

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 99-MDL-1317 - SEITZ/KLEIN

IN RE TERAZOSIN HYDROCHLORIDE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

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

S.D. Fla. Case No. 98-3125

Valley Drug Co. v. Abbott Laboratories, et al.

S.D. Fla. Case No. 99-7143

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Settlement Agreement") is made and entered into on February __, 2005, by and between (a) defendants Abbott Laboratories ("Abbott") and Geneva Pharmaceuticals, Inc., now known as Sandoz Inc. ("Geneva") (collectively "Defendants") and (b) plaintiffs Louisiana Wholesale Drug Co., Inc. ("LWD") and Valley Drug Co. ("Valley Drug") (collectively "Plaintiffs") in the putative 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 (collectively, the "Actions").

WHEREAS, Plaintiffs have alleged, among other things, that Abbott's written agreement with Geneva, dated April 1, 1998, was illegal under Section 1 of the Sherman Act, 15 U.S.C. §1 and Plaintiffs allege that this written agreement caused Plaintiffs and the Class (as defined in paragraph 1 herein) to incur significant damages;

WHEREAS, Defendants deny each and every one of Plaintiffs' allegations of unlawful or wrongful conduct, and deny that any conduct challenged by Plaintiffs caused any damage whatsoever, and have asserted a number of defenses to Plaintiffs' claims;

WHEREAS, Plaintiffs and Defendants 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 Defendants or of the truth of any claim or allegation or a waiver of any defenses thereto;

WHEREAS, arm's-length settlement negotiations have taken place between counsel for Plaintiffs and Defendants, and this Settlement Agreement, which embodies all of the terms and conditions of the settlement ("Settlement") between Defendants and Plaintiffs, both individually and on behalf of the Class, has been reached, subject to final approval of the United States District Court for the Southern District of Florida (the "Court");

WHEREAS, Plaintiffs' counsel have concluded, after extensive discovery and investigation of the facts, and after carefully considering the circumstances of the Actions, including the claims asserted in the complaints filed in the Actions, the possible legal and factual defenses thereto, 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 to be fair, reasonable, and adequate and in the best interests of the Class; and

WHEREAS, Defendants have concluded, despite their belief that they are not liable for the claims asserted and that they have good defenses thereto, that it would be in their best interests to enter into this Settlement Agreement to avoid further expense, inconvenience, uncertainties of litigation, and the distraction of burdensome and protracted litigation and thereby to resolve this controversy;

NOW THEREFORE, it is agreed by the undersigned, on behalf of Defendants, Plaintiffs and the Class, that the Actions and all claims made or that could have been made against

Defendants by Plaintiffs and the Class that are Released Claims (as defined in paragraph 11 herein) be settled, compromised and dismissed with prejudice, and without the award of costs, subject to the approval of the Court, on the following terms and conditions:

1. Class. The parties stipulate to Court approval, in the form set out in the proposed order attached hereto as Exhibit "1", of the certification of a class in light of the fact of settlement (the "Class"), defined as follows:

All persons who purchased Hytrin, also known by the chemical name terazosin hydrochloride, directly from Abbott Laboratories at any time during the period commencing March 31, 1998 through and including June 30, 2001.

Excluded from the Class are: (1) Defendants Abbott Laboratories, Geneva Pharmaceuticals, Inc. (now known as Sandoz Inc.), Zenith Goldline Pharmaceuticals, Inc. (now known as Ivax Pharmaceuticals, Inc.), their officers, directors, management, employees, subsidiaries, and affiliates; (2) each of the following entities, and any and all claims of each said entity that have been asserted, or could have been asserted, in *In re Terazosin Hydrochloride*, Case No. 99 MDL 1317 arising out of Hytrin or generic terazosin hydrochloride purchases by said entity: CVS Meridian, Inc., Rite Aid Corp., Walgreen Co., Eckerd Corp., The Kroger Co., Albertson's, Inc., The Stop & Shop Supermarket Co., and Hy-Vee, Inc.; and (3) Kaiser Foundation Health Plan, Inc. and the Kaiser entities on whose behalf it has asserted claims in paragraph 8 of its complaint in 99 MDL 1317.

The parties' stipulation to Court approval of certification of the Class is only for purposes of effectuating the Settlement, and for no other purpose. The parties retain all of their respective objections, arguments and/or defenses with respect to class certification should there be no settlement of the Actions. The parties acknowledge that there has been no stipulation to a class for any purposes other than effectuating the Settlement, and that if the Settlement does not

become final pursuant to the terms of paragraphs 4 and 5 below, the stipulation as to Class becomes null and void.

2. 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.

3. Motion for Preliminary Approval. Plaintiffs shall file with the Court a motion for preliminary approval of the Settlement, which contains a proposed preliminary approval order in the form attached hereto as Exhibit "1". In the event that the Court preliminarily approves the Settlement, Plaintiffs shall, in accordance 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 and such notice may be given substantially in the form attached hereto as Exhibit "2". Plaintiffs' counsel will recommend to the Court notice to the Class by means of first class mail.

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

- a. finding the Settlement and its terms to be 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. providing for incentive payments from the Settlement Fund (as defined in paragraph 6 herein) to the two Class representatives totaling \$75,000 in addition to whatever monies each will receive from the Settlement Fund pursuant to a Court-approved plan of allocation;

- c. directing that the Actions be dismissed with prejudice;
- d. reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including the administration and consummation of this Settlement;
- e. directing that the judgment of dismissal shall be final and appealable; and
- f. directing that, for a period of five years, the Clerk of the Court shall maintain the record of those members of the Class who have timely excluded themselves from the Class and that a certified copy of such records shall be provided to Defendants.

5. Finality of Settlement. The Settlement shall become final upon the occurrence of all of the following:

- (i) Plaintiffs or Defendants have not availed themselves of any right to withdraw from the Settlement pursuant to paragraphs 13 or 14 hereof;
- (ii) the Class is certified as contemplated by the stipulation in paragraph 1 herein;
- (iii) the Settlement is approved by the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure;
- (iv) entry, as provided for in paragraph 4 herein, is made of the order and final judgment with prejudice against Plaintiffs and the members of the Class who have not timely excluded themselves from the Actions; and
- (v) the time for appeal from the Court's approval of the Settlement as described in (iii) hereof and entry of a final judgment as described in (iv) hereof has expired or, if appealed, either such appeal shall have been dismissed prior to resolution or approval of the Settlement and the final judgment has been affirmed in its 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, by certiorari or otherwise.

6. Settlement Consideration: Cash. Subject to the provisions hereof, and in full, complete and final settlement of the Actions, Abbott shall pay forty-three million five hundred thousand dollars (\$43,500,000) and Geneva shall pay twenty-nine million dollars (\$29,000,000), in cash, within 5 business days of preliminary approval by the Court, into an escrow account (the

“Settlement Fund”), held and administered by an escrow agent to be selected by Plaintiffs’ undersigned counsel with agreement from counsel for Defendants. The Settlement Fund is the total amount that Defendants will pay under this Settlement Agreement or for the benefit of the Released Claims (as defined in paragraph 11 herein), including without limitation funds to satisfy claims by Class members, attorneys’ fees and costs, any Court-approved incentive awards to the named Plaintiffs for acting as Class representatives, and payment of any and all administrative and notice expenses associated with the Actions or this Settlement. The escrow account shall be established and administered pursuant to an escrow agreement in a form satisfactory to the parties. Defendants shall have no liability, obligation or responsibility with respect to the investment, disbursement, or other administration or oversight of the Settlement Fund. It is intended that the escrow account be treated as a “qualified settlement fund” for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1, and to that end the parties hereto shall cooperate with each other and shall not take a position, including a position in any filing or before any tax authority, that is inconsistent with such treatment. Whether or not final approval of this Settlement Agreement occurs and whether or not the Settlement Fund qualifies as a qualified settlement fund within the meaning of Treas. Reg. § 1.468B-1, any taxes or estimated taxes due as a result of income earned by the Settlement Fund, and all related costs and expenses, will be paid from the Settlement Fund. The parties elect that the Settlement Fund should be treated as a qualified settlement fund from the earliest possible date and agree to make any “relation back” election that may be available. Interest earned by the Settlement Fund shall become part of the Settlement Fund.

7. Full Satisfaction; Limitation of Interest and Liability. Members of the Class who have not timely excluded themselves from the Actions shall look solely to the Settlement Fund

for settlement and satisfaction against Defendants of all claims that are released hereunder. Certain members of the Class have purported to assign all or a portion of their claims (the "Assigned Claims"). Members of the Class shall not under any circumstances be entitled to any further compensation from Defendants with respect to any Assigned Claims. In the event that the Settlement becomes final pursuant to paragraph 5 herein, the Settlement Fund will fully satisfy any and all Released Claims as defined in paragraph 11 herein. Except as provided by order of the Court, no Class member shall have any interest in the Settlement Fund or any portion thereof. Defendants shall have no liability with respect to disbursements from the Settlement Fund pursuant to any Court-approved plan of allocation.

8. Reimbursement of Costs, Fees and Expenses. Plaintiffs and their counsel will be reimbursed and indemnified solely out of the Settlement Fund for all costs, fees and expenses including, but not limited to, the costs of notice of this Settlement to Class members and administration of the Settlement Fund. Defendants shall not be liable for any costs, fees or expenses of any Class members or Plaintiffs, or of any Class members' or Plaintiffs' attorneys, experts, consultants, advisors, agents and representatives. Any such costs, fees and expenses as approved by the Court shall be paid out of the Settlement Fund.

9. Disbursement of the Settlement Fund. If the Settlement becomes final pursuant to the provisions of paragraph 5 herein, the Settlement Fund shall be distributed to Class members and Class counsel as ordered by the Court. Prior to the Settlement's becoming final pursuant to the provisions of paragraph 5 herein, disbursements for the costs and expenses of Class notice and administration of the Settlement Fund may be made from the Settlement Fund, but only as provided herein or in the escrow agreement specified in paragraph 6 herein. Defendants shall have no liability or responsibility with respect to disbursements from or administration of the

Settlement Fund. To the extent that there is any ambiguity or inconsistency concerning disbursements when this Settlement Agreement and the escrow agreement specified in paragraph 6 herein are read together, the terms of this Settlement Agreement shall control.

10. Attorneys' Fees, Expenses and Costs. Class counsel intend to seek, solely from the Settlement Fund, attorneys' fees of up to 33 1/3% of the Settlement Fund (plus interest thereon) before deduction of any costs, expenses, or incentive awards. In addition, Class counsel intend to seek, from the Settlement Fund, reimbursement of reasonable costs and expenses incurred in the prosecution of the Actions. Defendants agree to take no position with respect to the application by Class counsel for the attorneys' fees and expense payments set forth above. Defendants agree not to oppose any request by Class counsel that the Court order that any attorneys' fees and expenses awarded by the Court shall be disbursed only to Garwin Gerstein & Fisher LLP, and Boies, Schiller & Flexner LLP, for allocation among the various counsel to the Class that have participated in this litigation.

11. Releases.

(a) Upon the Settlement's becoming final in accord with paragraph 5 herein, Defendants and their past, present and future parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, general or limited partners, employees, agents, attorneys and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (the "Released Parties") are and shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that Plaintiffs or any member or members of the Class who has (have) not timely

excluded itself (themselves) from the Class (including any of their past, present or future officers, directors, insurers, general or limited partners, divisions, stockholders, agents, attorneys, employees, legal representatives, trustees, parents, associates, affiliates, subsidiaries, partners, heirs, executors, administrators, purchasers, predecessors, successors and assigns, acting in their capacity as such), whether or not they object to the Settlement and whether or not they make a claim upon or participate in the Settlement Fund, ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, arising out of any conduct alleged in the Actions or in any other complaint filed in any action consolidated or coordinated in 99 MDL 1317, or otherwise relating to any alleged delay in marketing or selling of generic equivalents of Hytrin, prior to the date hereof except as provided for in paragraph 12 herein (the "Released Claims"). Plaintiffs and each member of the Class hereby covenant and agree that each shall not sue or otherwise seek to establish or impose liability against any Released Party based, in whole or in part, on any of the Released Claims.

(b) In addition, each Class member hereby expressly waives and releases, upon the Settlement Agreement becoming final, any and all provisions, rights, benefits conferred by § 1542 of the California Civil Code, which reads:

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

or by any law of any state or territory of the United States or other jurisdiction, 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 this

paragraph 11, but each Class member hereby expressly waives and fully, finally and forever settles and releases, upon this Settlement Agreement's becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Class member also hereby expressly waives and fully, finally and forever settles and releases any and all claims it may have against any Released Party under § 17200, *et seq.*, of the California Business and Professions Code or any similar, comparable or equivalent provision of the law of any other state or territory of the United States or other jurisdiction, which claims are hereby expressly incorporated into the definition of Released Claims.

(c) Plaintiffs and their counsel will ensure that each claim form contains a copy of the release set forth in paragraph 11(a) and (b) herein, which shall be signed by each member of the Class or its authorized representative as a precondition to receiving any portion of the Settlement Fund.

12. Reservation of Claims. Released Claims shall not include claims arising in the ordinary course of business between Class members and the Released Parties concerning product liability, breach of warranty, breach of contract (other than breach of contract based in whole or in part on any conduct challenged by any plaintiff in 99 MDL 1317), personal or bodily injury, or any claim of any sort that does not relate to Hytrin or terazosin hydrochloride. Released Claims also shall not include any claim asserted in 99 MDL 1317 by any of the following entities based upon an assignment to said entity arising out of Hytrin or generic terazosin hydrochloride purchases of said entity: CVS Meridian, Inc., Rite Aid Corp., Walgreen Co., Eckerd Corp., The

Kroger Co., Albertson's, Inc., The Stop & Shop Supermarket Co., and Hy-Vee, Inc.; this settlement shall not be construed to disturb or affect any such assigned claim.

13. Withdrawal From Settlement; Requests To Be Excluded From Class. If, after notice of the Settlement is sent to the Class, Class members with aggregate alleged damages exceeding a certain amount by a certain measure (as specified in a confidential letter agreement between the parties) ("exclusion threshold") request to exclude themselves from the Class, then Defendants may, under certain circumstances provided in the letter agreement, be entitled to withdraw from this Settlement. To be effective, any request by a Class member to be excluded from the Class must be received by Plaintiffs' counsel or the claims administrator on or before March 31, 2005. Plaintiffs agree to provide Defendants with all requests for exclusion within 2 business days of receipt by Plaintiffs' counsel, but in no event later than 4:00 p.m. Eastern time on April 1, 2005. Defendants may withdraw from this Settlement on the basis that the above-referenced exclusion threshold has been exceeded by providing written notice (which may be by facsimile or electronic mail) to Plaintiffs' counsel by 5:00 p.m. Pacific time on April 7, 2005.

In addition, Defendants anticipate entering into a multi-class settlement agreement with respect to the Indirect Purchaser actions that are part of 99 MDL 1317 (the "Indirect Purchaser Litigation"),¹ which agreement would allow Defendants to withdraw in circumstances relating

¹ These actions include *United Wisconsin Services, Inc., et al. v. Abbott Laboratories*, N.D. Ill. C.A. No. 99-C-7410(JBZ); *Grosskrueger v. Abbott Laboratories, et al.*, N.D. Ill. C.A. No. 99C-7883(JBZ); *Reid v. Abbott Laboratories, et al.*, D.D.C. C.A. No. 00-323; *Scafani v. Abbott Laboratories, et al.*, N.D. Cal. C.A. No. 00-00508-SBA; *Mednick v. Abbott Laboratories, et al.*, No. 2:00-3468; *O'Neal v. Abbott Laboratories, et al.*, No. 00-J-1504-S; *Grund v. Abbott Laboratories, et al.*; *Blue Cross and Blue Shield of Alabama, Inc. v. Abbott Laboratories, et al.*, No. 00-1303-Civ.-Lenard; *Bernstein v. Abbott Laboratories*, E.D. Mich. C.A. No. 2:00-CV-72974; and *Blue Cross and Blue Shield of Michigan v. Abbott Laboratories, et al.*, No. 5:01-CV-95, and *States of Florida, Colorado and Kansas v. Abbott Laboratories, et al.*, S.D. Fla., No. 01-4006.

to, *inter alia*, requests for exclusion from the indirect settlement classes by third party payers. Defendants will use their best efforts to enter into such a settlement agreement of the Indirect Purchaser Litigation by March 1, 2005. If Defendants do not enter into such a settlement agreement of the Indirect Purchaser Litigation by March 1, 2005, Defendants will inform Plaintiffs' counsel by written notice no later than 5:00 p.m. Pacific time on March 15, 2005 (including by facsimile or electronic mail) if Defendants' elect to withdraw from this Settlement because they failed to enter a settlement agreement of the Indirect Purchaser Litigation by March 1, 2005. Further, if Defendants' right to withdraw from any settlement agreement in the Indirect Purchaser Litigation is triggered by requests for exclusion from the indirect settlement classes by third party payers, Defendants likewise may withdraw from this Settlement. Should Defendants elect to withdraw from this Settlement on the ground that their right to withdraw was triggered by requests for exclusion from the indirect settlement classes by third party payors, Defendants will provide written notice (which may be by facsimile or electronic mail) to Plaintiffs' counsel by 5:00 p.m. Pacific time on April 11, 2005.

Defendants also anticipate entering into settlement agreements with respect to (1) the actions in 99 MDL 1317 brought by CVS Meridian, Inc., Rite Aid Corp., Walgreen Co., Eckerd Corp., The Kroger Co. Albertson's, Inc., The Stop & Shop Supermarket Co., and Hy-Vee, Inc., and (2) the action under the caption *State of West Virginia, ex rel. Darrel v. McGraw, Jr. v. Abbott Labs.*, No. 01-C-180 (Cir. Ct. Wyoming Co.). Defendants will use their best efforts to enter into such settlement agreements of these actions by March 15, 2005. Defendants may withdraw from this Settlement if Defendants do not enter into one or both of such settlement agreements by March 15, 2005. Defendants will promptly inform Plaintiffs' counsel if Defendants' right to withdraw from this Settlement has been so triggered. Defendants may

withdraw from this Settlement on the basis just specified by providing written notice (which may be by facsimile or electronic mail) to Plaintiffs' counsel by 5:00 p.m. Pacific time on March 22, 2005.

If Defendants withdraw from this Settlement, the Settlement Agreement shall be cancelled and terminated.

14. Effect of Disapproval. If the Court declines to finally approve the Settlement, or if such approval is reversed, vacated, or otherwise materially modified 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 enters the final judgment and appellate review is sought, and on such review, such final judgment is reversed, vacated or materially modified, then this Settlement Agreement shall be terminated upon the election of any of Defendants or Plaintiffs, acting through their undersigned counsel; provided however that any reversal, vacating or modification on appeal of any amount of Class counsel's fees and expenses awarded by the Court from the Settlement Fund, or any amount of incentive payments to any Class representative, or any determination by the Court to award less than the amount requested in attorneys' fees or costs to Plaintiffs' counsel or incentive payments to Plaintiffs, shall not give rise to any right of termination or otherwise serve as a basis for termination of this Settlement Agreement.

15. Termination. In the event that the Settlement is terminated pursuant to paragraph 13 or 14, or for any other reason does not become final in accordance with the terms of paragraph 5 herein, then (a) this Settlement Agreement (including the stipulation relating to the certification of the Class in accordance with paragraph 1 hereto) shall be of no force or effect, except for payment of Class notice and administrative fees and costs from the Settlement Fund, (b) the Settlement Fund, including any and all interest earned thereon and less only the amount

validly disbursed for the costs incurred in giving notice to the Class, shall be returned to Defendants, 60 percent to Abbott and 40 percent to Geneva, and (c) any release pursuant to paragraph 11 above shall be of no force or effect.

16. Preservation of Rights. The parties hereto agree that this Settlement Agreement, whether or not it shall become final pursuant to paragraph 5 herein, and any and all negotiations, documents and discussions associated with it shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by Defendants, or of the truth of any of the claims or allegations contained in any complaint or any other pleading or document, and evidence thereof shall not be discoverable, admissible or otherwise used directly or indirectly, in any way by Plaintiffs or Defendants, whether in the Actions or in any other action or proceeding. The parties expressly reserve all of their rights and defenses if the Settlement Agreement does not become final pursuant to paragraph 5 herein.

17. Binding Effect. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto, including the members of the Class who do not timely request to be excluded, and of the Released Parties. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Plaintiffs and their counsel (other than those in paragraph 19 herein) shall be binding upon all members of the Class.

18. Integrated Agreement. This Settlement Agreement (including all exhibits hereto and other documents explicitly referenced herein) contains the entire, complete, and integrated statement of each and every term and provision of the Settlement. This Settlement Agreement shall not be modified in any respect except by a writing executed by the undersigned in the

representative capacities specified, or others who are authorized to act in such representative capacities.

19. Limitations On Public Comment. Until October 15, 2005, neither Plaintiffs nor Defendants nor any counsel or other agent for or representative of Plaintiffs or a Defendant will make or cause to be made any public statement or comment regarding the Settlement – other than, (1) press releases approved by all undersigned counsel, (2) straightforward statements (without elaboration) in substantially the form “the actions have settled,” (3) neutral statements of the terms of the Settlement, or (4) statements repeating or paraphrasing, in a non-misleading form, all or a portion of any Court-approved notice to the Class of the Settlement; provided that each Defendant and each member of the Class shall be entitled to make such disclosures as it, in its discretion, shall determine are appropriate under the securities laws.

20. 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.

21. No Party is the Drafter. Counsel to all parties hereto have materially participated in the drafting of this Settlement Agreement. 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.

22. 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.

23. Consent to Jurisdiction. Defendants and each member of the Class hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation any suit, action, proceeding or dispute relating to the release provisions herein, except that this paragraph 23 shall not prohibit (a) the assertion in the forum in which a claim is brought that the release herein is a defense, in whole or in part, to such claim or, (b) in the event that such a defense is asserted in that forum, the determination of its merits in that forum.

24. Enforcement of Settlement. Nothing in this Settlement Agreement prevents Defendants from enforcing or asserting any release herein, subject to the provisions of paragraph 15 herein. Notwithstanding any other provision of this Settlement Agreement, this Settlement Agreement and the releases contained herein may be pleaded as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted with respect to any Released Claims and may be filed, offered and received into evidence and otherwise used for such defense.

25. Authorization To Act On Behalf Of Plaintiffs And Class. The undersigned counsel to Plaintiffs represent that they have been and are fully authorized to conduct settlement negotiations with Defendants' counsel on behalf of Plaintiffs and the Class and to enter into, and execute, this Settlement Agreement on behalf of Plaintiffs and the Class, subject to Court approval pursuant to Fed. R. Civ. P. 23(e).

26. Severability. In the event any one or more of the provisions of this Settlement Agreement shall for any reason be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision if Defendants'

and Plaintiffs' counsel mutually agree to proceed as if such illegal, invalid, or unenforceable provision had never been included in the Settlement Agreement.

27. 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 Defendants or Plaintiffs, or any of them, including without limitation that Defendants have, either individually or jointly, engaged in any conduct or practices that violate any antitrust statute or other law.

28. Work Product From This Litigation. Plaintiffs and their counsel agree not to:

- (a) share any of their work product from the Actions,
- (b) consent to any of their experts, advisors or consultants in the Actions sharing work product from the Actions, or
- (c) consent to any of their experts or consultants in the Actions working,

with or for the benefit of others (including counsel, experts, advisors or consultants of others, but except as Plaintiffs' counsel has already agreed with counsel to CVS Meridian, Inc., Rite Aid Corp., Walgreen Co., Eckerd Corp., The Kroger Co., Albertson's, Inc., The Stop & Shop Supermarket Co., and Hy-Vee, Inc.) that are asserting or contemplating asserting claims against any Released Parties relating to or arising out of any conduct challenged by any plaintiff in 99 MDL 1317.

29. 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 of the date first herein above written.

By: Bruce E. Gerstein
Bruce E. Gerstein, Esq.
Barry S. Taus, Esq.
GARWIN GERSTEIN & FISHER LLP
1501 Broadway, Suite 1416
New York, NY 10036
Tel: (212) 398-0055
*Co-Lead Counsel for the Class
and Louisiana Wholesale Drug Co., Inc.*

By: Jeffrey I. Weinberger
Jeffrey I. Weinberger, Esq.
Stuart N. Senator, Esq.
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue - 35th Floor
Los Angeles, CA 90071
Tel: (213) 683-9100
Counsel for Abbott Laboratories

By: Richard B. Drubel by BEV.
Richard B. Drubel, Esq.
Kimberly H. Schultz, Esq.
BOIES, SCHILLER & FLEXNER, L.L.P.
26 South Main Street
Hanover, NH 03755
Tel: (603) 643-9090
*Co-Lead Counsel for the Class and
Valley Drug Co.*

By: _____
Wayne A. Cross, Esq.
WHITE & CASE
1155 Avenue of the Americas
New York, NY 10036
Tel: (212) 819-8200
Counsel for Geneva Pharmaceuticals, Inc

Dated: February 24, 2005