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

24 IN RE: BEXTRA AND CELEBREX ) No. M:05-CV-01699-CRB  
MARKETING, SALES PRACTICES, AND )  
25 PRODUCT LIABILITY LITIGATION ) MDL No. 1699  
26 \_\_\_\_\_ )  
THIS RELATES TO: ) SETTLEMENT AGREEMENT AND  
27 ALL PURCHASER CASES ) RELEASE  
28 \_\_\_\_\_ )

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Exhibit 1	Short Form Notice to Consumer Subclasses
Exhibit 2	Long Form Notice to Consumer Subclasses
Exhibit 3	Short Form Notice to TPP Subclass
Exhibit 4	Long Form Notice to TPP Subclass
Exhibit 5	TPP Opt-Out Information Request
Exhibit 6	TPP Proof of Claims and Release
Exhibit 7	[Proposed] Preliminary Approval Order
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Exhibit 9	[Proposed] Order and Final Judgment
Exhibit 10	Plan of Allocation
Exhibit 11	Consumer Claim Form



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



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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

1 or the reversal or modification of the Fee and Expense Award, refund to the Settlement Fund any  
2 amounts paid to them pursuant to the Fee and Expense Award, including accrued interest on any  
3 such amount at the average rate earned on the Settlement Fund from the time of withdrawal until  
4 the date of refund. Each Class Counsel or firm receiving a fee shall be liable for such repayment in  
5 the amount it received. Each such Class Counsel's law firm, as a condition of receiving the Fee  
6 and Expense Award in advance of the Effective Date, on behalf of itself and each partner and/or  
7 shareholder of it, agrees that the law firm and its partners and/or shareholders are subject to the  
8 jurisdiction of the Settlement Court for the purpose of enforcing this Paragraph 12.E. Without  
9 limitation, each such law firm and its partners and/or shareholders agree that the Settlement Court  
10 may, upon application of Pfizer and notice to Class Counsel, summarily issue orders, including, but  
11 not limited to, judgments and attachment orders, and may make appropriate findings of or  
12 sanctions for contempt against any of them should such law firm, partner or shareholder fail timely  
13 to repay the Fee and Expense Award.

14 **13. Exclusive Remedy; Dismissal of Claims; Jurisdiction**

15 A. Exclusive Remedy

16 This Agreement shall be the exclusive source of remedy for any and all Released Claims,  
17 any claim arising out of the subject matter of this Agreement, and any complaint by any Class  
18 Member or against the Released Parties related to the Released Claims. No Released Party shall be  
19 subject to liability or expense of any kind to any Class Member related to the Released Claims  
20 except as provided in this Agreement. Upon the Settlement Court's Preliminary Approval of this  
21 Agreement, each Class Member shall be barred from initiating, asserting or prosecuting any  
22 Released Claims against any Released Party. This Agreement shall be binding upon, and inure to  
23 the benefit of, the parties' successors and assigns.

24 B. Dismissal of Claims

25 The parties agree that, upon the Settlement Court's approval of this Agreement, a judgment  
26 substantially in the form of the Order and Final Judgment attached as Exhibit 9 shall be entered  
27 dismissing with prejudice the Class Action and releasing the Released Claims of the Releasers.  
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C. Jurisdiction

The Settlement Court shall retain exclusive and continuing jurisdiction over the Complaint, the parties, and this Agreement with respect to the performance of its terms and conditions (and disputes arising out of or relating to this Agreement), the proper provision of all benefits, and the implementation and enforcement of its terms, conditions, and obligations. Any disputes between or among Pfizer and any Class Member concerning matters contained in this Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Settlement Court for resolution.

**14. Releases**

Upon this Agreement becoming Effective, the Released Parties shall be released and forever discharged by all Releasers from all Released Claims. All Releasers covenant and agree that they shall not hereafter seek to establish liability against any Released Party or any other person based, in whole or in part, on any of the Released Claims. Each Releaser expressly waives and fully, finally, and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claims, including Unknown Claims, without regard to the subsequent discovery or existence of different or additional facts. Class Counsel acknowledges, and the Class Members shall be deemed by operation of law and the Judgment to acknowledge, that the foregoing waiver of Unknown Claims, and of the provisions, rights, and benefits of Section 1542 of the California Civil Code, was bargained for and is a key element of the Settlement of which the release in this paragraph is a part.

**15. Preservation of Rights**

The parties agree that this Agreement, whether or not it becomes Effective, and any and all negotiations, documents, and discussion associated with it shall be without prejudice to the rights of any Party (other than those compromised herein); shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by the Released Parties, or of the truth of any of the claims or allegations contained in any complaint or pleading, whether in the Class Action or otherwise. This Agreement and all of the terms herein constitute compromises and offers to compromise covered by Federal Rule of Evidence 408. In the

1 event that this Agreement is terminated, nothing in this Agreement or its negotiation may be used  
2 as evidence in any action between the parties hereto. The parties expressly reserve all their rights if  
3 this Agreement fails to become final and effective substantially in accordance with its terms.

4 **16. Class Certification For Settlement Purposes Only**

5 Pfizer stipulates to certification of the Settlement Class as defined in Paragraph 1 for  
6 settlement purposes only, and for the sole purpose of creating the settlement class. Pfizer's  
7 stipulation is contingent upon this Agreement becoming effective and this Agreement not being  
8 terminated pursuant to the terms set forth herein. If this Agreement does not become effective or is  
9 otherwise terminated, Pfizer reserves the right to reassert all objections and defenses to certification  
10 of any class for any purpose, and Plaintiffs will not offer Pfizer's stipulation to certification as part  
11 of this Agreement as any evidence in support of a motion to certify a class.

12 **17. Enforcement of Settlement**

13 This Agreement may be pleaded as a full and complete defense to any action, suit or other  
14 proceeding that has been or may be instituted, prosecuted or attempted with respect to any of the  
15 Released Claims and may be filed, offered and received into evidence and otherwise used by any  
16 of the Released Parties for such defense and/or in support of injunctive relief against any such  
17 action, suit or other proceeding.

18 **18. Binding Effect**

19 This Agreement shall be binding upon, and inure to the benefit of, the successors and  
20 assigns of the parties hereto.

21 **19. Authorization to Enter Class Agreement**

22 The undersigned representatives of Pfizer represent that they are fully authorized to enter  
23 into and to execute this Agreement on behalf of Pfizer. Class Counsel represent that they are fully  
24 authorized to conduct settlement negotiations with Pfizer's Counsel on behalf of the Plaintiffs and  
25 to enter into, and to execute, this Agreement on behalf of Plaintiffs, subject to Settlement Court  
26 approval pursuant to Fed. R. Civ. P. 23(e).



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**20. No Party Is the Drafter**

None of the parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of construction that would or might cause any provision to be construed against the drafter hereof.

**21. Choice of Law**

All terms of this Agreement shall be governed by and interpreted according to the substantive laws of the State of California without regard to its choice of law or conflict of laws principles.

**22. Amendment or Waiver**

This Agreement shall not be modified in any respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.

**23. Execution in Counterparts**

This Agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date thereof.

**24. Integrated Agreement**

This Agreement, including the exhibits hereto, contain an entire, complete, and integrated statement of each and every term and provision agreed to by and between the parties hereto, and supersede all prior oral or written agreements and contemporaneous oral agreements among the parties.

**25. Construction**

This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the Released Claims with respect to the Released Parties.

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**26. Notices**

All notices and other communications required or permitted under this Agreement shall be in writing and delivered in person, by overnight delivery service or by facsimile or by electronic mail. Any such notice shall be deemed given as of the date of receipt and shall be delivered to the parties as follows:

**If to Plaintiffs:**

Steve W. Berman  
Hagens Berman Sobol Shapiro LLP,  
1301 Fifth Avenue, Suite 2900  
Seattle, WA 98101  
Tel. 206-623-7292  
Fax: 206-623-0594  
steve@hbsslaw.com

**If to Pfizer:**

Loren H. Brown  
DLA Piper  
1251 Avenue of the Americas  
New York, New York 10020-1104  
Telephone: (212) 335-4500  
Facsimile: (212) 335-4501  
Loren.brown@dlapiper.com

Each of the above shall have responsibility for promptly notifying other counsel of such communications.

**27. Severability**

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision if Pfizer and Class Counsel mutually elect to proceed as if such invalid, illegal or unenforceable provision had never been included in the Agreement.

**28. Headings**

The headings to this Agreement have been inserted for convenience only and are not to be considered when construing the provisions of this Agreement.

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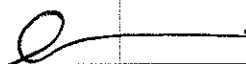
**29. Confidential Materials**

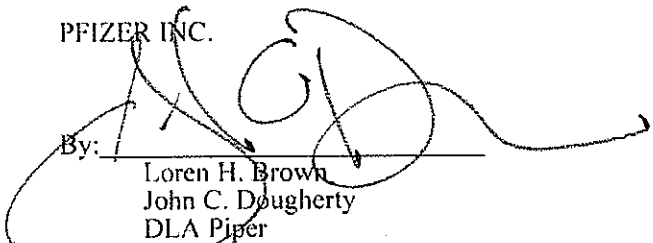
All documents or other materials that have been designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," "ATTORNEYS' EYES ONLY," or "CONFIDENTIAL HEALTH INFORMATION — SUBJECT TO PROTECTIVE ORDER" shall continue to be governed by all applicable provisions of PRETRIAL ORDER NO. 3: STIPULATED PROTECTIVE ORDER entered by the Court February 7, 2006, Docket No. 168 and STIPULATION AND PRETRIAL ORDER NO. 28: FIRST SUPPLEMENTAL STIPULATED PROTECTIVE ORDER entered by the Court March 26, 2008, Docket No. 2297, and shall be treated in accordance with those provisions.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the date first written below.

CLASS PLAINTIFFS

PFIZER INC.

By:   
Steve W. Berman  
Hagens Berman Sobol Shapiro LLP

  
By: Loren H. Brown  
John C. Dougherty  
DLA Piper

Dated: 3/13/09

Dated: 3/13/09