

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Southern Division

IN RE: TERAZOSIN HYDROCHLORIDE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

*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'Keefe v. Abbott Laboratories, S.D. Fla. C.A.
No. _____

O'Neal v. Abbott Laboratories, et al.,
No. 00-J-1504-S

Grund v. Abbott Laboratories, et al.,
No. _____

*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

*Blue Cross and Blue Shield of Michigan v. Abbott
Laboratories, et al.*, No. 5:01-CV-95

*Alabama Medicaid Agency v. Abbott Laboratories,
et al*, Civil Action No. 01-129-C (S.D. Ala.)

Hopper v. Abbott Laboratories, et al.,
E.D. N.C. 4:01-CV-160-H(3)

MASTER FILE NO. 99-MDL-1317
MDL DOCKET NO. 1317

Honorable. Patricia A. Seitz
Magistrate Judge Ted E. Bandstra

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into as of the 30th day of May, 2002 by and between defendant IVAX Pharmaceuticals, Inc. (“IVAX”) (formerly known as Zenith Goldline Pharmaceuticals, Inc.) and the Settlement Class (“Class”), as defined in this Settlement Agreement.

WHEREAS, Plaintiffs in the class actions listed above (collectively, the “Plaintiffs”), which were consolidated under Case No. 99-MDL-1317 Seitz/Bandstra or are pending consolidation (including the case of Linda Hopper v. Abbott Laboratories, Zenith Goldline Pharmaceuticals, Inc., and Geneva Pharmaceuticals Inc., E.D. N.C. 4:01-CV-160-H(3), originally filed in North Carolina state court) (the “Class Action”), have alleged, among other things, that IVAX’s agreement with defendant Abbott Laboratories (“Abbott”) dated March 31, 1998 was illegal and caused Plaintiffs and other members of the proposed Class to incur significant damages and/or unjustly enriched IVAX to the detriment of Plaintiffs and members of the proposed Class;

WHEREAS, IVAX denies each and every one of Plaintiffs’ allegations of unlawful conduct and has asserted a number of defenses to Plaintiffs’ claims;

WHEREAS, Plaintiffs and IVAX agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by IVAX or of the truth of any of the claims or allegations alleged in the Class Action or actions consolidated therein;

WHEREAS, arm’s-length settlement negotiations have taken place between counsel for Plaintiffs and IVAX, and this Settlement Agreement, which embodies all of the terms and conditions of the settlement between IVAX and the Plaintiffs, both individually and on behalf of the Class, is subject to the final approval of the Court;

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

WHEREAS, the Class Action will continue against the remaining defendants;

WHEREAS, IVAX has concluded, despite the belief of IVAX that it is not liable for the claims asserted and has good defenses thereto, that it will enter into this Settlement Agreement solely to avoid the further expense, inconvenience and burden of this protracted litigation, and the distraction and diversion of its personnel and resources, and thereby to put to rest this controversy with valued business customers, and to avoid the risks inherent in uncertain complex litigation; and

WHEREAS, IVAX and Plaintiffs have each had the full opportunity to examine the facts and circumstances surrounding their respective decisions to accept the terms of the Settlement Agreement and have not relied upon any representations (or the lack thereof) made by the other concerning the circumstances leading to this agreement.

NOW THEREFORE, it is agreed by and among the undersigned, on behalf of IVAX and the Plaintiffs, that the Class Action and all claims of the Plaintiffs be settled, compromised and

dismissed on the merits and with prejudice as to IVAX and, except as hereinafter provided, without costs as to Plaintiffs or IVAX, subject to the approval of the Court, on the following terms and conditions:

1. Class Certification. The undersigned shall seek certification of the following Settlement Class (the "Settlement Class") for settlement purposes: (a) All persons and entities who or which have at any time from March 31, 1998 to the present (the "Class Period") paid all or part of the purchase price of Hytrin or its AB-rated generic bioequivalents including all forms of terazosin hydrochloride other than for resale, in Alabama, 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, West Virginia or Wisconsin, or via mail order for residents of such states (hereinafter, the "19 State Sub-Class"); and (b) all persons and entities in the United States of America who or which have at any time from March 31, 1998 to the present (the "Class Period") paid all or part of the purchase price of Hytrin or its AB-rated generic bioequivalents including all forms of terazosin hydrochloride other than for resale (hereinafter, the "Nationwide Sub-Class"), but only to the extent of the Nationwide Sub-Class members' actual or potential claims of unjust enrichment against IVAX Pharmaceuticals, Inc. (formerly known as Zenith Goldline Pharmaceuticals, Inc.) relating to their payments for terazosin hydrochloride.

Excluded from each of the above Sub-Classes are Defendants; their officers and directors; their direct and indirect parent and subsidiary corporations and their officers and directors; government entities, other than Plaintiff Alabama Medicaid Agency; and direct purchasers of Hytrin and its generic bioequivalents from Defendants, to the extent of such direct purchases. It is further agreed that, as of a date fixed by the Court, the "Settlement Class" shall

consist of the Plaintiffs (including Plaintiff Alabama Medicaid Agency), and all other individuals defined above (“the Settling Class Members”) who do not validly and timely elect to be excluded from the Settlement Class.

2. Reasonable Best Efforts to Effectuate This Settlement. Counsel for the undersigned agree to recommend approval of this Settlement Agreement and the proposed Settlement Class by the Court and to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, by order of the Court or otherwise to carry out the terms of this Settlement Agreement.

3. Motion for Preliminary Approval. Promptly following the execution of this Settlement Agreement, Plaintiffs shall file with the Court a motion for preliminary approval of the settlement. In the event that the Court preliminarily approves the settlement, Plaintiffs shall, in accord with the order of preliminary approval, provide members of the Settlement Class with notice of the settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs’ counsel will propose notice (i) by direct mail to Class members who are third party payers; and (ii) by publication to Class members who are consumers.

4. Motion for Final Approval and Entry of Final Judgment. If the Court preliminarily approves this Settlement Agreement, and the method and form of notice substantially in the form attached as Exhibit A hereto, counsel for the Plaintiffs and counsel for IVAX shall jointly submit a motion for final approval of this Settlement Agreement by the Court, after appropriate notice to the Settlement Class, and shall seek entry of an order and final judgment:

- a. finally approving this Settlement Agreement and its terms as being a fair, reasonable and adequate settlement as to Plaintiffs and the Settlement Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms;
- b. directing that, as to IVAX, the Class Action be dismissed with prejudice and, except as provided for herein, without costs;
- c. reserving exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of this settlement;
- d. determining pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal shall be final and appealable; and
- e. directing that Class Counsel provide a copy to counsel of record for IVAX a record of putative class members who timely excluded themselves from the Settlement Class, and provide a copy to counsel of record for IVAX.

5. This Settlement Agreement shall become final upon the occurrence of all of the following:

- a. approval by the Court of the method and form of notice substantially in the form attached as Exhibit A hereto;
- b. IVAX has not availed itself of the right to withdraw from the Settlement Agreement pursuant to paragraphs 7 and 8 hereof;
- c. neither IVAX nor Plaintiff's lead counsel has availed itself of the right to withdraw from the Settlement Agreement pursuant to paragraph 19 hereof;
- d. it is approved by the Court as required by Rule 23(c) of the Federal Rules of Civil Procedure;
- e. entry, as provided for in paragraph 4 herein, is made of the final judgment of dismissal with prejudice as to IVAX against all Plaintiffs and members of the Settlement Class who have not timely excluded themselves from the Class Action; and
- f. the time for appeal from the Court's approval of this Settlement Agreement as described in ¶ 5(d) hereof and entry of a final judgment as described in ¶ 5(e) hereof has expired or, if appealed, approval of this Settlement Agreement and the final judgment have been affirmed in their

entirety by the Court of last resort to which such appeal has been taken and such affirmation has become no longer subject to further appeal or review.

6. Settlement Consideration: Cash. Subject to the provisions hereof, and in full, complete and final settlement of the Class Action, within ten (10) days following the entry of Final Judgment pursuant to paragraph 5(e) of this Settlement Agreement, IVAX shall pay six hundred thousand dollars (\$600,000), plus simple interest at the rate of 1.73 % per annum from date of execution of this Agreement to date of Final Judgment, to an escrow account administered on behalf of the Settlement Class (the “Settlement Fund”). In order to finance the Settlement Fund’s notice and related administration cost obligations under paragraph 12 hereof, IVAX may deposit funds into the Settlement Fund prior to date of Final Judgment, if necessary.¹ IVAX shall also pay up to an additional \$100,000 for administration and notice expenses (as explained further in paragraph 11 herein), whether incurred prior to the Settlement Agreement

¹ Within ten (10) days following the execution of this Settlement Agreement, IVAX will deposit \$50,000 into the Notice Fund, as defined in paragraph 11 hereof, to pay for notice and related administration costs. IVAX will thereafter deposit up to an additional \$50,000 into the Notice Fund, and will deposit up to \$50,000 into the Settlement Fund, to finance up to one-half of the next \$100,000 in notice and related administration costs, as called for in paragraph 12 hereof; IVAX will deposit funds called for by this sentence and paragraph 12 into the Notice Fund and the Settlement Fund in equal amounts, depositing up to \$50,000 in each Fund. If notice and related administration costs exceed \$150,000, IVAX will deposit additional funds into the Settlement Fund in order to finance the Settlement Fund’s sole obligation to cover all notice and related administration costs in excess of \$150,000, as explained in paragraph 12 hereof. Any and all amounts IVAX deposits into the Settlement Fund prior to the date of Final Judgment will be subtracted from the \$600,000 payment to the Settlement Fund called for by paragraph 6 hereof, so that in no event will IVAX deposit \$100,000 into the Notice Fund and more than \$600,000 (without accounting for the interest called for in paragraph 6) into the Settlement Fund in total. In the event that the Settlement Agreement does not become final in accordance with paragraph 5 hereof and IVAX becomes entitled to return of the Settlement Fund pursuant to paragraph 9 hereof, IVAX’s right to reimbursement under paragraph 9 shall apply equally to funds deposited into the Settlement Fund before or after date of Final Judgment. Therefore, the full amount of funds deposited by IVAX into the Settlement Fund to finance the Settlement Fund’s notice and related administration cost financing obligations under paragraph 12 will be reimbursed to IVAX (unless the Settlement Agreement does not become final in accordance with the terms of paragraph 5 solely as a result of IVAX enforcing its right to rescind the Settlement Agreement pursuant to paragraph 8 hereof), with Plaintiffs’ Co-Lead Counsel jointly and severally liable for reimbursing IVAX the full amount due to IVAX, as called for in paragraph 9 hereof. IVAX shall not be entitled to return or reimbursement of funds deposited into the Notice Fund, as defined in paragraph 11 hereof.

becoming final pursuant to the provisions of paragraph 5(e) herein or thereafter. All other administration and notice expenses will be funded from the Settlement Fund. It is intended that the escrow account be treated as a “qualified settlement fund” for federal income tax purposes pursuant to Treas. Reg. §1.468B-1 and that any taxes due as a result of income earned by the Settlement Fund will be paid from the Settlement Fund. All interest earned by the Settlement Fund shall be for the benefit of the Settlement Class.

7. IVAX may, at its option, rescind this Agreement in its entirety if requests to be excluded from the Settlement Class exceed the threshold that has been specified in a separate agreement between counsel for IVAX and Plaintiffs dated May 24, 2002 (the “Supplemental Agreement”). IVAX may exercise this option within fifteen (15) business days after the final date set by the Court for members of the Settlement Class to exclude themselves from the terms of this Settlement Agreement has passed. Such termination option shall be exercised, if at all, within such ten-day period by written notice of its election to terminate served on Class Co-Lead Counsel by telecopier, and a copy filed with the Court. Plaintiffs’ lead counsel shall serve counsel of record for IVAX with a record of putative class members who timely excluded themselves from the Settlement Class, by telecopier (with overnight mailing to follow), within five (5) business days of the final date set by the Court for members of the of the Settlement Class to exclude themselves from the terms of this Settlement Agreement.

8. In addition to the other termination rights provided by this Agreement, IVAX may, at its option, rescind this Agreement in its entirety if any person and/or entity (other than purely direct purchasers) who claims to have paid all or part of the purchase price of Hytrin or its AB-rated generic bioequivalents (including all forms of terazosin hydrochloride), for the purpose of re-selling the product, to persons other than IVAX (including Zenith Pharmaceuticals, Inc.) or

the other defendants in the Class Action (Abbott and Geneva Pharmaceuticals, Inc.) filed suit before April 1, 2002 but serves suit after April 1, 2002 but before the entry of Final Judgment pursuant to paragraph 5 of this Agreement against any of the Released Parties (as defined in paragraph 15 herein) alleging claims which were or could have been brought in the Class Action as defined in paragraphs 14 and 15.

9. In the event that this Settlement Agreement does not become final in accordance with the terms of paragraph 5, all amounts paid by IVAX pursuant to this Agreement by way of settlement, including any and all income earned thereon in the Settlement Fund, shall be returned to IVAX², and any release or covenant not to sue pursuant to paragraphs 14 and 17 below shall be of no force or effect. In the event that any amounts are disbursed from the Settlement Fund, (for notice costs under paragraph 12 or otherwise) before the Settlement Agreement becomes final in accordance with the terms of paragraph 5 and IVAX becomes entitled to return of the Settlement Fund pursuant to this Agreement, Plaintiffs' Co-Lead Counsel will be jointly and severally liable for reimbursing IVAX up to the full amount that would have been present in the Settlement Fund in the absence of the disbursement (unless the Settlement Agreement does not become final in accordance with the terms of paragraph 5 solely as a result of IVAX enforcing its right to rescind the Settlement Agreement pursuant to paragraph 8 hereof).

10. Disbursements from Settlement Fund. Members of the Settlement Class who have not timely excluded themselves from the Class Action shall look solely to the Settlement Fund for settlement and satisfaction against IVAX of all claims that are released hereunder.

² IVAX shall not be entitled to reimbursement of any amounts deposited in the Notice Fund as defined in paragraph 11. IVAX shall be responsible for all notice costs, in the event the Settlement Agreement does not become final in accordance with the terms of paragraph 5 solely as a result of IVAX enforcing its right to rescind the Settlement Agreement pursuant to paragraph 8 hereof.

Except as provided by order of the Court, no Settlement Class member shall have any interest in the Settlement Fund or any portion thereof. IVAX shall have no liability with respect to disbursements from the Settlement Fund.

11. Members of the Settlement Class and their counsel will be reimbursed and indemnified solely out of the Settlement Fund or the Notice Fund (as described more fully in this paragraph) for all expenses including, but not limited to, the costs of notice of this settlement to Class members. IVAX shall not be liable for any costs, or fees or expenses of any Plaintiffs' respective attorneys, experts, advisors, agents and representatives, but all such costs, fees and expenses as approved by the Court shall be paid out of the Settlement Fund, except IVAX shall deposit within ten (10) days following the execution of this Settlement Agreement \$50,000 into an escrow account ("Notice Fund"), held and administered by an escrow agent to be selected by Plaintiffs' lead counsel, for notice and related administration costs. IVAX will thereafter deposit up to an additional \$50,000 into the Notice Fund for payment of notice and related administration costs, under the schedule called for by paragraph 12, within ten (10) days of request for such additional funds from Plaintiff's lead counsel. It is intended that the escrow account be treated as a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. Sec. 1.468B-1 and that any taxes due as a result of income earned by the Notice Fund will be paid from the Notice Fund.

12. Notice and related administration costs shall be paid as follows: the first \$50,000 in notice and related administration costs shall be paid solely from the Notice Fund; the next \$100,000 in notice and related administration costs shall be split evenly between the Notice Fund and the Settlement Fund; and any such costs in excess of \$150,000 shall be paid from the Settlement Fund.

13. If this Settlement Agreement becomes final pursuant to the provisions of paragraph 5 herein, Indirect Purchaser Plaintiffs will seek to use the Settlement Fund to pay expenses of the prosecution of this Action and the ongoing litigation. IVAX otherwise takes no position on the use or disbursements of the settlement proceeds.

14. Expenses and Costs. Indirect Purchaser Plaintiffs' Counsel intend to seek reimbursement of reasonable costs and expenses incurred in the prosecution of this action and the ability to use the funds in the Settlement Fund to pay for costs and expenses incurred with the ongoing prosecution of this action against non-settling defendants. IVAX takes no position with respect to any application by Indirect Purchaser Plaintiffs' Counsel for the expense payments set forth above.

15. Releases. Upon this Settlement Agreement becoming final in accord with paragraph 5 hereof, IVAX and its present and former parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, employees, agents and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (the "Released Parties") shall be released and forever discharged from liability for all claims that were or could have been brought by Plaintiffs and the 19 State Sub-Class in the Class Action arising out of their purchase of or payments for terazosin hydrochloride during the Class Period, and the Released Parties shall further be released and forever discharged from liability for all unjust enrichment claims that were or could have been brought by the Nationwide Sub-Class arising out of their purchase of or payments for terazosin hydrochloride during the Class Period, and the Released Parties shall further be released and forever discharged from liability by the Settlement Class for any claim of fraudulent inducement to enter into this Settlement Agreement (collectively, the "Released Claims"). Nothing in this Settlement Agreement is intended to

release any non-settling defendant or its subsidiaries, divisions or affiliates. Each member of the Settlement Class hereby covenants and agrees that it shall not, hereafter, seek to establish liability against any Released Party based, in whole or in part, upon any of the Released Claims.

16. This release shall not release any claims arising from alleged product liability, breach of contract, breach of warranty, or common law personal injury tort.

17. In addition to the provisions of paragraph 14 of this Agreement, the Class members hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights, and benefits relating to the claims assessed against IVAX in the Class Action which are conferred by § 1542 of the California Civil Code, which states:

Section 1542. Certain Claims Not Affected by General Release.
A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Class member 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 claims which are the subject matter of the provisions of paragraph 14 of this Agreement, but each Class member hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject matter of the provisions of paragraph 14 of this Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

18. The Released Parties shall be released and forever discharged from liability for all claims that were or could have been brought by Plaintiffs in Linda Hopper v. Abbott Laboratories, Zenith Goldline Pharmaceuticals, Inc., and Geneva Pharmaceuticals Inc., E.D. N.C. 4:01-CV-160-H(3), originally filed in North Carolina state court, arising out of purchases of or payments for terazosin hydrochloride during the Class Period, and the Released Parties shall further be released and forever discharged from liability by the Settlement Class for any claim of fraudulent inducement to enter into this Settlement Agreement. To the extent that the actions called for by paragraphs 3 and 4 of this Settlement Agreement do not discharge the Released Parties of all liability in the Hopper case, Plaintiffs' lead counsel will undertake all necessary measures to effectuate the release called for by this paragraph.

19. Reservation of Claims. The Class members intend by this Settlement Agreement to settle with and release only the Released Parties that such Class members have released pursuant to paragraph 14 hereof, and the parties do not intend this Settlement Agreement, any part hereof, or any other aspect of the proposed settlement or release, to release or otherwise affect in any way any rights a Class member has or may have against any other party or entity whatsoever other than the Released Parties pursuant to paragraph 14 hereof. In addition, the releases set forth in paragraphs 14 and 17 hereof shall not release any claims arising in the ordinary course of business between Class members and the Released Parties (*e.g.*, product liability, breach of contract, breach of warranty, common law personal injury tort, etc.).

20. Effect of Disapproval. If the Court declines to grant final approval for this Settlement Agreement, or if such approval is set aside on appeal, or if the Court does not enter the final judgment in substantially the form provided for in paragraph 4, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not

affirmed, or if the Court does not approve the method of notice as described in paragraph 3, or if the Court does not approve the form of notice substantially in the form attached as Exhibit A hereto, then this Settlement Agreement shall be canceled and terminated, and shall become null and void upon the election of IVAX or Plaintiffs' lead counsel. A modification or reversal on appeal of any amount of Plaintiffs' counsels' expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such final judgment.

21. In the event that the settlement does not become final in accordance with the terms of paragraph 5 hereof, then this Settlement Agreement shall be of no force or effect, except for payment of notice and administrative fees and costs from IVAX to the extent provided in paragraph 11, and IVAX shall be entitled to return of the amount in this Settlement Fund (or, in the event of a disbursement from the Settlement Fund, IVAX shall be entitled to return by plaintiffs' co-lead counsel of the amount that would have been in the Settlement Fund in the absence of disbursement). IVAX will not be entitled to recover any notice costs if the settlement does not become final in accordance with the terms of paragraph 5 solely as a result of IVAX enforcing its right to rescind the Settlement Agreement pursuant to paragraph 8 hereof. The parties hereto agree that this Settlement Agreement, whether or not it shall become final, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party, 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 IVAX or of the truth of any of the claims or allegations contained in the complaint or any other pleading, and evidence thereof

shall not be discoverable or used directly or indirectly, in any way, whether in the Class Action or in any other action or proceeding. The parties expressly reserve all of their rights if the settlement does not become final in accordance with the terms of this Settlement Agreement.

22. Settlement Consideration: Cooperation. Effective upon the execution of this Agreement by the undersigned counsel, IVAX agrees (at its own expense other than the cost of providing copies of documents), to cooperate fully with Plaintiffs and their counsel in connection with each of the following matters:

- a. IVAX shall retain, pending the final disposition of the Class Action, all documents or other evidence, if any, whether located in the United States or elsewhere, in its possession, custody or in the control of its current and former employees, attorneys or other agents relating to the subject matter of the Class Action or the discovery served by Plaintiffs;
- b. IVAX agrees that, to the extent it is able to do so without compromising its defense in any continuing litigation involving the same subject matter as the Class Action, it will provide reasonable cooperation and assistance to counsel for Plaintiffs in connection with the prosecution of Plaintiffs' remaining claims against non-settling defendants, including, but not limited to, the appearance of and truthful testimony by witnesses under its control at any trial in this matter; and
- c. IVAX shall also authenticate, if possible, any document Plaintiffs' counsel seeks to have so authenticated.

23. The parties hereto and their respective counsel acknowledge and agree that discovery in this action, and the cooperation envisioned by paragraph 21, may involve disclosure of trade secrets and other confidential and proprietary business, technical and financial information. The parties hereto and their respective counsel agree that materials produced pursuant to this Settlement Agreement shall be governed by the Protective Order dated December 16, 1999, by the Stipulation for Protective Order dated June 26, 2000, and by the Protective Order dated June 27, 2000.

24. Binding Effect. This Settlement Agreement shall be binding upon, and inure to

the benefit of, the successors and assigns of the parties hereto and to Released Parties. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Plaintiffs and their counsel shall be binding upon all the settling Class members.

25. Integrated Agreement. Except as set forth in paragraph 7 above, this Settlement Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties. This Settlement Agreement shall not be modified in any respect except by a writing executed by all the parties hereto.

26. 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.

27. No Party is the Drafter. None of the parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

28. Choice of Law. All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive law of the state of Florida without regard to its choice of law or conflict of laws principles.

29. Consent to Jurisdiction. IVAX and each member of the Settlement Class hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of Florida for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement.

30. No Admission. Nothing in this Settlement Agreement shall be construed as an admission in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority, present or future, by IVAX including, without limitation, that IVAX has engaged in any conduct or practices that violate any antitrust statute or other law.

31. Intended Beneficiaries. Nothing in this Settlement Agreement shall be deemed to confer any rights or benefits, or impose any obligations, on any person other than the members of the Class and the Released Parties.

32. Execution in Counterparts. This agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this agreement and filed with the Court.

IN WITNESS WHEREOF, the parties hereto through their fully authorized representatives have agreed to this Settlement Agreement on the date first herein above written.

By: _____
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