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19 Los Angeles, CA 90013
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21 *Attorneys for Defendants*

22 UNITED STATES DISTRICT COURT
23 NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

24 IN RE: BEXTRA AND CELEBREX) No. M:05-CV-01699-CRB
25 MARKETING, SALES PRACTICES, AND)
26 PRODUCT LIABILITY LITIGATION) MDL No. 1699

26 THIS RELATES TO:) SETTLEMENT AGREEMENT AND
27 ALL PURCHASER CASES) RELEASE
28

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TABLE OF EXHIBITS

Exhibit 1	Short Form Notice to Consumer Subclasses
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1 would be protracted and expensive, and that it is desirable that the Class Action be fully and finally
2 settled in the manner and upon the terms and conditions set forth in this Agreement, in order to
3 limit further expense, inconvenience, and distraction, and to dispose of the burden of protracted
4 litigation, taking into account, among other things, the uncertainty and risks inherent in any
5 litigation, especially in complex cases such as this;

6 WHEREAS, Class Plaintiffs have filed a consolidated amended complaint combining the
7 allegations of the Third Amended Purchase Claims Master Bextra Complaint and the Third
8 Amended Purchase Claims Master Celebrex Complaint, which shall serve as the operative
9 complaint for the purposes of this Agreement (the "Consolidated Amended Complaint");

10 WHEREAS, Class Plaintiffs have advised Defendant that in the absence of settlement they
11 intend to seek amendment to the Consolidated Amended Complaint to allege claims under the
12 federal RICO statute, and seek certification of a national class under that statute;

13 WHEREAS, the Parties agree that this Agreement shall not be deemed or construed as an
14 admission or as evidence of any violation of any statute or law, or of any liability or wrongdoing
15 by any of the Released Persons, or of the truth of any of the claims or allegations alleged in the
16 Third Amended Purchase Claims Master Bextra Complaint, Third Amended Purchase Claims
17 Master Celebrex Complaint, and [Proposed] Consolidated Amended Complaint (collectively,
18 "Complaint"), or as a waiver of any defenses thereto, or a waiver of any right to oppose
19 amendment to allege RICO claims, or any argument in response to a motion for class certification;

20 WHEREAS, the Parties have conducted a thorough examination and investigation of the
21 facts and law relating to the asserted and potential claims and defenses in the Complaint;

22 WHEREAS, the Defendant and Class Plaintiffs, through their counsel, after vigorous
23 arm's-length negotiations, have conditionally agreed to a total payment by Defendant of
24 \$89,000,000 (of which \$4,000,000 is allocated solely for notice and claims administration) in full
25 and final settlement of the Celebrex and Bextra Purchase Claims as set forth herein.

26 NOW, THEREFORE, it is agreed by and between the undersigned on behalf of Pfizer and
27 the Class Plaintiffs that any and all claims made or that could have been made against Pfizer by
28 Class Plaintiffs in the Class Action be settled, compromised and dismissed on the merits with

1 prejudice and without costs as to Plaintiffs or Pfizer, subject to the approval of the Settlement
2 Court, on the following terms and conditions:

3 **1. Settlement Class Definition**

4 A. Subject to the Settlement Court's approval, and the conditions of Paragraph 15, the
5 undersigned agree and consent to the certification pursuant to Fed. R. Civ. P. 23(b)(3) of the
6 following settlement class as defined by its combined three subclasses (collectively, the
7 "Settlement Class"):

- 8 (1) Bextra or Bextra and Celebrex Consumer Subclass. All consumers located in the
9 United States who purchased or paid for prescriptions of Bextra or both Bextra and
10 Celebrex. Class members who purchased or paid for both Bextra and Celebrex will
11 receive compensation based on their Bextra purchases only, in exchange for
12 releasing their claims for both Bextra and Celebrex purchases.
- 13 (2) Celebrex ONLY Consumer Subclass. All consumers located in the United States
14 who purchased or paid for prescriptions of Celebrex, but not Bextra, prior to July
15 29, 2005. This class and subclass does not include individuals who only purchased
16 or paid for Celebrex after July 29, 2005.
- 17 (3) Bextra and Celebrex Third Party Payor ("TPP") Subclass. All TPPs, defined as all
18 entities that: (a) provide, sponsor or insure a healthcare plan, which includes
19 prescription drug coverage to natural persons, and (b) purchase, pay or insure all or
20 part of the cost of prescription drugs prescribed and dispensed to those persons
21 pursuant to a health plan, located in the United States who reimbursed or paid for
22 Bextra and/or Celebrex. Class members who purchased or paid for both Bextra and
23 Celebrex will receive compensation based on their Bextra purchases only, in
24 exchange for releasing their claims for both Bextra and Celebrex purchases.

25 B. Excluded from the proposed Class are Defendant, any entity in which Defendant has
26 a controlling interest or which have a controlling interest in Defendant, and Defendant's legal
27 representatives, predecessors, successors and assigns; the judicial officers to whom this case is
28 assigned; any member of the immediate families of excluded persons; governmental agencies and
those who resold Celebrex and/or Bextra, and any consumer who has released his/her claims
against Pfizer related to Celebrex and/or Bextra.

C. Those entities that own or operate businesses referred to commonly as pharmacy
benefit managers ("PBMs") or third party administrators ("TPAs") and who as part of their
business operation contract with ultimate TPPs of a prescription pharmaceutical benefit to perform

1 certain services in the administration and management of that prescription pharmaceutical benefit
2 for those ultimate TPPs are not class members under the Settlement Class definition. The
3 Settlement Class, specifically the Bextra and Celebrex TPP subclass, includes the ultimate TPPs
4 providing the prescription pharmaceutical benefit and not the PBMs or TPAs with which those
5 TPPs contract to administer or manage that prescription benefit on behalf of the class members,
6 unless such PBMs or TPAs are the fiduciary of the TPPs or by contract assumed, in whole or in
7 party, the insurance risk of that prescription pharmaceutical benefit during the class period.

8 **2. General Definitions**

9 As used in this Agreement, the following terms shall have the indicated meanings:

10 A. "Authorized Claimant" means a Class Member who submits a timely and valid
11 Proof of Claim form to the Claims Administrator or is otherwise authorized to receive a share of
12 the Net Settlement Fund under the Plan of Allocation.

13 B. "Claims Administrator" means Rust Consulting, Inc. (formerly Complete Claim
14 Solutions, LLC), subject to approval of the Settlement Court.

15 C. "Class Complaint" or "Complaint" means the Third Amended Purchase Claims
16 Master Bextra Complaint, Third Amended Purchase Claims Master Celebrex Complaint, and
17 [Proposed] Consolidated Amended Complaint.

18 D. "Class Counsel" means the law firms listed in the Consolidated Amended
19 Complaint and Settlement Allocation Counsel.

20 E. "Class Escrow Account" means the account established pursuant to Paragraph 9.A.
21 and Exhibit 8 to this Agreement.

22 F. "Class Member" means any person or entity falling within the definition of the
23 Settlement Class who is not a Settlement Class Opt-Out.

24 G. "Class Notice Consultant" means Kinsella Media, LLC, 2120 L Street NW, Suite
25 205, Washington, DC or, if not reasonably available, another firm agreed to by Pfizer and Class
26 Counsel.

27 H. "Class Representatives" mean the named plaintiffs who have asserted claims on
28 behalf of themselves and a putative class in the Class Action. Class Representatives for the

1 Settlement Class are as follows: Allied Services Division Welfare Fund; ASEA/AFSCME Local
2 52 Health Benefits Trust; Bricklayers of Indiana Welfare Fund; Commonwealth Care Alliance;
3 Frankenmuth Financial Group, Inc.; IBEW 673 Fringe Benefit Fund; IBEW Local 129 Fringe
4 Benefit Funds; IBEW Local 683 Fringe Benefit Funds; IBEW Local 32 Health and Welfare Fund;
5 Indiana Carpenters Health and Welfare Fund; Indiana Electrical Workers Local 481 Benefit Trust;
6 Indiana State Council of Roofers Health and Welfare Fund; Indiana State District Council of
7 Laborers and Hod Carriers Welfare Fund; Metal Trades Branch Welfare Fund; Michiana Area
8 Electrical Workers Health and Welfare Fund; National Healthcare Insurance Company; New
9 England Carpenters Health Benefits Fund; Painters Local No. 469 Health and Welfare Fund;
10 Painting Industry Insurance and Annuity Funds; Pipe Trades Industry Health and Welfare Plan;
11 Plumbers and Steamfitters Local No. 166 Health and Welfare Plan; Plumbers and Steamfitters
12 Local 42 Health & Welfare Plan; Plumbers Local No. 210 Health and Welfare Fund; Service
13 Employee International Union Local No. 3 Health & Welfare Fund; Sheet Metal Workers Local
14 No. 20 Welfare and Benefit Fund; Sheet Metal Workers' International Association Local No. 28 of
15 Metropolitan New York & Long Island; Southern Ohio Painters Health and Welfare Fund;
16 Steamfitters' Industry Welfare Fund; Watters, Linda A., Offices of Financial and Insurance
17 Services for the State of Michigan in her capacity as Rehabilitator of The Wellness Plan and in her
18 capacity as Liquidator of Michigan Health Maintenance Organization Plans, Inc., formerly known
19 as Omnicare Health Plan, Inc.; Betty A. Alexander; Nancy Ayers; Aurora Balloveras; Clara
20 Fontanilles; Dorothy Greaves; Sarah Hare; Ronnie L. Hatcher; Beatrice Howard; Georgia
21 Katsanos; Stephen Keisker; Rose Lohman; Michelle Madoff; Helen Marconi; Robert Mariconi;
22 Evelyne Mayes; Judith C. Meredith; Nancy Milano; Mary Morris; Vernon Shephard; and June
23 Swan.

24 1. "Consumer Class Member" means any person falling within the definition of the
25 Consumer Subclasses set forth in Paragraphs 1.A.(1) and 1.A.(2) who is not a Settlement Class
26 Opt-Out. "Consumer Class Member" includes living persons as well as the executors, heirs,
27 administrators, trustees, or other authorized representatives of deceased persons.

28



1 J. "Court" or "Settlement Court" means the Honorable Charles R. Breyer of the
2 United States District Court for the Northern District of California, or, if Judge Breyer is not
3 available, another judge from the United States District Court for the Northern District of
4 California who will be designated by Judge Breyer or who is duly appointed, or any other court
5 before which Pfizer's Counsel and Class Counsel agree to settle the claims of the Settlement Class.

6 K. "Effective Date" has the meaning ascribed in Paragraph 7 of this Agreement.

7 L. "Escrow Agent" means a bank or institution agreed to by the parties.

8 M. "Final" means the latest of:

9 (1) the date of final affirmance of any appeal of the Judgment, the expiration of
10 time for a petition for or a denial of a writ of certiorari to review the Judgment and, if certiorari is
11 granted, the date of final affirmance of the Judgment following review pursuant to that grant; or

12 (2) the date of final dismissal or withdrawal of any appeal from the Judgment or
13 the final dismissal, denial or withdrawal of any proceeding on certiorari or writ of review of the
14 Judgment; or

15 (3) if no appeal is filed, the expiration date of the time for filing or noticing of
16 any appeal from the Judgment. Any proceeding or order, or any appeal or petition for a writ of
17 review or certiorari, pertaining solely to any Plan of Allocation or application for attorneys' fees
18 and expenses shall not in any way delay or preclude the Judgment from becoming Final.

19 N. "Judgment" means the Order and Final Judgment to be entered approving the
20 Agreement substantially in the form attached hereto as Exhibit 9.

21 O. "Net Settlement Fund" means the Settlement Fund less: notice and administration
22 costs and expenses as described in Paragraphs 5.B. and 9.C.(7), Taxes and Tax Expenses as
23 described in Paragraph 9.D., and the amount of any Fee and Expense Award to Plaintiffs' Counsel.

24 P. "Pfizer's Counsel" or "Defendant's Counsel" means DLA Piper and such other
25 counsel as Pfizer may designate.

26 Q. "Pharmaceutical Purchase" or "Purchase" means payment or reimbursement, direct
27 or indirect, for all or part of the cost of Bextra or Celebrex.

28

1 R. "Plaintiffs" means the Class Representatives together with all putative members of
2 the Settlement Class.

3 S. "Preliminary Approval Order" means an order approving the settlement set forth in
4 this Agreement, substantially in the form of Exhibit 7.

5 T. "Proof of Claim" means the form submitted to the Claims Administrator by a Class
6 Member claiming to be an Authorized Claimant and attached hereto as Exhibits 6 and 11.

7 U. "Released Claims" means any and all claims, demands, actions, suits, causes of
8 action, damages whenever incurred, and liabilities of any nature whatsoever, including costs,
9 expenses, penalties, and attorneys' fees, known or unknown, suspected or unsuspected, in law or
10 equity, that any Class Releaser who has not timely and validly excluded itself from the Settlement
11 Class, whether or not they object to this Agreement or make a claim upon or participate in the
12 Settlement Fund, ever had, now has, or hereafter can, shall, or may have, directly, indirectly,
13 representatively, derivatively, or in any capacity, arising out of any conduct, events or transactions
14 alleged or that could have been alleged in any litigation relating to the purchase, price, payment,
15 reimbursement, use, prescription, marketing, manufacture, distribution, sale, promotion, research,
16 design, development, supply and/or ingestion of Celebrex and/or Bextra during the Class Period.
17 "Released Claims" include all state and federal statutory and common law claims of any sort.
18 "Released Claims" shall not include any claim against any person or entity that is not a Released
19 Party, any claim for breach of this Agreement, or any claim between any Settlement Class Member
20 and any Released Party that is unrelated to the allegations set forth in the Class Complaints.

21 V. "Released Parties" means: Pfizer, Inc., Pharmacia Corporation, and G.D. Searle
22 LLC and all associated and affiliated companies, along with their successors, assigns, subsidiaries,
23 and trustees and/or beneficiaries of trusts which have an interest in the above referenced
24 companies, and/or any of their current, past or future owners, directors, officers, employees,
25 attorneys, liability insurers, accountants, direct and indirect shareholders, partners, members, or
26 agents.

27 W. "Releaser" means any (i) Class Member, (ii) his, her, or its respective present and
28 former, direct and indirect, parents, subsidiaries, divisions, partners and affiliates, (iii) his, her, or

1 its respective present and former stockholders, officers, directors, employees, managers, agents,
2 attorneys and any of their legal representatives, (iv) any future operating entities created and
3 controlled by a Class Member (not including any successor of a Settlement Class Opt-Out), (v) any
4 predecessors, successors, heirs, executors, trustees, administrators and assigns of each of the
5 foregoing, all in their capacities as such, and (vi) any entities or persons on whose behalf the Class
6 Member is authorized to act. All Released Claims are forever discharged, and such claims cannot
7 be asserted by any of Releaser's future, direct and indirect, parents, subsidiaries, divisions, partners
8 and affiliates, their respective future stockholders, officers, directors, employees, managers, agents,
9 attorneys and any of their legal representatives, or any successors, heirs, executors, trustees,
10 administrators, or assigns of each of the foregoing. As used in this Paragraph, "affiliates" means
11 entities controlling, controlled by or under common control with a Releaser.

12 X. "Settlement Allocation Counsel" means:

13 Bextra or Bextra and Celebrex
14 Consumer Class

Lance A. Harke
Harke & Clasby LLP
15 155 South Miami Avenue, Suite 600
Miami, FL 33130
lharke@harkeclasby.com

16 Celebrex ONLY Consumer Class

William Riley
Price Waicukauski & Riley, LLC
17 301 Massachusetts Avenue
Indianapolis, IN 46204
18 wriley@price-riley.com

19 Bextra and Celebrex TPP Class

Jason J. Thompson
Sommers Schwartz, P.C.
20 2000 Town Center, Suite 900
Southfield, MI 48075-1100
21 JThompson@sommerspc.com

22 Jeffrey B. Gittleman
Barrack, Rodos & Bacine
23 3300 Two Commerce Square
2001 Market Street
24 Philadelphia, PA 19103
jgittleman@barrack.com

25 Richard W. Cohen
26 Lowey Dannenberg Cohen & Hart, P.C.
White Plains Plaza
27 One North Broadway
White Plains, NY 10601
28 RCohen@lowey.com

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and

Mark D. Fischer
Rawlings & Associates, PLLC
One Eden Parkway
LaGrange, KY 40031-1800
mdf@rawlingscompany.com

Y. "Settlement Class Opt-Out" means any person or entity falling within the definition of the TPP Settlement Subclass or the Consumer Settlement Subclasses, as the Court shall determine, who has submitted a timely and valid request for exclusion in accordance with the procedures set forth in the notices disseminated pursuant to Orders of the Court.

Z. "Settlement Fund" means the fund identified in Paragraph 9.A., together with any interest earned or accrued while in escrow.

AA. "Settlement Notices" means the Notices which are to be sent to the Settlement Class or published substantially in the forms attached hereto as Exhibits 1, 2, 3 and 4.

BB. "Third Party Payor" or "TPP" means an entity that is: (a) a party to a contract, issuer of an insurance policy, or sponsor of a plan, and (b) at risk, under such contract, insurance policy, or plan to reimburse all or part of the cost of prescription drugs dispensed to covered natural persons. TPPs include insurance companies, and any person or entity that made Pharmaceutical Purchases for individual or group beneficiaries of the TPP's prescription drug or health coverage plans including, but not limited to, self-insured employers, union health and welfare plans. Entities with self-funded plans that contract with a health insurance company or other entity to serve as a third party claims administrator to administer their prescription drug benefits qualify as TPPs. Private plans that cover government employees and/or retirees are also included. Excluded are Defendant, its respective present and former, direct and indirect, parents, subsidiaries, divisions, partners and affiliates; the United States government, its officers, agents, agencies and departments, the States of the United States and their respective officers, agents, agencies and departments; and all other local governments and their officers, agents, agencies and departments.

1 CC. "TPP Class Member" means any person or entity falling within the definition of the
2 Settlement Class, excluding any Settlement Class Opt-Out, who also falls within the definition of
3 Third Party Payor.

4 DD. "Unknown Claims" means any Released Claims that a Releaser does not know or
5 suspect to exist in its favor at the time of its release of the Released Parties, which, if known by it,
6 might have affected its settlement with and release of the Released Parties, or might have affected
7 its decision not to object to this Settlement. With respect to any and all Released Claims against
8 the Released Parties, the Releaser agrees, upon the Effective Date, to expressly waive and
9 relinquish, and by operation of the Judgment shall have expressly waived and relinquished, to the
10 fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the
11 California Civil Code, which provides:

12 A general release does not extend to claims which the creditor does
13 not know or suspect to exist in his or her favor at the time of
14 executing the release, which if known by him or her must have
15 materially affected his settlement with the debtor;

16 or by any law or state or territory of the United States, or principle of common law, which is
17 similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releaser
18 may hereafter discover facts other than or different from those which he, she, or it knows or
19 believes to be true with respect to the Released Claims, but each Releaser hereby expressly waives
20 and fully, finally, and forever settles and releases, upon the Effective Date of this Agreement, any
21 known or unknown, suspected or unsuspected, contingent or non-contingent Released Claims,
22 whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory
23 of law or equity now existing or coming into existence in the future, including, but not limited to,
24 conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or
25 rule, without regard to the subsequent discovery or existence of such different or additional facts.

26 3. Reasonable Best Efforts to Effectuate This Settlement

27 Consistent with the terms of this Agreement and notwithstanding the rights of the parties to
28 terminate this Agreement at certain times, the parties and their counsel agree to use their reasonable
best efforts, including all steps and efforts contemplated by this Agreement and any other

1 reasonable steps and efforts that may be necessary or appropriate, by order of the Settlement Court
2 or otherwise, to carry out the terms of this Agreement.

3 **4. Motion for Preliminary Approval**

4 Concurrent with the submission of this Agreement for consideration by the Settlement
5 Court, Class Counsel shall submit to the Settlement Court a motion for preliminary approval of the
6 settlement set forth in this Agreement, requesting entry of a Preliminary Approval Order
7 substantially in the form annexed hereto as Exhibit 7.

8 **5. Notice to Class**

9 The class notice program shall be in accordance with Fed. R. Civ. P. 23 and subject to the
10 approval of the Settlement Court. Class Counsel shall file a Motion for Approval of Notice
11 Program by March 27, 2009.

12 A. Upon approval of the Notice Program by the Settlement Court, and the making of
13 advance payment(s) by Pfizer pursuant to Paragraph 9.A.(1), Class Counsel, in accordance with
14 Fed. R. Civ. P. 23 and the Preliminary Approval Order, shall provide all members of the Settlement
15 Class who can be identified by reasonable means with the best notice practicable under the
16 circumstances, in substantially the forms of the Settlement Notices attached hereto as Exhibits 1, 2,
17 3 and 4, or as otherwise ordered by the Court. Such notice shall include publication on a web site
18 established by Class Counsel or the Claims Administrator and additional publication and other
19 notice as set forth in the Settlement Notice Program.

20 B. All expenses associated with the provision of notice to the members of the
21 Settlement Class, including the fee for professional services rendered by Kinsella Media, LLC,
22 2120 L Street NW, Suite 205, Washington, DC or, if not reasonably available, another firm agreed
23 to by Pfizer and Class Counsel (the "Class Notice Consultant") shall be advanced from the
24 Settlement Fund. The Claims Administrator shall issue no press release or other written
25 communication to Class Members without first obtaining the parties' written approval of such
26 press release or communication.



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6. Entry of Final Judgment

If, after the Final Settlement Approval Hearing scheduled by the Settlement Court in the Preliminary Approval Order, the Settlement Court approves this Agreement, then counsel for the parties shall request that the Settlement Court enter an Order and Final Judgment substantially in the form annexed hereto as Exhibit 9.

7. Effective Date of Settlement Agreement

A. This Agreement shall become Effective on the first date by which all the following events and conditions shall have occurred or been met:

- (1) execution of this Agreement;
- (2) entry of the Preliminary Approval Order substantially in the form attached hereto as Exhibit 7, subject to any changes directed by the Settlement Court and acceptable to the parties hereto;
- (3) approval by the Settlement Court of this Agreement, following Settlement Notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure;
- (4) entry of the Judgment, substantially in the form of Exhibit 9 attached hereto; and,
- (5) the Judgment has become Final.

B. If this Agreement does not become effective as defined in Paragraph 7.A., then this Agreement shall automatically be canceled and terminated. However, any proceedings which affect only the award of attorneys' fees shall not result in the termination of this Agreement or otherwise prevent it from being Effective.

8. Opt-Outs and Termination Provision

A. At its sole and exclusive discretion, Pfizer shall be entitled to terminate this Agreement within the times stated in Paragraph 8.D. below if either of the following conditions (A) or (B) is satisfied: (A) TPPs who become Settlement Class Opt-Outs have paid in the aggregate more than \$7.5 million in reimbursement for prescriptions of Bextra and Celebrex, and at least one such TPP Settlement Class Opt-Out paid more than \$1.0 million in reimbursement for prescriptions

1 of Bextra and Celebrex; or (B) TPPs who become Settlement Class Opt-Outs have paid in the
2 aggregate more than \$20.0 million in reimbursement for prescriptions of Bextra and Celebrex.

3 B. The Claims Administrator shall (i) distribute with the Long-Form Notice to TPPs,
4 and post on the Bextra Celebrex Settlement website, the TPP Information Request and Opt-Out
5 attached as Exhibits 4 and 5; (ii) deliver to Pfizer's Counsel and Class Counsel, within 5 days after
6 the deadline for notification of a decision to opt out, a list of all Settlement Class Opt-Outs and,
7 with regard to any TPP Class Members who submit an election to opt out, the Information Request
8 received from each such opt out TPP Class Member. To the extent that any Settlement Class Opt-
9 Out timely and validly revokes its request for exclusion from the classes certified by Order of the
10 Court, the Claims Administrator shall deliver to Pfizer's Counsel and Class Counsel copies of all
11 such revocations within 3 days of receipt.

12 C. If any TPP Opt-Out does not supply all of the information specified by the TPP
13 Information Request at the time it submits a request for exclusion from the Class, Pfizer is
14 authorized to seek the information specified in the TPP Information Request by informal or formal
15 means, including subpoena and to enforce any such subpoena by all lawful means. Any such
16 subpoenas shall be issued within 20 days of the opt-out date, and Pfizer shall undertake its best
17 efforts to complete all enforcement actions within 60 days after service of subpoenas. If any such
18 subpoenas are outstanding thirty (30) calendar days before the Final Settlement Approval Hearing,
19 Pfizer's Counsel and Class Counsel agree to seek an adjournment of the Final Settlement Hearing
20 to provide Pfizer with adequate time to assess whether to terminate this Agreement consistent with
21 this Paragraph 8.A.

22 D. Pfizer may exercise its rights under Paragraph 8.A. above at any time within 15 days
23 after receipt from all TPP Settlement Class Opt-Outs of the data described in the TPP Information
24 Request, whether received pursuant to Paragraph 8.B, above, or in response to subpoenas issued
25 pursuant to Paragraph 8.C. ("the Exercise Date"). If the Final Settlement Approval Hearing would
26 otherwise occur less than 30 days after the Exercise Date calculated as set forth in this paragraph,
27 the date for the Final Approval Hearing shall be continued to a date at least 30 days after the
28 Exercise Date, or to such other later date as the Court may order. If Pfizer elects to exercise its

1 rights under this Section 8, it must do so by serving written notice of termination on the Settlement
2 Court and Class Counsel by hand delivery or first class mail, postmarked on or before thirty (30)
3 calendar days before the Final Settlement Approval Hearing.

4 E. In the event this Agreement is terminated pursuant to Paragraphs 8.D. or fails to
5 become effective for any reason, the parties to this Agreement shall be deemed to have reverted to
6 their respective status immediately preceding the execution of this Agreement, and, except as
7 otherwise expressly provided, the parties shall proceed in all respects as if this Agreement had not
8 been executed and any related orders had not been entered, including any award of attorneys' fees,
9 expenses, and interest thereupon, and the Settlement Fund previously paid by Pfizer, together with
10 any interest earned thereon, less any taxes due with respect to such income, shall be returned to
11 Pfizer, except for the costs of notice. At the request of Pfizer's Counsel, Class Counsel or their
12 designees shall apply for any tax refund owed on the Settlement Fund and pay the proceeds, after
13 deduction of any fees or expenses incurred in connection with such application(s) for refund, at the
14 written direction of Pfizer's Counsel.

15 F. If this Agreement does not become Effective, or in the event this Agreement is
16 terminated or fails to become effective for any reason, this Agreement concerning the certification
17 of the Settlement Class as defined in Paragraph 1 shall be null and void, the rights and obligations
18 of the parties shall be identical to those prior to the execution of this Agreement, and the status of
19 the Class Action shall be as it was prior to the execution of this Agreement. Furthermore, the terms
20 and provisions of the Agreement shall have no force and effect with respect to the parties, with the
21 exception of this Paragraph and Paragraphs 9.D., 9.E., 16, and 17. Any Judgment or order entered
22 by the Settlement Court in accordance with the terms of this Agreement shall be vacated as *nunc*
23 *pro tunc*.

24 **9. The Settlement Fund and Class Escrow Account**

25 A. Payments into the Settlement Fund

26 In full and final settlement of the claims of the Settlement Class, Pfizer shall pay \$89
27 million into the Settlement Fund, which shall be held in the Class Escrow Account maintained by
28 the Escrow Agent. \$4 million will be allocated solely for costs of notice and administration. If

1 such notice and administration costs are less than \$4 million, the remaining amount shall be
2 returned to Pfizer. The Class Escrow Account shall be established and administered pursuant to an
3 Escrow Agreement substantially in the form attached as Exhibit 8. Pfizer shall make payments into
4 the Settlement Fund according to the following schedule:

5 (1) Within ten (10) business days after the Preliminary Approval Order is
6 entered by the Settlement Court substantially in the form annexed hereto as Exhibit 7, Pfizer shall
7 pay \$89 million to the Class Escrow Account.

8 (2) Pfizer's payment into the Class Escrow Account of the sums specified in
9 Paragraph 9.A.(1) shall completely fulfill its obligations under this Agreement to the Settlement
10 Class. Subject to Paragraph 9.E., interest earned on any funds once deposited in the Escrow
11 Account shall be for the benefit of the Class or Class Counsel.

12 B. Allocation to Class Members

13 Payments to Class Members shall be made pursuant to a Plan of Allocation attached hereto
14 as Exhibit 10. Pfizer shall have no right to comment on or oppose the Plan of Allocation.

15 C. Duties of the Escrow Agent

16 (1) The Escrow Agent, on behalf of the Settlement Class, shall be responsible
17 for all administrative, accounting, and tax compliance activities in connection with the Class
18 Escrow Account and Settlement Fund.

19 (2) The Escrow Agent shall invest any funds deposited in the Class Escrow
20 Account in excess of \$200,000 in short term instruments issued by or guaranteed by the full faith
21 and credit of the United States of America or an agency thereof, and shall collect and reinvest all
22 interest accrued thereon. The Escrow Agent shall reinvest the proceeds of these instruments as
23 they mature in similar instruments at the then-current market rates. Any funds held in the Class
24 Escrow Account in an amount of less than \$200,000 shall be held in an interest bearing bank
25 account insured by the FDIC. Neither Pfizer nor Pfizer's Counsel shall have any responsibility or
26 liability for investment decisions. The Settlement Fund shall bear all risks related to its investment.

27 (3) The Escrow Agent shall not disburse the Settlement Fund except as provided
28 for in this Agreement, or by an Order of the Settlement Court, or with the written agreement of

1 Pfizer's Counsel and Class Counsel. Such agreement shall be provided or objected to within five
2 (5) business days of presentation.

3 (4) Subject to further orders or directions as may be made by the Settlement
4 Court, the Escrow Agent is authorized to execute such transactions on behalf of the Class Members
5 as are consistent with the terms of this Agreement.

6 (5) All funds held by the Escrow Agent shall be deemed and considered to be in
7 *custodia legis* of the Settlement Court, and shall remain subject to the jurisdiction of the Settlement
8 Court, until such time as such funds shall be distributed pursuant to this Agreement, the Plan of
9 Allocation, or further order(s) of the Settlement Court.

10 (6) The Escrow Agent shall administer the Settlement Fund under Class
11 Counsel's supervision and subject to the jurisdiction of the Settlement Court once the Funds are
12 deposited by Pfizer. Neither Pfizer nor Pfizer's Counsel shall have any responsibility or liability
13 for the administration of the Settlement Fund or the Class Escrow Account and shall have no
14 liability to the Settlement Class in connection with such administration. All costs associated with
15 the administration of the Settlement Fund or the Class Escrow Account shall be paid from the
16 Settlement Fund.

17 (7) The Settlement Fund may be used by the Escrow Agent, without further
18 approval from Pfizer or the Settlement Court, to advance to the Claims Administrator the costs and
19 expenses (not including Class Counsel's attorneys' fees) reasonably and actually incurred in
20 connection with providing notice to the Settlement Class, locating Class Members, assisting with
21 the filing of claims, administering and distributing the Settlement Fund to Class Members,
22 processing Proof of Claim forms and paying escrow fees and costs, if any, the actual costs of
23 publication, printing and mailing of the Settlement Notice and summary notice, and paying the
24 reasonable administrative expenses incurred and reasonable fees charged by the Claims
25 Administrator in connection with providing the Settlement Notice and processing the submitted
26 claims. Any such costs of notice and administration above the \$4 million allocated will be
27 subtracted from the remaining Net Settlement Fund. The Settlement Fund may also be invested
28 and earn interest as provided for in Paragraph 9.C.(2) of this Agreement.

1 (8) The Settlement Fund, net of any Taxes (as defined below) on the income
2 thereof, shall be used to pay (i) any remaining notice and administration costs referred to in
3 Paragraph 9.C.(7); (ii) the attorneys' fee and expense award referred to in Paragraph 12 below; and
4 (iii) any award of expenses and lost wages to the Class Representatives.

5 (9) In the event that the Class Escrow Account is maintained by more than one
6 Escrow Agent, any disputes between the Escrow Agents shall be resolved by the Settlement Court.

7 D. Taxes

8 (1) The Settlement Fund shall be treated by the parties as being at all times a
9 "Qualified Settlement Fund" within the meaning of Treas. Reg. § 1.468B-1. In addition, the
10 Escrow Agent, as administrator of the Settlement Fund within the meaning of Treas. Reg.
11 § 1.468B-2(k)(3), and Pfizer shall jointly and timely make the "relation-back election" (as defined
12 in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such election shall be made in
13 compliance with the procedures and requirements contained in such regulations. It shall be the
14 responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary
15 documentation for signature by all necessary parties, and thereunder to cause the appropriate filing
16 to occur.

17 (2) For the purposes of § 468B of the Internal Revenue Code of 1986, and the
18 regulations promulgated thereunder, including Treas. Reg. § 1.468B, the "administrator" shall be
19 the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax
20 returns necessary or advisable with respect to the Settlement Fund (including without limitation the
21 returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the election described in
22 Paragraph 9.D.(1)) shall be consistent with this Paragraph and in all events shall reflect that all
23 taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement
24 Fund shall be paid out of the Settlement Fund as provided in Paragraph 9.D.(3) below.

25 (3) All (i) taxes (including any estimated taxes, interest or penalties) arising with
26 respect to the income earned by the Settlement Fund including any taxes or tax detriments that may
27 be imposed on Pfizer with respect to any income earned by the Settlement Fund for any period for
28 which the Settlement Fund does not qualify as a "qualified settlement fund" for federal or state



1 income tax purposes ("Taxes"), and (ii) expenses and costs incurred in connection with the
2 operation and implementation of this Paragraph 9.D. (including, without limitation, expenses of tax
3 attorneys or accountants and mailing and distribution costs and expenses relating to filing (or
4 failing to file) the returns described in this Paragraph 9.D.) ("Tax Expenses"), shall be paid out of
5 the Settlement Fund; in all events Pfizer shall have no liability or responsibility for the Taxes, the
6 Tax Expenses, or the filing of any tax returns or other documents with the Internal Revenue
7 Service or any state or local taxing authority. The Escrow Agent shall indemnify and hold Pfizer
8 harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of
9 any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to
10 be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent
11 out of the Settlement Fund without prior order from the Settlement Court, and the Escrow Agent
12 shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution
13 to Authorized Claimants any funds necessary to pay such amounts (as well as any amounts that
14 may be required to be withheld under Treas. Reg. § 1.468B-2(1)-(2)); Pfizer is not responsible and
15 shall have no liability therefore, or for any reporting requirements that may relate thereto, except
16 that Pfizer's Counsel agrees to provide promptly to the Escrow Agent the statement described in
17 Treasury Regulation § 1.468B-3(e). The parties hereto agree to cooperate with each other and their
18 tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this
19 Paragraph 9.D.

20 (4) For purposes of this Paragraph 9.D., references to the "Settlement Fund"
21 shall include both the Settlement Fund and the Class Escrow Account, and shall also include any
22 earnings thereon.

23 E. Effect of Termination

24 Except as otherwise provided herein, in the event that this Agreement is terminated
25 pursuant to Paragraphs 8.D. or fails to become effective for any reason, any portion of the
26 Settlement Fund previously paid by Pfizer, together with any interest earned thereon, less any
27 Taxes due with respect to such income and the costs of notice, shall be returned to Pfizer as
28 provided in Paragraph 8.E. above.

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10. Distribution of the Settlement Fund

The Settlement Fund shall be distributed as follows or as otherwise ordered by the Court:

A. Prior to this Agreement becoming Effective:

(1) Reasonable fees and expenses incurred in administering the Class Escrow Account and the Settlement Fund shall be advanced pursuant to Paragraph 9.C. and the Escrow Agreement. The costs of notice and claim administration of the Settlement shall be advanced by the Escrow Agent to the Claims Administrator as approved by the Settlement Court and at the direction of Class Settlement Counsel with written notice of such payments provided to Pfizer's Counsel;

(2) Disbursements pursuant to Paragraph 9.D. and the Escrow Agreement for the payment of any taxes due as a result of income earned by the Settlement Fund (including any estimated taxes, interest or penalties) shall be made promptly by the Escrow Agent pursuant to the Escrow Agreement with written notice of such disbursements provided to Pfizer's Counsel.

(3) Subject to Paragraph 12.E., up to 50% of any Fee and Expense Award to Class Counsel as ordered by the Settlement Court in connection with final approval of this Agreement may be distributed from the Settlement Fund within three (3) business days after the entry of Judgment.

(4) Except as provided in Paragraph 10.A.(1)-(3), no other payments or distributions from the Settlement Fund shall be made prior to the Effective Date.

B. After this Agreement becomes Effective, the Settlement Fund shall be distributed as follows:

(1) Any remaining fees or expenses incurred in connection with the administration of the Class Escrow Account and the Settlement Fund shall be paid pursuant to Paragraph 9.C. and the Agreement, and to the extent, if any, the reasonable fees and expenses incurred as part of notice and claims administration of the Settlement Fund have not been paid, such fees and expenses shall be distributed to the Claims Administrator by the Escrow Agent with notice of such disbursements provided to Class Counsel;

1 (2) Disbursements for the payment of any taxes due as a result of income earned
2 by the Settlement Fund (including any estimated taxes, interest or penalties) pursuant to Paragraph
3 9.D. of the Agreement shall be made promptly by the Escrow Agent pursuant to the Escrow
4 Agreement with notice of such disbursements provided to Class Counsel;

5 (3) Any compensation determined by the Settlement Court for services rendered
6 to the Settlement Class by the Class Representatives as ordered by the Settlement Court, shall be
7 distributed to the Class Representatives;

8 (4) Subject to Paragraph 12.E., the remainder of any Fee and Expense Award to
9 Class Counsel not previously distributed pursuant to Paragraph 10.A.(3) shall be distributed from
10 the Settlement Fund within three (3) business days of the Effective Date;

11 (5) The Settlement Fund, net of: (a) payment of attorneys' fees and expenses;
12 (b) payment of other fees, costs, expenses and awards; and (c) amounts that are necessary for the
13 payment of taxes or estimated taxes and fees and expenses of the Escrow Agent, as directed by
14 Class Counsel, shall be allocated among TPP Class Members and Consumer Class Members
15 according to the provisions set forth in the Plan of Allocation. The balance, if any, of funds
16 allocated for Consumer Class Members that is not distributed to Consumer Class Members
17 pursuant to Paragraph 11 will be re-allocated for distribution among TPP Class Members.
18 Notwithstanding the provisions set forth in the Plan of Allocation, any Class Member that
19 participated in the Bextra Refund Program shall have their allocation from the Settlement Fund
20 reduced in the amount of any payment(s) previously received by that Class Member as part of the
21 Bextra Refund Program.

22 **11. Claims Administration**

23 A. The Claims Administrator shall be Rust Consulting, Inc., subject to Court approval.
24 The Claims Administrator may appoint as many claims officers, experts, and/or advisors as are
25 necessary to carry out the duties of the Claims Administrator expeditiously. The Claims
26 Administrator procedures shall be subject to Settlement Court approval and under the continuing
27 jurisdiction of the Settlement Court. The Claims Administrator shall be responsible for
28 disseminating information to Settlement Class Members concerning settlement procedures

1 according to the Notice Program, among other ways, by establishing a toll-free "hotline." In
2 addition, the Claims Administrator shall assist the Settlement Court in processing and tabulating
3 opt-out requests, shall receive all opt-out forms and documentation, shall receive, process, classify,
4 and pay claims as provided in this Agreement and any applicable orders of the Settlement Court,
5 and shall operate under the continuing supervision of the Settlement Court.

6 B. All claims deadlines shall be as set forth in the Preliminary Approval Order issued
7 by the Settlement Court, in substantially the form set forth in Exhibit 7.

8 C. The Claims Administrator shall determine each Authorized Claimant's share of the
9 Settlement Fund based upon each Authorized Claimant's Recognized Claim (as defined in the
10 attached Plan of Allocation or in such other Plan of Allocation as the Court approves).

11 D. Any Proof of Claim form to be executed by the Class Members shall be approved
12 by the Court as part of the Notice Program. The Order and Final Judgment shall provide that all
13 Class Members are bound by the releases set forth in this Agreement whether or not they submit a
14 valid and timely Proof of Claim form.

15 E. Pfizer shall have no role in or responsibility for the review or evaluation of Proof of
16 Claim forms.

17 F. It is not a condition of this Agreement that the Plan of Allocation be approved
18 provided this Agreement has become Effective.

19 G. Each Authorized Claimant shall be allocated a share of the Net Settlement Fund
20 pursuant to the procedures set forth in the Plan of Allocation or such alternative plan for
21 distribution that may be approved as of the date this Agreement becomes Effective. Pfizer shall
22 have no involvement in or liability for reviewing or challenging claims.

23 H. Any TPP Class Member who does not submit a valid Proof of Claim will not be
24 entitled to receive any portion of the Settlement Fund. Whether or not they submit a Proof of
25 Claim, all Class Members will be bound by all of the terms of this Agreement, including the terms
26 of the Judgment and the releases provided for herein, and will be barred from bringing any action
27 against the Released Parties concerning the Released Claims.

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1 I. Class Counsel shall have the right, but not the obligation, to waive what they deem
2 to be formal or technical defects in any Proof of Claim form submitted in the interests of achieving
3 substantial justice.

4 J. For purposes of determining the extent, if any, to which a Class Member shall be
5 entitled to be treated as an "Authorized Claimant," the following conditions shall apply:

6 (1) A Class Member shall be required to submit a Proof of Claim form (in the
7 preliminary forms attached as Exhibits 6 and 11 hereto), supported by such evidence as is
8 designated therein, including proof of the claimant's loss, or such other or proof as Class Counsel,
9 in their discretion, may deem acceptable;

10 (2) All required Proof of Claim forms must be submitted by the date specified in
11 the Preliminary Approval Order unless such period is extended by Order of the Settlement Court.
12 Any Settlement Class Member who fails to submit a Proof of Claim by such date shall be forever
13 barred from receiving any payment pursuant to this Agreement (unless, by Order of the Settlement
14 Court, a later submitted Proof of Claim form by such Class Member is approved). A Proof of
15 Claim form shall be deemed to have been submitted when posted if received with a postmark
16 indicated on the envelope and if mailed by first-class mail and addressed in accordance with the
17 instructions thereon. In all other cases, the Proof of Claim form shall be deemed to have been
18 submitted when actually received by the Claims Administrator;

19 (3) Each Proof of Claim form shall be submitted to and reviewed by the Claims
20 Administrator, under the supervision of Class Counsel, who shall determine in accordance with this
21 Agreement the extent, if any, to which each claim shall be allowed, subject to review by the
22 Settlement Court pursuant to Paragraph 11.J.(5) below;

23 (4) A Proof of Claim form that does not meet the submission requirements may
24 be rejected. Prior to rejection of a Proof of Claim form, the Claims Administrator shall
25 communicate with the claimant in order to remedy the curable deficiencies in the Proof of Claim
26 form submitted. The Claims Administrator, under supervision of Class Counsel, shall notify, in a
27 timely fashion and in writing, all claimants whose Proof of Claim forms they propose to reject in
28 whole or in part, setting forth the reasons therefore, and shall indicate in such notice that the

1 claimant whose claim is to be rejected has the right to a review by the Settlement Court if the
2 claimant so desires and complies with the requirements of Paragraph 11.J.(5) below; and

3 (5) If any claimant whose claim has been rejected in whole or in part desires to
4 contest such rejection, the claimant must, within twenty (20) calendar days after the date of mailing
5 of the notice required in Paragraph 11.J.(4) above, serve upon the Claims Administrator and Class
6 Counsel a notice and statement of reasons indicating the claimant's grounds for contesting the
7 rejection along with any supporting documentation, and requesting a review thereof by the
8 Settlement Court. If a dispute concerning a claim cannot be otherwise resolved, Class Counsel
9 shall thereafter present the request for review to the Settlement Court.

10 K. Each claimant shall be deemed to have submitted to the jurisdiction of the
11 Settlement Court with respect to the claimant's claim, and the claim will be subject to investigation
12 and discovery under the Federal Rules of Civil Procedure, provided that such investigation and
13 discovery shall be limited to that claimant's status as a Class Member and the validity and amount
14 of the claimant's claim. No discovery shall be allowed on the merits of the Class Action or the
15 terms of this Agreement in connection with processing of the Proof of Claim forms.

16 L. The Claims Administrator shall deliver to Pfizer's Counsel and Class Counsel a list
17 of all Opt-Outs no later than 5 calendar days after the deadline set forth in the Preliminary
18 Approval Order for putative Class Members to request exclusion from the Settlement Class.

19 M. Payment pursuant to this Agreement and the Plan of Allocation shall be deemed
20 final and conclusive against all Class Members. All Class Members whose claims were submitted
21 to the Settlement Court for review and not hereafter approved by the Settlement Court shall be
22 barred from receiving distributions from the Settlement Fund, but otherwise shall be bound by all
23 of the terms of this Agreement, including the terms of the Judgment and the releases provided for
24 herein, and will be barred from bringing any action against the Released Parties concerning the
25 Released Claims.

26 N. All proceedings with respect to the administration, processing, and determination of
27 claims described by Paragraphs 11.A.-K. of this Agreement and the determination of all
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1 controversies relating thereto, including disputed questions of law and fact with respect to the
2 validity of claims, shall be subject to the jurisdiction of the Settlement Court.

3 O. The Net Settlement Fund shall be distributed to Authorized Claimants by the Claims
4 Administrator only after this Agreement becomes Effective and after: (i) all claims have been
5 processed, and all claimants whose claims have been rejected or disallowed, in whole or in part,
6 have been notified and provided the opportunity to be heard concerning such rejection or
7 disallowance; (ii) all objections with respect to all rejected or disallowed claims have been resolved
8 by the Settlement Court, and all appeals therefrom have been resolved or the time therefor has
9 expired; (iii) all matters with respect to attorneys' fees, costs, and disbursements have been
10 resolved by the Settlement Court, all appeals therefrom have been resolved or the time therefore
11 has expired; and (iv) all costs of administration have been paid or reserved.

12 P. It is understood and agreed by the parties that any proposed Plan of Allocation
13 including, without limitation, any adjustment to an Authorized Claimant's claim as set forth
14 therein, is not a part of this Agreement and is to be considered by the Settlement Court separately
15 from the Settlement Court's consideration of the fairness, reasonableness, and adequacy of the
16 terms set forth in this Agreement. and any order or proceeding relating to the Plan of Allocation
17 shall not operate to terminate or cancel this Agreement or affect the finality of the Settlement
18 Court's Judgment approving this Agreement, or any other orders entered pursuant to the
19 Agreement.

20 Q. Neither the Released Parties nor their counsel shall have any responsibility for,
21 interest in, or liability whatsoever with respect to, the investment or distribution of the Settlement
22 Fund, the Plan of Allocation, the determination, administration or calculation of claims, the
23 payment or withholding of taxes, or any losses incurred therewith. No Class Member shall have
24 any claim of any kind against the Released Parties or their counsel, with respect to matters set forth
25 in this Paragraph 11, and the Class Members and Class Counsel release the Released Parties and
26 their counsel from any and all liability arising from or with respect to any of the foregoing.

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12. Attorneys' Expenses and Fees and Fee Disputes

A. The parties agree that an award of attorneys' fees, costs, and expenses, including the fees of experts and consultants, in this Class Action ("Fee and Expense Award") is a matter committed to the sole discretion of the Settlement Court. Recognizing that the award of attorneys' fees and expenses is a matter committed to the sole discretion of the Settlement Court, Pfizer will not object to Class Counsel's request for an attorneys' fee not to exceed the sum of thirty percent (30%) of the Settlement Fund, plus expenses.

B. The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment to Plaintiffs' Counsel from the Settlement Fund that may occur, except as expressly provided in Paragraph 9.A. Class Counsel shall release and forever discharge the Released Parties from any claims, demands, actions, suits, causes of action, or other liabilities relating to any attorneys' fees or expenses incurred in or in any way related to the Class Action.

C. The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, the allocation among Plaintiffs' Counsel, and any other person or entity who may assert some claim thereto, of any Fee and Expense Award that the Settlement Court may make, and Pfizer takes no position with respect to such matters.

D. The procedure for and the allowance or disallowance by the Settlement Court of any applications by any of the Plaintiffs' Counsel for attorneys' fees, costs and expenses, including the fees of experts and consultants, to be paid out of the Settlement Fund, are not part of this Agreement, and are to be considered by the Settlement Court separately from the Settlement Court's consideration of the fairness, reasonableness, and adequacy of the terms of this Agreement. Any order or proceedings relating to the Fee and Expense Application, or any appeal from any order relating thereto, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the Judgment approving the Agreement.

E. In the event that any portion of the Fee and Expense Award has been paid to Class Counsel, and the Settlement does not become effective for any reason, or the Judgment or the order making the Fee and Expense Award is reversed or modified on appeal, then Class Counsel shall within twenty (20) business days from the event that precludes the Effective Date from occurring

