

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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NEW ENGLAND CARPENTERS HEALTH )  
BENEFITS FUND, PIRELLI ARMSTRONG )  
RETIREE MEDICAL BENEFITS TRUST; )  
TEAMSTERS HEALTH & WELFARE FUND )  
OF PHILADELPHIA AND VICINITY; )  
PHILADELPHIA FEDERATION OF )  
TEACHERS HEALTH AND WELFARE )  
FUND; DISTRICT COUNCIL 37, AFSCME - )  
HEALTH & SECURITY PLAN; JUNE )  
SWAN; BERNARD GORTER, SHELLY )  
CAMPBELL and CONSTANCE JORDAN )

C.A. No. 1:05-CV-11148-PBS

Plaintiffs, )

v. )

FIRST DATABANK, INC., a Missouri )  
corporation; and McKESSON )  
CORPORATION, a Delaware corporation, )

Defendants. )

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**AMENDED SETTLEMENT AGREEMENT AND RELEASE**

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This Amended Settlement Agreement and Release (“Agreement”) is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the Settlement Court, this Agreement is entered into between and among (1) the Class Representatives on behalf of themselves and the Private Payor Settlement Class as defined in paragraph 1 of this Agreement (the “Plaintiffs”) and (2) Defendant McKesson Corporation (“McKesson”), by and through their respective counsel.

WHEREAS, there is pending in the United States District Court for the District of Massachusetts an action entitled *New England Carpenters Health Benefits Fund et al. v. First DataBank, Inc., et al.*, Civil Action No. 1:05-CV-11148 (D. Mass.) (the “Class Action”) in which the Plaintiffs have alleged, *inter alia*, that Defendants, including McKesson, wrongfully increased the WAC to AWP markup factor applied to numerous prescription pharmaceuticals, thereby causing members of the proposed Private Payor Settlement Class, whose payments for pharmaceuticals are based on the published AWP, to make substantial excess payments for those pharmaceuticals;

WHEREAS, McKesson has denied and continues to deny each and all of the claims and contentions alleged in the Class Action, and has denied and continues to deny that it has committed any violation of law or engaged in any wrongful act alleged, or that could have been alleged, in the Class Action;

WHEREAS, Class Counsel have concluded, after discovery and investigation of the facts and after carefully considering the circumstances of the Class Action, including the claims asserted in the complaint filed in the Class Action and the possible legal and factual defenses thereto, that it would be in the best interests of the Plaintiffs to enter into this Agreement, which interests include the substantial prospective value to be derived by the settlement set forth herein

(the “Settlement”) and the interest in avoiding the uncertainties of litigation and to assure that the benefits reflected herein are obtained for the Plaintiffs; and, further, that Class Counsel consider the Settlement to be fair, reasonable and adequate and in the best interests of the Plaintiffs and of the proposed Private Payor Settlement Class;

WHEREAS, McKesson, through its counsel, after vigorous, arms-length negotiations, has agreed, subject to the terms of this Agreement, to pay certain sums in settlement for the benefit of the Private Payor Settlement Class;

WHEREAS, McKesson, despite its belief that it has valid and complete defenses to the claims asserted against it in the Class Action, has concluded that further conduct of the Class Action would be protracted and expensive, and that it is desirable that the Class Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement, in order to limit further expense, inconvenience, and distraction, and to dispose of the burden of protracted litigation, taking into account, among other things, the uncertainty and risks inherent in any litigation, especially in complex cases such as this;

NOW, THEREFORE, it is agreed by and between the undersigned on behalf of McKesson and the Plaintiffs that any and all claims made or that could have been made against McKesson by Plaintiffs in the Class Action be settled, compromised and dismissed on the merits with prejudice and without costs as to Plaintiffs or McKesson, subject to the approval of the Settlement Court, on the following terms and conditions:

**1. Private Payor Settlement Class Definition.**

(a) Subject to the Settlement Court’s approval, and the conditions of Paragraph 17, the undersigned agree and consent to the certification pursuant to Fed. R. Civ. P. 23(b)(3) of the following settlement class in the Class Action, hereinafter referred to as the “Cash Payor Settlement Class”:

“Cash Payor Settlement Class” means all uninsured or underinsured individual persons who, during the period from August 1, 2001, through the date of the Settlement Court’s preliminary approval of this Agreement, paid or incurred a debt enforceable at the time of judgment in this case for any of the drugs listed in Appendix A to Plaintiffs’ Third Amended Complaint, Docket Entry #360 (“Marked Up Drugs”).

(b) This Agreement also applies to the Co-Pay Consumer and TPP classes previously certified in the Court’s March 19, 2008 Order. The March 19, 2008 Order, in relevant part, states as follows (with the correction of the end date of the class period from May 15, 2005 to March 15, 2005 to conform to the pleadings and plaintiffs’ motion for class certification):

[T]he Court certifies the following class for a period beginning August 1, 2001 and ending on March 15, 2005 for all purposes [hereinafter the “Class Period”]:

Class 1, Consumer Purchasers: All individual persons who paid, or incurred a debt enforceable at the time of judgment in this case to pay, a percentage co-payment for the Marked Up Drugs during the Class Period based on AWP, pursuant to a plan, which in turn reimbursed the cost of brand-name pharmaceutical drugs based on AWP.

The Court also certifies the following class for a period beginning August 1, 2001 and ending on December 31, 2003 for the purposes of damages, and for a period beginning August 1, 2001 and ending March 15, 2005 for purposes of liability and equitable relief:

Class 2, Third-Party Payors: All third-party payors (1) the pharmaceutical payments of which were based on AWP during the Class Period; (2) that made reimbursements for drugs based on an AWP that was marked up from 20 to 25% during the term of its contract with its PBM or with another entity involved in drug reimbursement; and (3) that used First DataBank or Medispan for determining the AWP of the Marked Up Drugs.

As used herein, the terms “Co-Pay Consumer Settlement Class” and “TPP Settlement Class” refer to Class 1 and Class 2, respectively, and are comprised of the same membership.

(c) The Cash Payor Settlement Class, the Co-Pay Consumer Settlement Class, and the TPP Settlement Class are referred to collectively as the “Private Payor Settlement Class.”

(d) Excluded from the Private Payor Settlement Class are Defendants, their 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.

(e) Those entities that own or operate businesses referred to commonly as pharmacy benefit managers (“PBMs”) and who as part of their business operation contract with ultimate Third Party Payors of a prescription pharmaceutical benefit to perform certain services in the administration and management of that prescription pharmaceutical benefit for those ultimate Third Party Payors are not class members under the Private Payor Settlement Class definition of this Agreement. The class includes the ultimate Third Party Payors providing the prescription pharmaceutical benefit and not the PBMs with which those Third Party Payors contract to administer or manage that prescription benefit on behalf of the class members, unless such PBMs are the fiduciary of the Third Party Payors or by contract assumed, in whole or in part, the insurance risk of that prescription pharmaceutical benefit during the period from August 1, 2001, through March 15, 2005.

## **2. General Definitions.**

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

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

B. “Cash Consumer Class Member” means any person falling within the definition of the Cash Payor Settlement Class set forth in Paragraph 1 who is not a Settlement Class Opt-

Out. “Cash Consumer Class Member” includes living persons as well as the executors, heirs, administrators, trustees, or other authorized representatives of deceased persons.

C. “Claims Administrator” means Complete Claims Solutions, Inc., subject to approval of the Settlement Court.

D. “Class Escrow Account” means the account established pursuant to Paragraph 9(A) and Exhibit G of this Agreement.

E. “Class Member” means any person or entity falling within the definition of the Private Payor Settlement Class who is not a Settlement Class Opt-Out.

F. “Class Representatives” means the named plaintiffs who have asserted claims on behalf of themselves and a putative class in the Class Action.

G. “Class Counsel” means the law firms of Hagens Berman Sobol Shapiro LLP, Spector Roseman Kodroff & Willis, Wexler Wallace LLP, Edelson & Associates, LLC, Lowey Dannenberg Cohen & Hart, and Rawlings & Associates, P.C.

H. “Consumer Class Member” means Cash Consumer Class Members and Co-Pay Consumer Class Members.

I. “Co-Pay Consumer Class Member” means any person falling within the definition of the Co-Pay Consumer Settlement Class who is not a Settlement Class Opt-Out. “Co-pay Consumer Class Member” includes living persons as well as the executors, heirs, administrators, trustees, or other authorized representatives of deceased persons.

J. “Court” or “Settlement Court” means the Honorable Patti B. Saris of the United States District Court for the District of Massachusetts, or, if Judge Saris is not available, another judge from the United States District Court for the District of Massachusetts who will be

designated by Judge Saris or who is duly appointed, or any other court before which McKesson's Counsel and Class Counsel agree to settle the claims of the Private Payor Settlement Class.

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

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

M. "Final" means the latest of:

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

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

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

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

O. "McKesson's Counsel" means Morrison & Foerster LLP and Choate, Hall & Stewart LLP.

P. "Net Settlement Fund" means the Settlement Fund less: notice and administration costs and expenses as described in Paragraphs 5(B) and 9(C)(7), Taxes and Tax Expenses as

described in Paragraph 9(D), and the amount of any Fee and Expense Award to Plaintiffs' Counsel.

Q. "Pharmaceutical Purchase" means payment or reimbursement, direct or indirect, for all or part of the cost of a pharmaceutical, including, but not limited to, those pharmaceuticals listed as part of Plaintiffs' Third Amended Complaint in the Class Action, prescribed, provided or administered in the United States; including, but not limited to, the AWP-based payment or partial payment for or reimbursement of the price or part of the price of a pharmaceutical to any doctor, medical practice, hospital, pharmacy or any health care provider, or the payment of any AWP-based co-insurance, deductible or other amount that, in whole or in part, is based on or affected by the AWP or Blue Book AWP ("BBAWP") for such pharmaceuticals pursuant to an insurance agreement or other health care plan. As stated, the term "Pharmaceutical Purchase" is limited to transactions where the cost, payment, reimbursement amount or price of the pharmaceutical was based, in whole or in part, on the AWP, the BBAWP, or other data published or disseminated by First Databank, Medi-Span, or any other publisher electronically or otherwise.

R. "Plaintiffs" means the Class Representatives together with all putative members of the Private Payor Settlement Class.

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

T. "Proof of Claim" means the form submitted to the Claims Administrator by a TPP Class Member claiming to be an Authorized Claimant and attached hereto as Exhibit K.

U. "Released Claims" means any and all claims, demands, actions, suits, causes of action, damages whenever incurred whether compensatory or exemplary, liabilities of any nature

or under any theory whatsoever, including Unknown Claims, as well as all costs, expenses, penalties and attorneys' fees, in law or equity, that any Releaser who has not timely excluded himself, herself, or itself from the Private Payor Settlement Class, whether or not he, she, or it objects to the settlement, ever had or now has, directly, representatively, derivatively or in any capacity, arising out of any conduct, events or transactions relating to the use of, payment or reimbursement in any way based upon, collection, calculation, formulas, mark-up, determination, dissemination, publication of, and representations concerning, the AWP or BBAWP or similar data published or disseminated by First DataBank, Medi-Span, or any other publisher, electronically or otherwise, for any prescription pharmaceuticals, including but not limited to, the allegations contained in or which could have been contained in the Class Action or the related case entitled *New England Carpenters Health Benefits Fund et al. v. McKesson, Inc.*, Civil Action No. 1:07-CV-12277 (D. Mass.). Released Claims do not include claims against any manufacturer regarding pricing or marketing by the manufacturer or regarding AWP manipulation by the manufacturer.

V. "Releasees" or "Released Parties" means (i) McKesson, (ii) its respective present and former, direct and indirect, parents, subsidiaries, divisions, partners and affiliates, (iii) the respective present and former stockholders, officers, directors, employees, managers, agents, attorneys, partners, and any of the legal representatives of the foregoing, (iv) any future operating entities created and controlled by McKesson, and (v) any predecessors, successors, heirs, executors, trustees, administrators and assigns of each of the foregoing, all in their capacities as such. As used in this Paragraph, "affiliates" means entities controlling, controlled by or under common control with a Releasee.

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

X. “Settlement Allocation Counsel” means:

Co-pay Consumer  
Settlement Class

Jeffrey S. Goldenberg  
Murdock, Goldenberg, Schneider & Groh, P.A.  
35 East Seventh Street, Suite 600  
Cincinnati, OH 45202

Cash Payor Settlement  
Class

Stephen Rosenfeld  
Rosenfeld & Rafik  
44 School Street, Suite 1000  
Boston, MA 02108

TPP Settlement Class      Richard W. Cohen  
Lowey Dannenberg Cohen & Hart, P.C.  
White Plains Plaza  
One North Broadway  
White Plains, NY 10601

and

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

Y.      “Settlement Class Opt-Out” means: (1) any person or entity falling within the definition of the TPP Settlement Class or the Co-Pay Consumer Settlement Class, 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 dated June 4, July 9, and July 21, 2008, and who does not timely and validly submit a request to revoke the previous request for exclusion in accordance with the procedures set forth in Paragraph 8(C)(2); and (2) any individual person falling within the definition of the Cash Payor Settlement Class, as the Court shall determine, who timely and validly submits a request for exclusion in accordance with Paragraph VI.D of the Preliminary Approval Order. A Settlement Class Opt-Out that is a TPP is referred to as a “TPP Opt-Out.” A Settlement Class Opt-Out that is a Co-Pay Consumer is referred to as a “Co-Pay Consumer Opt-Out.” A Settlement Class Opt-Out that is a Cash Payor is referred to as a “Cash Payor Opt-Out.”

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 of Pendency and Proposed Settlement of Class Action which are to be sent to the Private Payor Settlement Class or published substantially in the forms attached hereto as Exhibits A.1, A.2, B.1, B.2, C.1, and C.2.

BB. “States of the United States” refers to the fifty States of the United States, the District of Columbia, and the territories, possessions, and commonwealths of the United States.

CC. “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 Defendants, their 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.

DD. “TPP Class Member” means any person or entity falling within the definition of the Private Payor Settlement Class, excluding any Settlement Class Opt-Out, who also falls within the definition of Third Party Payor.

EE. “Unknown Claims” means any Released Claims that a Releaser does not know or suspect to exist in its favor at the time of its release of the Released Parties, which, if known by it, might have affected its settlement with and release of the Released Parties, or might have affected its decision not to object to this Settlement. With respect to any and all Released Claims

against the Released Parties, the Releaser agrees, upon the Effective Date, to expressly waive and relinquish, and by operation of the Judgment shall have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, 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 by any law or state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releaser may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the Released Claims, but each Releaser hereby expressly waives and fully, finally, and forever settles and releases, upon the Effective Date of this Agreement, any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claims, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

**3. Reasonable Best Efforts to Effectuate This Settlement.**

Consistent with the terms of this Agreement and notwithstanding the rights of the parties to 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 reasonable steps and efforts that may be necessary or appropriate, by order of the Settlement Court or otherwise, to carry out the terms of this Agreement.

**4. Motion for Preliminary Approval.**

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

**5. Notice to Class.**

The class notice program shall be in accordance with Fed. R. Civ. P. 23 and subject to the approval of the Settlement Court.

(A) Upon preliminary approval of this Agreement by the Settlement Court, and the making of advance payment(s) by McKesson pursuant to Paragraph 9(A)(1), Class Counsel, in accordance with Fed. R. Civ. P. 23 and the Preliminary Approval Order, shall provide all members of the Private Payor Settlement Class who can be identified by reasonable means with the best notice practicable under the circumstances, in substantially the forms of the Settlement Notices attached hereto as Exhibits A.1, A.2, B.1, B.2, C.1 and C.2, or as otherwise ordered by the Court. Such notice shall include publication on a web site established by Class Counsel or the Claims Administrator and additional publication and other notice as set forth in the Notice Program. (To be attached as Exhibit E in filing to be made prior to December 11, 2008.)

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

**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 H.

**7. Effective Date of Settlement Agreement.**

The Effective Date of this Agreement shall be 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 F;
- (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 H attached hereto; and
- (5) the Judgment has become Final.

**8. Termination.**

(A) If all of the conditions specified in Paragraph 7 are not met, then this Agreement shall be canceled and terminated.

(B) McKesson's Counsel and Class Counsel shall each have the right to terminate this Agreement by providing written notice of their election to do so to all other parties hereto within thirty (30) calendar days after: (a) the Settlement Court's refusal to approve this Agreement or any material part of it; (b) the Settlement Court's declining to enter the Judgment in any material

respect, other than with respect to the Plan of Allocation or the award of attorneys' fees and expenses to Plaintiffs' Counsel; or (c) the date upon which the Judgment is modified or reversed in any material respect – other than with respect to the Plan of Allocation or the award of attorneys' fees and expenses to Plaintiffs' Counsel – by the Court of Appeals or the Supreme Court. Neither a modification by the Settlement Court nor reversal on appeal of the Plan of Allocation or of an award by the Court of any amount of attorneys' fees, expenses and interest to any of Plaintiffs' Counsel shall constitute grounds for cancellation and termination of this Agreement.

(C) TPP Opt-Outs and Termination Provision

(1) In the event that there are TPP Opt-Outs in excess of the amount specified in the Supplemental Agreement Regarding TPP Opt-Outs concurrently filed under seal with the Settlement Court, McKesson shall be entitled to terminate this Agreement. The Claims Administrator shall deliver to McKesson's Counsel and Class Counsel a list of all TPP Opt-Outs and copies of all documentation supplied by TPP Opt-Outs no later than December 1, 2008. To the extent that any TPP Opt-Out timely and validly revokes its request for exclusion from the classes certified by Order of the Court dated March 19, 2008, the Claims Administrator shall deliver to McKesson's Counsel and Class Counsel copies of all such revocations by TPPs no later than March 1, 2008.

(2) For purposes of the implementation of this Agreement and the Supplemental Agreement, including this Paragraph 8(C), no later than December 22, 2008, or ten (10) days after entry by the Settlement Court of the Preliminary Approval Order, whichever is later, the Claims Administrator shall send to TPP-Outs documents substantially in the form of the TPP Information Request and TPP Opt-In Notice attached as Exhibits C.3 and C.4. The TPP

Information Request shall request that the TPP Opt-Out specify, in writing and under penalty of perjury under the laws of the United States, its name, federal tax ID, and the number of lives for which the TPP provided prescription drug coverage during 2007 (or the last full year the TPP offered prescription drug coverage). The TPP Opt-In Notice shall advise each TPP Opt-Out of its right to participate in the TPP Settlement Class and to revoke its request for exclusion from the class certified by the Settlement Court's March 19, 2008 Order if it chooses to do so. The Claims Administrator shall provide copies of all TPP Information Request and Opt-In Notices to McKesson's Counsel and Class Counsel by mail or email at the same time they are delivered to TPP Opt-Outs. Copies of all responses to TPP Information Request forms shall be delivered to McKesson's Counsel within five (5) business days of receipt by Class Counsel or the Claims Administrator but in no event later than fifty (50) calendar days before the Final Settlement Approval Hearing. McKesson, in its sole discretion, can waive the requirements of this Paragraph 8(C)(2) as to any or all TPP Opt-Outs.

(3) If any TPP Opt-Out does not supply all of the information specified by the TPP Information Request within thirty (30) calendar days of mailing and does not revoke its request for exclusion from the TPP Class, the parties are authorized to seek the information specified in the TPP Information Request by subpoena and to enforce any such subpoena by all lawful means.

(4) McKesson may terminate this Agreement under this Paragraph 8(C) by serving written notice of termination on the Settlement Court and Class Counsel by hand delivery or first class mail, postmarked on or before thirty (30) calendar days before the Final Settlement Approval Hearing.

(D) Except as otherwise provided herein, in the event this Agreement is terminated pursuant to Paragraphs 8(A), 8(B), or 8(C) or fails to become effective for any reason, within five (5) business days after written notification, the parties to this Agreement shall be deemed to have reverted to their respective status immediately preceding the execution of this Agreement, and, except as otherwise expressly provided, the parties shall proceed in all respects as if this Agreement had not been executed and any related orders had not been entered, including any award of attorneys' fees, expenses, and interest thereupon, and any portion of the Settlement Fund previously paid by McKesson, together with any interest earned thereon, less any Taxes due with respect to such income, shall be returned to McKesson, with the costs of notice paid from the Settlement Fund being borne by McKesson. At the request of McKesson's Counsel, Class Counsel or their designees shall apply for any tax refund owed on the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, at the written direction of McKesson's Counsel.

(E) If the Effective Date does not occur, or in the event this Agreement is terminated or fails to become effective for any reason, this Agreement concerning the certification of the Private Payor Settlement Class as defined in Paragraph 1 shall be null and void, the rights and obligations of the parties shall be identical to those prior to the execution of this Agreement, and the status of the Class Action shall be as it was prior to the execution of this Agreement. Furthermore, the terms and provisions of the Agreement shall have no force and effect with respect to the parties, with the exception of this Paragraph and Paragraphs 9(D), 9(E), 12(E), 14, 16, 17, and 19-30. Any Judgment or order entered by the Settlement Court in accordance with the terms of this Agreement shall be vacated as *nunc pro tunc*.

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

(A) Payments into the Settlement Fund

In full and final settlement of the claims of the Private Payor Settlement Class, McKesson shall pay \$350 million into the Settlement Fund, which shall be held in the Class Escrow Account maintained by the Escrow Agent. The Class Escrow Account shall be established and administered pursuant to an Escrow Agreement substantially in the form attached as Exhibit G. McKesson shall make payments into the Settlement Fund according to the following schedule:

(1) Within ten (10) business days after the Preliminary Approval Order is entered by the Settlement Court substantially in the form annexed hereto as Exhibit F, McKesson shall advance \$5 million to the Class Escrow Account to cover the initial costs of the class notice program and related administrative expenses. Thereafter, once the costs of class notice and administration associated with printing, postage, and processing of claims are known, McKesson shall provide a second and final advance payment to the Class Escrow Account to cover those costs.

(2) Within sixty (60) days after the Preliminary Approval Order is entered by the Settlement Court substantially in the form annexed hereto as Exhibits F, McKesson shall pay into the Class Escrow Account an additional \$55 million minus any amounts advanced pursuant to Paragraph 9(A)(1).

(3) Within forty (40) days after entry of the Final Judgment, McKesson shall pay into the Class Escrow Account an additional \$295 million.

(4) McKesson's payment into the Class Escrow Account of the sums specified in Paragraphs 9(A)(1)-(3) shall completely fulfill its obligations under this Agreement to the Private Payor Settlement Class. Subject to Paragraph 9(E), interest earned on any funds once deposited in the Escrow Account shall be for the benefit of the Class or Class Counsel.

(B) Allocation to Class Members.

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

(C) Duties of the Escrow Agent.

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

(2) The Escrow Agent shall invest any funds deposited in the Class Escrow Account in short term instruments issued by or guaranteed by the full faith and credit of the United States of America or an agency thereof, and shall collect and reinvest all interest accrued thereon. The Escrow Agent shall reinvest the proceeds of these instruments as they mature in similar instruments at the then-current market rates. Neither McKesson nor McKesson's Counsel shall have any responsibility or liability for investment decisions. The Settlement Fund shall bear all risks related to its investment.

(3) The Escrow Agent shall not disburse the Settlement Fund except as provided for in this Agreement, or by an Order of the Settlement Court, or with the written agreement of McKesson's Counsel and Class Counsel. Such agreement shall be provided or objected to within five (5) business days of presentation.

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

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

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

(7) The Settlement Fund may be used by the Escrow Agent, without further approval from McKesson or the Settlement Court, to advance to the Claims Administrator the costs and expenses (not including Class Counsel's attorneys' fees) reasonably and actually incurred in connection with providing notice to the Private Payor Settlement Class, locating Class Members, assisting with the filing of claims, administering and distributing the Settlement Fund to Class Members, processing Proof of Claim forms and paying escrow fees and costs, if any, the actual costs of publication, printing and mailing of the Settlement Notice and summary notice, and paying the reasonable administrative expenses incurred and reasonable fees charged by the Claims Administrator in connection with providing the Settlement Notice and processing the submitted claims. The Settlement Fund may also be invested and earn interest as provided for in Paragraph 9(C)(2) of this Agreement.

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

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

(D) Taxes.

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

(2) For the purposes of § 468B of the Internal Revenue Code of 1986, and the regulations promulgated thereunder, including Treas. Reg. § 1.468B, the "administrator" shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the election described in Paragraph 9(D)(1)) shall be consistent with this Paragraph 9(D) and in all

events shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 9(D)(3) below.

(3) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund including any taxes or tax detriments that may be imposed on McKesson with respect to any income earned by the Settlement Fund for any period for which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (“Taxes”), and (ii) expenses and costs incurred in connection with the operation and implementation of this Paragraph 9(D) (including, without limitation, expenses of tax attorneys or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Paragraph 9(D)) (“Tax Expenses”), shall be paid out of the Settlement Fund; in all events McKesson shall have no liability or responsibility for the Taxes, the Tax Expenses, or the filing of any tax returns or other documents with the Internal Revenue Service or any state or local taxing authority. The Escrow Agent shall indemnify and hold McKesson harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Settlement Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)-(2)); McKesson is not responsible and shall have no liability therefore, or for any reporting requirements that may relate thereto, except that McKesson’s

Counsel agrees to provide promptly to the Escrow Agent the statement described in Treasury Regulation § 1.468B-3(e). The parties hereto agree to cooperate with each other and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Paragraph 9(D).

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

(E) Effect of Termination.

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

**10. Distribution of the Settlement Fund.**

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

(A) Prior to the Effective Date of this Agreement:

(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 McKesson’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 McKesson'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 the Effective Date of this Agreement, 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;

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

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

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

(5) The Settlement Fund, net of: (a) payment of attorneys' fees and expenses pursuant to Paragraphs 10(A)(3), 10(B)(4), and 12; (b) payment of other fees, costs, expenses and awards provided for in Paragraphs 9(C)-(D), 10(A)(1)-(2), and 10(B)(1)-(3); and (c) amounts that are necessary for the payment of taxes or estimated taxes and fees and expenses of the Escrow Agent, as directed by Class Counsel, shall be allocated among TPP Class Members and Consumer Class Members according to the provisions set forth in the Plan of Allocation.

**11. Claims Administration.**

(A) The Claims Administrator shall be Complete Claim Solutions, Inc., subject to Court approval. The Claims Administrator may appoint as many claims officers, experts, and/or advisors as are necessary to carry out the duties of the Claims Administrator expeditiously. The Claims Administrator procedures shall be subject to Settlement Court approval and under the continuing jurisdiction of the Settlement Court. The Claims Administrator shall be responsible for disseminating information to Private Payor Settlement Class Members concerning settlement procedures, among other ways, by establishing a toll-free "hotline." In addition, the Claims Administrator shall assist the Settlement Court in processing and tabulating opt-out requests, shall receive all opt-out forms and documentation, shall receive, process, classify, and pay claims as provided in this Agreement and any applicable orders of the Settlement Court, and shall operate under the continuing supervision of the Settlement Court.

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

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

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

(E) McKesson shall have no role in or responsibility for the review or evaluation of Proof of Claim forms.

(F) It is not a condition of this Agreement that the Plan of Allocation be approved.

(G) Each Authorized Claimant shall be allocated a share of the Net Settlement Fund pursuant to the procedures set forth in the Plan of Allocation. McKesson shall have no involvement in or liability for reviewing or challenging claims.

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

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

(J) For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an “Authorized Claimant,” the following conditions shall apply:

(1) A TPP Class Member shall be required to submit a Proof of Claim form (in the preliminary form attached as Exhibit K hereto), supported by such evidence as is designated therein, including proof of the claimant’s loss, or such other or proof as Class Counsel, in their discretion, may deem acceptable;

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

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

(4) A Proof of Claim form that does not meet the submission requirements may be rejected. Prior to rejection of a Proof of Claim form, the Claims Administrator shall communicate with the claimant in order to remedy the curable deficiencies in the Proof of Claim

form submitted. The Claims Administrator, under supervision of Class Counsel, shall notify, in a timely fashion and in writing, all claimants whose Proof of Claim forms they propose to reject in whole or in part, setting forth the reasons therefore, and shall indicate in such notice that the claimant whose claim is to be rejected has the right to a review by the Settlement Court if the claimant so desires and complies with the requirements of Paragraph 11(J)(5) below; and

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

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

(L) The Claims Administrator shall deliver to McKesson's Counsel and Class Counsel a list of all Cash Payor Settlement Class Opt-Outs no later than 14 calendar days after the deadline set forth in the Preliminary Approval Order for Cash Payors to request exclusion from the Private Payor Settlement Class.

(M) Payment pursuant to this Agreement and the Plan of Allocation shall be deemed final and conclusive against all Class Members. All Class Members whose claims are not approved by the Settlement Court shall be barred from receiving distributions from the Settlement Fund, but otherwise shall be bound by all of the terms of this Agreement, including the terms of the Judgment and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Released Claims.

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

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

(P) It is understood and agreed by the parties that any proposed Plan of Allocation including, without limitation, any adjustment to an Authorized Claimant's claim as set forth therein, is not a part of this Agreement and is to be considered by the Settlement Court separately from the Settlement Court's consideration of the fairness, reasonableness, and adequacy of the

terms set forth in this Agreement, and any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel this Agreement or affect the finality of the Settlement Court's Judgment approving this Agreement, or any other orders entered pursuant to the Agreement.

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

**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, McKesson 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). The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment to Plaintiffs' Counsel from the Settlement Fund.

(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 McKesson 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 or the reversal or modification of the Fee and Expense Award, refund to the Settlement Fund any amounts paid to them pursuant to the Fee and Expense Award, including accrued interest on any such amount at the average rate earned on the Settlement Fund from the time of withdrawal until the date of refund. Each Class Counsel or firm receiving a fee shall be liable for such repayment in the amount it received. Each such Class Counsel's law firm, as a condition of receiving the Fee and Expense Award in advance of the Effective Date, on behalf of itself and each partner and/or shareholder of it, agrees that the law firm and its partners and/or

shareholders are subject to the jurisdiction of the Settlement Court for the purpose of enforcing this Paragraph 12(E). Without limitation, each such law firm and its partners and/or shareholders agree that the Settlement Court may, upon application of McKesson and notice to Class Counsel, summarily issue orders, including, but not limited to, judgments and attachment orders, and may make appropriate findings of or sanctions for contempt against any of them should such law firm, partner or shareholder fail timely to repay the Fee and Expense Award.

(F) Upon payment of any Fee and Expenses Award ordered by the Settlement Court, 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.

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

(A) Exclusive Remedy

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

(B) Dismissal of Claims

The parties agree that, upon the Settlement Court's approval of this Agreement, a judgment substantially in the form of the Order and Final Judgment attached as Exhibit H shall

be entered dismissing with prejudice the Class Action and releasing the Released Claims of the Releasers.

(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 McKesson 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. Modification of Trial Schedule.**

McKesson's Counsel and Class Counsel will ask that the Settlement Court hold a preliminary approval hearing on December 11, 2008. If the Settlement Court does not grant preliminary approval, McKesson's Counsel and Class Counsel will ask the Settlement Court to reset trial to March 2, 2009, and reset a pre-trial schedule commensurate with that presently in effect.

**15. Releases.**

Upon the Effective Date of this Agreement, 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.

**16. Preservation of Rights.**

The parties agree that this Agreement, whether or not the Effective Date occurs, 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 event that this Agreement is terminated, nothing in this Agreement or its negotiation may be used as evidence in any action between the parties hereto. The parties expressly reserve all their rights if this Agreement fails to become final and effective substantially in accordance with its terms.

**17. Class Certification For Settlement Purposes Only.**

McKesson stipulates to certification of the Cash Settlement Class as defined in Paragraph 1 for settlement purposes only, and for the sole purpose of creating the settlement class. McKesson's stipulation is contingent upon: the execution by the parties of this Agreement, the final approval of this Agreement by the Settlement Court, and this Agreement not being terminated pursuant to the terms set forth herein. If the Agreement is for any reason not finally approved, or is otherwise terminated, McKesson reserves the right to reassert all objections and defenses to certification of any previously certified class for trial purposes, and Plaintiffs will not

offer McKesson's stipulation to certification as part of this Agreement as any evidence in support of a motion to certify the Cash Class or in opposition to any attempt to decertify the TPP or Co-Pay Classes.

**18. Enforcement of Settlement.**

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

**19. Binding Effect.**

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

**20. Authorization to Enter Class Agreement.**

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

**21. 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.

**22. 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.

**23. 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.

**24. Execution in Counterparts.**

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

**25. Integrated Agreement.**

This Agreement, including the exhibits hereto, together with the Supplemental Agreement and any exhibits thereto, 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.

**26. 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.

**27. 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 McKesson:**

Lori A. Schechter  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105  
Tel. 415-268-6000  
Fax: 415-268-7522  
lschechter@mofo.com

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

**28. 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 McKesson and Class Counsel mutually elect to proceed as if such invalid, illegal or unenforceable provision had never been included in the Agreement.

**29. 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.

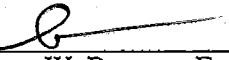
**30. Confidential Materials.**

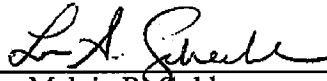
All documents or other materials that have been designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL HEALTH INFORMATION — SUBJECT TO PROTECTIVE ORDER” shall continue to be governed by all applicable provisions of the Orders of the Court dated April 24 and October 11, 2006, 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

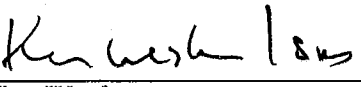
MCKESSON CORPORATION

By:   
Steve W. Berman, Esq.  
Hagens Berman Sobol Shapiro LLP

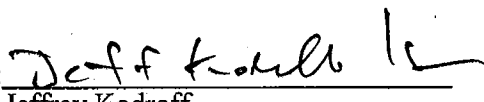
By:   
Melvin R. Goldman  
Lori A. Schechter  
James P. Bennett  
Paul Flum  
Morrison & Foerster LLP

Dated: 1.21.09


Dated: 1/21/09

By:   
Ken Wexler  
Wexler Wallace LLP

Dated: 1.21.09

By:   
Jeffrey Kodroff  
Spector Roseman Kodroff & Willis, PC

Dated: 1.21.09

By:   
Marc Edelson  
Edelson & Associates

Dated: 1.21.09