as described in 4.a. hereof and entry of a final judgment as described in 4.b. hereof has expired or, if appealed, approval of this Settlement Agreement and the final judgment have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

5. **Settlement Consideration: Cash.** Subject to the provisions hereof, and in full, complete and final settlement of the Class Action, within ten (10) days following the entry of Final Judgment pursuant to paragraph 4 of this Settlement Agreement, IVAX shall pay \$2,072,327, plus simple interest at the rate of 1.715% per annum from the date of execution of this Agreement to the date of Final Judgment, to an account administered on behalf of the Class (the "Settlement Fund"). IVAX shall also pay up to an additional \$25,000 for administration and notice expenses, whether incurred prior to the Settlement Agreement becoming final pursuant to the provisions of paragraph 4 herein or whether incurred thereafter. All other administration and notice expenses will be funded from the Settlement amount.

6. All monies deposited into the Settlement Fund shall, subject only to the provisions of this Settlement Agreement, be the property of the beneficiaries thereof upon deposit and shall not revert to IVAX or any of the Released Parties, as defined herein. It is intended that the Settlement Fund be treated as a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. § 1.46B-1 and that any taxes due as a result of income earned by the Settlement Fund will be paid from the Settlement Fund.

7. In the event that this Settlement Agreement does not become final as required by paragraph 4, IVAX shall be responsible only to pay the costs incurred of providing notice to the

Class, and any release or covenant not to sue pursuant to paragraphs 12 and 13 below shall be of no force or effect.

8. **Disbursements from Settlement Fund.** Members of the Class who have not timely excluded themselves from the Class Action shall look solely to the Settlement Fund for settlement and satisfaction against IVAX of all claims that are released hereunder. Except as provided by order of the Court, no Class member shall have any interest in the Settlement Fund or any portion thereof.

9. The Sherman Act Class Plaintiffs and their counsel will be reimbursed and indemnified solely out of the Settlement Fund for all expenses including, but not limited to, the costs of notice of this settlement to Class members,. IVAX shall not be liable for any costs, or fees or expenses of any of Plaintiffs' respective attorneys, experts, advisors, and representatives, but all such costs and expenses as approved by the Court shall be paid out of the Settlement Fund, except for the additional \$25,000 of administration and notice costs to be paid by IVAX.

10. If this Settlement Agreement becomes final pursuant to the provisions of paragraph 4 herein, the Sherman Act Class Plaintiffs may seek to use the Settlement Fund to pay expenses for the prosecution of this Action. In addition, disbursements for the costs and expenses of Class notice, distribution and administration of the Settlement Fund, together with other reasonable expenses awarded by the Court, shall be made from the Settlement Fund. IVAX will not oppose such use or disbursements of the settlement proceeds.

11. **Expenses and Costs.** Sherman Act Class Plaintiffs' counsel intend to seek reasonable costs and expenses incurred in the prosecution of this action. IVAX agrees to take no position with respect to the application by Sherman Act Class Plaintiffs' counsel for the expense payments set forth above. IVAX agrees that any expenses awarded by the Court shall be

disbursed only to Sherman Act Class Plaintiffs' Co-Lead Counsel, Boies, Schiller & Flexner, LLP and Garwin, Bronzaft, Gernstein & Fisher, L.L.P., for allocation among the various Sherman Act Class Plaintiffs' counsel who have participated in this litigation.

12. **Releases.** Upon this Settlement Agreement becoming final in accord with paragraph 4 hereof, IVAX and its present and former parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, employees, agents and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (the "Released Parties") shall be released and forever discharged from liability for all claims that were or could have been brought by Class Plaintiffs and members of the Class in the Class Action and for any claim of fraudulent inducement to enter into this Settlement Agreement (the "Released Claims"). Nothing in this Settlement Agreement is intended to release any non-settling Defendant. Each member of the Class hereby covenants and agrees that it shall not, hereafter, seek to establish liability against any Released Party based, in whole or in part, upon any of the Released Claims.

13. In addition to the provisions of paragraph 12 of this Agreement, the Class members hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights and benefits conferred by § 1542 of the California Civil Code, which states:

Section 1542. Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each Class member may hereafter discover facts other than or different from those which he, she or it knows or

believes to be true with respect to the claims which are the subject matter of the provisions of paragraph 12 of this Agreement, but each Class member hereby expressly waives and fully, finally and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim as provided in paragraph 12 of this Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

14. **Reservation of Claims.** The Class members intend by this Settlement Agreement to settle with and release only the Released Parties that such Class members have released pursuant to paragraph 12 hereof, and the parties do not intend this Settlement Agreement, any part hereof or any other aspect of the proposed settlement or release, to release or otherwise affect in any way any rights a Class member has or may have against any other party or entity whatsoever other than the Released Parties pursuant to paragraph 12 hereof. In addition, the releases set forth in paragraph 12 and 13 hereof shall not release any claims arising in the ordinary course of business between Class members and the Released Parties (e.g., product liability, breach of contract, breach of warranty, common law personal injury tort, etc.).

15. **Effect of Court Action.** If the Court declines to finally approve this Settlement Agreement, or if such approval is set aside on appeal, or if the Court does not enter the final judgment in substantially the form provided for in paragraph 4, or if the Court permits additional opt outs from the current Class as described in the confidential letter agreement of February 19, 2002, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed, or if the terms of this Settlement Agreement are materially changed except by mutual consent of the parties, then this Settlement Agreement may be cancelled and terminated, and shall become null and void, upon the election of IVAX or

Plaintiffs' Co-Lead Counsel. A modification or reversal on appeal of any amount of Plaintiffs' counsels' expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such final judgment.

16. If the Class, as certified by the Court on September 20, 2001, and as amended by the Court on September 28, 2001, is de-certified following a decision by the United States Court of Appeals for the Eleventh Circuit or the United States Supreme Court, and no new direct purchaser class is certified by the Court, this Agreement may be cancelled and terminated, and shall become null and void, upon the election of IVAX or Plaintiffs' Co-Lead Counsel.

If the Class, as certified by the Court on September 20, 2001, and as amended by the Court on September 28, 2001, is modified or altered following a decision by the United States Court of Appeals for the Eleventh Circuit or the United States Supreme Court, or if upon remand following a decision by the Eleventh Circuit Court of Appeals or the United States Supreme Court, a class is certified that is different than the Class certified by the Court on September 20, 2001, and as amended by the Court on September 28, 2001, the Settlement amount set forth herein shall be reduced proportionately based on a percentage, the numerator of which is the total amount of Class members' direct purchases of terazosin hydrochloride for Class members who are no longer members of the Class (excluding members who have already timely opted out of the Class, either by submitting a request for exclusion or by filing a Hytrin lawsuit on or before November 19, 2001), and the denominator of which is the total amount of current Class members' direct purchases of terazosin hydrochloride during the same time period. The amount by which the Settlement amount is to be reduced shall be refunded to IVAX within 10 business days. If the total percentage of direct purchaser plaintiffs originally part of the Class certified by the Court on September 20, 2001, and as amended by the Court on September 28, 2001

(excluding members who have already timely opted out of the Class, either by submitting a request for exclusion or by filing a Hytrin lawsuit on or before November 19, 2001), but not part of an amended, modified, or re-certified direct purchaser Class exceeds the percentage described in the confidential letter agreement of February 19, 2002 (unless the Court concludes that these particular members have no cause of action to proceed against IVAX or are entitled to recover no monetary damages from IVAX), this Agreement may be cancelled and terminated, and shall become null and void, upon the election of IVAX or Plaintiffs' Co-Lead Counsel.

17. In the event that the settlement does not become final in accordance with the terms of paragraph 4 and 16 hereof, then this Settlement Agreement shall be of no force or effect, except for payment of notice, and administration fees and costs from the Settlement Fund, and IVAX shall be entitled to the return of the amount held in the Settlement Fund less such notice and Settlement Fund administration fees and costs. The parties hereto agree that this Settlement Agreement, whether or not it shall become final, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or any liability or wrongdoing by IVAX or of the truth of any of the claims or allegations contained in the complaint or any other pleading, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Class Action or in any other action or proceeding. The parties expressly reserve all of their rights if the settlement does not become final in accordance with the terms of this Settlement Agreement.

18. **Settlement Consideration: Cooperation.** IVAX agrees that it will cooperate with the Sherman Act Class Plaintiffs' continued prosecution of their remaining claims in this Action to the extent that such cooperation does not reasonably adversely affect IVAX's defenses

in any continuing litigation involving Hytrin or terazosin hydrochloride. As a part of this cooperation, IVAX agrees to the following:

- a. witnesses under its control will not testify, unless pursuant to Court order or a subpoena, at any trial covering antitrust matters relating to terazosin hydrochloride in which IVAX is not a defendant and the Sherman Act Class Plaintiffs are plaintiffs;
- b. upon request, to produce witnesses under its control to appear at a trial in which IVAX is not a defendant but the Sherman Act Class Plaintiffs are plaintiffs; and
- c. to provide truthful information to assist plaintiffs in prosecuting their claims in this Action.

19. **Binding Effect.** This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto and to the Released Parties.

Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Sherman Act Class Plaintiffs and their counsel shall be binding upon all members of the Class.

20. **Integrated Agreement.** This Settlement Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties. This Settlement Agreement shall not be modified in any respect except by a writing executed by all the parties hereto.

21. **Headings.** The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

22. **No Party is the Drafter.** None of the parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case

law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

23. **Choice of Law.** All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the state of Florida without regard to its choice of law or conflict of laws principles.

24. **Consent to Jurisdiction.** IVAX and each member of the Class hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of Florida, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement.

25. **No Admission.** Nothing in this Settlement Agreement shall be construed as an admission in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority, present or future, by IVAX including, without limitation, that IVAX has engaged in any conduct or practices that violate any antitrust statute or other law.

26. **Intended Beneficiaries.** Nothing in this Settlement Agreement shall be deemed to confer any rights or benefits, or impose any obligations, on any person other than the members of the Class and the Released Parties.

27. **Execution in Counterparts.** This agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this agreement and filed with the Court.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement on the date first herein above written.

By: Barry S. Taus  
Barry S. Taus, Esq.  
Bruce E. Gerstein, Esq.  
Jan Bartelli, Esq.

GARWIN, BRONZAFI, GERSTEIN  
& FISHER, L.L.P.  
1501 Broadway, Suite 1416  
New York, NY 10036  
Tel: (212) 398-0055  
Fax: (212) 764-6620  
E-Mail: btaus@gbgf-law.com

By: Richard B. Drubel / KHS  
Richard B. Drubel, Esq.  
Kimberly H. Schultz, Esq.

BOIES, SCHILLER & FLEXNER LLP  
26 South Main Street  
Hanover, NH 03755  
Tel: (603) 643-9090  
Fax: (603) 643-9010  
E-Mail: rdrubel@bsfllp.com

*Co-Lead Counsel for Sherman Act Class Plaintiffs*

By: [Signature]  
Gerson A. Zweifach, Esq.  
Kevin M. Downey, Esq.

WILLIAMS & CONNOLLY LLP  
725 Twelfth Street, N.W.  
Washington, D.C. 20005-5901  
Tel: (202) 434-5000  
Fax: (202) 434-5029  
E-Mail: gzweifach@wc.com

*Counsel for Defendant IVAX Pharmaceuticals, Inc.*