

04 OCT -4 PM 4:02  
 FILED  
 EDWARD H. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

1 HAGENS BERMAN LLP  
 2 ELAINE T. BYSZEWSKI (SBN 222304)  
 3 700 South Flower Street, Suite 2940  
 4 Los Angeles, CA 90017-4101  
 Telephone: (213) 330-7150  
 Facsimile: (213) 330-7152

5 Steve W. Berman (WSBA No. 12536)  
 6 HAGENS BERMAN LLP  
 7 1301 Fifth Avenue, Suite 2900  
 Seattle, WA 98101  
 Telephone: (206) 623- 7292  
 Facsimile: (206) 623-0594

8 David S. Nalven (MA No. 547220)  
 9 HAGENS BERMAN LLP  
 10 One Main Street, 4<sup>th</sup> Floor  
 Cambridge, MA 02141  
 Telephone: (617) 482-370  
 Facsimile: (617) 482-3003

11 [Additional counsel appear on signature page.]

12 Attorneys for Plaintiff Service Employees  
 13 International Union Health and Welfare Fund

E-filing

WDB

14 UNITED STATES DISTRICT COURT  
 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 16 SAN FRANCISCO DIVISION

C 04 4203  
 Case No.:

17 SERVICE EMPLOYEES INTERNATIONAL  
 18 UNION HEALTH AND WELFARE FUND  
 19 on Behalf of Itself and All Others Similarly  
 Situated,

CLASS ACTION COMPLAINT

20 Plaintiff,

JURY TRIAL DEMANDED

21 vs.

22 ABBOTT LABORATORIES,

23 Defendant.

24 INTRODUCTION

25  
 26 1. Plaintiff, Service Employees International Union Health and Welfare Fund  
 27 ("SEIU Fund"), on behalf of itself and all others similarly situated, brings this action against  
 28 Abbott Laboratories ("Abbott," "Defendant," or the "Company") for injunctive relief under the

1 antitrust laws of the United States and for restitution and/or disgorgement under California  
 2 Business and Professions Code Section 17200, *et seq.*, and common law.

3  
 4 **JURISDICTION**

5 2. This Court has federal question subject matter jurisdiction over this action  
 6 pursuant to 28 U.S.C. §§ 1331 and 1337 and by Section 4 of the Clayton Act, 15 U.S.C. § 15(a).  
 7 This Court has supplemental jurisdiction over the state law and common law claims pursuant to  
 8 28 U.S.C. § 1367.

9 **VENUE AND INTRADISTRICT ASSIGNMENT**

10 3. Defendant transacts business, maintains offices, or is found within the state of  
 11 California. The interstate commerce described in this Complaint is carried on, in part, within this  
 12 District. Venue is proper in this District pursuant to the provisions of 15 U.S.C. §§ 22 and 28  
 13 U.S.C. § 1391. Moreover, the interstate commerce described in this Complaint is carried on, in  
 14 part, within the county of San Francisco, which is located within the San Francisco Division,  
 15 pursuant to Local Rule 3-6(d).

16 **PLAINTIFFS**

17 4. Plaintiff SEIU Fund is a self-funded, multi-employer health and welfare fund  
 18 organized under ERISA. The SEIU Fund has between 7,000 and 8,000 covered lives and serves  
 19 members of SEIU local unions, some SEIU local staff and all SEIU international staff in  
 20 locations throughout the United States. The SEIU Fund is administered by a joint board of  
 21 trustees with equal numbers of union and employer trustees. The SEIU Fund is a third-party  
 22 payor which pays all or part of its members' prescription drug costs.

23 **DEFENDANT**

24  
 25 5. Abbott is a corporation organized, existing, and doing business under the laws of  
 26 the state of Illinois. Its office and principal place of business is located at 100 Abbott Park Road,  
 27 Abbott Park, Illinois 60064. Abbott is engaged principally in the development, manufacture, and  
 28 sale of pharmaceuticals drugs and health care products and services. Abbott reported total sales

1 of \$19.7 billion in 2003, of which \$4.3 billion was attributable to its anti-viral pharmaceuticals.  
2 Abbott operates in 130 countries and has facilities in 14 states, including at least 3 in this  
3 District.

#### 4 TRADE AND COMMERCE

5 6. During the Class Period, defined below, Abbott marketed and sold its HIV drug  
6 Norvir<sup>®</sup> in a continuous stream of commerce to customers located throughout the United States.  
7 Abbott also marketed and sold its HIV drug Kaletra<sup>®</sup> in a continuous stream of commerce to  
8 customers located throughout the United States.

9 7. Abbott's business activities that are the subject of this Complaint were in the flow  
10 of, and substantially affected, interstate trade and commerce. Abbott frequently uses interstate  
11 transportation and communication in connection with the marketing and sale of these  
12 pharmaceuticals.

#### 13 FACTUAL BACKGROUND

14 8. AIDS is the worst pandemic in history. By the end of 2003, an estimated 16  
15 million people died from AIDS and 40 million people were infected with HIV/AIDS worldwide.  
16 Each day, more than eight thousand people die worldwide from AIDS and thirteen thousand  
17 more contract the deadly virus.

18 9. Abbott has participated in HIV research since the early years of the epidemic. In  
19 1985, the Company developed the first licensed test for HIV antibodies in the blood and remains  
20 a leader in HIV diagnostics and treatments.

21 10. Abbott is one of several pharmaceutical companies marketing protease inhibitors  
22 ("PIs"). PIs are considered the most powerful weapons to date against HIV. This class of drugs  
23 works by blocking new infectious copies of HIV from being released from infected cells.

24 11. There are a number of PIs currently on the market, including:

25 (a) Invirase<sup>®</sup> (saquinavir), manufactured by Roche Laboratories, approved by  
26 the Food and Drug Administration in December 1995;

27 (b) Crixivan<sup>®</sup> (indinavir), manufactured by Merck, approved March 1995;

28

- 1 (c) Norvir<sup>®</sup> (ritonavir), manufactured by Abbott, approved March 1996;
- 2 (d) Viracept<sup>®</sup> (nelfinavir), manufactured by Agouron Pharmaceuticals,
- 3 approved March 1997;
- 4 (e) Fortovase<sup>®</sup> (a saquinavir reformulation), manufactured by Roche
- 5 Laboratories, approved November 1997;
- 6 (f) Agenerase<sup>®</sup> (amprenavir), manufactured by GlaxoSmithKline, approved
- 7 April 1999;
- 8 (g) Kaletra<sup>®</sup> (the PI lopinavir boosted by ritonavir), manufactured by Abbott,
- 9 approved September 2000;
- 10 (h) Reyataz<sup>®</sup> (atazanavir), manufactured by Bristol-Myers Squibb, approved
- 11 June, 2003; and
- 12 (i) Lexiva<sup>®</sup> (fosamprenavir), manufactured by GlaxoSmithKline, approved
- 13 October 2003.

14 12. Each of these PIs, like any anti-HIV drug, will eventually lose efficacy as the

15 virus develops resistance to it. When such resistance occurs, the failed PI must be replaced with

16 another PI that is able to overcome the virus's resistance. Because successive PI regimes must

17 be used in a sequence carefully calibrated to reflect the virus's evolving mutations in individual

18 patients, preserving a maximum number of PI treatment options for physicians to choose from is

19 of paramount importance to the survival of people with HIV.

20 13. Different patients require different combination therapies and medicines

21 depending on, among other things, whether the patient has developed resistance to some

22 medications, side effects of a particular medicine, pregnancy, interactions with other drugs and

23 the effect of drugs on different resulting illnesses. No single PI is directly and completely

24 interchangeable with any other PI in any particular patient.

25 14. Norvir<sup>®</sup> is a drug patented, produced, distributed, and sold by Abbott. Abbott

26 developed Norvir<sup>®</sup> with the assistance of a National Institutes of Health grant and spent only

27 about \$15 million of its own funds on pre-approval clinical trials for the drug. Abbott is the sole

28

1 maker of Norvir<sup>®</sup>, and there are no generics or functionally equivalent formulations on the  
2 market. By the end of 2001, Norvir<sup>®</sup> had generated cumulative sales for Abbott of more than \$1  
3 billion (more than sixty times the estimated cost of its pre-approval outlays). Securities analysts  
4 have estimated that, even without the price increase that is the subject of this Complaint, Norvir<sup>®</sup>  
5 would generate more than \$2 billion for Abbott over the next ten years.

6 15. Norvir<sup>®</sup> was originally developed as a PI, and in March of 1996, it was approved  
7 for use as a stand-alone drug or for use in combination with other PIs. Serious side effects  
8 prevented Norvir<sup>®</sup> from ever being successfully marketed as a PI. However, small doses of the  
9 drug were found to dramatically improve blood levels of other PIs, decreasing the side effects  
10 associated with those drugs and "boosting" the antiviral effect of other PIs against even resistant  
11 strains of HIV. For such boosting purposes, there is no substitute for Norvir<sup>®</sup>. The "Booster  
12 Market" thus consists of the market for Norvir<sup>®</sup>, while the "Boosted Market" consists of the  
13 market for PIs only when they are prescribed together with Norvir<sup>®</sup> as a booster. Other  
14 advantages of Norvir<sup>®</sup>-boosted PI regimens over regimens without Norvir<sup>®</sup> include convenience  
15 in terms of pill burden and reduction of food restrictions for patients, both important factors in  
16 ensuring adherence to antiretroviral therapy.

17 16. Perhaps even more importantly, recent research has shown substantial benefits for  
18 the use of boosted PI regimens, especially for patients who experience failure of treatment  
19 regimens combining PIs with other anti-HIV drugs. Such treatment failures are marked by the  
20 emergence of drug-resistant mutations that limit the benefit of other drugs in the future, because  
21 of cross-resistance between HIV medications. When patients experience failure of initial  
22 boosted PI regimens, there is no evidence of PI resistance and, moreover, there is less resistance  
23 to the other drugs in the regimen. Hence, by using Norvir<sup>®</sup> to boost PI regimens, physicians can  
24 maximize the treatment options remaining for the patients experiencing treatment failure.

25 17. In addition to Norvir<sup>®</sup>, Abbott also markets its own Norvir<sup>®</sup>-boosted PI, Kaletra<sup>®</sup>.  
26 Kaletra<sup>®</sup> consists of Abbott's PI lopinavir, combined in pill form with Norvir<sup>®</sup> as a boosting  
27  
28

1 agent. Kaletra<sup>®</sup> has significant side effects, however, most notably hyperlipidemia, rendering  
2 patients significantly more vulnerable to heart attacks and strokes.

3 18. Prescriptions for Kaletra<sup>®</sup> rose steadily after its September 2000 introduction, and  
4 by June 2003, new prescriptions and total sales of the drug had reached an all-time high, securing  
5 Kaletra<sup>®</sup> an approximate 75% share of the Boosted Market. However, Kaletra<sup>®</sup>'s domination of  
6 the Boosted Market was about to be seriously threatened.

7 19. With the June 2003 introduction of Bristol-Myers Squibb's competing PI,  
8 Reyataz, a new PI boosted by Norvir<sup>®</sup>, Kaletra<sup>®</sup>'s share of new PI prescriptions began a  
9 precipitous decline. By October 2003, the press reported that Kaletra<sup>®</sup> had "topped out."  
10 Furthermore, Kaletra<sup>®</sup> prescriptions, as a proportion of the Boosted Market, began to plummet in  
11 the two months following the introduction of Reyataz. To make matters worse,

12 GlaxoSmithKline introduced Lexiva in October 2003, another PI boosted by Norvir<sup>®</sup>. Both  
13 Reyataz and Lexiva began to make steady inroads against Kaletra<sup>®</sup>'s boosted PI market share.

14 20. Abbott acted quickly to stanch these losses and maintain its dominant position in  
15 the Boosted Market. On December 3, 2003, barely five weeks after the release of  
16 GlaxoSmithKline's Lexiva and more than seven years after Norvir<sup>®</sup>'s introduction into the  
17 market, Abbott abruptly announced that it was raising the wholesale price of Norvir<sup>®</sup> from  
18 \$205.74 to \$1,028.71 for 120 100 mg capsules – an increase of approximately 478%.

19 21. By means of this staggering price hike, Abbott added drastically to the cost of  
20 regimens using Norvir<sup>®</sup> to boost competing PIs. The annual cost of the Norvir<sup>®</sup> needed to boost  
21 these drugs increased by \$6,258 per year for PIs such as Lexiva requiring twice-daily doses of  
22 Norvir<sup>®</sup>. For Tipranovir<sup>®</sup>, a PI currently in development by Boehringer-Ingelheim, the optimal  
23 Norvir<sup>®</sup> booster dose would increase by more than \$12,000 per year.

24 22. In a *coup de grace* against competitors' PIs, Abbott did not raise the price of the  
25 Norvir<sup>®</sup> used in its own Kaletra<sup>®</sup>. As a result, Kaletra<sup>®</sup> became the least expensive boosted  
26 regimen in the Boosted Market. By leveraging its power in the Booster Market, Abbott  
27 unlawfully maintained or extended its monopoly in the Boosted Market.

28

1           23.    Abbott's actions also had a chilling effect on the research efforts of competitors  
2 such as Boehringer-Ingelheim, which seeks to develop future generations of PIs and is heavily  
3 reliant on Norvir<sup>®</sup>'s boosting properties. As one pharmaceutical company research scientist  
4 recently stated in the press, "[w]hy bother investing in these areas if Abbott has effectively  
5 priced you out of the market in the US?" The same scientist suggests that, by pricing others out  
6 of the market, Abbott will effectively shape the research evidence base in such a way as to  
7 ensure that all roads lead to its products.

8           24.    Abbott's monopolistic intentions were immediately apparent to an outraged  
9 public. The Attorneys General of Illinois and New York launched investigations into the price  
10 increase. The Illinois Attorney General stated in a February 6, 2004 press release:

11                   Critics of this price jump by the suburban Chicago-based drug  
12                   giant say the increase is aimed at undercutting competitors'  
13                   products and helping Abbott gain a larger market share for its new  
14                   combination of all-Abbott drugs to suppress HIV. In the past,  
15                   Abbott's Norvir<sup>®</sup> has been combined with other drug companies'  
16                   products in HIV suppression "cocktail" combinations.

17           25.    Physicians prescribing PIs overwhelmingly agree with the fears expressed in the  
18 Illinois Attorney General's statement. The Organization of HIV Healthcare Providers,  
19 representing physicians collectively treating approximately 85,000 patients with HIV, stated in a  
20 January 20, 2004 letter to Abbott that in hiking Norvir<sup>®</sup>'s price Abbott was "taking advantage of  
21 a monopolistic situation, where [its] product is the only effective protease inhibitor boosting  
22 agent." The group of organizations also articulated its fears that the increased cost of Norvir<sup>®</sup>  
23 would:

24                   (a) adversely affect access to current and future salvage therapies that require  
25                   Norvir<sup>®</sup> as a boosting agent;

26                   (b) adversely affect future pricing negotiations for the AIDS Drug Assistance  
27                   Program, which would put treatment further out-of-reach for an increasingly larger group  
28                   of people;

1 (c) influence the pricing patterns of other manufacturers of HIV/AIDS  
2 medications; and

3 (d) adversely affect Medicare beneficiaries with HIV who, despite the recently  
4 adopted program expansion, may be unable to afford the high costs associated with  
5 receiving the new prescription drug benefit.

6 26. The effects of Abbott's anticompetitive activities are already being felt by an  
7 extraordinarily vulnerable population. At least one hospital has now revised its formulary – the  
8 list of preferred drugs that physicians may use – because of cost, to give preference to Kaletra<sup>®</sup>  
9 and restrict physicians' options to use other drugs.

10 27. Such a cost-based consequence, however, carries with it dire physical  
11 consequences. Not only does switching to Kaletra<sup>®</sup> cut short the remaining utility of patients'  
12 current non-Abbott PI, thus eliminating a definite period of time in which the HIV virus is not  
13 immune to their current PI therapy and they are healthy, but switching to Kaletra<sup>®</sup> also entails  
14 significant side effects, which include hyperlipidemia- rendering patients much more susceptible  
15 to heart attacks and strokes. Consequently, as a direct proximate result of Abbott's conduct,  
16 Plaintiff and the Class face irreparable injury for which there is no adequate remedy at law.

#### 17 RELEVANT MARKETS

18 28. All but one of the protease inhibitors, currently prescribed for the treatment of  
19 HIV, benefit from the use of Norvir<sup>®</sup> as a "booster" in order to maximize the blood levels of the  
20 drug and minimize toxic side effects. Indeed, many public health assistance programs require  
21 the use of Norvir<sup>®</sup> as the booster for a PI regimen. Abbott has virtually a 100% share of the  
22 multimillion-dollar Booster Market in the United States.

23 29. The Boosted Market consists of the market for PIs only when prescribed together  
24 with Norvir<sup>®</sup> as a booster. Many of the PIs currently in use and all PIs in clinical trials are used  
25 and prescribed together with Norvir<sup>®</sup> as a booster. Abbott's Norvir<sup>®</sup>-boosted PI product,  
26 Kaletra<sup>®</sup>, is sold in this Boosted Market.

27 30. The United States is the geographical market.  
28

### CLASS ACTION ALLEGATIONS

1  
2           31. Plaintiff brings this action on its own behalf and as a class action under the  
3 provisions of Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of  
4 the following class:

5  
6                   All persons or entities (excluding Abbott, its parents, subsidiaries,  
7 and affiliates, and governmental entities) who purchased Norvir<sup>®</sup>  
8 indirectly as a booster to other PIs and who paid all or part of the  
9 cost of Norvir<sup>®</sup>, from December 3, 2003 to the present (the "Class  
10 Period").

11           32. Plaintiff does not know the exact number of class members. Due to the nature of  
12 the trade and commerce involved, however, Plaintiff believes that the class members are  
13 sufficiently numerous and geographically dispersed throughout the United States such that  
14 joinder of all class members is impracticable.

15           33. Except as to the amount of individual restitution and/or disgorgement that each  
16 class member is entitled to, all relevant questions of fact and law are common to the class,  
17 including, but not limited to, the following:

18                   (a) Whether Abbott unlawfully attempted to monopolize the Boosted Market  
19 during the Class Period;

20                   (b) Whether Abbott engaged in anticompetitive conduct in order to leverage  
21 its monopoly in the Booster Market to obtain, maintain, or extend an undue monopoly in the  
22 Booster Market;

23                   (c) Whether the geographic market for both protease inhibitor boosters and  
24 boosted protease inhibitors is the United States;

25                   (d) Whether the product market in which Abbott has a monopoly is the  
26 Booster Market;

27                   (e) Whether the product market Abbott was attempting to monopolize is the  
28 Boosted Market;

- 1 (f) Whether Abbott intended to monopolize the Boosted Market or to  
2 maintain or extend an existing monopoly on the Boosted Market;
- 3 (g) Whether there was a dangerous probability that Abbott would succeed in  
4 monopolizing the Boosted Market;
- 5 (h) Whether Abbott had pro-competitive reasons for its conduct;
- 6 (i) Whether Abbott's pricing practices constitute a continuous course of  
7 unfair, unlawful, and/or fraudulent business practices;
- 8 (j) The effects of Abbott's attempted monopolization on prices of boosted  
9 protease inhibitors; and
- 10 (k) The appropriate measure of restitution and/or disgorgement sustained by  
11 Plaintiff and class members.

12 34. Plaintiff is a member of the class, and Plaintiff's claims are typical of the claims  
13 of other class members. Plaintiff will fairly and adequately protect the interests of the class.  
14 Plaintiff's interests are coincident with, and not antagonistic to, those of other class members. In  
15 addition, Plaintiff is represented by counsel who are competent and experienced in the  
16 prosecution of antitrust class action litigation.

17 35. The prosecution of separate actions by individual class members would create a  
18 risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for  
19 Abbott.

20 36. The questions of law and fact common to class members predominate over any  
21 questions affecting only individual members, including legal and factual issues relating to  
22 liability and damages.

23 37. A class action is superior to other methods available for the fair and efficient  
24 adjudication of this controversy. Treatment as a class action will permit a large number of  
25 similarly situated persons or entities to adjudicate their common claims in a single forum  
26 simultaneously, efficiently, and without the duplication of effort and expense that numerous  
27 individual actions would engender. Class treatment will also permit the adjudication of claims  
28

1 by many class members who could not afford individually to litigate an antitrust claim such as is  
2 asserted in this Complaint. This action likely presents no difficulties in management that would  
3 preclude its maintenance as a class action. Finally, the class is readily ascertainable.

4  
5 **FIRST CAUSE OF ACTION**  
6 **Sherman Act § 2 (15 U.S.C. § 2)**

7 38. Plaintiff incorporates allegations set forth above, as if fully stated here.

8 39. At all relevant times, Abbott possessed a monopoly in the Booster Market.

9 40. The Booster Market and the Boosted Market constitute separate, relevant product  
10 markets.

11 41. Abbott possessed and acted with specific intent to achieve an anticompetitive  
12 purpose, including the intent to eliminate competitors from the Boosted Market and to  
13 unlawfully maintain its monopoly in the Boosted Market.

14 42. Abbott engaged in one or more of the predatory or anticompetitive acts alleged in  
15 this Complaint.

16 43. There is a dangerous probability that Abbott will be successful in achieving or in  
17 unlawfully maintaining a monopoly in the Boosted Market.

18 44. There is no pro-competitive justification for Abbott's actions.

19 45. Abbott acted with an anticompetitive purpose resulting in an anticompetitive  
20 effect.

21 46. Abbott's acts and conduct were committed for the following purposes:

22 (a) to eliminate competitors from the Boosted Market;

23 (b) to chill the development of potentially competing PIs that require a  
24 booster such as Norvir<sup>®</sup>; and

25 (c) to unlawfully maintain a monopoly in, or attempt to monopolize, the  
26 Boosted Market.

27 47. These acts by Abbott have restrained or prevented competition and threaten and  
28 continue to restrain and prevent competition.





**PRAYER FOR RELIEF**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**WHEREFORE**, Plaintiff prays:


- 1. That this action be declared a class action under Rule 23 of the Federal Rules of Civil Procedure;
- 2. That Abbott's conduct be declared a violation of Section 2 of the Sherman Act, the California Unfair Business Practices Act, and common law as alleged in this Complaint;
- 3. That injunctive relief be ordered, preventing and restraining Abbott and all persons acting on its behalf from further engaging in the unlawful acts alleged in this Complaint;
- 4. That Plaintiff and class members be awarded restitution and/or disgorgement of all revenues, profits, and benefits obtained as a result of Abbott's conduct;
- 5. That the Court establish a constructive trust consisting of any benefit obtained by Abbott as a result of its conduct, from which Plaintiff and class members may make claims for restitution;
- 6. That Plaintiff and class members be awarded costs, interest, expenses, and reasonable attorneys' and experts' fees incurred in connection with this action; and
- 7. Such further relief as this Court deems necessary and appropriate.

**JURY DEMAND**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby respectfully demands a trial by jury.

DATED: October 4, 2004

**HAGENS BERMAN LLP**

By:   
ELAINE T. BYRZEWSKI

700 South Flower Street, Suite 2940  
Los Angeles, CA 90017-4101  
Telephone: (213) 330-7150  
Facsimile: (213) 330-7152

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Steve W. Berman  
**HAGENS BERMAN LLP**  
1301 Fifth Avenue, Suite 2900  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594

David S. Nalven  
**HAGENS BERMAN LLP**  
One Main Street, 4th Floor  
Cambridge, MA 02142  
Telephone: (617) 482-3700  
Facsimile: (617) 482-3003

Bernard Persky  
Hollis L. Salzman  
**GOODKIND LABATON RUDOFF &  
SUCHAROW LLP**  
100 Park Avenue  
New York, New York 10017  
Telephone: (212) 907-0700  
Facsimile: (212) 818-0477

Joseph Lipofsky  
**ZWERLING SCHACHTER  
ZWERLING, LLP**  
845 Third Avenue, 6th Floor  
New York, New York 10022  
Telephone: (212) 223-3900  
Facsimile: (212) 371-5969

Dan Drachler  
**ZWERLING, SCHACHTER &  
ZWERLING, LLP**  
1904 Third Avenue, Suite 1030  
Seattle, Washington 98101-1170  
Telephone: (206) 223-2053  
Facsimile: (206) 343-9636  
*Attorneys for Plaintiff*