

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CVS PHARMACY, INC.,

Plaintiff,

v.

PRASCO, LLC,

Defendant.

CA 07 2585

C.A. No.: _____
JURY TRIAL DEMANDED

COMPLAINT

This is an action for breach of contract arising from the actions of Prasco, LLC (“Prasco” or the “Defendant”) in violation of an agreement (“Agreement”) to sell directly or indirectly to CVS Pharmacy, Inc. (“CVS” or the “Plaintiff”) fexofenadine hydrochloride tablets (“Product”) at the lowest price offered to any other customer. In violation of this Agreement, the Defendant charged another customer a substantially lower price on this Product, causing CVS over \$15.6 million in damages.

PARTIES

1. Plaintiff CVS Pharmacy, Inc. (“CVS”) is a Delaware Corporation with its principal place of business located at One CVS Drive, Woonsocket, Rhode Island 02895.

2. Defendant Prasco, LLC (“Prasco”) is an Ohio Corporation in the generic pharmaceutical industry with its principal place of business located at 7155 E. Kemper Road, Cincinnati, Ohio 45249.

JURISDICTION

3. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332.

FACTS

4. On September 23, 2005, Mitch Cullen (“Cullen”), Vice President of National Accounts for Prasco, sent Craig Heneghan (“Heneghan”), Vice President of Pharmacy Merchandising for CVS, a draft of an agreement pursuant to which Prasco would sell to CVS the Product, a generic form of a brand pharmaceutical sold under the name Allegra.

3. After reviewing Prasco’s first draft of the Agreement, Heneghan added certain provisions essential to CVS’s willingness to purchase the Product from Prasco, as opposed to another source of an equivalent generic product.

4. In a telephone call in which Heneghan informed Cullen of the changes he wished to make to the Agreement, Cullen approved the additions.

5. On that day, September 23, 2005, CVS and Prasco entered the Agreement. See CVS Direct Contract (redacted to remove confidential pricing information), attached hereto as Exhibit A.

6. The Agreement required Prasco to sell the Product to CVS in dosages of 30, 60, and 180 mg at set prices. Id.

7. As part of the Agreement, Prasco agreed that CVS would receive a quarterly rebate of 0.5% on invoices paid by CVS. Id.

8. Prasco further agreed that all purchases made under the Agreement would be made in accordance with CVS’s business standards (“Business Standards,” a copy of which is attached hereto as Exhibit B). Id. at ¶ 2.

9. The Agreement defined CVS’s Business Standards to include, without limitation, CVS’s Return Goods Policy, CVS’s Generic Business Standards, CVS’s Billback Program, and CVS’s Base Portfolio Generic Rebate Policy. Id. at ¶ 2.

10. Pursuant to the Agreement, Prasco agreed that in the event of any cost decrease, CVS would be compensated for the difference between the then current (reduced) cost and the cost at the time of invoice for each unit of the Product on hand (the difference between the number of units obtained as a result of direct or indirect purchases and the number of units dispensed) upon the effective date of a cost decrease (“Price Decrease Protection Clause”). Id. at ¶ 3.

11. The Agreement also included a “Most Favored Nation Clause” providing that Prasco “warrants and represents that CVS will pay the lowest price by Prasco to any other customer regardless of class of trade.” Id. at ¶ 4.

12. The Most Favored Nation Clause of the Agreement further required that “CVS will pay Prasco the lowest price (net of all rebates, allowances, programs, etc.) when compared to any other Prasco customer.” Id.

13. The Most Favored Nation Clause of the Agreement further provided that the prices included in a purchase order “shall be automatically revised (by Prasco to CVS) to equal the lowest cost at which Prasco shall have sold or shall have offered to any other customer.” Id.

14. On at least two occasions, Heneghan contacted Cullen at Prasco to confirm that Prasco was honoring the Agreement by offering CVS the lowest price offered for the Product. On each occasion, Cullen represented that Prasco was honoring the terms of the Agreement.

15. On May 4, 2006, the Parties executed a price revision agreement in which Prasco agreed to decrease the cost of the Product sold to CVS. A copy of the May 4, 2006 Price Revision Agreement (redacted to remove confidential pricing information) is attached hereto as Exhibit C.

16. On June 5, 2006, after noticing an apparent error in CVS's May 2006 shelf stock differential calculation, Prasco sent a fax to CVS forwarding a copy of the parties' Agreement and explaining its understanding of the method to be used to calculate the shelf stock differential under Paragraph 3 of that Agreement. A copy of the fax from M. Pendley to C. Heneghan dated June 5, 2006 (redacted to remove confidential pricing information) is attached hereto as Exhibit D.

17. On June 16, 2006, CVS and Prasco agreed to modify the shelf stock differential calculation method from the procedure set forth in paragraph 3 of the parties Agreement to the method set forth in CVS's Business Standards. A copy of the letter from C. Heneghan to M. Cullen dated June 16, 2006 (redacted to remove confidential pricing information) is attached hereto as Exhibit E. Pursuant to CVS's Business Standards, in the event of any cost decrease, CVS is to be compensated for the difference between the then current (reduced) cost and the cost at the time of invoice for each unit of the Product in stock (as a result of direct or indirect purchases) at CVS's distribution centers and for five weeks' inventory at store level upon the effective date of a cost decrease ("Business Standards' Price Decrease Protection Clause"). Business Standards, Ex. B, at 2.

18. On March 2, 2007, the parties executed another price revision agreement in which Prasco agreed to decrease the cost of the Product sold to CVS. A copy of the March 2, 2007 Price Revision Agreement (redacted to remove confidential pricing information) is attached hereto as Exhibit F.

19. On March 5, 2007, CVS informed Prasco of its shelf stock differential calculation based on the March 2 price decrease in which store quantity was based on 5 weeks' inventory in accordance with the Business Standards' Price Decrease Protection Clause. A copy of the letter

from C. Heneghan to M. Cullen dated Mar. 5, 2007 (redacted to remove confidential pricing information) is attached hereto as Exhibit G.

20. On March 22, 2007, CVS Corporation, CVS's parent, announced that Caremark Rx, Inc. ("Caremark") merged with another wholly owned subsidiary of CVS Corporation (the "Merger").

21. As a result of the Merger, CVS learned that, contrary to the Agreement, Prasco had not, in fact, charged CVS the lowest price offered to any other customer. Instead, CVS learned that Caremark had been charged a lower price than CVS.

22. The difference between the lower price charged to Caremark and the price charged to CVS for the Product purchased by CVS during the period of the Agreement totals at least \$15.6 million.

23. Confronted with CVS's knowledge of its breach of the Most Favored Nation Clause, in April 2007 Prasco reduced the price it charged CVS for the Product to match the price that which had been charged to Caremark. A copy of the letter from Prasco's E.T. Arington to CVS's Matthew Leonard dated Apr. 26, 2007 (redacted to remove confidential pricing information) is attached hereto as Exhibit H.

24. In a letter from Heneghan to Cullen on May 3, 2007, and in accordance with CVS's Business Standards and Paragraphs 2 and 3 of the Agreement, CVS requested a shelf stock differential of \$3,002,327 in response to Prasco's April 2007 price reduction. A copy of the Letter from C. Heneghan to M. Cullen dated May 3, 2007 (redacted to remove confidential pricing information) is attached hereto as Exhibit I. The May 3, 2007 letter indicated that if CVS did not receive a check or credit memo in the amount of the calculated shelf stock differential, an offset would be processed on June 4, 2007. Id.

25. Prasco refused to comply with the terms of the Agreement, as amended, by providing CVS with the shelf stock differential corresponding to its April 2007 price reduction as requested.

26. As indicated in its May 3, 2007 letter, CVS deducted the \$3,002,327 owed as a shelf stock differential from subsequent Prasco invoices.

27. Despite CVS's demand, Prasco has refused to acknowledge that CVS is entitled to the \$15.6 million difference between the lowest price offered and the price CVS paid during the period of the Agreement or that CVS properly withheld the \$3,002,327 shelf stock differential from Prasco invoices to recoup a portion of that \$15.6 million.

COUNT I

BREACH OF CONTRACT

28. CVS repeats and incorporates herein by reference the allegations contained in paragraphs 1 through 27 of this Complaint.

29. CVS complied in all material respects with its obligations under the Agreement.

30. Prasco breached the Agreement by failing to charge CVS the lowest price that it charges to any other Prasco customer in accordance with the Most Favored Nation Clause and by failing to reimburse CVS in accordance with the Price Decrease Protection Clause and/or the Business Standards' Price Decrease Protection Clause.

31. As a direct and proximate result of Prasco's breach of the Agreement, CVS was harmed, because it paid at least \$15.6 million more than it should have paid under the Agreement for Product that CVS purchased directly and/or indirectly from Prasco.

32. Pursuant to the Agreement, CVS has recouped \$3,002,327, but Prasco continues to owe CVS over \$12.6 million.

33. Despite CVS's demand, Prasco has refused to honor its obligations under the Agreement.

COUNT II

DECLARATORY JUDGMENT:
CVS IS ENTITLED TO TAKE A CREDIT TO RECOUP ITS SHELF STOCK
DIFFERENTIAL

34. CVS repeats and incorporates herein by reference the allegations contained in paragraphs 1 through 33 of this Complaint.

35. Pursuant to the terms of the Agreement, when Prasco decreased its prices in April of 2007, CVS became entitled to a shelf stock differential of \$3,002,327.

36. CVS has deducted the \$3,002,327 owed by Prasco under the terms of the Agreement, as amended, as a result of Prasco's April 2007 price decrease from subsequent Prasco invoices.

37. Prasco has refused to agree that CVS was entitled to take these credits against its invoices. As a result, an actual controversy exists as to whether CVS is entitled to retain the \$3,002,327 shelf stock differential credit it has applied against Prasco's invoices. See 28 U.S.C. § 2201.

38. Pursuant to 28 U.S.C. § 2201, CVS is entitled to a declaratory judgment declaring that CVS rightfully took a credit against Prasco invoices in the amount of \$3,002,327 to recover the shelf stock differential owed by Prasco.

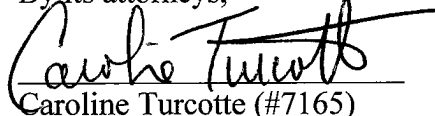
PRAYER FOR RELIEF

WHEREFORE, CVS respectfully requests that the Court, after hearing, enter judgment in its favor and award it the following relief:

1. Adjudicate and declare that the Defendant has breached the terms of the Agreement.
2. Assess and award CVS damages resulting from the Defendant's breach of contract.
3. Issue a Declaratory Judgment declaring that CVS rightfully took a credit against Prasco invoices in the amount of \$3,002,327 to recover the shelf stock differential owed by Prasco.
4. Award CVS pre-judgment interest and its costs incurred in this action;
5. Such other and further relief as this Court deems just and equitable under the circumstances.
6. CVS hereby demands a jury trial on all issues so triable.

CVS PHARMACY, INC.

By its attorneys,



Caroline Turcotte (#7165)

Raymond M. Ripple (# 6489)

EDWARDS ANGELL PALMER &
DODGE LLP

2800 Financial Plaza

Providence, RI 02903

(401) 274-9200 (phone)

(401) 276-6611 (fax)

rripple@eapdlaw.com

Of counsel

Steven M. Cowley, Esq.

Elizabeth A. Spinney, Esq.

Edwards Angell Palmer & Dodge LLP

111 Huntington Ave.

Boston, MA 02199

(617) 239-0100 (phone)

(617) 227-4420 (fax)

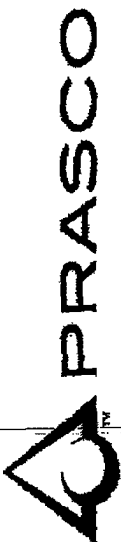
scowley@eapdlaw.com

espinney@eapdlaw.com

Dated: July 6, 2007

EXHIBIT A

822/2005



CVS Direct Contract - Revised

PRODUCT	INGREDIENTS	STRENGTH	PKG. SIZE	NDC #	COMPARE TO	AWP	INVOICE PRICE	NET PRICE	SELECTED ITEMS	ANNUAL USAGE
Fexofenadine Hydrochloride Tablets	Fexofenadine Hydrochloride	30mg	100	108-02	Allegra [®]	\$			X	
Fexofenadine Hydrochloride Tablets	Fexofenadine Hydrochloride	60mg	100	107-02	Allegra [®]	\$			X	
Fexofenadine Hydrochloride Tablets	Fexofenadine Hydrochloride	180mg	100	109-02	Allegra [®]	\$			X	

Mitch Cullen
CVS Representative

Prasco Laboratories Representative

9/23/2005
Date

C.P.A.
CVS Representative
9/23/05
Date

Effective: 9/23/2005

Payment Terms: 2% 90 days, net 61 days

Quarterly Rebate: Quarterly assessment at 0.5% of Invoices paid by CVS.

1. 5% stocking allowance and 90 days additional dating on initial purchase (limited to 30 days usage).

2. All purchases made under this agreement will be made in strict accordance with CVS business standards (Return Policy, 60-day Return Standard, Billback Program, D.S. or Refund Policy, etc.).

Proposal is valid for 30 days after effective date.

Please indicate selected items (X) and fax signed agreement to 513-618-3334.

3. If CVS deems it necessary to drop ship the 30mg to its stores or warehouses, Prasco will fully fund such activity. The estimated cost of doing so is \$4,000.

3. As it pertains to Flexo-line only, any applicable shelf stock (price decrease protection) will be calculated by multiplying the cost difference (New Cost - Old Cost) by the number of units on hand (Purchases (Direct + Indirect) - units dispensed).

4. Prasco warrants and represents that CVS will pay the lowest price offered by Prasco to any other customer regardless of class of trade. In short, CVS will pay Prasco the lowest price (net of all rebates, allowances, programs, etc.) when compared to any other Prasco customer. The prices of a purchase order shall be automatically revised (by Prasco to CVS) to equal the lowest cost at which Prasco shall have sold or shall have offered to any other customer.

Prasco Laboratories
7155 E. Kemper Road
Cincinnati, OH 45249
866.525.0688 513.618.3334 f

Revised 8/23/05, 11/05

REDACTED

EXHIBIT B

CVS/pharmacy[®]

CVS Generic Pharmaceuticals Business Standards *Confidential*

Overview

While dynamics continue to change throughout the industry, it is important that your organization clearly understands CVS' expectations surrounding generic pharmaceuticals. CVS maintains consistent standards regarding business relationships with our suppliers. Through the effective communication of these criteria, it is CVS' objective to ensure uniformity in our business relationships across all generic suppliers. It is under the terms and conditions outlined in this document that CVS places purchase orders and your organization sells product to CVS.

I. In Stock Position

- It is CVS' expectation that all suppliers will consistently and completely fill all purchase orders in a timely manner.
- When generic products are awarded by CVS, it is imperative that suppliers comprehend the current and future demand requirements to fulfill 100% of CVS' orders.
- Reserve inventory must be maintained at the supplier's facility to adequately protect CVS in the event of demand fluctuations, production issues, or changes in the availability of raw materials.
- Suppliers will notify CVS in advance of any anticipated supply interruptions.
- Out-of-stock situations are unacceptable.
- In addition to ensuring appropriate quantities for CVS' distribution centers, direct suppliers must confirm that adequate product is available at designated wholesalers to support indirect (DSD) purchases.

II. Wholesaler Billback Program

- For all items purchased directly by CVS (and for certain other products designated by CVS from time to time), wholesaler contracts are to be maintained:
 - Indirect retail (DSD) contract loaded with Cardinal
 - PharmaCare contract loaded with McKesson and AmerisourceBergen
- The above referenced products will be included in the quarterly Billback process.
- Suppliers will load contracts for their entire product line, for all available package sizes.
- Quarterly Generic Billback Reports, which comprehend the difference between CVS' contract cost and direct cost, will be calculated by CVS based on purchases from the wholesaler.
- Billback reports will be communicated to suppliers on a quarterly basis.
- Billback payments should be received by CVS within thirty (30) days from the date that appears on the Billback report.

III. Quarterly Direct Generic Rebate

- Quarterly Generic Rebates for Direct Purchases will follow the methodology outlined in CVS' letter dated February 27, 2004; copies will be furnished upon request.
- Direct Rebates will be calculated on a calendar basis; all invoices dated within the applicable calendar quarter will be eligible for that quarter's rebate.
- Direct Rebates should be received by CVS within forty-five (45) days of the end of the respective quarter.

IV. Shelf Stock Adjustment

- Upon the effective date of a cost decrease, CVS will calculate a Shelf Stock Adjustment.
- Shelf Stock Adjustments comprehend the difference between the old and new cost for on-hand quantities in CVS' distribution centers plus five weeks' inventory at store level.
- It is CVS' expectation that suppliers will continually monitor market conditions related to the pricing of generic pharmaceuticals. In the event that market dynamics change for a product, the supplier must promptly inform CVS and provide an immediate cost reduction.

V. Generic Advance Adjustment

- In the event of a cost increase, CVS will calculate a 90-day Generic Advance Adjustment that quantifies the difference between the old and new cost, calculated at the current rate of utilization.
- CVS will consider the new cost as the supplier's best price. Alternative sources for this product will be explored and if the product is awarded to a new supplier, the incumbent will be notified.

VI. Base Portfolio Generic Rebate

- Effective April 1, 2004, CVS will require a rebate of 0.5% on all Direct Purchases of generic pharmaceuticals.
- All Direct Purchases made by CVS during the applicable quarter will be subject to that quarter's Base Portfolio Generic Rebate.
- Quarterly assessment will be calculated by CVS at 0.5% of invoices paid (prior to 2% cash discount) during the applicable quarter.
- The Base Portfolio Generic Rebate is in addition to all other rebates paid to CVS.
- CVS will process offsets for Base Portfolio Generic Rebates. Suppliers will be notified in advance of each transaction amount before an offset is processed.

VII. Returns/Recalls

- All returns/recalls will be subject to the CVS Return Goods Policy and Product Recall/Withdrawal Policy in effect from time to time.

*It is CVS' expectation that the contents of these standards will be treated as confidential and proprietary information and that recipient shall not disclose any information contained within this document to any third party.
© 2004 CVS/pharmacy.*

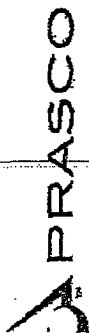
SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Mr. Mitch Cullen Vice President National Accounts Prasco Laboratories 7155 E. Kemper Rd. Cincinnati, OH 45249</p>		<p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>2. Article Number (Transfer from service label)</p> <p>PS Form 3811, August 2001</p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes </p>	
		<p>7003 3110 0003 4276 0412</p> <p>Domestic Return Receipt 102585-02-M-1540</p>	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Mr. Chris Arington Exec. VP Partner Prasco Laboratories 7155 E. Kemper Rd. Cincinnati, OH 45249</p>		<p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>2. Article Number (Transfer from service label)</p> <p>PS Form 3811, August 2001</p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes </p>	
		<p>7003 3110 0003 4275 5081</p> <p>Domestic Return Receipt 102585-02-M-1540</p>	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Mr. E. Thomas Arington President, CEO Prasco Laboratories 7155 E. Kemper Rd. Cincinnati, OH 45249</p>		<p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>2. Article Number (Transfer from service label)</p> <p>PS Form 3811, August 2001</p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes </p>	
		<p>7003 3110 0003 4275 5074</p> <p>Domestic Return Receipt 102585-02-M-1540</p>	

EXHIBIT C

5/4/2006



CVS
Direct Contract - Revised

PRODUCT	INGREDIENTS	STRENGTH	PKG. SIZE	NDC #	COMPARE TO	AWP	INVOICE PRICE	SELECTED ITEMS	ANNUAL USAGE
nadine Hydrochloride Tablets 212094	Fexofenadine Hydrochloride	30mg	100	106-02	Allegra®				
nadine Hydrochloride Tablets 337196	Fexofenadine Hydrochloride	60mg	100	107-02	Allegra®				
nadine Hydrochloride Tablets 338517	Fexofenadine Hydrochloride	180mg	100	108-02	Allegra®				

REDACTED

Effective: 5/4/2006
Payment Terms: 2% 60 days, net 61 days
Quarterly Rebate: Quarterly assessment at 0.5% of Invoices paid by CVS.

5/4/2006
Date
Laboratories Representative

[Signature] 5/4/06
Date

Proposal is valid for 30 days after effective date.
Please indicate selected items (X) and fax signed agreement to 513-618-3334.

[Redacted Signature]
Per CVS business schedule in contract for 12 to 15 months.
(a/pd)

Δ \$58.06/plan

Prasco Laboratories
7155 E. Kemper Road
Cincinnati, OH 45249
866.525.0688 513.618.3334 f

fexofenadine 5206.xls

24 cc: Teri

EXHIBIT D

06/05/06 MON 16:19 FAX 5136183351

PRASCO

001



FAX COVER SHEET

To: Craig Heneghan	From: Matt Pendley
Company: CVS	Company: Prasco
FAX: (401) 769-9473	FAX (513) 618-3351
Phone: (401) 765-1500 x3402	Phone: (513) 618-3365

Date: June 5, 2006

Pages: 3 (Including Cover Page)

This fax is in regards to your recent Fexofenadine Shelf Stock Adjustment (SSA) dated 5/11/06 (attached).

After speaking with Mitch Cullen I was hoping that you could clarify point 3 of the original Fexofenadine agreement (attached) between Prasco and CVS dated 9/23/05 and the SSA in question. The SSA is claiming 5 weeks utilization at the pharmacy level, not an actual number of units on hand.

Please let me know if you have any questions.

Thank you,
Matt Pendley

CC: Mitch Cullen

PRASCO LABORATORIES
7155 E. Kemper Road • Cincinnati, OH 45249
513.618.3365 • F 513.618.3351 • 888.525.0668
email: m.pendley@prasco.com
www.prasco.com

06/05/06 MON 18:20 FAX 5136183351

PRASCO

002

CVS/pharmacy®

May 11, 2006

Mr. Mitch Cullen
VP, National Accounts
Prasco Labs
105 Royal Club Drive
Cary, NC 27513

Dear Mitch:

In relation to your recent price reductions, listed below are the quantities we had on hand.

<u>Description</u>	<u>Size</u>	<u>*Store Quantity</u>	<u>Warehouse Quantity</u>	<u>Old Cost</u>	<u>New Cost</u>	<u>Amount Due</u>
Fexofenadine 30mg	100					
Fexofenadine 60mg	100					
Fexofenadine 180mg	100					
						<u>\$5,043,181.97</u>

* Store quantity is based on 5 weeks utilization.

An offset for \$5,043,181.97 will be processed by CVS on June 12, 2006.

REDACTED

If you have any questions, please feel free to call me at (401) 770-5196.

Sincerely,
Craig P. Heneghan

Craig P. Heneghan
Director Pharmacy Merchandising

Attachment

CPH/dml

EXHIBIT E



June 16, 2006

Mr. Mitch Cullen
VP, National Accounts
Prasco Labs
105 Royal Club Drive
Cary, NC 27513

if no deducted

Dear Mitch:

Please find attached CVS' updated shelf stock related to the May 4, 2006 price decrease on Fexofenadine. This recalculation is based off of the September 23, 2005 agreement and replaces the previously calculated shelf stock contained within CVS' letters dated May 11, 2006 and June 8, 2006. (Please see attached).

As discussed, both CVS and Prasco agree that for all Prasco products going forward, the shelf stock calculation will be based off of the CVS' Business Standards (in effect from time to time) unless otherwise agreed to in writing.

An offset for \$4,571,167.00 will be processed by CVS on June 16, 2006.

If you have any questions, please feel free to call me at (401) 770-5196.

Sincerely,

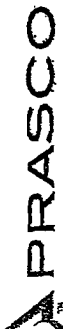
Craig P. Heneghan

Craig P. Heneghan
Director Pharmacy Merchandising

Attachment

CPH/dml

5/4/2006



CVS

Direct Contract - Revised

PRODUCT	INGREDIENTS	STRENGTH	PKG. SIZE	NDC #	AWP	INVOICE PRICE	SELECTED ITEMS	ANNUAL USAGE
dine Hydrochloride Tablets 338094	Fexofenadine Hydrochloride	30mg	100	106-02				
dine Hydrochloride Tablets 338096	Fexofenadine Hydrochloride	60mg	100	107-02				
dine Hydrochloride Tablets 338097	Fexofenadine Hydrochloride	180mg	100	109-02				

Effective: 5/4/2006

Payment Terms: 2% 60 days, net 61 days

Quarterly Rebate: Quarterly assessment at 0.5% of invoices paid by CVS.

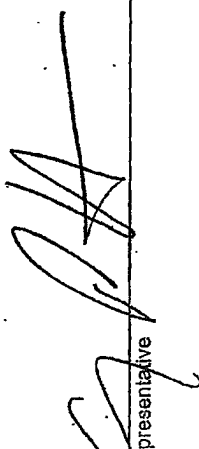
REDACTED


5/4/2006

Date

ullen

aboratories Representative

 5/4/06
 representative Date

1. 
 • Per CVS' survey is scheduled in effect from 5/4/06 to 5/4/07
 O.P.D.

Proposal is valid for 30 days after effective date.

Please indicate selected items (X) and fax signed agreement to 513-618-3334.

1 \$ 58.00
 (Signature)

Prasco Laboratories
 7155 E. Kemper Road
 Cincinnati, OH 45249
 866.525.0688 513.618.3334 f

Fexofenadine 52.06.xls

1-4 cc: Teri
 (Signature)

PRASCO

CVS
Indirect Contract

*Indirect
Wholesaler*

PRODUCT	INGREDIENTS	STRENGTH	PKG. SIZE	NDC #	COMPARE TO	AWP	CONTRACT PRICE	SELECTED ITEMS	ANNUAL USAGE
dine Hydrochloride Tablets	Fexofenadine Hydrochloride	30mg	100	106-02	Allegra®	\$			
dine Hydrochloride Tablets	Fexofenadine Hydrochloride	60mg	100	107-02	Allegra®	\$			
dine Hydrochloride Tablets	Fexofenadine Hydrochloride	180mg	100	109-02	Allegra®	\$			

7/1/06

Effective: 12/31/2007

Contract Reference #: PLCVS502

Designated Wholesalers: Cardinal Health, ABC, McKesson *Per CVS business standards.*

Quarterly billback for indirect purchases to direct contract net prices.

5/25/2006

Date

5/25/06

Date

laboratories Representative

[Signature]

representative

Proposal is valid for 30 days after effective date.

Please indicate selected items (X) and fax signed agreement to 513-618-3334.

*Per CVS business standards
in effect from 7/1/06 to 12/31/07.*

Prasco Laboratories
7155 E. Kemper Road
Cincinnati, OH 45249
866.525.0688 513.618.3334 f

REDACTED

faxo Indirect 5 23 06.xls

5/30 cc: pram

**Fexofenadine Shelf Stock Adjustment
Price Decrease Effective May 3, 2006**

Item	NDC	Description	Pkg	Old Price	New Price	Price Var	Warehouse Purchases	Indirect DSD Purchases	Drop Shipments to Stores	Total Purchases	Total Dispensing-Units	Shelf Stock Units (Purchases Less Dispensings)	Shelf Stock Adjustment
338094	66993010602	FEXOFENADINE HCL 30 MG TABLET	100										
338096	66993010702	FEXOFENADINE HCL 60 MG TABLET	100										
338097	66993010902	FEXOFENADINE HCL 180 MG TABLET	100										

REDACTED

Shelf Stock Amount

\$4,571,167

CVS

Direct Contract - Revised

AGENT'S	STRENGTH	PKG. SIZE	NDC #	COMPARE TO	APP	INVOICE PRICE	NET PRICE	SELECTED ITEMS	ANNUAL USAGE
Hydrochloride	30mg	100	108-02	Allegro [®]	\$			X	
Hydrochloride	60mg	100	107-02	Allegro [®]	\$			X	
Hydrochloride	180mg	100	109-02	Allegro [®]	\$			X	

Effective: 9/23/2005

Payment Terms: 2% 80 days, net 61 days
 Quarterly Rebate: Quarterly assessment at 0.5% of invoices paid by CVS.

1. 5% stocking allowance and 30 days additional dating on initial purchase (limited to 30 days usage).

2. All purchases made under this agreement will be made in strict accordance with CVS business standards (Return Goods Policy, General Business Standards, Billback Program, D.S. and Refillable, etc.).

Proposal is valid for 30 days after effective date.

Please indicate selected items (X) and fax signed agreement to 513-618-3334.

3. As it pertains to Retroflexion only, any applicable shelf stock (price decrease protection) will be calculated by multiplying the cost difference (new cost - old cost) by the number of units on hand (Purchases (direct+indirect) - units dispensed).

4. Prasco warrants and represents that CVS will pay the lowest price offered by Prasco to any other Customer regardless of class of trade. In short, CVS will pay Prasco the lowest price (net off all rebates, allowances, programs, etc.) even compared to any other Prasco customer. The price of a purchase order shall be automatically revised (by Prasco to CVS) to equal the lowest cost.

Prasco Laboratories at which Prasco shall have sold or shall have
 7155 E. Kemper Road
 Cincinnati, OH 45249
 866.525.0688 513.618.3334

REDACTED

PRASCO LABORATORIES
 7155 E. Kemper Road • Cincinnati, OH 45249
 513.618.3365 • 513.618.3351 • 866.525.0688
 email: m.pendley@prasco.com
 www.prasco.com

under all
 vide units
 1) revisions.
 we know
 re any
 need.
 unless

EXHIBIT F

CVS

Direct Contract

PRASCO

PRODUCT	INGREDIENTS	STRENGTH	PKG. SIZE	NDC#	COMPARE TO	AWP	INVOICE PRICE	REBATE TEXT	ANNUAL USAGE (M)
Fexofenadine Hydrochloride Tab	33 8094	30mg	100	103-02	Allegra			See Details Below	
Fexofenadine Hydrochloride Tab	33 8096	80mg	100	107-02	Allegra			See Details Below	
Fexofenadine Hydrochloride Tab	33 8097	180mg	100	109-02	Allegra			See Details Below	

Effective: 03/02/2007

03/02/2007

Mick Cullen

Date

Prasco Laboratories

Payment Terms: 2% 80 Net 81

Rebate: Quarterly assessment at 0.5% of invoices paid by CVS

Right of First Refusal: In the event of a new product launch by a manufacturer, the manufacturer shall provide written notice to CVS of the new product launch. CVS shall have the right to purchase the new product at a price no greater than the price paid by CVS for the comparable product.

Date

CVS Representative

Proposal is valid for 30 days after effective date.

Please indicate selected items (N) and fax signed agreement to 513-518-3334.

REDACTED

Per CVS business standards
in effect for firm to
CVS
3/2/07

The marks of comparative products are owned by the
respective manufacturers/producers of those products.

Page 1 of 1

Prasco Laboratories
866.626.0688 513.518.3334
7165 E. Kemper Road Cincinnati, OH 45249

1741

9/12 cas toni

EXHIBIT G



March 5, 2007

Mr. Mitch Cullen
VP, National Accounts
Prasco Labs
105 Royal Club Drive
Cary, NC 27513

4/24 Redacted

Dear Mitch:

In relation to your recent price reductions, listed below are the quantities we had on hand.

<u>Description</u>	<u>Size</u>	<u>*Store Quantity</u>	<u>Warehouse Quantity</u>	<u>Old Cost</u>	<u>New Cost</u>	<u>Amount Due</u>
Fexofenadine 30mg	100					\$3,004.00
Fexofenadine 60mg	100					\$108,924.00
Fexofenadine 180mg	100					\$615,909.00
						\$727,837.00

REDACTED

* Store quantity is based on 5 weeks utilization.

An offset for \$727,837.00 will be processed by CVS on April 5, 2007.

If you have any questions, please feel free to call me at (401) 770-5196.

Sincerely,

Craig P. Heneghan
Vice President Pharmacy Merchandising

Attachment

CPH/dml

CVS

Direct Contract



PRODUCT	INGREDIENTS	STRENGTH	RXG. SIZE	NDC#	COMPARE TO	AWP	INVOICE PRICE	REBATE TEXT	ANNUAL USAGE
Exfolenadine Hydrochloride Tab	33, 33, 33, 33	30mg	100	108-02, 108-02	Allegro			See Details Below	
Exfolenadine Hydrochloride Tab	33, 33, 33, 33	60mg	100	108-02, 108-02	Allegro			See Details Below	
Exfolenadine Hydrochloride Tab	33, 33, 33, 33	180mg	100	108-02, 108-02	Allegro			See Details Below	

Effective: 03/02/2007

03/02/2007

Prasco Laboratories

Payment Terms: 2% 60 Net 61

Rebate: Quarterly assessment at 0.5% of Invoices paid by CVS

Right to terminate this agreement if any company or its subsidiaries shall receive a notice of a change in ownership or control of the company.

CVS Representative

Date

Proposal is valid for 30 days after effective date.

Please indicate selected items (X) and for signed agreement to 513-618-3334.

Per CVS business standard
in effect for 3/12/07

REDACTED

The marks of comparative products are owned by the respective manufacturers/producers of those products.

Page 1 of 1

Prasco Laboratories

866.625.0688 615.618.3334 f

7155 E. Kemper Road Cincinnati, OH 45249

1741

9/12/07 CVS

PACKET PAGE: 752 *0001127088X0007COMBOLIER255C 0
 IF255C/IFR255C WEEK NO. 08 C.V.S. / P.H.A.R.M.A.C.Y. I.N.C. STOCK STATUS COMBINED
 BUYER NO. 0 CRAIG HENEGHAN 03-06-07 ACTIVE ONLY RK-BUYERS
 CVS-RET U-COST SLSWK 3 SLSWK 1 A-W-S FK BOH RES UN INV VALUE
 SUGG ACT-COST SLSWK 4 SLSWK 2 LKXFSB BOO WK-REC CSPK EOM RES INV
 301* PAGE 751 * BLANK IF COMP GEN
 O IF OLD FORMULA
 N IF NEW FORMULA
 P=PROCARE, N=NEB STATUS, O=NEB ONLY
 YTD, PROM REG BOX ON
 AVG NO/OLD-EXC-AVG-BACKUP S P H O

ITEM DESCRIPTION ON-ODR DTS SIZE

4024 WK-05-03-05 1 LT 0
 PRASCO LABS
 280683 ANDRY-C TABS 100
 FL
 280683 ANDRY-C TABS 100
 TN
 280683 ANDRY-C TABS 100
 OR
 280683 ANDRY-C TABS 100
 CR
 280683 ANDRY-C TABS 100
 NJ
 280683 ANDRY-C TABS 100
 TN
 280683 ANDRY-C TABS 100
 EN
 292873 BROMPLEX DM SYRUP 100
 FL
 292873 BROMPLEX DM SYRUP 480
 IN
 292873 BROMPLEX DM SYRUP 480
 OR
 292873 BROMPLEX DM SYRUP 480
 CR
 292873 BROMPLEX DM SYRUP 480
 NJ
 292873 BROMPLEX DM SYRUP 480
 TN
 292873 BROMPLEX DM SYRUP 480
 EN
 02/26
 02/07 03/01 480
 338097 FEXOFENADINE HCL 100
 IN
 03/03
 338097 FEXOFENADINE HCL 100
 TN
 338097 FEXOFENADINE HCL 100
 CR
 338097 FEXOFENADINE HCL 100
 NJ
 03/01
 338097 FEXOFENADINE HCL 100
 TN
 02/26
 338094 FEXOFENADINE HCL 100
 IN
 03/03
 338094 FEXOFENADINE HCL 100
 FL
 338094 FEXOFENADINE HCL 100
 TN
 338094 FEXOFENADINE HCL 100
 CR
 338094 FEXOFENADINE HCL 100
 NJ
 03/01

REDACTED

PACKET PAGE: 753 *00011570PR00007002011P255C 0
 1X255/1P255C WEEK NO. 08
 VPM NO. 1 MATT LEONARD STOCK STATUS COMBINED
 BUYER NO. 0 CRAIG WENESHAN 03-DB-07 ACTIVE ONLY RX BUYERS
 303X PAGE 752 * BLANK IF COMP GEN
 O IF OLD FORMULA
 N IF NEW FORMULA
 FLAGS: S=STORE, P=PROCARE, H=HEB STATUS, O=WEB ONLY
 RES UM INV VALUE YTD FROM REG POX OM
 SUG ACT-COST SUSK & SUSK 2 UNITS 800 MK REC CSRK EQM RES INV AVG MD/OLD EXC AVG BACKUP S P M O

REDACTED

ITEM	DESCRIPTION	CYS-RET	U-COST	SUSK 1	A-MK-S	FOR	RES	UM	INV	VALUE	YTD	FROM	REG	POX	OM
338096	FEXOFENADINE 10MG TB														
TN	02/26														
338096	FEXOFENADINE 10MG TB														
EN															
338096	FEXOFENADINE 10MG TB														
MN	03/03														
338096	FEXOFENADINE 10MG TB														
TN															
338096	FEXOFENADINE 10MG TB														
CR															
338096	FEXOFENADINE 10MG TB														
NJ	03/01														
338096	FEXOFENADINE 10MG TB														
TN	02/26														
338096	FEXOFENADINE 10MG TB														
EN															
296449	K-TAN TABS														
MN															
296449	K-TAN TABS														
EL															
296449	K-TAN TABS														
TN															
296449	K-TAN TABS														
OR															
296449	K-TAN TABS														
CR															
296449	K-TAN TABS														
NJ															
296449	K-TAN TABS														
TN															
296449	K-TAN TABS														
EN															
296450	K-TAN & SUSP														
MN	03/03														
296450	K-TAN & SUSP														
TN															
296450	K-TAN & SUSP														
NJ	03/01														
296450	K-TAN & SUSP														
TN															
296450	K-TAN & SUSP														
EN	03/01														
337042	LEFLUNOMIDE 10MG TB														
MN															
337042	LEFLUNOMIDE 10MG TB														
FL															
337042	LEFLUNOMIDE 10MG TB														
TN															
337042	LEFLUNOMIDE 10MG TB														
OR															

3/5

10115 OPEN PURCHASE ORDER INQUIRY BY *ITEM* FUNCTION *

NO MORE PG.'S FOR THIS ITEM

PG# = EXP. PG. INQUIRY BY ITEM PF13 = TRANSFER PF10 = HELP PA1 = BROWSE
ITEM# 358094 DESC EXXONADINE30MG75 SIZE 100 CASE PACK 0000024

REF# 000060

WHSE	F/O	NUMBER	PAGE	D	OF	ORDER	DATE	S	DATE	ON	Q	DEAL	D	P	S
W2		1323176	001			30207	30207	A	30207	ORDER	QTY	NO	L	B	S
N2		2808694	001			30107	30807	A	30807						
T2		6868634	001			30607	30607 <th>A</th> <th>30607</th> <th></th> <th></th> <th></th> <th></th> <th></th> <th></th>	A	30607						

REDACTED

10115 OPEN PURCHASE ORDER INQUIRY BY ITEM* FUNCTION *

NO MORE EO'S FOR THIS ITEM

PRG = EXP PO INQUIRY BY ITEM REL3 = TRANSFER REL10 = HELP PA1 = BROWSE

ITEM# 338096 DESC FEXOFENADINE60MGTS SIZE 100 CASE PACK 0000048

REL# 000000

WHSE	NUMBER	PAGE	D	DATE	DATE	S	DATE	QTY	Q	DEAL	D	P	S
				OF ORDER	R/O			ORDER		NO			
W2	1328176	001		30207 ✓		A	30207	30907	P				
N2	2808693	001		30107 ✓		A	30807		P				
T2	6888631	001		22807 ✓		A	30807		P				

REDACTED

[illegible]

REDACTED

WHSE	NUMBER	E/O
N2	1323176	
N2	2808693	
T2	6868031	

DATE	DATE
CM ORDER	B/O
30267	✓
30107	✓
22607	✓

DATE	SHIP/ARR	30907	30807	30507
Q A A A A				

ORDER OF
G. M. Z. A. A.

DEAL
NO

Plasco

Description	Size	WN Store		MI Store		IN Store		TN Store		OR Store		CA Store		EN Store		Total		Warehouse		Store		Total Amount	
		Quantity	Unit	Quantity	Unit	Quantity	Unit	Quantity	Unit	Quantity	Unit	Quantity	Unit	Quantity	Unit	Quantity	Unit	Quantity	Unit	Amount Due	Unit	Amount Due	Unit
Flexofenadine 30mg	100																						
Flexofenadine 60mg	100																						
Flexofenadine 180mg	100																						

S 727,837.00

REDACTED

EXHIBIT H



April 26, 2007

PERSONAL & CONFIDENTIAL

Mr. Matt Leonard
Sr. Vice President, Pharmacy
CVS
One CVS Drive
Woonsocket, RI 02895

Dear Matt:

It was good to see you this week, even though our meeting did not provide the results that I believe we both wanted. As a follow-up to our meeting, I am writing to ensure you understand our position on the Fexofenadine pricing issue.

Since your original net price of _____ on the 180mg X 100's, we have had two new agreements that resulted in your current net price of _____. These new agreements were implemented based on input from your buyer who said the market was "softening" and the new prices were necessary in order to receive all of your business. As it turns out, we reduced your prices by _____, resulting in a total savings of _____ while you decided to move approximately 20% of your business to another supplier contrary to our understanding.

With the acquisition of Caremark, you are now seeking another price reduction based on a different trade class, which would require Prasco to retroactively change its pricing policy and its standard way of doing business. As I stated in our meeting, our pricing policy regarding trade class differentiation has been firmly established since the launch of Prasco, and I have operated in a similar manner throughout my career. I'm sure you can understand why it is impossible for us to allow any customer, regardless of size, to force a change in our pricing policy. This is why we never agreed to your "most favored language" suggested by your buyer.

Our meeting in Phoenix was particularly disappointing, since I offered you the equivalent of \$11.2MM to pave the way for future business, and you said that it was not enough and

Prasco Laboratories
7155 E. Kemper Road
Cincinnati, OH 45249
Phone: 513.618.3333
Fax: 513.618.3334
1.866.525.0688
www.prasco.com

REDACTED

Mr. Matt Leonard

April 26, 2007

Page -2-

you would move the product. I respect your right to make your business decision, and we will bill you for the April shipments at the prices listed below on a one time basis.

30 mg

60 mg

180 mg

REDACTED

In summary, the financial benefits to CVS based on our shipments of Fexofenadine to date are outlined below:

- A) estimated savings through lower pricing (180-day exclusivity period)
 - additional savings through our two price reductions
 - Total savings
- B) Plus \$11.2MM offered for future business.

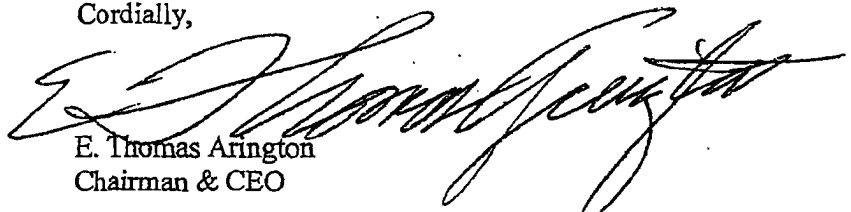
I do find it unusual and a bit confusing that we provided so much value and yet you are not only moving the product, but you are eliminating what could be accomplished together with Fexofenadine D (Fexofenadine Hydrochloride/Pseudoephedrine Hydrochloride).

We are confident that we have met every commitment under the original pricing structure negotiated by you and Chris, as well as the two subsequent price reductions as documented by our invoices to CVS. As it turns out, we implemented these reductions even though we did not receive 100% of your business, per our original understanding.

We are finalizing our business relationship on Fexofenadine by offering a special buy-in for the month of April in order to ensure a smooth transition to another supplier. If you decide to accept the offer that I presented to you at the NACDS meeting, the buy-in will continue for a full six months.

Please feel free to contact me directly at 513-618-3370 if you wish to discuss this matter further.

Cordially,


E. Thomas Arlington
Chairman & CEO

ETA:slf

EXHIBIT I



May 3, 2007

Mr. Mitch Cullen
VP, National Accounts
Prasco Labs
105 Royal Club Drive
Cary, NC 27513

Dear Mitch:

In relation to your recent price reduction, please see the attached shelf stock calculation totaling \$3,002,327.

If CVS does not receive a check or credit memo in the amount listed above, an offset will be processed on June 4, 2007.

If you have any questions, please feel free to call me at (401) 770-5196.

Sincerely,

A handwritten signature in black ink, appearing to read "C. P. H.", with a horizontal line extending to the right.

Craig P. Heneghan
Vice President Pharmacy Merchandising

Attachment

CPH/dml

Heneghan, Craig P.

From: Heneghan, Craig P.
Sent: Thursday, April 05, 2007 8:22 AM
To: 'c.arington@prasco.com'
Cc: Mitch Cullen
Subject: Fexofenadine Discussion

Iris,

First I would like to thank you for your willingness to address the identified pricing issue with Fexofenadine. I believe the conversation we had yesterday was a good start at addressing this matter; I appreciate your openness and straightforwardness.

Additionally, I wanted to let you know that I have adjusted CVS' invoice price on Fexofenadine to \$ [REDACTED] for a bottle of 100; to be in line with our agreement.

Look forward to continuing our discussion today and I am hopeful that we will reach a full resolution to this matter.

Thanks again,

Craig

Please Load
New Pricing

Craig

REDACTED

elf Stock Adjustments-Prasco Fexofenadine

Date of Invoice	NDC	Description	Mfg	Pkg	Old		New		5 Weeks Avg Units	Units on Hand	Total Units	Shelf Stock Adjustment
					Invoice Price	Invoice Price	Price Var	Price Var				
12/07	66993-0106-02	FEXOFENADINE HCL 30 MG TABLET	PRASCO LABS	100								
12/07	66993-0107-02	FEXOFENADINE HCL 60 MG TABLET	PRASCO LABS	100								
12/07	66993-0109-02	FEXOFENADINE HCL 180 MG TABLET	PRASCO LABS	100								
												\$ 3,002,327

REDACTED