

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

THE STATE OF FLORIDA, ex rel.	)	
ROBERT A. BUTTERWORTH, and by	)	
and through ROBERT A. BUTTERWORTH	)	
as assignee of Toys "R" Us, Inc.,	)	
Publix Super Markets, Inc. and	)	
Winn-Dixie Stores, Inc.	)	
	)	
Plaintiffs,	)	Case No.
v.	)	91-40002-MP
	)	
ABBOTT LABORATORIES, <u>et al.</u> ,	)	<u>INDIVIDUAL CASE</u>
	)	
Defendants.	)	
	)	

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AGREEMENT OF SETTLEMENT AND RELEASE

This Agreement of Settlement and Release ("Agreement") is entered into by and among Plaintiff the State of Florida (on its own behalf, including its departments and as assignee of the Florida claims of Toys "R" Us, Inc., Publix Super Markets, Inc. and Winn-Dixie Stores, Inc.) (all of the above hereinafter collectively "Plaintiff") and Abbott Laboratories and Ross Laboratories. The parties to this Agreement are referred to collectively hereinafter as "the Parties."

WHEREAS, the above-captioned action (the "Action") is currently pending in the United States District Court for the Northern District of Florida (the "Court");

WHEREAS, the complaint and amended complaint in the Action allege, among other things, that Abbott Laboratories acting through its subsidiary Ross Laboratories or divisions or subsidiaries of these companies (hereinafter collectively

"Abbott") participated in a conspiracy with Bristol-Myers Squibb Company and American Home Products Corporation and/or with divisions, subsidiaries or affiliates of those companies (all of the above collectively hereinafter the "Defendants") in violation of Federal and/or state antitrust laws regarding pricing and marketing of infant formula products, or otherwise violated such laws;

WHEREAS, Plaintiff alleges that pricing and marketing practices of Abbott were unlawful only if such practices were done pursuant to a contract, combination or conspiracy with competitors; Plaintiff did not, does not, and does not intend to allege that any completely unilateral practices of Abbott regarding pricing or marketing of infant formula products (such as unilateral practices of marketing infant formula products to and through health care professionals or of refraining from advertising such products directly to consumers) have been or are unlawful;

WHEREAS, Abbott and Bristol-Myers Squibb Company (Mead Johnson Nutritional Group) are the two largest domestic competitors in the manufacture and sale of infant formula products with historic aggregate shares of domestic sales volumes of over 85 percent;

WHEREAS Abbott has denied and does deny all charges of wrongdoing of any kind whatsoever and has asserted affirmative defenses against the claims alleged in the complaint and amended complaint in the Action; and

WHEREAS, Abbott, without admitting any of the allegations in the Action or any liability whatsoever, has agreed to enter into this Agreement in order to reduce further expense, inconvenience and the distraction of burdensome and protracted litigation and in order to obtain the releases, covenants and final judgment contemplated by this Agreement and to put to rest with finality all claims that have been or that could have been asserted against Abbott in the Action under any Federal or state antitrust law or any other laws.

NOW, THEREFORE, in consideration of the premises, covenants and agreements herein set forth, the sufficiency of which the Parties hereby acknowledge, it is agreed by and between the undersigned that the claims of Plaintiff against Abbott be settled and compromised on the following terms and conditions:

1. As used in this Agreement, the term "Infant Formula" means a food, as described in 21 U.S.C. § 321(aa), which purports to be or is represented for special dietary use solely as a food for infants by reason of simulation of human milk or its suitability as a complete or partial substitute for human milk.

2. Simultaneously with the signing of this Agreement, the Parties shall execute for filing with the Court a Stipulation of Dismissal with Prejudice and Consent to Entry of Permanent Injunction (the "Stipulation of Consent") in the form annexed hereto as Exhibit A, together with an attachment consisting of a Permanent Injunction by Consent and Dismissal ("Permanent Injunction") in the form annexed hereto as Exhibit B. The fully

executed Stipulation and Consent, along with the Permanent Injunction, shall be given and entrusted to counsel for Plaintiff for filing with the Court. The Parties agree that they will exercise their best efforts to obtain entry of the Permanent Injunction, will not seek to appeal such entry, will not seek to modify the Permanent Injunction and will not take any action, directly or indirectly, which might prevent or delay the Permanent Injunction from becoming final.

3. Plaintiff, all of its respective officers, officials, agents, employees, predecessors, successors, departments, divisions, sections, agencies, affiliates and representatives, and all of the respective assignors (past, current or future) to the extent of their Florida claims and assignees (past, current, or future) of Plaintiff or any of the other persons or entities listed above in this sentence covenant and agree that they are hereby forever barred from instituting, assigning, maintaining, collecting, assisting, or prosecuting against Abbott or any of its past, present or future officers, directors, agents, employees, attorneys, affiliates, predecessors, shareholders, subsidiaries, divisions, successors, assigns, indemnities and legal representatives in any and all claims, demands, actions, causes of action or liability of any nature, whether known or unknown, whether at law or equity, whether for damages, penalties or injunctive relief, which they ever had, now have, or could have had against Abbott with respect to any and all purchases (whether made directly from Abbott or another Defendant or from

another party other than a Defendant), sales, marketing, pricing or advertising of, or any other conduct relating to, any Infant Formula Product prior to the date of this Agreement or which could have been asserted or might in the future be asserted against Abbott arising out of or related to any of the facts alleged in the complaint or amended complaint in the Action, whether based on Federal or state antitrust laws or any other laws (all of the above collectively hereinafter the "Claims").

4. Plaintiff, all of its respective officers, officials, agents, employees, predecessors, successors, departments, divisions, sections, agencies, affiliates and representatives, and all of the respective assignors (past, current, or future) to the extent of their Florida claims and assignees (past, current, or future) of Plaintiff or any of the other persons or entities listed above in this sentence hereby release and discharge Abbott and its past, present or future officers, directors, agents, employees, attorneys, affiliates, predecessors, shareholders, subsidiaries, divisions, successors, assigns, indemnities and legal representatives from any and all liability in respect of the Claims. Plaintiff shall advise counsel for Abbott of any future assignment of claims to Plaintiff relating to the subject matter of this Action within one business day of such assignment, and shall confirm in writing that the covenants and releases of paragraphs 3 and 4 of this Agreement are applicable to such assigned claims.

5. (A) If the Court signs and enters the Permanent Injunction, and if the Permanent Injunction becomes final, then Abbott shall deliver to Plaintiff the sum of \$8,000,000.00 (the "Settlement Fund") by transferring said amount into an account entitled Florida State Treasury Concentration Account at Barnett Bank of Tallahassee in accordance with the request of Jerome W. Hoffman, Esq., Chief, Antitrust Section, on Plaintiff's behalf. This payment shall be in full, complete and final settlement of the Claims, including but not limited to any and all claims for damages, interest thereon, civil penalties, injunctive relief, attorneys' fees, expenses, costs and any other form of relief of any kind whatsoever. It is expressly understood that notwithstanding the fact that Abbott's payment of the Settlement Fund shall be in full, complete and final settlement of all the claims asserted by Plaintiff against Abbott in this Action, the Settlement Fund is not, and Plaintiff may not characterize the Settlement Fund as, anything other than a payment in respect of the claims assigned to the State of Florida by Toys "R" Us, Inc., Publix Super Markets, Inc. and Winn-Dixie Stores, Inc. In particular, no portion of the Settlement Fund is, and Plaintiff may not characterize any portion of the Settlement Fund as, a civil penalty or payment in respect of claims asserted by the State of Florida in its own right.

(B) If the Court declines to sign and enter the Permanent Injunction, or if the Permanent Injunction is modified, reversed or set aside for any reason whatsoever, and such court's order becomes final and is not subject to further appeal, then the following shall occur simultaneously:

(i) this entire Agreement, with the exception of paragraph 8 below, shall be completely rescinded and shall be deemed void ab initio, and of no force or effect, without prejudice to the claims, defenses or rights of the Parties;

(ii) all of Plaintiff's claims against Abbott and all of Abbott's answers and defenses thereto shall be immediately reinstated in the Action, as if this Agreement had never been entered;

(iii) the covenants and releases referred to in paragraphs 3 and 4 above shall be deemed null and void and of no force and effect; and

(iv) Abbott shall have no obligation to deliver the Settlement Fund or any other sum of money to Plaintiff.

6. This Agreement (i) shall not be deemed or construed to be an admission by any party of any fact or matter, (ii) does not constitute any evidence against or admission of liability by Abbott with respect to any claim that was or could have been asserted against Abbott by Plaintiff, and (iii) may not be used as evidence or in any other way in this Action or in any other proceeding or litigation, except in connection with enforcement of this Agreement.

7. It is expressly understood that the terms stated in this Agreement are contractual and not merely recitals.

8. This Agreement may be executed in counterparts by the Parties.

9. The Court shall retain jurisdiction over the interpretation, effectuation and implementation of this Agreement.

10. This Agreement shall become effective upon its execution by all of the undersigned and cannot be amended or modified without the agreement in writing of all of the undersigned.

11. Plaintiff expressly warrants that the assignments it has previously received are covered by this Agreement, were duly authorized by the corporate assignors and are valid and enforceable. Plaintiff further expressly warrants that Plaintiff has the authority to settle the Claims with the releases and covenants reflected in this Agreement and that such releases and covenants are valid and enforceable.

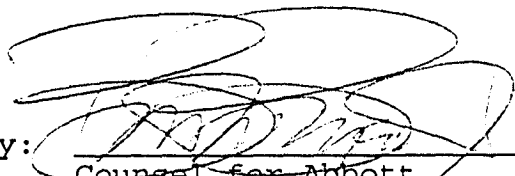


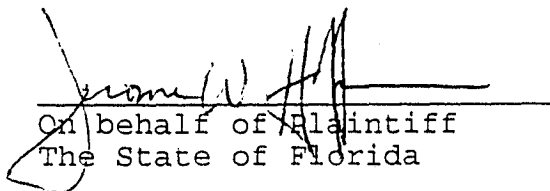
12. The undersigned represent that they are fully authorized to enter into this Agreement on behalf of the respective Parties.

Dated: May 24, 1993.

ROBERT A. BUTTERWORTH  
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By:   
Counsel for Abbott  
Laboratories and Ross  
Laboratories

By:   
On behalf of Plaintiff  
The State of Florida

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF FLORIDA  
 TALLAHASSEE DIVISION

THE STATE OF FLORIDA, ex rel. )  
 ROBERT A. BUTTERWORTH, and by )  
 and through ROBERT A. BUTTERWORTH )  
 as assignee of Toys "R" Us, Inc., )  
 Publix Super Markets, Inc. and )  
 Winn-Dixie Stores, Inc., )

Plaintiff, )

v. )

ABBOTT LABORATORIES, et al., )

Defendants. )

Case No.  
 91-40002-MP

INDIVIDUAL CASE

ORDER AND JUDGMENT

Upon consideration of the Stipulation of Dismissal with Prejudice and Consent to Entry of Final Judgment between Plaintiff, the State of Florida (on its own behalf and as assignee of Toys "R" Us, Inc., Publix Super Markets, Inc. and Winn-Dixie Stores, Inc.) (all of the above hereinafter collectively "Plaintiff") and Defendant Abbott Laboratories ("Abbott"), dated May 21, 1993.

U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF FLORIDA  
 TALLAHASSEE, FLORIDA

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5/25/93 *JP*  
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*All Counsel*

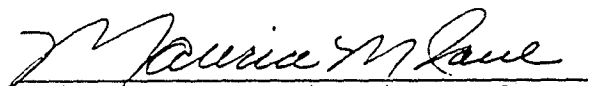
IT IS HEREBY ORDERED AND ADJUDGED, in accordance with Rules 54, 58 and 79 of the Federal Rules of Civil Procedure, that:

1. The above-captioned action against Abbott be and hereby is dismissed with prejudice, with each party to bear its own costs and attorneys' fees.

2. There is no just reason for delay in the entry of judgment as agreed upon in the Stipulation of Dismissal with Prejudice and Consent to Entry of Final Judgment.

3. The Clerk is directed to enter judgment hereon promptly.

DONE AND ORDERED this 25<sup>TH</sup> day of May, 1993.

  
United States District Judge