



terms of that paragraph shall be deemed to constitute a portion of the Consent Decree, and the provisions of this Order shall supercede any otherwise conflicting provisions contained in the Consent Decree as they relate to stocking. It is further directed that, to the extent either party wishes to announce the Consent Decree to the press, the parties shall confer in good faith regarding the content of any press release and regarding the scheduling of any press conference, and shall use reasonable best efforts to accommodate the other's desires, if any, to issue any such press release on a joint basis, or to be jointly present for any press conference. The Court will retain jurisdiction to enforce the terms of the Consent Decree.

2. Clearance of Store Aisles. With respect to the parties' dispute as to the length of time that Duane Reade's store aisles may be blocked to less than 36 inches, during the staging and unpacking of stock in cartons or plastic "totes" delivered to Duane Reade's stores, Duane Reade shall comply with the following requirements:

a. Categorization of Stores/Time Periods for 36-Inch Aisle Clearance.

Duane Reade stores shall be divided into three categories, based on the criteria and categorization formula set forth in Duane Reade's written proposal submitted July 29, 2005, a copy of which is attached hereto as Exhibit A. Any Duane Reade stores opened in the future shall be assigned a category based on the same criteria and formula set forth in Exhibit A. Except as provided in Paragraph 2(b), for all stores, the period of time by which clearance of all aisles to a passable width of at least 36 inches ("36" Clearance") shall be achieved shall be measured from the time when the staging of a delivery of stock is complete, which shall be defined as the time when the delivery truck leaves the store upon completing a delivery. For "Category 1" stores (stores for which clearing the aisles

is easiest), Duane Reade shall achieve 36” Clearance within two hours from the time staging is complete. For “Category 2” stores (stores for which clearing the aisles is of medium difficulty), Duane Reade shall achieve 36” Clearance within four hours from the time staging is complete. For “Category 3” stores (stores for which clearing the aisles is most difficult), Duane Reade shall achieve 36” Clearance within six hours from the time staging is complete.

b. Calculation of Time Periods With Respect to Overnight Hours. In calculating the time periods set forth in Paragraph 2(a), above, the hours between 9:00 p.m. and 7:00 a.m. shall be excluded, except that, for any stores that are open 24 hours a day, and that receive evening deliveries for which the relevant time period does not expire by 9:00 p.m., Duane Reade shall achieve 36” Clearance for such deliveries no later than 7:00 a.m.

c. Posting of Information for Customers. For each store, Duane Reade shall conspicuously post, near every customer entrance to the store, including any special wheelchair accessible entrance, a sign indicating the length of time by which 36” Clearance is expected to be achieved after a delivery. Duane Reade is encouraged, but not obligated, to post additional information as to its scheduled deliveries and its policies and practices regarding aisle clearance.

d. Record-Keeping of 36” Clearance Times. For each warehouse delivery to a store, Duane Reade shall make, and shall retain for a period of at least one year, a written record of the time when product staging is complete and the time when 36” Clearance is achieved.

e. No Blockage of Elevators. During product staging and pack-out, Duane Reade shall in no event block any store elevators that would otherwise be available to customers with disabilities.

f. Use of Wheeled Bases for Totes. Duane Reade shall use reasonable best efforts to obtain wheeled bases for its stackable plastic totes, so as to enable stacked totes to be moved more easily upon a customer's request. If such wheels are obtained, Duane Reade employees shall use their reasonable best efforts to move stacked totes on wheels promptly upon a customer's request where the totes impede access to an aisle. The Court recognizes, however, that, unless wheeled bases are capable of being locked, or unless other provisions can be made to prevent stacked totes from being moved by customers, the use of wheels for stacked totes may create a hazard in Duane Reade's stores. If, by December 31, 2005, Duane Reade has been unable, despite its reasonable best efforts, to obtain wheeled bases that it believes may be used safely in its stores, it shall so notify Plaintiffs' counsel and the Court, setting forth the efforts that it has made to obtain safely usable wheeled bases, and explaining the reasons why its efforts have been unsuccessful. Nothing in this Order shall preclude Duane Reade from making a determination that wheeled totes are not workable in one or more of its stores, provided that such a determination is made after Duane Reade has used its reasonable best efforts to obtain and implement wheeled totes in its stores.

g. Priority Clearance of Pharmacy Aisles. As part of the process of achieving 36" Clearance, Duane Reade shall use reasonable best efforts to clear (to 36 inches) aisles leading to store pharmacies before clearing other store aisles.

h. Training. Duane Reade shall train district managers, store managers, any “pack-out teams,” and any other relevant delivery and store employees as to methods for staging products so as to maximize the wheelchair accessibility of aisles. Such training shall include, but not be limited to, instruction in placing and/or stacking cartons and totes in appropriate locations and with appropriate alignment so as to minimize obstruction of the aisles. Duane Reade shall also train district managers, store managers, any pack-out teams, and any other relevant store employees as to methods for unpacking cartons and totes so as to achieve 36” Clearance within the shortest possible time. Such training shall include, but not be limited to, instruction in prioritizing the order of the pack-out so as to make reasonable best efforts (i) to clear pharmacy aisles to 36” before clearing other aisles; (ii) to unpack stock in aisles that have less than 36” clearance before unpacking stock in aisles that already have 36” clearance; (iii) to unpack cartons that are not on wheels before unpacking totes on wheeled bases; and (iv) to flatten and clear cartons promptly after they are unpacked. Duane Reade shall also train store managers to report to their district managers any failures by their stores to achieve 36” Clearance within the required times, and shall train district managers both to document their steps to address and correct such failures and to report to in-house counsel or to any other individual designated by Duane Reade to prepare the quarterly reports to Plaintiffs’ counsel required by Paragraph 2(m), below. Duane Reade shall also undertake to train new employees in staging and pack-out procedures as part of their orientation, and shall repeat or enhance prior training of existing employees in such manner and at such intervals as it deems necessary to maintain compliance with the terms of this Order.

i. Certification of Training. No later than December 31, 2005, Duane Reade shall certify to Plaintiffs' counsel that it has completed the initial training of its current employees, as set forth in Paragraph 2(h), above. On a quarterly basis thereafter, Duane Reade shall certify that the training program identified in Paragraph 2(h) remains in place and is continuing to be implemented.

j. Customer Complaints. Duane Reade shall provide customers with an opportunity to complain or comment on accessibility issues, by providing, within each store, a conspicuously posted telephone number that customers may call with their complaints or comments. In addition, Duane Reade shall in good faith determine whether it would be productive and practical to provide a conspicuous, locked "suggestion box" (which would be emptied by district managers, rather than store personnel) in any of its stores, and shall provide such suggestion boxes for any stores for which it makes a positive determination. (Duane Reade shall, in any event, place suggestion boxes in at least five of its stores to evaluate their effectiveness, and shall select such stores in consultation with Plaintiffs.) Duane Reade shall make a written record of customer complaints received via telephone. Any complaints regarding issues of accessibility for the disabled shall be routed to the district manager and/or to any other individual designated by Duane Reade to have responsibility for ensuring compliance with the Consent Decree, including the terms of this Order. Any written customer complaints and written records of oral complaints regarding the accessibility of store aisles shall be retained by Duane Reade for at least 60 days after Plaintiffs are provided with the

quarterly report (referred to in Paragraph 2(m), below) in which such complaints are reported.

k. Compliance Monitoring. Duane Reade shall continue to retain an independent service to run a “Mystery Shopper” program, in which individuals employed by that service make unannounced and incognito visits to Duane Reade stores to identify and then bring to management’s attention issues of potential concern to shoppers. Duane Reade shall inform this service that, if, during a store visit, any Mystery Shopper observes a store’s failure to achieve 36” Clearance within the required time period for that store, the Mystery Shopper should document his/her observations in writing and immediately notify the district manager of the failure. In addition, Duane Reade shall retain an independent service to implement, no later than January 1, 2006, a “Special” Mystery Shopper program, in which a Special Mystery Shopper will visit at least 20 Duane Reade stores per month (such stores to be selected on a random basis, but with each random sample designed to represent a fair cross-section of the three categories of stores described in Paragraph 2(a), above) for the specific purpose of monitoring compliance with the 36” Clearance times set forth herein. Special Mystery Shoppers should be provided with expected warehouse delivery times, so that they may time their store visits to coincide with anticipated product staging and pack-outs. Duane Reade shall inform the Special Mystery Shopper service that, if any Special Mystery Shopper observes a store’s failure to achieve 36” Clearance within the required time period, the Special Mystery Shopper should document his/her observations in writing and immediately notify the district manager of the failure. If a district manager is informed by any Mystery Shopper

(or by any other source) of an instance of a store's failure to achieve 36" Clearance within the required time, the district manager shall then take steps to address and correct the failure, and shall document such steps in writing.

In addition to the Special Mystery Shopper documenting whether a store has met its stated time requirement, during their visits to Duane Reade stores the Special Mystery Shopper shall note (i) any aisles that do not meet the 36" Clearance requirement; and (ii) any aisles that are in the process of being cleared or packed out by Duane Reade employees. The Mystery Shopper shall note any aisles that are being cleared or packed out by Duane Reade employees and any aisles they observe that are plainly less than the 36" Clearance requirement, it being understood that the Mystery Shopper is not required to measure the aisles. Duane Reade shall provide an appropriate checklist to the Special Mystery Shoppers and the Mystery Shoppers on which they shall note their observations.

1. Follow-up on Instances of Non-Compliance. If any Duane Reade district manager or any other individual designated by Duane Reade to have responsibility for ensuring compliance with the terms of this Order learns from any source (other than instances of self-reporting by a store manager, but including a Mystery Shopper, a customer, a Plaintiff, or Plaintiffs' counsel) that a store has failed to meet its stated time requirement for achieving 36" Clearance, then Duane Reade shall instruct the Special Mystery Shopper service that the store should be observed in the following month by a Special Mystery Shopper, who should document whether the store has then met its stated time requirement. This type of follow-up shall be repeated each month, until the store is observed by a Special Mystery Shopper to be achieving its required 36" Clearance time.

Any such follow-up observation of a store shall be conducted in addition to the Special Mystery Shopper's regular monthly observation of 20 randomly-selected stores.

m. Quarterly Reporting by Duane Reade to Plaintiffs' Counsel. Commencing with the period from January 1, 2006 to March 31, 2006, Duane Reade shall, on a quarterly basis, report the following information to Plaintiffs' counsel: (i) any known instances (occurring during that quarter) of a store's failure to achieve 36" Clearance within the required time; (ii) the source of the information regarding the store's failure (*i.e.*, store manager, Mystery Shopper, customer, any Plaintiff, Plaintiffs' counsel, or other); (iii) where the failure was reported by any Mystery Shopper, the Mystery Shopper's documentation of the failure; (iv) where the failure was reported by a customer, a copy of the customer's written complaint and/or a copy of the written record of the customer's oral complaint; and (v) a summary of the steps taken by the district manager and any other Duane Reade employees to address and correct the failure.

n. Requests by Plaintiffs' Counsel For Time Documentation and/or Videotapes. When a store has been identified in Duane Reade's quarterly compliance report as having failed, during that quarter, to achieve 36" Clearance within the required time, Plaintiffs' counsel may request additional documentation regarding that failure and regarding the store's compliance history. Specifically, Plaintiffs' counsel may request, and Duane Reade shall supply upon request, up to two months of data on that store's 36" Clearance times (*i.e.*, the recorded start times and completion times of the clearance of aisles to 36 inches). In addition, upon request by Plaintiffs' counsel, Duane Reade shall make reasonable best efforts to provide Plaintiffs' counsel with a copy of any security

videotape of store aisles recorded on the date of the reported compliance failure. With respect to such videotape, Duane Reade shall take appropriate steps to ensure the preservation of such videotape for at least one month after Plaintiffs are provided with the quarterly report in which such violations are reported. Where, despite Duane Reade's reasonable best efforts, videotape from the date in question has not been preserved, Plaintiffs' counsel may request, and Duane Reade shall provide, videotape from the same store, recorded on a subsequent date when an equivalently-scheduled warehouse delivery is made and unpacked. In that event, the store manager and other store employees shall not be informed in advance that the videotape is to be provided.


o. Refraining from Seeking Contempt Sanctions. Plaintiffs may not seek contempt sanctions against Duane Reade based on Duane Reade's failure to comply with Paragraph 2 ("Clearance of Store Aisles"), unless plaintiffs first give Duane Reade reasonable notice of such failure and Duane Reade fails to cure it within a reasonable time after receiving such notice. Further, Plaintiffs shall refrain from seeking any contempt sanction from the Court for Duane Reade's failure to meet its required 36" Clearance times until after the expiration of an initial one-year grace period of January 1 to December 31, 2006. During 2006, the parties are directed to confer in good faith to attempt to resolve any issues of compliance with the 36" Clearance time requirements set forth herein. If, at any time, the parties agree that the Court should modify any of the provisions of this Order – including, but not limited to, the categorization of any stores into Category 1, 2, or 3, and/or the length of time required for stores in any category (or for specific stores) to achieve 36" Clearance – then counsel shall submit to the Court for

approval a jointly proposed modification of the Order (and/or of Exhibit A hereto), with an explanation as to why the parties believe that modification would be appropriate.

p. Status Report To the Court. Counsel shall submit a joint letter to the Court in the first quarter of 2007, stating whether any party believes that the terms of this Order should be modified in any way that has not been mutually agreed to by the parties. Upon review of counsel's joint letter, the Court will schedule a status conference as necessary.

Dated: New York, New York  
October 28, 2005

SO ORDERED

  
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DEBRA FREEMAN  
United States Magistrate Judge

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