

EXHIBIT B

**TO 8/5/09 LETTER TO
THE HONORABLE DENNIS M. CAVANAUGH, U.S.D.J.
FROM JAMES E. CECCHI, ESQ.**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: VYTORIN/ZETIA MARKETING
SALES PRACTICES AND PRODUCTS
LIABILITY LITIGATION

MDL NO. 1938
Master Docket No. 08-285 (DMC)

THIS DOCUMENT RELATES TO:
ALL CASES

PROPOSED PLAN OF ALLOCATION

THIS PLAN OF ALLOCATION is made as of August 4, 2009, by and among:

(a) Class Plaintiffs: IBEW Local 164 Welfare Fund, Fire & Police Retiree Health Care Fund of San Antonio, Pipefitters Local 537 Trust Fund, Teamsters Healthcare, Midwestern Teamsters Health & Welfare Fund, UFCW & Employers Arizona Health & Welfare Trust, County of Suffolk, Louisiana Health Insurance Indemnity Company d/b/a/ Bluecross Blueshield of Louisiana, Helen Aronis, Kenneth Bever, Glenda Morgan, Roy Cosgrove, Charles Miller, Anna Iannuzzi, Robert Mastondrea, Robert Love, Donald Varino, Frances Weiland, Daniel Tollefson, (collectively "Class Plaintiffs") in the class actions pending in federal court in the District of New Jersey, MDL No. 1938 (collectively, the "Litigation"); and

(b) IRHP Group: a group of health insurance companies and health plans ("Independently Represented Health Plans," "IRHPs," or "IRHP Group"), represented by the undersigned IRHP Counsel;

WHEREAS, Class Plaintiffs and Defendants Merck & Co., Inc., Schering-Plough Corporation, and Merck/Schering-Plough Pharmaceuticals (collectively "Defendants") have

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entered into a settlement agreement of the Litigation (the "Class Settlement Agreement and Release") dated as of August 3, 2009;

WHEREAS, the Master Class is comprised of third-party payors ("TPPs") and individual consumers;

WHEREAS, Consumer SubClass Counsel and TPP SubClass Counsel appointed by Lead Class Counsel engaged in vigorous arm's-length negotiations to allocate the Total Settlement Amount between Consumers and TPPs;

WHEREAS, the IRHP Group and Defendants have entered into a settlement agreement (the "IRHP Settlement Agreement") dated as of August 3, 2009;

WHEREAS, the IRHP Group has represented that, in the aggregate, they provide or administer prescription drug and health benefits to at least seventy percent (70%) of the covered lives privately insured in the United States as of December 31, 2007;

WHEREAS, Class Plaintiffs, through Lead Class Counsel, TPP SubClass Counsel and the IRHP Group, through IRHP Group Counsel, after vigorous, arm's-length negotiations, have agreed to an initial payment to the IRHP Group (the "IRHP Settlement Amount");

WHEREAS, Class Plaintiffs and the IRHP Group intend TPP and IRHP claims to be paid on the same *pro rata* basis and intend to establish a reconciliation mechanism herein between settlement amounts allocated to the TPP Settlement Pool and the IRHPs, to be applied once all claims of TPPs and IRHPs are submitted, for that purpose;

WHEREAS, the parties to this Plan of Allocation agree to use their best efforts to obtain Court approval for the terms of this Plan of Allocation having agreed that the allocation set forth herein is fair and equitable, and that the fairness of the overall settlement to which this Plan of Allocation is made a part, requires the adoption of this proposed plan of allocation;

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NOW THEREFORE, it is agreed by the undersigned, on behalf of Class Plaintiffs and the Settlement Class, and the IRHP Group, that the Total Settlement Amount shall be allocated and distributed, subject to the Class Settlement Agreement and Release, the IRHP Settlement Agreement and Court approval, where required, as set forth herein:

1. General Definitions. As used in this Agreement, the following terms shall have the indicated meanings:

(a) "Authorized Consumer Claimant" means a Consumer SubClass Member who submits a Proof of Claim that is acceptable in whole or in part by the Claims Administrator or whose valid payment information is otherwise received by the Claims Administrator.

(b) "Authorized TPP Claimant" means a TPP SubClass Member who submits a Proof of Claim that is accepted in whole or in part by the Claims Administrator.

(c) "Claims Administrator" means Rust Consulting, Inc. (formerly known as Complete Claims Solutions, Inc.).

(d) "Claim Documentation" means the materials required for submission of a claim to the Claims Administrator pursuant to this Plan of Allocation., and as approved by the Court in its Preliminary Approval of the Settlement.

(e) "Class Member" means any natural person or entity falling within the definition of the Master Class who is not a Class Opt-Out.

(f) "Class Opt-Out" means any natural person or entity falling within the definition of either a Consumer SubClass Member or TPP SubClass Member who timely and validly submits a request for exclusion from the corresponding Settlement Class in accordance with the procedures set forth in the Settlement Notice.

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(g) "Class Settlement Fund" means the Total Settlement Amount minus the IRHP Group Initial Payment.

(h) "Consumer" means any person falling within the definition of the Master Class who is a natural person and not a TPP. "Consumer" includes living persons as well as the executors, heirs, administrators, trustees, or other authorized representatives of deceased persons.

(i) "Consumer SubClass Counsel" means Adam J. Levitt of the the law firm Wolf Haldenstein Adler Freeman & Herz LLC, and Stephen Neuwirth of the law firm Quinn Emanuel Urquhart Oliver & Hedges, LLP. For the purposes of this Plan of Allocation, Consumer SubClass Counsel may be interchangeably referred to as "Consumer Allocation Counsel."

(j) "Consumer Class Members" means Consumers who fall within the definition contained in the Class Settlement Agreement and Release, and excludes Class Opt-Outs.

(k) "Consumer Settlement Pool" means Twelve Million Four Hundred Fifty Thousand Dollars (\$12,450,000), which constitutes the portion of the Class Settlement Fund allocated to Consumer SubClass Members, which amount shall be segregated into an account as provided in Paragraph 2, plus all interest or other income that accrues thereon.

(l) "Court" or "Settlement Court" means the Honorable Dennis M. Cavanaugh of the United States District Court for the District of New Jersey, or if Judge Cavanaugh is not available, another judge from the United States District Court for the District of New Jersey who will be designated by Judge Cavanaugh or who is appointed, or any subsequent court before which the Defendants' Counsel and Lead Class Counsel agree to settle the claims of the Master Class.

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(m) "Defendants" means Merck & Co., Inc., Schering-Plough Corporation, and Merck/Schering-Plough Pharmaceuticals.

(n) "Effective Date" shall have the meaning ascribed to it in Article XV of the Class Settlement Agreement and Release.

(o) "Escrow Account" means the accounts established pursuant to the Class Settlement Agreement.

(p) "Lead Class Counsel" means Christopher A. Seeger of the law firm Seeger Weiss LLP and James E. Cecchi of the law firm Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein.

(q) "Merck" means Merck & Co., Inc., and includes its affiliates, officers, directors, employees, agents and any of their legal representatives, and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing.

(r) "Merck/Schering-Plough Pharmaceuticals" means a joint venture between Merck and Schering-Plough doing business as "Merck/Schering-Plough Pharmaceuticals" and the affiliates of the joint venture (including, but not limited to, MSP Singapore Company, LLC and MSP Distribution Services (C) LLC).

(s) "MSP" means Merck/Schering-Plough Pharmaceuticals, and includes its constituent entities and affiliates along with their officers, directors, employees, agents and any of their legal representatives, and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing.

(t) "Net Consumer Settlement Pool" means the balance of the Consumer Settlement Pool after deducting fees, expenses, incentive awards and costs.

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(u) "Net TPP Settlement Pool" means the TPP Settlement Pool after the payment of fees, expenses, costs, incentive awards, and the IRHP Group Reversion Amount, if any.

(v) "Schering" means Schering-Plough Corporation, and includes its affiliates, officers, directors, employees, agents and any of their legal representatives, and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing.

(w) "Settlement Class" means the Master Class as defined in the Class Settlement Agreement and Release.

(x) "Settlement Notice" means the Notice Program prepared by Kinsella Media, Inc., in conjunction with Rust Consulting, Inc. or as ordered by the Court in accordance with Article XII of the Class Settlement Agreement and Release.

(y) "SFPs" means self-funded healthcare plans and/or entities for which one or more IRHP Group Member provides or provided prescription drug or health benefit services through administrative services-only contracts or as a third-party administrator, to the extent the IRHP Group Member is claiming for such SFPs' purchases of VYTORIN and/or ZETIA (it being recognized that some SFPs are covered by more than one third-party administrator), and on whose behalf the IRHP Group Member warrants it is authorized to make a claim. Such SFPs will be identified in the Claim Documentation submitted by the IRHP.

(z) "IRHP Group" or "IRHPs" means the third-party payors represented by IRHP Counsel that have entered into the IRHP Settlement Agreement, SFPs for which one or more IRHP Group Members provides or provided prescription drug or health benefit services through administrative services-only contracts or as a third-party administrator and on whose behalf the IRHP Group Member warrants it is authorized to make a claim.

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(aa) "IRHP Group Counsel" means the law firms of Rawlings & Associates, PLLC; and Lowey Dannenberg Cohen & Hart P.C.

(bb) "IRHP Group Escrow" means Four Million Dollars (\$4,000,000.00) from the IRHP Group Initial Payment, to be held in escrow as described herein.

(cc) "IRHP Group Initial Payment" means the amount payable to the IRHP Group pursuant to the IRHP Agreement if the IRHP Group, in aggregate, provides or administers prescription drug and health benefits to at least seventy percent (70%) of the covered lives privately insured in the United States as of December 31, 2007.

(dd) "IRHP Group Recognized Claim Percentage" or "IRHPRCP" means the total amount of claims by all IRHP Group Members that are allowed by the Claims Administrator divided by the total allowed claims of (a) all Authorized TPP Claimants and (b) all members of the IRHP Group.

(ee) "IRHP Group Reversion Amount" means an amount calculated after all TPP claims have been processed and the total allowed claim amounts for all Authorized TPP Claimants and the IRHP Group have been determined by the Claims Administrator. The IRHP Group Reversion Amount is calculated differently depending on whether the IRHP Over/Underage is positive or negative. If the IRHP Over/Underage is positive, then the IRHP Group Reversion Amount means the amount determined by the following calculation: $\text{IRHP Over/Underage} \times \$29,050,000 \times (1 - \text{TPP Class Fees} / \$14,525,000)$. If the IRHP Over/Underage is negative, the IRHP Group Reversion Amount cannot be more than the value of the IRHP Group Escrow as of the date of payment of the IRHP Group Reversion Amount.

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(ff) "IRHP Over/Underage" means the IRHPRCP less Fifty Percent (50%).

For example, if the IRHPRCP is 75%, then the IRHP Over/Underage would be a positive 25%.

If the IRHPRCP is 25%, then the IRHP Over/Underage would be a negative 25%.

(gg) "Subject Drug" means VYTORIN and/or ZETIA.

(hh) "Third-Party Payor" or "TPP" means any entity falling within the definition of the TPP SubClass as contained in the Class Settlement Agreement and Release.

(ii) "Total Settlement Amount" means Forty One Million Five Hundred Thousand Dollars (\$41,500,000), which is paid by Defendants in full and final satisfaction of all Released Claims held by any Consumer SubClass Member, TPP SubClass Member or IRHP Group Member. The Total Settlement Amount is inclusive of any payments for reasonable attorneys' fees and costs of any kind, including all costs associated with Settlement Notice and claims and escrow administration.

(jj) "TPP SubClass Counsel" means Thomas M. Sobol of the law firm of Hagens Berman Sobol Shapiro LLP. For the purposes of this Plan of Allocation, TPP SubClass Counsel may be interchangeably referred to as "TPP Allocation Counsel."

(kk) "TPP Claimant List" means a list of the identities of all TPP SubClass Members that submit Claim Documentation prepared by the Claims Administrator.

(ll) "TPP SubClass Fees" means the portion of the fee award granted by the Settlement Court that is deducted from the TPP Settlement Pool.

(mm) "TPP SubClass Members" means TPPs falling within the definition of the TPP SubClass contained in the Settlement Agreement and Release, and excludes any Class Opt-Outs.

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(nn) "TPP List" means a list of the TPP SubClass Members who have the 100 largest aggregate claims approved by the Claims Administrator and the amount of such claims.

(oo) "TPP Settlement Pool" means the portion of the Class Settlement Fund allocated to TPP Class Members minus the IRHP Group Initial Payment, which amount shall be segregated as provided in Paragraph 2, plus all interest or other income that accrues thereon.

(pp) "Purchases" means payments or reimbursements for all or part of the cost of a Subject Drug prescribed and dispensed in the United States; including but not limited to, the payment or partial payment for or reimbursement of a Subject Drug to any pharmacy or other healthcare provider, or the payment of a co-insurance amount or co-pay amount for a Subject Drug pursuant to an insurance agreement, or other health care plan. Purchases do not include purchases of a Subject Drug for resale purposes.

(qq) "United States" means the United States of America including its states, commonwealths, territories and possessions.

2. Initial Allocation of the Settlement Proceeds. The Defendants have agreed to pay the Forty One Million, Five Hundred Thousand Dollars (\$41,500,000) to the Settlement Class and IRHPs, which will be allocated as follows:

(a) Consumer Settlement Pool: Twelve Million, Four Hundred and Fifty Thousand Dollars (\$12,450,000) will be segregated into an account for the Consumer Settlement Pool; and

(b) TPP Settlement Pool: Fourteen Million, Five Hundred and Twenty-Five Thousand Dollars (\$14,525,000) will be segregated into an account for the TPP Settlement Pool.

(c) IRHP Settlement Amount: Fourteen Million, Five Hundred and Twenty-Five Thousand Dollars (\$14,525,000) shall be paid to the IRHPs in accordance with the provisions of the IRHP Settlement Agreement as the IRHP Initial Payment.

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3. IRHP Reversion Escrow Account: Four Million Dollars (\$4,000,000) of the IRHP Settlement Amount shall be paid by IRHP Group Counsel into an escrow account (the "IRHP Group Escrow").

4. Co-Payor Information. The IRHP Group and TPP SubClass Members will use their reasonable best efforts to produce to the Claims Administrator HIPAA compliant information identifying insured Consumer co-payors and the amounts of their qualifying co-payments for Subject Drugs for purposes of effectuating notice to Consumer SubClass Members.

5. Disbursements Prior to Final Approval of the Class Settlement.

Prior to the Class Settlement becoming final, disbursements for the costs and expenses of Class notice and administration may be made from the Consumer Settlement Pool and the TPP Settlement Pool as provided in the Class Settlement Agreement and approved by the Court. Notice and class administration costs associated with notice to Consumer SubClass Members shall be paid from the Consumer Settlement Pool. Notice and claims administration costs associated with notice to TPP SubClass Members shall be paid from the TPP Settlement Pool. Attorneys' fees and litigation costs as shall be awarded by the Settlement Court shall be paid ratably by each of the Consumer Settlement Pool and the TPP Settlement Pool in accordance with the funds initially deposited into each Pool.

6. IRHP Group "True-Up" and Reversion Amount and Requirements.

a. The IRHP Group shall submit its Claim Documentation to the Claims Administrator, with a copy to Lead Class Counsel and the Defendants' Counsel, on or before the deadline for TPP Class Members to submit their proofs of claims to the Claims Administrator.

b. Lead Class Counsel shall submit a schedule of all TPP Opt-Outs to IRHP Group Counsel, with a copy to the Defendants' Counsel, no later than thirteen (13) days before

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the claims submission deadline. IRHP Group Members shall then submit to the Claims Administrator, with a copy to the Defendants' Counsel and Lead Class Counsel, any necessary amendments to their Claim Documentation to exclude claims made on behalf of any TPP Opt-Outs.

c. The Claims Administrator shall not authorize any claims made by IRHP Group Members on behalf of the Defendants, their respective present and former, direct and indirect, parents, subsidiaries, partners and affiliates, or on behalf of any government entity to the extent that such government entity is not a member of the Master Settlement Class pursuant to the Class Settlement Agreement and Release. The Claims Administrator also shall not allow duplication of claims by IRHP Group Members and/or TPP SubClass Members.

d. Representations and Warranties. As part of the IRHP Settlement Agreement, each IRHP shall warrant that any Claim Documentation, data, or other information it submits to the Claims Administrator will be true and accurate in good faith and to the best of its ability.

e. Effect of Failure of an IRHP Group Member to Submit Claim Documentation. To verify the accuracy of claim information and to prevent duplication of claims, the Claims Administrator may reasonably request additional information from IRHP Group Members as deemed appropriate by the Claims Administrator. The IRHP Settlement Agreement shall set forth that IRHP Group Members will provide additional information to the Claims Administrator as requested. The calculation of the IRHP Group Reversion Amount shall not include claims of any IRHP Group Member that fails to timely submit the above Claim Documentation or additional claims documentation reasonably requested by the Claims Administrator.

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f. Confidentiality. All Claim Documentation (including the identification of SFPs) or other information submitted by IRHP Group Members pursuant to this Paragraph shall be kept confidential and may be used or disclosed only for the purpose of effectuating this Plan of Allocation and the IRHP Settlement Agreement, including disclosure to the Claims Administrator, the Defendants, Lead Class Counsel, and the Court. Adequate steps shall be taken to protect against unlawful disclosure of confidential patient information, if any, that is included in such Claim Documentation, or other information.

g. IRHP Group "True Up" Reversion Amount Computation.

i. Notice of Proposed Computation. The Claims Administrator shall make available to IRHP Group Counsel a list of the identities of all TPP SubClass Members that submit Claim Documentation (the "TPP Claimant List"). The TPP Claimant List shall be deemed confidential and can be used only for the purposes of determining duplication of claims or whether any entity submitting Claim Documentation falls within the definition of TPP as set forth herein. The TPP Claimant List shall be generated by the Claims Administrator and transmitted to IRHP Group Counsel no later than the date for the final fairness hearing set by the Settlement Court. IRHP Group Counsel shall have the opportunity, within twenty-one (21) days of receipt of a TPP Claimant List, to identify in writing to Lead Class Counsel any TPP SubClass Member that IRHP Group Counsel believes has submitted a claim that is duplicative of a claim already asserted by another TPP SubClass Member or IRHP Group Member, or that falls outside the definition of TPP as set forth herein. At least thirty-five (35) days prior to any distribution of the Net TPP Settlement Pool to TPP SubClass Members, Lead Class Counsel shall provide IRHP Group Counsel with the proposed computation of the IRHP Group Reversion Amount payment, including a list reflecting the Claims Administrator's determination of the amount of each IRHP

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Group Member's allowed claims for purchases of Subject Drugs. Such computation will become binding upon the IRHP Group unless within ten (10) business days of receipt of computation, IRHP Group Counsel disputes the amount of the proposed IRHP Group Reversion Amount payment in writing to Class Settlement Counsel. In the event of such a dispute, IRHP Group Counsel may request and receive from Lead Class Counsel a list of the TPP SubClass Members who have the 100 largest aggregate claims approved by the Claims Administrator and the amount of such claims (the "TPP List"). The TPP List shall be held in confidence by IRHP Group Counsel, will be provided for attorneys' eyes only, and shall not be provided or shared with any other person, including any member of the IRHP Group or another TPP. IRHP Group Counsel shall be entitled to show the list to a single third-party consultant who is not employed by any TPP, and who agrees in writing to be bound by the same confidentiality as IRHP Group Counsel, solely for purposes of dispute resolution under this Paragraph. The proposed computation will then become binding upon the IRHP Group within ten (10) business days of receipt of the TPP List, unless IRHP Group Counsel further disputes the amount of the proposed IRHP Group Reversion Amount payment in writing to Lead Class Counsel. Other than as provided in this Plan of Allocation and the IRHP Settlement Agreement, the IRHP Group and IRHP Group Counsel shall not be entitled to any information collected or generated by the Claims Administrator or Lead Class Counsel, except to the extent permitted by the Court in a proceeding pursuant to the Dispute Procedure below.

ii. Dispute Procedure. Lead Class Counsel and the IRHP Group shall attempt to resolve any disputes raised pursuant to this Paragraph through good faith negotiations. If the dispute cannot be resolved informally, it shall be submitted to the Court for resolution.

h. IRHP Group "True Up" Reversion Amount Payment. On or before five (5)

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days after the Effective Date, or within five (5) days of any resolution of a dispute under Paragraph g above, or within five (5) days after all TPP claims have been processed and the total authorized claim amounts for all Authorized TPP Claimants and IRHP Group Members has been finally determined, whichever is later, the parties shall cause the payment of the IRHP Group Reversion Amount to be made as follows:

i. If the IRHP Group Reversion Amount is calculated by reference to a positive IRHP Over/Underage, Lead Class Counsel shall cause the Escrow Agent to pay from the TPP Settlement Pool, into an account designated by IRHP Group Counsel, an amount equal to the IRHP Group Reversion Amount. IRHP Group Counsel may release this payment along with the IRHP Group Escrow to IRHP Group Members according to a formula to be agreed upon by the IRHP Group; or

ii. If the IRHP Group Reversion Amount is calculated by reference to a negative IRHP Over/Underage, IRHP Group Counsel shall cause payment to be made from the IRHP Group Escrow to the TPP Settlement Pool in an amount equal to the IRHP Group Reversion Amount; provided, however, that such payment shall not exceed the total value of the IRHP Group Escrow as of the date of payment of the IRHP Group Reversion Amount.

7. Court Approval of Disbursements and Distributions. Approval by the Court shall be required prior to any disbursement or any distribution from the Class Settlement Fund, other than for any fees and expenses incurred to administer the Escrow Account, costs associated with Settlement Notice and claims administration, and taxes on the Class Settlement Fund.

8. Disbursements and Distributions from the Class Settlement Fund. The Class Settlement Fund shall be distributed as follows or as otherwise ordered by the Court:

(a) Prior to the Effective Date of the Class Settlement Agreement and Release:

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i. Any fees and expenses incurred in administering the Escrow Account shall be paid pursuant to the Escrow Agreement. The costs of Settlement Notice shall be paid by the Escrow Agent to the Claims Administrator at the direction of Lead Class Counsel, with notice of such payments provided to the Defendants. The cost of notice and administration for Consumer Class Members shall be paid out of the Consumer Settlement Pool; and the cost of notice and administration for TPP SubClass Members shall be paid ratably out of both the TPP Settlement Pool and the IRHP Group Escrow, in proportion with the amounts originally deposited in each. As an administrative convenience, rather than causing funds to be transferred from the IRHP Group Escrow for each payment of expenses associated with TPP notice and claims administration, the Escrow Agent shall keep account of such payments made out of the TPP Settlement Pool.

ii. Disbursements for the payment of any taxes (including any estimated taxes, interest or penalties) due as a result of income earned by the Consumer Settlement Pool and/or the TPP Settlement Pool shall be made promptly by the Escrow Agent pursuant to the Escrow Agreement, with notice of such disbursements provided to Lead Class Counsel and the Defendants. Net income and estimated taxes shall be calculated and paid separately for the Consumer Settlement Pool and the TPP Settlement Pool; and separate tax returns shall be filed for the Consumer Settlement Pool and the TPP Settlement Pool.

(b) After the Effective Date of the Class Settlement Agreement and Release, the Class Settlement Fund and the IRHP Escrow Account shall be distributed as follows:

(1) First, any remaining fees or expenses incurred in connection with the administration of the Escrow Account shall be paid pursuant to the Escrow Agreement, and to the extent, if any, that the reasonable fees and expenses incurred as part of Settlement Notice and

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claims administration 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 Lead Class Counsel. Such fees, expenses and costs shall be paid from the Consumer Settlement Pool and TPP Settlement Pool as provided in this Paragraph 8 (a)(1);

(2) Second, disbursements for the payment of any taxes (including any estimated taxes, interest or penalties) due as a result of income earned by the Consumer Settlement Pool and/or the TPP Settlement Pool shall be made promptly by the Escrow Agent pursuant to the Escrow Agreement with notice of such disbursements provided to the Lead Class Counsel. Net income and estimated taxes shall be calculated and paid separately for the Consumer Settlement Pool and the TPP Settlement Pool; and separate tax returns shall be filed for the Consumer Settlement Pool and the TPP Settlement Pool;

(3) Third, any attorneys' fees and litigation expenses awarded by the Settlement Court shall be paid to Lead Class Counsel for distribution and allocation, in Lead Class Counsel's sole discretion, to all plaintiffs' counsel who are included in the fee award by the Settlement Court. Defendants agree not to oppose any reasonable fee application made by Lead Class Counsel for the Litigation. Unless otherwise ordered by the Settlement Court, such attorneys' fees and expenses as are awarded by the Court shall be paid from the Consumer Settlement Pool and the TPP Settlement Pool and the IRHP Escrow Account in proportion to the total of the amounts deposited into these three accounts;

(4) Fourth, any incentive award determined by the Court for services rendered to the Settlement Class by the Class Plaintiffs shall be distributed to such persons or entities. Any incentive award for a TPP shall be paid from the TPP Settlement Pool and any incentive award to a Consumer shall be paid from the Consumer Settlement Pool.

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(5) Fifth, the Net Consumer Settlement Pool shall be payable to Authorized Consumer Claimants in accordance with a formula proposed by Lead Class Counsel (after consultation with and approval by Consumer Allocation Counsel) and as approved by the Court.

i. Payments from the Net Consumer Settlement Pool to Authorized Consumer Claimants shall be made as promptly as practicable after the Effective Date. If the total of all payments to Authorized Consumer Claimants would exceed the value of the Net Consumer Settlement Pool, then the payments to all Authorized Consumer Claimants shall be reduced pro rata.

ii. All unclaimed funds remaining in the Net Consumer Settlement Pool shall be distributed, with the permission of the Court, for the benefit of Consumer SubClass Members, either in a supplemental distribution to Consumer SubClass Members or other Court ordered distribution, after notice to all parties to the Litigation and to this Plan of Allocation, and an opportunity to be heard.

(6) Sixth, any IRHP Group Reversion Amount shall be paid from or to the TPP Settlement Pool as provided in Paragraph 5(h) above;

(7) Seventh, the Net TPP Settlement Pool shall be payable to Authorized TPP Claimants ratably according to each Authorized TPP Claimant's unpaid percentage of the total allowed claims of all Authorized TPP Claimants, or as otherwise directed by the Court.

9. Effect of Disapproval. In the event that the Settlement Court or a later appellate court declines to approve the Plan of Allocation substantially in its proposed form, then Consumer Allocation Counsel, TPP Allocation Counsel and IRHP Counsel shall have the right and the obligation to renegotiate the terms of the Plan of Allocation in a manner substantially as close to the original Plan of Allocation as possible. In the event that the Settlement Court or a

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later appellate court declines to approve the Plan of Allocation substantially in its proposed form, Lead Class Counsel, Consumer Allocation Counsel and TPP Allocation Counsel will support the IRHP Group if they determine it is necessary to join the Class for the purpose of renegotiating the terms of the Plan of Allocation in a manner substantially as close to the original Plan of Allocation as possible. Anything to the contrary notwithstanding, the Court's disapproval of the Plan of Allocation or the failure to reach agreement as to the Plan of Allocation shall not affect the rights of the parties to the separate IRHP Settlement Agreement.

10. Termination. In the event that the Class Settlement Agreement is terminated pursuant to Articles XVII or XXIV of the Class Settlement Agreement and Release, or for any other reason does not become final in accordance with the terms of the Class Settlement Agreement, then this Plan of Allocation shall be of no force or effect, except as that contingency is provided for in the Class Settlement Agreement, such as for payment of Class notice and administrative fees and costs from the Class Settlement Fund. To the extent that the IRHP Group has received the IRHP Group Initial Payment (including the IRHP Group Escrow), IRHP Group Counsel may, if they have not already, release the IRHP Group Escrow to IRHP Group Members according to a formula to be agreed upon by the IRHP Group, and the retention of those amounts received shall be governed according to the terms of the IRHP Agreement. Anything to the contrary notwithstanding, the termination of the Class Settlement Agreement shall not affect the rights of the parties to the separate IRHP Settlement Agreement.

11. Disposition of the IRHP Group Reversion Amount in the Event of Termination of the Class Agreement. If the Court declines to finally approve the Class Settlement Agreement, or if such approval is reversed, vacated, or otherwise materially modified on appeal, or if the Court does not enter the final judgment in substantially the form provided for the Class

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Settlement Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is reversed, vacated or materially modified (an "Adverse Appellate Decision"), and this Settlement is terminated upon the election of any of Defendants or Lead Class Counsel, then the IRHP Group Reversion Amount shall be distributed as follows:

- a) If the parties are able to negotiate amendments to the Class Settlement Agreement such that it is approved by the Court and becomes effective within thirty (30) months after entry of the Adverse Appellate Decision, then the IRHP Group shall be permitted to participate in the IRHP Group Reversion Amount on terms substantially similar to those provided in this Agreement.
- b) If the Adverse Appellate Decision is for reasons relating to allocation of the TPP Settlement Pool, then, as part of any attempted re-negotiation of the Class Settlement Agreement, any additional monies required to be allocated to one such group shall reduce the monies allocated to the remaining TPP groups *pro rata*. In the case of the IRHP Group, such monies re-allocated cannot exceed the value of the IRHP Group Escrow, including any interest or other income earned thereon. If the Class Settlement Agreement is so amended, finally approved by the Court, and becomes effective within thirty (30) months after entry of the Adverse Appellate Decision, then the IRHP Group shall be permitted to participate in the IRHP Group Reversion Amount (as adjusted) on terms substantially similar to those provided in this Agreement.

12. Preliminary Approval. This Plan of Allocation, which is material to both the Class Settlement Agreement and the IRHP Settlement Agreement, shall be submitted to the

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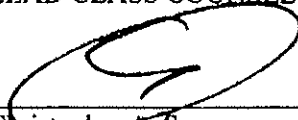
Court for preliminary approval as presumptively fair, reasonable and adequate under Fed. R. Civ. P. 23(e). In connection with preliminary approval, Lead Class Counsel will present a proposed formula for distribution of the Net Consumer Settlement Pool to Consumer Class Members, which will be described in the proposed notice provided to Consumer SubClass Members.

13. Execution in Counterparts. This Plan of Allocation 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 Plan of Allocation as of the date first herein above written.

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LEAD CLASS COUNSEL



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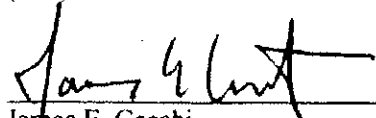
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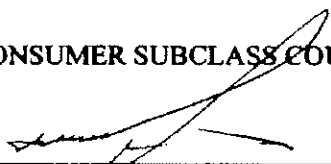
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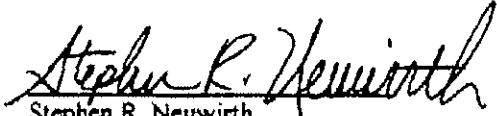
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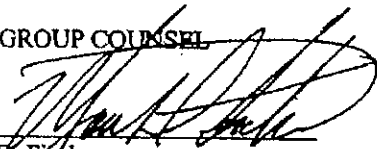
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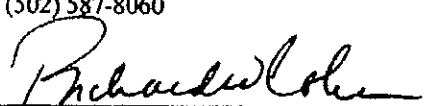
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