

**SETTLEMENT AGREEMENT BY AND AMONG PLAINTIFF STATES,
INDIRECT PURCHASER PLAINTIFFS AND DEFENDANTS**

This Settlement Agreement is made and entered into this 3rd day of March 2005 by and among the undersigned States, by and through their respective Attorneys General, (collectively, the “**Plaintiff States**”); the Indirect Purchaser Plaintiffs (“IPPs”) (as defined in Section I below), on behalf of themselves and in their respective capacities as representatives of the IPP Classes (as defined in Section I below) (collectively with the Plaintiff States, “**Plaintiffs**”); and Abbott Laboratories and Geneva Pharmaceuticals, Inc. (now known as Sandoz Inc.) (collectively, “Defendants”) by and through their undersigned counsel.

WHEREAS, beginning in 1999, certain Consumers and Third Party Payers (as defined below) filed lawsuits in various state and federal courts asserting claims under federal law and under the laws of Alabama, Arizona, California, the District of Columbia, Florida, Illinois, Kansas, Maine, Michigan, Minnesota, Mississippi, Nevada, New Mexico, New Jersey, New York, North Carolina, North Dakota, South Dakota, Tennessee, West Virginia and Wisconsin (“Relevant Jurisdictions”), alleging that Defendants monopolized, attempted to monopolize, conspired to monopolize, and entered into agreements that unreasonably restrained trade in the United States market for the prescription drug Hytrin[®] and its generic bioequivalents. Plaintiffs alleged in these actions that Defendants’ conduct violated antitrust, unfair competition and/or consumer protection statutes and the common law. Beginning in 2000, the Judicial Panel on Multidistrict Litigation transferred many of these actions to the United States District Court for the Southern District of Florida for centralized pretrial proceedings under the caption *In Re Terazosin Hydrochloride Antitrust Litigation*, MDL No. 99-1317; and

WHEREAS, in 2002 the IPPs filed their “Fourth Amended Coordinated Class Action Complaints” as a single document (the “IPP Complaints”) in the United States District Court for the Southern District of Florida, alleging that Defendants monopolized, attempted to monopolize, conspired to monopolize, and entered into an agreement that unreasonably restrained trade in the market for Hytrin and its generic bioequivalents in violation of the antitrust, unfair competition and/or consumer protection statutes and the common law of the Relevant Jurisdictions, seeking declaratory judgments, restitution for unjust enrichment, damages, and other equitable relief; and

WHEREAS, on September 27, 2001, the Plaintiff States filed a complaint against Defendants in the United States District Court for the Southern District of Florida on their own behalf, on behalf of certain state agencies, and through their statutory, equitable or common law authorities or as representatives of or *parens patriae* on behalf of natural person citizens of those states, alleging monopolization, attempted monopolization, and agreement in restraint of trade in the market for Hytrin and its generic bioequivalents, in violation of antitrust, unfair competition and/or consumer protection laws and seeking injunctive relief, civil penalties, damages, disgorgement, restitution and other equitable relief (“the Plaintiff States’ Complaint”); and

WHEREAS, Plaintiffs have conducted extensive economic and factual investigation relating to the claims, underlying events, and transactions alleged in the Plaintiff States’ Complaint and the IPP Complaints (collectively, the “Complaints”), in addition to conducting extensive legal research, and, as a result, the Plaintiffs are thoroughly familiar with the liability and damages aspects of the claims they have asserted in the Complaints; and

WHEREAS, following motion practice and pretrial preparation, class and merits discovery, the Court’s April 8, 2004 Order granting class certification of 17 state classes of

Consumers and Third Party Payers (“**Class Certification Order**”), full submission of the parties’ briefing of an interlocutory appeal of such Class Certification Order pursuant to Fed. R. Civ. P. 23(f), and trial preparation, extensive arm’s-length negotiations have taken place between counsel for Plaintiffs and counsel for Defendants in reaching the terms of this Settlement Agreement with the assistance of a Court-appointed mediator; and

WHEREAS, Plaintiffs’ counsel have concluded, after extensive discovery and investigation of the facts and after carefully considering the circumstances of this litigation, including the claims asserted in the Complaints and the possible legal and factual defenses thereto, that it would be in the best interests of the Plaintiffs and the members of the IPP Classes to enter into this Settlement Agreement to avoid the uncertainties of this particularly complex litigation and to assure a benefit to the members of the IPP Classes, and further, that Plaintiffs’ counsel consider the settlement set forth herein to be fair, reasonable, and adequate and in the best interests of the Plaintiffs and the members of the IPP Classes; and

WHEREAS, Defendants deny each and every one of Plaintiffs’ allegations of unlawful and inequitable conduct and Plaintiffs’ entitlement to damages, restitution or any other legal or equitable relief in connection with Plaintiffs’ claims arising therefrom and have asserted a number of defenses to Plaintiffs’ claims which Defendants believe to be meritorious; and

WHEREAS, Defendants, while continuing to deny the allegations, any violation of law or wrongdoing, and any liability with respect to any and all claims asserted in the Complaints, have concluded that they will enter into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this protracted litigation, and the distraction and diversion of their personnel and resources, and thereby to resolve this controversy; and

WHEREAS, those whom the undersigned represent have each determined it to be in their respective best interests to resolve this dispute and to enter into this Settlement Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

I. DEFINITIONS

All terms defined in the preamble to this Settlement Agreement shall be so defined when used anywhere in this Settlement Agreement. Additionally, when capitalized in this Settlement Agreement:

A. **“Aggregate Settlement Fund”** means the sum of Thirty Million Seven Hundred Thousand Dollars (\$30,700,000.00), of which Abbott will pay Eighteen Million Four Hundred Twenty Thousand Dollars (\$18,420,000.00) and Geneva will pay Twelve Million Two Hundred Eighty Thousand Dollars (\$12,280,000.00).

B. **“Consumer”** means a natural person.

C. **“Consumer Notice of Settlement”** means the Court-approved consumer notice of settlement, including the **“Consumer Claim and Exclusion Form.”**

D. **“Consumer Opt-Out Deadline”** means the date set by the Court as the deadline for Consumer members of the IPP Classes to file Notices of Exclusion from the IPP Classes.

E. **“Consumer Plaintiffs”** means Martin Bernstein, Lavera Grosskrueger, David Grund, William Mednick, Albert Meyer, Willie O’Neal, Victor Scafani.

F. **“Consumer Settlement Fund”** means that portion of the Net Settlement Fund that will be set aside to pay any incentive awards to Consumer Plaintiffs, and the claims of Consumers who are members of the IPP Classes and who file timely and valid proofs of claim

and do not exclude themselves from the IPP Classes, as well as related notice and administrative costs.

G. **“Consumer Summary Notice of Settlement”** means the Court-approved consumer summary notice of settlement.

H. **“Court”** means the United States District Court for the Southern District of Florida.

I. **“Defendant”** means either Abbott Laboratories (“Abbott”) or Geneva Pharmaceuticals, Inc. (now known as Sandoz, Inc.) (“Geneva”). **“Defendants”** means both Abbott and Geneva.

J. **“Designated Governmental Entities”** means the governmental entities listed in Attachment D annexed hereto.

K. **“Effective Date”** means the date on which all of the following conditions shall have been satisfied, at which time this Settlement Agreement will be deemed to have become **“Effective”**:

1. Entry by the Court of the Preliminary Approval Order;
2. Receipt by the Escrow Agent of the Aggregate Settlement Fund from Defendants pursuant to Section III.A. of this Settlement Agreement;
3. Expiration of the Opt-Out Deadlines;
4. Expiration of any time provided herein or in Rider A referenced in Section IV of this Settlement Agreement for Defendants to terminate the Settlement Agreement, without Defendants having exercised any such right;

5. Final approval by the Court of this Settlement Agreement without any material change;
6. Entry by the Court of the Final Judgment and Order; and
7. The dismissal with prejudice of the complaint in the action entitled *Hopper v. Abbott Laboratories, et al.*, No. 01-CVS-2499 (N.C. Superior Court for County of Pitt);
8. Either:
 - a. the expiration of the time to file a notice of appeal from either the entry by the Court of the Final Judgment and Order or the approval by the Court of the Settlement Agreement, without any such notice of appeal having been timely filed; or
 - b. if one or more notices of appeal are timely filed, dismissal of all such appeals or affirmance of the Final Judgment and Order in all material respects, subject to no further right of review; provided however that any reversal, vacatur or modification on appeal of the award or allocation of any amount of Plaintiffs' attorney's fees and expenses awarded by the Court from the Settlement Fund, or any amount of incentive payments to any Plaintiffs, or any determination by the Court to award less than the amount requested in attorneys' fees or costs to Plaintiffs' counsel or incentive payments to Plaintiffs, or any determination of the Court with respect to the allocation of any amounts of Plaintiffs' attorneys' fees and expenses, shall not prevent the Settlement Agreement from becoming

effective or give rise to any right of termination or otherwise serve as a basis for termination of this Settlement Agreement; and

9. Dismissal of Defendants' Rule 23(f) appeal of the Class Certification Order.

L. **"Escrow Agent"** means Citibank N.A. or such other escrow agent as agreed upon the parties.

M. **"Escrow Agreement"** means the escrow agreement, pursuant to which the Aggregate Settlement Fund shall be administered.

N. **"Final Judgment and Order"** means the Court's final, appealable order, without any material change to the form of Attachment B annexed hereto.

O. **"Indirect Purchaser Plaintiffs"** or **"IPPs"** means all plaintiffs in the following actions and complaints, all of which were coordinated in MDL No. 1317: *United Wisconsin Services, Inc., et al. v. Abbott Laboratories*, N.D. Ill. C.A. No. 99-C-7410(JBZ); *Grosskrueger v. Abbott Laboratories, et al.*, N.D. Ill. C.A. No. 99C-7883(JBZ); *Reid v. Abbott Laboratories, et al.*, D.D.C. C.A. No. 00-323; *Scafani v. Abbott Laboratories, et al.*, N.D. Cal. C.A. No. 00-00508-SBA; *Mednick v. Abbott Laboratories, et al.*, No. 2:00-3468; *O'Neal v. Abbott Laboratories, et al.*, No. 00-J-1504-S; *Grund v. Abbott Laboratories, et al.*; *Blue Cross and Blue Shield of Alabama, Inc. v. Abbott Laboratories, et al.*, No. 00-1303-Civ.-Lenard; *Bernstein v. Abbott Laboratories*, E.D. Mich. C.A. No. 2:00-CV-72974; *O'Keefe v. Abbott Laboratories, et al.*; *Blue Cross and Blue Shield of Michigan v. Abbott Laboratories, et al.*, No. 5:01-CV-95; Coordinated Fourth Amended Class Action Complaints, MDL No. 1317, filed on or about Nov. 22, 2002.

P. **“IPP Classes”** means:

All persons and entities who or which have at any time from October 15, 1995 to the date of Preliminary Approval of this Settlement Agreement, paid all or part of the purchase price of Hytrin or its AB-rated generic bioequivalents other than for resale, in Alabama, California, Florida, Illinois, Kansas, Maine, Michigan, Minnesota, Mississippi, Nevada, New Mexico, New York, North Carolina, North Dakota, South Dakota, Tennessee West Virginia and Wisconsin, or via mail order for residents of such states. Excluded from the IPP Classes are the Defendants, their officers and directors, their direct and indirect parent and subsidiary corporations and their officers and directors; government entities; entities that purchased Hytrin and its generic bioequivalents for resale, to the extent of such purchases for resale; direct purchasers of Hytrin and its generic bioequivalents from Defendants, to the extent of such direct purchases; and indirect purchasers who suffered no economic injury as a result of Defendants' allegedly unlawful conduct.

Q. **“IPPs’ Co-Lead Counsel”** means Lowey, Dannenberg, Bemporad & Selinger,

P.C.; Wallace Jordan Ratliff & Brandt; and Cohen Milstein Hausfeld & Toll.

R. **“IPPs’ Designated Counsel”** means Lowey Dannenberg Bemporad & Selinger,

P.C.

S. **“Legal Public Holiday”** means any day on which the offices of the Escrow

Agent are closed for the transaction of public business or designated as a “legal holiday”

pursuant to Fed. R. Civ. P. 6(a), as amended, or any successor to that rule.

T. **“MDL No. 1317”** means the litigation captioned *In Re: Terazosin Hydrochloride Antitrust Litigation*, Master File No. 99-MDL-1317 (S.D. Fla.), and any and all related cases and actions consolidated or coordinated within that litigation for discovery or other purposes.

U. **“Net Settlement Fund”** means the Aggregate Settlement Fund less: (1) the State Settlement Fund; (2) IPPs’ attorneys’ fees and expenses awarded by the Court; and (3) certain Escrow Agent fees associated with the Aggregate Settlement Fund.

V. **“Notice Plan”** means the Court-approved process, a summary of which is annexed hereto as Attachment C, by which the Plaintiffs will publish the Consumer Summary Notice of Settlement and TPP Summary Notice of Settlement, mail the Consumer Notice of Settlement and TPP Notice of Settlement, and otherwise disseminate notice to the IPP Classes of this Settlement Agreement.

W. **“Opt-Out Deadlines”** means both the Consumer Opt-Out Deadline and the Third Party Payer Opt-Out Deadline as defined below.

X. **“Parties”** means the IPPs, the Plaintiff States and the Defendants; and **“Party”** means any of them individually.

Y. **“Plaintiff States”** means the States of Colorado, Florida, and Kansas.

Z. **“Preliminary Approval Order”** means the Court’s order preliminarily approving this Settlement Agreement, adopted and entered without any material change to Attachment A annexed hereto.

AA. **“Released Claims”** means all claims, demands, debts, obligations, damages, civil penalties, whenever and wherever incurred, liabilities of any nature whatsoever (including costs, expenses, penalties and attorneys’ fees), actions, suits, proceedings, assertions, and causes of action (**“Claims”**), known or unknown, suspected or unsuspected, in law or in equity of any jurisdiction, including but not limited to Claims arising under any federal or state antitrust, unfair methods of competition, or consumer protection laws, under any state or federal deceptive practices acts, or under the common laws (including any theory of unjust enrichment) of any jurisdictions, whether accrued in whole or in part of any kind whatsoever, from the beginning of time through the date this Settlement Agreement is preliminarily approved by the Court, which

any Releasor had, has, or may have in the future, directly, representatively, derivatively, or in any other capacity against any Releasee (i) arising out of or concerning the allegations, or the facts and circumstances giving rise to the allegations in the Complaints or in any other complaint filed, consolidated or coordinated in MDL No. 1317, or (ii) otherwise relating to any alleged delay in marketing or selling of generic equivalents of Terazosin Products, regardless of whether such claim was raised in the Complaints. Released Claims shall not be construed to include: (1) claims arising solely from and asserting damages based solely on an alleged physical injury; or (2) claims that may be asserted by any Releasor relating to the “best price” or “average wholesale price” reporting practices or to health care or Medicaid fraud or abuse, except to the extent that such claims arise from the facts, matters, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act set forth in the Complaints, or in any other complaint filed in any action that has been filed, consolidated or coordinated in MDL No. 1317.

BB. **“Releasees”** means the Defendants and their respective past, present and future directors, officers, employees, agents, attorneys, shareholders, affiliates, divisions, agents, representatives, parents, subsidiaries, general or limited partners, insurers, and the predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing.

CC. **“Releasors”** means:

1. The Plaintiff States, on behalf of themselves and, including without limitation:
 - a. Departments, bureaus, and agencies of Plaintiff States as actual or alleged purchasers or reimbursers;

- b. The Plaintiff States' quasi-sovereign interests in fair competition and the health of their citizenry, and/or in the Plaintiff States' sovereign capacities;
 - c. Designated Governmental Entities; and
 - d. Plaintiff States either in their *parens patriae* or functionally equivalent capacity, on behalf of natural persons who reside in their respective states, or as class representatives or in a functionally equivalent capacity, on behalf of natural persons who reside in their respective states, or as both;
2. The IPPs and members of the IPP Classes, whether or not they object to the Settlement Agreement and whether or not they make a claim upon or participate in any Settlement Fund (including both TPPs and Consumers, whether IPPs or not); and
3. The respective past, present and future directors, officers, insurers, employees, shareholders, agents, attorneys, trustees, associates, general or limited partners, affiliates, divisions, agents, representatives, predecessors, parents, subsidiaries, agencies, departments, institutions, successors and assigns, of each of the Releasers listed in sub-paragraphs 1 and 2, except that Releasers shall not include any person or entity that validly opts out of the IPP Classes.

DD. **“Settlement Administrator”** means Complete Claim Solutions, Inc. of West Palm Beach, Florida, which has administered numerous similar class settlements, which

administered the previous settlement in this action with Defendant Ivax Pharmaceuticals, Inc., and whose duties shall be to (1) after the Court enters the Final Judgment and Order, review, process, and approve the timely filed proofs of claim of Consumers and Third Party Payers, (2) after the Effective Date, direct the Escrow Agent to pay those claims which are approved *pro rata* to Consumers and Third Party Payers entitled to participate in the Consumer Settlement Fund and the Third Party Payer Settlement Fund, (3) after the Court enters the Preliminary Approval Order, administer the Notice Plan with respect to the IPP Classes, (4) provide to IPPs' Co-Lead Counsel and Defendants, within 48 hours of receipt, but in no event later than 10:00 a.m., Eastern time on April 12, 2005, copies of any requests by TPP members of the IPP Classes to be excluded from the IPP Classes, and (5) provide to IPPs' Co-Lead Counsel and Defendants, within 48 hours of receipt, but in no event later than 4 p.m. Eastern time on the calendar day following the Consumer Opt-Out Deadline, copies of any requests by Consumer members of the IPP Classes to be excluded from the IPP Classes.

EE. **“Settlement Fund”** means each of the Aggregate Settlement Fund, the Consumer Settlement Fund, the State Settlement Fund, and the Third Party Payer Settlement Fund; and **“Settlement Funds”** means all of these funds collectively.

FF. **“State Liaison Counsel”** means the Attorney General of the State of Florida.

GG. **“State Settlement Fund”** means that portion of the Aggregate Settlement Fund that will be set aside to reimburse, subject to Court approval, fees and costs of the Plaintiff States, the claims of the Plaintiff States, and other remedies as allowed by state law. The amount set aside for the State Settlement Fund shall be \$2,000,000.00 (Two Million), plus interest earned on that amount.

HH. **“Terazosin Products”** means Hytrin[®] and/or its AB-rated equivalents, including without limitation generic versions of terazosin hydrochloride.

II. **“Third Party Payer”** or **“TPP”** means any entity that is (1) a party to a contract, issuer of a policy or sponsor of a plan, and is also (2) at risk, pursuant to such contract, policy or plan, to provide prescription drug benefits, or to pay or reimburse all or part of the purchase price of Terazosin Products dispensed to Consumers covered by such contract, policy or plan.

JJ. **“Third Party Payer Opt-Out Deadline”** or **“TPP Opt-Out Deadline”** means the date set by the Court as the deadline for Third Party Payer members of the IPP Classes to file Notices of Exclusion from the IPP Classes, which shall not be later than April 11, 2005.

KK. **“Third Party Payer Settlement Fund”** or **“TPP Settlement Fund”** means that portion of the Net Settlement Fund that will be set aside to pay any incentive awards to TPP Plaintiffs, and the claims of TPP members of the IPP Classes which file timely and valid proofs of claim and do not exclude themselves from the IPP Classes, as well as related notice and administrative costs.

LL. **“TPP Notice of Settlement”** means the Court-approved TPP notice of settlement, which includes the **“TPP Proof of Claim Form”** and **“TPP Notice of Exclusion Form.”**

MM. **“TPP Plaintiffs”** means Blue Cross and Blue Shield of Alabama, Blue Cross and Blue Shield of Michigan, and Crossroads Acquisition Corp. (f/k/a Cobalt Corporation).

NN. **“TPP Summary Notice of Settlement”** means the Court-approved TPP summary notice of settlement.

II. RELEASES AND COVENANTS

A. **Releases.** Upon the Effective Date of this Settlement Agreement, the Releasors shall and hereby do unconditionally, fully and finally release and discharge forever the Releasees from the Released Claims and any liability arising therefrom.

B. **Covenant Not to Sue.** Each of the Releasors hereby covenants and agrees that he, she or it shall not hereafter seek to establish liability or assert Released Claims, on behalf of himself, herself, itself or any other person or entity, against any of the Releasees, in whole or in part, for any of the Released Claims.

C. **Additional Release.**

1. Releasors shall also be deemed to have expressly waived, released and forever discharged any and all provisions, rights and benefits that may be available under Section 1542 of the California Civil Code ("**Section 1542**"), which provides:

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

or under any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to Section 1542 (each a "**Comparable Law**"). Each Releasor may hereafter discover facts other than or different from those which he, she or it knows or believes to be true, but each Releasor hereby expressly waives and fully, finally and forever settles and releases, upon the Effective Date, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Releasor also

hereby expressly waives and fully, finally and forever settles and releases any and all claims it may have against any Released Party under § 17200, *et seq.*, of the California Business and Professions Code or any similar, comparable or equivalent provision of the law of any other state or territory of the United States or other jurisdiction, which claims are hereby expressly incorporated into the definition of Released Claims.

2. IPP Plaintiffs' Co-Lead Counsel will ensure that each claim form contains a copy of the release set forth in this Section II, together with the applicable definitions, which shall be signed by each member of the IPP Classes or its authorized representative as a precondition to receiving any portion of the Settlement Fund.

D. **Effect of Releases.** This Settlement Agreement may be pleaded as a full and complete defense to any action that may be instituted, prosecuted, or attempted with respect to any of the Released Claims. The Parties agree that for any such action, the Court or any court of competent jurisdiction may enter an injunction restraining prosecution of such proceeding.

III. SETTLEMENT PAYMENTS

A. **Aggregate Settlement Fund; Payment Date.** In full, complete and final settlement of the Complaints, within five (5) business days of the preliminary approval of this Settlement Agreement (and receipt of wire transfer instructions), Abbott will pay Eighteen Million Four Hundred Twenty Thousand Dollars (\$18,420,000.00) and Geneva will pay Twelve Million Two Hundred Eighty Thousand Dollars (\$12,280,000.00), into an escrow account specified by the Escrow Agent (the "**Escrow Account**"), to be distributed by the Escrow Agent as set forth in this Settlement Agreement.

B. **Full Satisfaction.** The Aggregate Settlement Fund is the total amount that Defendants will pay under this Settlement Agreement, or in connection with the Complaints, or

in connection with any Released Claim, including, without limitation, attorneys' fees and costs of the IPPs and the Plaintiff States, any Court-approved incentive awards to named Plaintiffs, and payment of any and all administrative and notice expenses associated with this litigation or settlement.

C. **Attorneys' Fees and Expenses.**

1. **IPPs.** IPPs' Co-Lead Counsel, on behalf of all IPPs and counsel for IPPs, agree that any application to the Court for an award of attorneys' fees shall not exceed 30% of the Aggregate Settlement Fund less the State Settlement Fund, and that any application to the Court for reimbursement of their itemized out-of-pocket expenses not previously reimbursed shall not exceed Two Million Dollars (\$2,000,000.00).

2. **Plaintiff States.** State Liaison Counsel, on behalf of all counsel for the Plaintiff States, has designated an amount not exceeding One Million Six Hundred Twenty-Five Thousand Dollars (\$1,625,000.00), to be paid exclusively out of the State Settlement Fund to reimburse the Plaintiff States' attorneys' fees and expenses, subject to court approval.

3. **Full Satisfaction of Claims for Attorneys' Fees.** Neither IPPs, the Plaintiff States, members of the IPP Classes, any of their respective counsel, nor any other Releasor shall seek or demand payment of fees and/or costs beyond those provided for in Sections III.C.1 and III.C.2 herein, nor shall they seek payment of such fees and/or costs from any source other than the Aggregate Settlement Fund. Sections III.C.1 and III.C.2 herein specify all payments of attorneys' fees, costs and expenses contemplated by this Settlement Agreement. All such payments of attorney's fees, costs and expenses shall be subject to approval by the Court. The Parties expressly acknowledge that, regardless of whether and the extent to which the Court

awards attorney's fees, costs and expenses (and regardless of whether and the extent to which any such award is upheld on appeal), Released Claims include (but are not limited to) all claims for attorney's fees, costs and expenses, and there shall be no further claim for attorney's fees, costs or expenses.

D. **Incentive Payments**. IPPs' Co-Lead Counsel, on behalf of IPPs, may seek an award of incentive payments not to exceed Thirty Thousand Dollars (\$30,000.00) in the aggregate, to be paid solely from the Consumer Settlement Fund, for Consumer Plaintiffs, and One Hundred Twenty Thousand Dollars (\$120,000.00) in the aggregate, to be paid solely from the TPP Settlement Fund, for TPP Plaintiffs, to compensate IPPs for the time and expense they incurred pursuing these actions on behalf of all the IPP Classes. All incentive payments shall be subject to Court approval. The Parties expressly acknowledge that, regardless of whether and the extent to which the Court awards incentive payments (and regardless of whether and the extent to which any such award is upheld on appeal), Released Claims include (but are not limited to) all claims for incentive payments, and there shall be no further claim for incentive payments.

E. **Allocation of Net Settlement Fund**. Plaintiffs represent that, following arm's-length negotiation between representatives of Consumers and representatives of TPPs, they have agreed among themselves to divide the Net Settlement Fund as follows. Defendants shall have no liability of any kind with respect to such division of the Net Settlement Fund.

1. **Consumer Settlement Fund**. Of the Net Settlement Fund, 25% shall be allocated to the Consumer Settlement Fund to pay valid and timely claims of Consumer members of the IPP Classes, all costs associated with providing notice to Consumer class members and the

administration of the Consumer Settlement Fund, and any incentive payments awarded to the Consumer Plaintiffs.

2. TPP Settlement Fund. Of the Net Settlement Fund, 75% shall be allocated to the TPP Settlement Fund to pay valid and timely claims of TPP members of the IPP Classes, all costs associated with providing notice to TPP class members and the administration of the TPP Settlement Fund, and any incentive payments awarded to the TPP Plaintiffs.

3. Disposition of Surplus Funds in the Consumer Settlement Fund. If, after payment of (a) Court-approved costs of notice and administration, (b) any incentive payments awarded to Consumer Plaintiffs, and (c) 100% of valid and timely filed claims, monies remain in the Consumer Settlement Fund, any such remaining amount shall be paid to the TPP Settlement Fund, to the extent any valid and timely filed claims by TPP members of the IPP Classes remain unpaid.

4. Disposition of Surplus Funds in the TPP Settlement Fund. If, after payment of (a) Court-approved costs of notice and administration, (b) any incentive payments awarded to TPP Plaintiffs, and (c) 100% of valid and timely filed claims, monies remain in the TPP Settlement Fund, any such remaining amount shall be paid to the Consumer Settlement Fund, to the extent any valid and timely filed claims by Consumer members of the IPP Classes remain unpaid.

5. Disposition of Surplus Funds in the Net Settlement Fund. If, after payment of all items listed in III.E.3.(a)-(c) and III.E.4.(a)-(c), monies remain in either the Consumer Settlement Fund or the TPP Settlement Fund, the remaining amounts in either or both

Settlement Funds shall be distributed as ordered by the Court, except that it is understood that no such remaining amounts shall be returned to either Defendant or paid to Plaintiffs.

F. **Allocation of IPPs' Attorneys' Fees and Expenses.** IPPs' attorneys' fees and expenses awarded by the Court shall be allocated as IPPs' Co-Lead Counsel may agree or as approved by the Court. Defendants shall have no liability of any kind with respect to the allocation or distribution of attorney's fees and expenses awarded by the Court.

IV. DEFENDANTS' TERMINATION OPTIONS

A. In the event that the IPP Threshold Amounts (as that term is defined in Rider A to this Settlement Agreement, which is to be filed under seal) are exceeded, then Defendants may terminate this Settlement Agreement pursuant to the terms of Rider A. To be timely, any requests for exclusion by TPP members of the IPP Classes must be received by the Settlement Administrator by the TPP Opt-Out Deadline, and any requests for exclusion by Consumer members of the IPP Classes must be postmarked by the Consumer Opt-Out Deadline. The IPPs' Co-Lead Counsel shall provide, or ensure that, as set forth in Section I.DD(4)-(5) of this Settlement Agreement the Settlement Administrator provides, Defendants' counsel with any requests for exclusion within the time periods set forth in Section I.DD(4)-(5).

To terminate this Settlement Agreement on the basis that the Third Party Payer Threshold Amount (as that term is defined in Rider A) has been exceeded, Defendants shall provide written notice (which may be by facsimile or electronic mail) to IPPs' Co-Lead Counsel by 5:00 p.m. Pacific time on May 9, 2005. To terminate this Settlement Agreement on the basis that the Consumer Threshold Amount (as that term is defined in Rider A) has been exceeded, Defendants shall provide written notice (which may be by facsimile or electronic mail) to IPPs' Co-Lead

Counsel on the date that is ten (10) business days following the Consumer Opt-Out Deadline, but not later than 5:00 p.m. Pacific time on the date that is five (5) business days prior to the hearing to determine the fairness and reasonableness of this Settlement Agreement.

B. Defendants have entered into a settlement agreement with a class of direct purchasers of Hytrin, which agreement was preliminarily approved by the Court on February 24, 2005 (the "Direct Purchaser Settlement Agreement"). The Direct Purchaser Settlement Agreement would allow Defendants to withdraw in circumstances relating to, *inter alia*, requests for exclusion from members of the direct purchaser class. If Defendants' right to withdraw from the direct purchaser class settlement agreement is triggered by requests for exclusion from the direct purchaser class, Defendants may terminate this Settlement Agreement by providing written notice (which may be by facsimile or electronic mail) to IPPs' Co-Lead Counsel by 5:00 p.m. Pacific time on April 7, 2005. If the direct purchaser class settlement agreement is not finally approved by the Court, Defendants may terminate this Settlement Agreement by providing written notice (which may be by facsimile or electronic mail) to IPPs' Co-Lead Counsel by 5:00 p.m. Pacific time the date that is five (5) business days after the Court's final determination not to finally approve the direct purchaser class settlement agreement.

C. Defendants anticipate entering into settlement agreements with respect to (1) the actions in MDL No. 1317 brought by CVS Meridian, Inc., Rite Aid Corp., Walgreen Co., Eckerd Corp., The Kroger Co. Albertson's, Inc., The Stop & Shop Supermarket Co., and Hy-Vee, Inc. (collectively, the "Direct Opt-Out Settlement"), and (2) the action under the caption *State of West Virginia, ex rel. Darrel v. McGraw, Jr. v. Abbott Labs.*, No. 01-C-180 (W. Va. Cir. Ct. Wyoming Co.) ("*West Virginia*"). Defendants will use their best efforts to enter into such settlement

agreements of these actions by March 15, 2005. Defendants may terminate this Settlement Agreement if Defendants do not enter into one or both of such settlement agreements by March 15, 2005. Defendants will promptly inform IPPs' Co-Lead Counsel if Defendants' right to terminate this Settlement Agreement has been so triggered. Defendants may terminate this Settlement Agreement on the basis just specified by providing written notice (which may be by facsimile or electronic mail) to IPPs' Co-Lead Counsel by 5:00 p.m. Pacific time on March 22, 2005. Defendants may also terminate this Settlement Agreement at any time prior to the fifth (5th) business day to the hearing to determine the fairness and reasonableness of the settlement (currently expected to occur on June 27, 2005), if the *West Virginia* court does not finally approve the settlement of that action, or if the Direct Opt-Out Settlement is terminated by Defendants in accordance with any termination right therein, by providing written notice (which may be by facsimile or electronic mail) to IPPs' Co-Lead Counsel by 5:00 p.m. Pacific time the date that is five (5) business days after, respectively, the *West Virginia* court's final determination not to approve that settlement or Defendants' termination of the Direct Opt-Out Settlement.

V. CLASS CERTIFICATION, NOTICE AND SETTLEMENT HEARING

A. **Motion for Preliminary Approval.** On or about March 1, 2005, the Parties shall apply to the Court for preliminary approval of this Settlement Agreement and entry of the Preliminary Approval Order.

B. **Implementation of Notice Plans.** Within three (3) business days after entry of the Preliminary Approval Order, IPPs' Co-Lead Counsel shall, through the Settlement Administrator, effectuate the Notice Plan as to the mailing of the TPP Notice of Settlement and

the reserving of publication space in the publications listed in the Notice Plan for Consumer Summary Notice of Settlement and TPP Summary Notice of Settlement, subject to availability of Settlement Funds necessary for such purposes. All other provisions of the Notice Plan shall be effectuated as soon as practicable thereafter, but not later than the deadlines contained in the Notice Plan.

C. **Settlement Hearing.** At or before the time set by the Court for a hearing to consider the fairness and reasonableness of this Settlement Agreement and the terms of settlement embodied herein, Plaintiffs shall submit papers in support of the fairness and reasonableness of this Settlement Agreement, and shall seek entry by the Court of the Final Judgment and Order. Defendants in their discretion may also submit such papers, but are not required to do so. Each Party shall have a reasonable opportunity to review and comment on the other Parties' papers in advance of filing.

VI. SETTLEMENT ADMINISTRATION

A. **Administration of Escrow Account.** The Escrow Account shall be administered as specified in the Escrow Agreement.

B. **Court Jurisdiction Over Settlement Funds.** All funds held in the Aggregate Settlement Fund, the Consumer Settlement Fund, the TPP Settlement Fund and the State Settlement Fund shall be deemed to be *in custodia legis*, and shall remain subject to the jurisdiction of the Court, until such Settlement Funds are fully distributed or returned to Defendants pursuant to an Event of Termination, or until the Court orders otherwise.

C. **Tax Treatment of Settlement Funds.**

1. The Settlement Funds shall be treated as being at all times “qualified settlement funds” within the meaning of Treas. Reg. § 1.468B-1. The Parties shall timely make or cause the Escrow Agent to make such elections as necessary or advisable to carry out the provisions of this Section VI.D., including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1), back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulation.

2. For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent.

3. Whether or not final approval of this Settlement Agreement occurs and whether or not the Settlement Fund qualifies as a qualified settlement fund within the meaning of Treas. Reg. § 1.468B-1, all (a) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by a Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendants with respect to any income earned by a Settlement Fund for any period during which such Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (“**Taxes**”), and (b) expenses and costs incurred in connection with Taxes, the administration of such Settlement Fund or the operation and implementation of this Section VI.C. (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Section VI.C.) (“**Tax Expenses**”), shall be paid out of the affected Settlement Fund.

4. Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the settlement and shall be timely paid by the Escrow Agent out of the appropriate Settlement Fund with respect to which such Taxes and/or Tax Expenses have accrued, without prior order from the Court. The Escrow Agreement shall obligate the Escrow Agent (notwithstanding anything herein to the contrary) to withhold from distribution out of the appropriate Settlement Fund any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l)(2)).

5. The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section VI.C. The parties hereto shall not take a position, including a position in any filing or before any tax authority, that is inconsistent with such treatment. For purposes of this Section VI.C., references to a Settlement Fund shall include such Settlement Fund and any earnings thereon.

6. Nothing in this Section shall be construed to mean that there are any Taxes or Tax Expenses which will be incurred by the State Settlement Fund.

D. **No Defendants' Liability for Settlement Funds**. The Parties expressly agree that Defendants shall have no responsibility, obligation or liability whatsoever for any distributions, investments, administration or other oversight of the Settlement Funds or interest earned thereon, or any reporting requirements that may relate thereto.

VII. **SETTLEMENT DISBURSEMENTS**

A. **Payments By the Escrow Agent.** The Escrow Agent shall have the following responsibilities:

1. Depositing and investing the Aggregate Settlement Fund into the Escrow Account; and

2. Paying out of the Aggregate Settlement Fund, in accordance with Orders of the Court and on the time schedule specified in this Settlement Agreement:

a. To the Settlement Administrator, actual costs reasonably incurred for the purpose of undertaking the functions described in Section I.DD(1)-(2), and (4)-(5), provided that such costs together with the costs specified in subparagraph (c) below shall not exceed in the aggregate Six Hundred Thousand Dollars (\$650,000);

b. To the Settlement Administrator, actual notice costs reasonably incurred for the purpose of providing the Consumer Summary Notice of Settlement, Consumer Notice of Settlement, TPP Summary Notice of Settlement, and TPP Notice of Settlement, and any other authorized notice to members of the IPP Classes in accordance with the Notice Plan, provided that such costs shall not exceed in the aggregate Five Hundred Thousand Dollars (\$500,000);

c. To the Settlement Administrator, the costs incurred in the administration of the TPP Settlement Fund and the Consumer Settlement Fund, provided that such costs together with the costs specified in subparagraph (a) above shall not exceed in the aggregate Six Hundred Thousand Dollars (\$650,000);

d. To the Escrow Agent, those fees or other payments payable to the Escrow Agent pursuant to the terms of the Escrow Agreement;

- e. To IPPs' counsel, as directed by IPPs' Designated Counsel, the amount of IPPs' attorneys' fees and expenses awarded by the Court;
 - f. To any IPP entitled thereto, any incentive payment awarded by the Court;
 - g. To Plaintiff States, the amount of the State Settlement Fund, pursuant to the direction of State Liaison Counsel; and
 - h. To the members of the IPP Classes who or which file timely and valid proofs of claim, the approved amounts of such claims;
- 3. Paying any Taxes or Tax Expenses (including reimbursing a Defendant for its payment of any Taxes or Tax Expenses); and
 - 4. Paying to the Defendants the Termination Refund as set forth in Section X.C.

B. **Timing of Payments By the Escrow Agent.** Following the funding of the Escrow Account as set forth in Section III.A. of this Settlement Agreement, the Escrow Agent shall make the payments identified in Sections VII.A. and X of this Settlement Agreement at the following times:

- 1. The payments identified in Section VII.A.2(a)-(c) of this Settlement Agreement, as such notice and administrative costs are actually incurred on the schedule specified in Section I.DD.
- 2. In the event that Defendants shall become entitled to a Termination Refund (as described and defined in Sections VII.A.4 and X.B of this Settlement Agreement), the Escrow Agent shall pay that amount to Defendants at the time provided in Section X.B.

3. After this Court's entry of the Preliminary Approval Order without material change, the payments identified in Section VII.A.2(d) of this Settlement Agreement, as such payments become payable pursuant to the terms of the Escrow Agreement.

4. IPPs' attorneys' fees and expenses approved and awarded by the Court shall be paid by the Escrow Agent out of the amount remaining in the Aggregate Settlement Fund, following segregation of the State Settlement Fund, within five (5) business days after the Effective Date of the Settlement and the receipt by the Escrow Agent of joint written notice from the IPPs' Designated Counsel and the Defendants, acting through their respective counsel, advising the Escrow Agent that the Settlement Agreement has become Effective and directing the Escrow Agent to make these payments, which notice shall be promptly provided. Before making payments of IPPs' attorneys' fees and expenses, the Escrow Agent must have received from IPPs' Designated Counsel written directions (accompanied by a copy of the Court's order awarding payment thereof) to pay the amounts ordered by the Court, to the extent, in the manner, and to the persons described in the Court's order, and/or as directed by IPPs' Designated Counsel in a manner not inconsistent with the Court's order.

5. The payments identified in Sections VII.A.2(f), VII.A.2(g) and VII.A.2(h), within thirty (30) calendar days following the Effective Date of this Settlement Agreement and the receipt by the Escrow Agent of joint written notice from the Plaintiffs and the Defendants, acting through their respective counsel, advising the Escrow Agent that the Settlement Agreement has become Effective and directing the Escrow Agent to make these payments.

6. The payments specified in Sections VII.A.3., as such amounts become due.

VIII. COOPERATION AND IMPLEMENTATION

A. **Reasonable Best Efforts**. Counsel for the Parties agree to recommend approval of this Settlement Agreement by the Court and to undertake their reasonable best efforts, including all steps and efforts detailed in this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to expeditiously carry out the terms of this Settlement Agreement. The Parties shall have a reasonable opportunity to review any motion papers in advance of filing.

B. **Stay of Appeal**. The Defendants and IPPs agree to jointly notify the 11th Circuit Court of Appeals of this Settlement Agreement within five (5) business days of preliminary approval of this Settlement Agreement and request that such Court stay all further proceedings related to the pending Rule 23(f) appeal by Defendants of the Class Certification Order (the "Appeal") until further notice. Within ten (10) business days following the date on which all events giving rise to the Effective Date except I.K.9 (concerning dismissal of the Appeal) have occurred, Defendants shall cause the Appeal to be dismissed. If this Settlement Agreement is terminated for any reason contemplated in this Settlement Agreement, the Parties agree within ten (10) business days to jointly notify the 11th Circuit Court of Appeals of such termination and request that the Appeal be scheduled for the next available oral argument calendar.

IX. **BENEFIT AND BINDING EFFECT**

The terms of this Settlement Agreement shall be binding on, and shall inure to the benefit of, the Parties and their successors and assigns. The Parties expressly disclaim any intention to create rights under this Settlement Agreement that may be enforced by any other person under any circumstances whatsoever, except as provided in this Settlement Agreement.

X. TERMINATION

A. Events of Termination.

1. Defendants shall have the right and the option in their sole discretion to terminate this Settlement Agreement as set forth in Section IV.
2. Either Defendants or Plaintiffs may unilaterally terminate this Settlement Agreement if any of the following conditions occur:
 - a. The Court's refusal to grant preliminary approval of this Settlement Agreement without any material change (it being agreed that the Court's continuance of the hearing on preliminary approval shall not be considered a refusal);
 - b. The Court's refusal to grant final approval of this Settlement Agreement without any material change;
 - c. The Court's refusal to issue the Final Judgment and Order without any material change; or
 - d. The reversal, vacatur, or material modification of the Final Judgment and Order on appeal; provided however that any reversal, vacatur or modification on appeal of any amount or allocation of attorney's fees and expenses awarded by the Court from the Settlement Fund, or any amount of incentive payments, or any determination by the Court to award less than the amounts requested for attorneys' fees, costs or incentive payments, shall not prevent the Effective Date from occurring or give rise to any right

of termination or otherwise serve as a basis for termination of this Settlement Agreement.

B. **Termination Refund.** Within five (5) business days following the date on which any Party provides written notice to both the Escrow Agent and all other Parties that said Party is exercising his, her or its right of termination in accordance with Section X.A.1 or X.A.2, the Escrow Agent shall repay to the Defendants, 60 percent to Abbott and 40 percent to Geneva, or in such other proportion as Abbott and Geneva jointly instruct the Escrow Agent in writing, the Aggregate Settlement Fund (including interest accrued thereon), less the sum of: (1) costs actually incurred, and paid or due and payable, pursuant to Section VII.A.2(a)-(c), up to the aggregate dollar limits set forth therein, plus (2) amounts paid, or due and payable, to the Escrow Agent pursuant to the Escrow Agreement up to the date of the notice of termination, plus (3) any accrued Taxes and Tax Expenses as defined in Section VI.C.3. The amount so calculated is referred to in this Settlement Agreement as the “**Termination Refund**”).

C. **Effect of Exercise of Termination Rights on Litigation.** Upon the timely and valid exercise by any Party of the right to terminate this Settlement Agreement, this Settlement Agreement (except provisions governing the Termination Refund and any other events to occur upon termination) shall become null and void, shall have no further force and effect, and the Plaintiff States and IPPs shall retain full rights to assert any and all Claims against Releasees, and Releasees shall retain any and all defenses thereto. All rights of the Parties shall be restored to their status immediately prior to the execution of this Settlement Agreement. These actions shall thereupon revert to their respective procedural and substantive status prior to the date of execution hereof and shall proceed as if this Settlement Agreement, and all other related orders

and papers, had not been executed. In such event, the Parties shall jointly request that any order contemplated hereby, which shall have been entered, be vacated.

XI. MISCELLANEOUS

A. **Entire Agreement.** This Settlement Agreement, the attachments hereto, the documents referenced herein, and Rider A referenced in Section IV.A. of this Settlement Agreement (collectively, the “**Settlement Documents**”) contain the entire agreement and understanding of the Parties. There are no additional promises, understandings or terms of the Settlement Agreement other than those contained in the Settlement Documents. The Settlement Documents supersede and render of no effect all other oral or written communications concerning the subject matter hereof.

B. **Modification; Waiver.** The terms or provisions of this Settlement Agreement may not be changed, waived, modified, cancelled or varied in any manner whatsoever unless in a writing duly signed by all Parties. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions hereof, and that Party, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Settlement Agreement to be performed by the other Party.

C. **Authority.** The undersigned counsel for each of the Parties hereby represents and warrants that he or she is authorized to enter into this Settlement Agreement on behalf of that Party. Each of the Plaintiffs represents and warrants that it has not assigned, and that it shall not assign any Released Claim or any right, title or interest in any Released Claim. State Liaison

Counsel represents and warrants that its signature on behalf of a Plaintiff State reflects the authority of State Liaison Counsel to bind such Plaintiff State.

D. **No Party is the Drafter.** This Settlement Agreement is acknowledged to have been and shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

E. **Execution in Counterparts.** This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court. This Settlement Agreement may be validly executed and delivered by fax or other electronic transmission,.

F. **Notice.** Without limitation on other methods of notice specified in this Settlement Agreement, any and all notices, requests, consents, directives, or communications by any Party intended for any other Party shall be deemed sufficient if made in a writing to be delivered personally, by express courier, or by postage prepaid mail, or by facsimile transmission or e-mail followed by postage prepaid mail, and addressed as follows:

To Plaintiff States:

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Office of the Attorney General, Florida
PL-01, The Capitol
Tallahassee, FL 32399
Tel.: 850-414-3600
Fax: 850-488-9134

Karl Hansen, Esq.
Office of the Attorney General, Kansas
120 S.W. 10th Ave., 2nd Floor
Topeka, KS 66612-1597
Tel.: 785-368-8447

Fax: 785-296-3131

- and -

Devin Laiho, Esq.
Office of the Attorney General, Colorado
1525 Sherman Street, 5th Floor
Denver, CO 80203
Tel.: 303-866-4500
Fax: 303-866-5691

To Indirect Purchaser Plaintiffs:

Richard W. Cohen, Esq. or Geoffrey M. Horn, Esq.
Lowey Dannenberg Bemporad & Selinger, P.C.
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White Plains, NY 10601
Tel: 914-997-0500
Fax: 914-997-0035

Kimberly West, Esq.
Wallace Jordan Ratliff & Brandt, LLC
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Birmingham, AL 35209
Tel.: 205-870-0555
Fax: 205-871-7534

- and -

Michael Hausfeld, Esq. or Daniel Small, Esq.
Cohen Milstein Hausfeld & Toll
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West Tower, Suite 500
Washington, DC 20005-3934
Tel.: 202-408-4614
Fax: 202-408-4699

To Abbott:

Jeffrey I. Weinberger, Esq. or Stuart N. Senator, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue, 35th Floor

Los Angeles, CA 90071
Tel.: 213-683-9100
Fax: 213-683-5127

To Geneva:

Wayne A. Cross, Esq. or Robert A. Milne, Esq.
White & Case LLP
1155 Avenue of the Americas
New York, NY 10036-2787
Tel.: 212-819-8200
Fax: 212-354-8113

Any Party may, from time to time, change the address to which such notices, requests, consents, directives, or communications are to be delivered, by giving the other Parties prior written notice of the changed address, in the manner herein above provided, ten (10) calendar days before the change is effective.

G. **Governing Law; Consent to Jurisdiction.** This Settlement Agreement, including, but not limited to, the releases contained herein, shall be governed by, and construed in accordance with, the laws of the State of Florida without regard to its conflict of laws principles. The Parties to this Settlement Agreement agree that the Final Judgment and Order shall provide that the Court shall retain jurisdiction to enforce all provisions and terms of this Settlement Agreement. This Settlement Agreement shall be enforced in the United States District Court for the Southern District of Florida, except that this Section XI.G shall not prohibit (a) the assertion in the forum in which a claim is brought that the release herein is a defense, in whole or in part, to such claim or, (b) in the event that such a defense is asserted in that forum, the determination of its merits in that forum. The Parties, on behalf of themselves and the IPPs additionally on behalf of the settling members of the IPP Classes, waive any objection that each of them may now or hereafter have to the venue of any suit, action or proceeding to enforce this

Settlement Agreement and irrevocably consent to the jurisdiction of the Court and agree to accept and acknowledge service in any such suit, action or proceeding.

H. **No Admission.** Whether or not any termination right provided for herein is exercised by any Party, neither this Settlement Agreement, nor any action taken pursuant to it nor proceedings undertaken in accordance with the terms set forth herein shall be construed as or deemed to be evidence of or an admission or concession by Defendants as to the validity of any claim that has been or could have been asserted against them or as to any liability by them, which liability is hereby expressly denied and disclaimed by Defendants. Whether or not any termination right provided for herein is exercised by any Party, neither this Settlement Agreement, nor any of its provisions, nor any statement or document made or filed in connection herewith, shall be filed, offered, received in evidence or otherwise used in any action or proceeding or in any arbitration or other proceeding of any type, except in connection with the Parties' application for approval or enforcement of this Settlement Agreement and all proceedings incident thereto.

I. **Enforcement of Settlement Agreement.** The Parties agree that this Settlement Agreement may be pleaded as necessary for the purpose of enforcing the Settlement Agreement.

J. **Headings.** The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement in any manner.

K. **No Disparagement.** Until October 15, 2005, neither IPPs, IPPs' counsel or agents, Defendants, nor their counsel or agents shall make or cause to be made any public statement or comment regarding this Settlement Agreement or the settlement contemplated

hereby other than (1) press releases approved by all undersigned counsel, (2) straightforward statements (without elaboration) in substantially the form “the actions have settled,” (3) neutral statements of the terms of the settlement, or (4) statements repeating or paraphrasing, in a non-misleading form, all or a portion of any Court-approved notice to the IPP Classes of the settlement; provided that each Defendant and each member of the IPP Classes shall be entitled to make such disclosures as it, in its discretion, shall determine are appropriate under the securities laws. This section does not apply to the Plaintiff States, their counsel, or agents or to any public statements or comments that either Defendant may make in response to a public statement or comment by one or more Plaintiff States.

L. Use Of Work Product From This Litigation.

1. Plaintiffs and their counsel agree not to, except by order of the Court:
 - (a) take any action inconsistent with the provisions of the protective order(s) entered in MDL No. 1317;
 - (b) share any of their work product from MDL No. 1317 with, or use any of their work product from MDL No. 1317 for the benefit of, any person or entity asserting or contemplating asserting claims relating to or arising out of any conduct challenged by any plaintiff in MDL No. 1317;
 - (c) consent to any of their experts, advisors or consultants in MDL No. 1317 sharing work product from MDL No. 1317; or
 - (d) consent to any of their experts or consultants in MDL No. 1317 working with or for the benefit of others (including counsel,

experts, advisors or consultants of others) that (i) are or have at any time been plaintiffs in MDL No. 1317 or (ii) are asserting or contemplating asserting claims relating to or arising out of any conduct challenged by any plaintiff in MDL No. 1317.

2. Defendants and their counsel agree not, except by order of the Court, to take any action or consent to any other person or entity taking any action inconsistent with the provisions of the protective order(s) entered in MDL No. 1317.

IN WITNESS WHEREOF, the Parties hereto through their fully authorized representatives have agreed to this Settlement Agreement, the attachments hereto, Rider A referenced in Section IV.A. of this Settlement Agreement, and the settlement embodied herein and therein, on the date first above herein written.

IPP CLASSES

LOWEY DANNENBERG
BEMPORAD & SELINGER, P.C.

By: 

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Richard W. Cohen, Esq.
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ABBOTT LABORATORIES

MUNGER, TOLLES & OLSON LLP

By: 

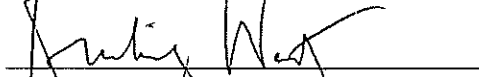
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*Counsel for Defendant
Abbott Laboratories*

IPP CLASSES (CONT.)

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& BRANDT, LLC

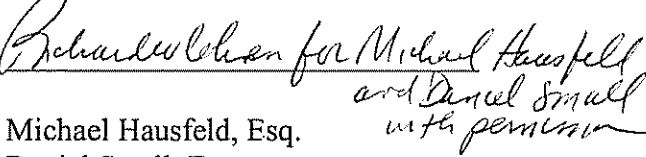
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COHEN MILSTEIN HAUSFELD
& TOLL

By:



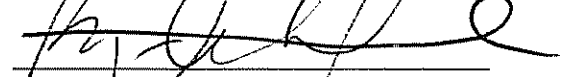
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Indirect Purchaser Plaintiffs'
Co-Lead Counsel

**GENEVA
PHARMACEUTICALS, INC.**

WHITE & CASE, LLP

By:



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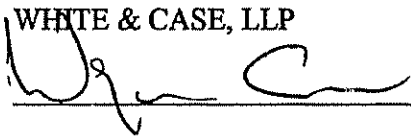
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*Counsel for Defendant
Abbott Laboratories*

**GENEVA
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WHITE & CASE, LLP

By:  _____

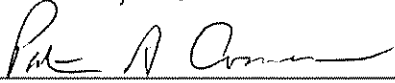
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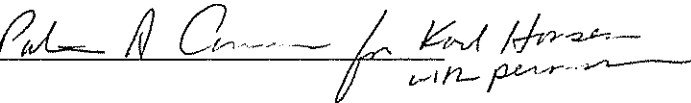
PLAINTIFF STATES

OFFICE OF THE ATTORNEY
GENERAL, FLORIDA

By: 

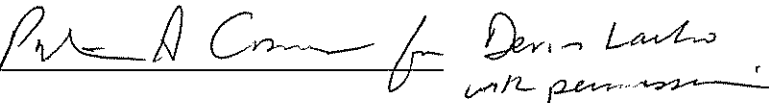
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