

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
<i>ex rel.</i>	§	
VEN-A-CARE OF THE	§	
FLORIDA KEYS, INC.	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
ABBOTT LABORATORIES INC.,	§	
B. BRAUN MEDICAL INC., AND	§	
BAXTER HEALTHCARE	§	
CORPORATION	§	
	§	
<i>Defendants.</i>	§	201 <sup>st</sup> JUDICIAL DISTRICT

**ABBOTT LABORATORIES, INC.'S RESPONSES  
TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION**

Pursuant to the Texas Rules of Civil Procedure, specifically but not limited to Rule 196, Defendant Abbott Laboratories, Inc. ("Abbott"), by its attorneys, submits the following response and objections to Plaintiffs' First Request For Production directed to Abbott (the "Request").

**PRELIMINARY STATEMENT**

A. Abbott's investigation for information responsive to Plaintiffs' Request continues, and its response to this Request is based on information available at this time. Abbott reserves the right to supplement and/or amend its response (and its production of information) at any time prior to trial.

B. Further, where Abbott states herein that it will produce information or documents in accordance with the Texas Rules of Civil Procedure, it will produce such information and documents to the extent that they exist and can be reasonably obtained.

C. By stating that Abbott will produce any information or documents responsive to the Request, Abbott does not represent that any such information or documents exist or are within its custody, care or control.

D. The information and documents supplied herein are for use in this litigation and for no other purpose.

E. Abbott's response to this Request is made without in any way waiving: (a) the right to object, on the grounds of competency, relevancy, materiality, privilege, or other grounds of admissibility as evidence for any purpose in this action or any other action; and (b) the right to object on any ground to other discovery requests involving or relating to the subject matter of this Request. Furthermore, Abbott is providing responses in an effort to expedite discovery in this action and not as an indication or admission by Abbott of the relevancy, materiality or admissibility thereof, and Abbott hereby preserves all objections to Plaintiffs' use of such responses.

F. To the extent that Abbott states that it will make certain information and documents available to Plaintiffs, such information and documents will not be made available to Plaintiffs until entry of an appropriate protective order by the Court in a form approved by Abbott.

### **OBJECTIONS TO DEFINITIONS**

G. Abbott objects to the definitions of "Defendant(s)," "you," "your" and "your company" to the extent they seek to impose discovery obligations that are broader than or inconsistent with the requirements of the Texas Rules of Civil Procedure and the Court's Local Rules and Orders. Abbott further objects to these definitions as overly broad, unduly burdensome, vague and ambiguous.

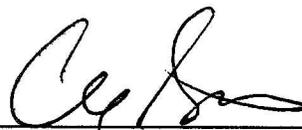
H. Abbott objects to the definition of “Average Manufacturer Price” or “AMP” as vague and ambiguous because 42 U.S.C. § 1396r-8 has been amended over time.

**OBJECTIONS TO REQUEST FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Please produce, in electronic form, the Average Manufacturer Price (AMP) for each drug bearing labeler code 00074 for each quarter for which an AMP was either calculated or reported by you as required by federal law.

**RESPONSE:** In addition to its Objections to Definitions, Abbott objects to this request because it: (i) is overly broad and unduly burdensome in seeking the Average Manufacturer Price for each drug bearing Abbott’s labeler code over the course of thirteen years; (ii) is not limited to Abbott’s drugs listed in Exhibit A to the Second Amended Petition; (iii) is not limited to the time period specified in the Second Amended Petition; (iv) seeks confidential and/or proprietary information; (iv) seeks information protected under the Medicaid Rebate Statute and Abbott’s Medicaid Rebate agreement with CMS; and (v) seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence in seeking information regarding drugs that are not named in the Second Amended Petition and in seeking information beyond the time period specified in the Second Amended Petition.

Subject to and without waiving any of its objections, and subject to entry of an appropriate protective order, Abbott will produce electronic AMP data for the time period of September 1, 1994 to the present for Abbott’s drugs listed in Exhibit A to the Second Amended Petition.



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was mailed via certified mail, return receipt requested, on this 1st day of September, 2004 to:

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