

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

BETWEEN :

CANADIAN COMMERCIAL WORKERS INDUSTRY PENSION PLAN

Plaintiff

- and -

BIOVAIL CORPORATION, EUGENE N. MELNYK, BRIAN H. CROMBIE,  
JOHN R. MISZUK, AND KENNETH G. HOWLING

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**SETTLEMENT AGREEMENT**

## RECITALS

**WHEREAS** Canadian Commercial Workers Industry Pension Plan (the "Canadian Representative Plaintiff") filed a proposed class proceeding (the "Claim") on behalf of itself and the other members of the Class (as hereinafter defined) against Biovail Corporation ("Biovail"), and against Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk, Kenneth Howling (the "Individual Defendants", and together with Biovail, the "Defendants", and together with the Canadian Representative Plaintiff, are the "Parties" to this settlement agreement), in the Ontario Superior Court of Justice (the "Ontario Court") on September 21, 2005 (Court File No. 48172 CP) (the "Canadian Action");

**AND WHEREAS** Ontario Teachers' Pension Plan Board and Local 282 Welfare Trust Fund ("U.S. Plaintiffs", and together with the Canadian Representative Plaintiff, the "Plaintiffs") filed the Consolidated Amended Class Action Complaint on behalf of themselves and the other members of the U.S. Class against Biovail, the Individual Defendants and others (who are the "U.S. Defendants", and together with the U.S. Plaintiffs, the "U.S. Parties"), in the United States District Court for the Southern District of New York (the "SDNY Court") on June 18, 2004; **and whereas** the U.S. Plaintiffs subsequently filed the Consolidated Second Amended Class Action Complaint (the "Complaint") in the SDNY Court on August 25, 2006 (Master File No. 03-CV-8917 (RO)) (the "U.S. Action", and together with the Canadian Action, the "Litigation");

**AND WHEREAS** the Complaint generally alleges, among other things, that, in Communications (as hereinafter defined) in connection with the launching and marketing of Cardizem LA and reporting to the public about the launch of Cardizem LA, Biovail, with the participation of the Individual Defendants and others, issued materially false and misleading press releases and other statements, including financial statements filed with the United States Securities Exchange Commission, regarding Cardizem LA and Biovail's financial condition during the Class Period (as hereinafter defined) in a scheme to artificially inflate the value of Biovail's common stock; **and whereas** the Complaint further alleges that the U.S. Plaintiffs and the other members of the U.S. Class purchased the common stock of Biovail during the Class Period at prices artificially inflated as a result of the U.S. Defendants' dissemination in Communications of materially false and misleading statements regarding Biovail in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder;

**AND WHEREAS** the Canadian Representative Plaintiff makes allegations in the Claim similar to those alleged in the Complaint; and particularly alleges, among other things, that, in Communications in connection with the launching and marketing of Cardizem LA and reporting to the public about the launch of Cardizem LA, the Individual Defendants issued materially false and misleading press releases and other statements, including financial statements, regarding Cardizem LA and Biovail's financial condition during the Class Period which artificially inflated the value of Biovail's common stock; **and whereas** the Claim further alleges that the Canadian Representative Plaintiff and the other members of the Class purchased the common stock of Biovail during the Class Period at prices artificially inflated as a result of the Defendants' dissemination in Communications of materially false and misleading statements regarding Biovail in violation of sections 36 and 52 of the *Competition Act*, R.S.C. 1985, c. C-34 and incurring liability pursuant to section 134 of the *Securities Act*, R.S.O. 1990, c. S.5;

**AND WHEREAS** in the fall of 2005, the U.S. Parties mediated before former Judge Nicholas Politan but were unable to reach an agreement to resolve the U.S. Action; **and whereas** in December 2007, with the benefit of the development of the U.S. Action and the extensive discovery obtained since the earlier mediation and with the assistance of Gary V. McGowan, Esq. acting as a mediator, U.S. Plaintiffs, by their counsel, conducted discussions and arm's-length negotiations with counsel for U.S. Defendants with respect to a compromise and settlement of the U.S. Action with a view to settling the issues in dispute and achieving the best relief possible consistent with the interests of the Class; **and whereas** the U.S. Plaintiffs entered into the Stipulation and Agreement of Settlement (the "Stipulation") in settlement of the claims raised in the U.S. Action upon the conclusion of U.S. Class Counsel (as hereinafter defined), based upon their investigation and pre-trial discovery, that the terms and conditions of the Stipulation were fair, reasonable and adequate to U.S. Plaintiffs and the other members of the U.S. Class, and in their best interests, and after considering (i) the substantial cash and other benefits that U.S. Plaintiffs and the other members of the U.S. Class would receive from settlement of the U.S. Action, (ii) the attendant risks of litigation, including in particular the risks of establishing recoverable damages, and (iii) the desirability of permitting the settlement to be consummated as provided by the terms of the Stipulation;

**AND WHEREAS** Canadian Class Counsel (as hereinafter defined), agreed to hold the Canadian Action in abeyance until the conclusion of the certification hearing in the U.S. Action, which certification hearing did not take place as a result of the settlement of the U.S. Action; **and whereas** Canadian Class Counsel were authorized to review evidence acquired by U.S. Class Counsel in the course of prosecuting the U.S. Action, including evidence which was the subject of a protective order; **and whereas** Canadian Class Counsel, having made a thorough investigation of such facts and evidence, and having interacted with, and been updated by, U.S. Class Counsel throughout the prosecution of the U.S. Action, and having taken part in the drafting of the Stipulation and in particular the corporate governance enhancements which shall be undertaken by Biovail as well as the language of the Notices, the method of dissemination of the Notices, and the claim administration procedures, have determined that the settlement provided for in the Stipulation is fair, reasonable, adequate, and in the best interests of the Canadian Representative Plaintiff and the Class;

**AND WHEREAS** the Canadian Representative Plaintiff believes that the claims asserted in the Canadian Action have merit and in no event shall this Settlement Agreement be construed or deemed to be a concession by any Canadian Representative Plaintiff of any infirmity in the claims asserted in the Canadian Action; **and whereas** the Canadian Representative Plaintiff nonetheless recognizes the expense and length of continued proceedings necessary to prosecute the Canadian Action through trial and appeals, and has also taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Canadian Action, as well as the delays inherent in such litigation; **and whereas** the Canadian Representative Plaintiff is also mindful of the inherent problems of proof under, and possible defences to, the securities law and common law violations asserted in the Canadian Action; **and whereas** the Canadian Representative Plaintiff believes that the settlement provided for in this Settlement Agreement confers substantial benefits upon the Class;

**AND WHEREAS** the Defendants deny any wrongdoing whatsoever and neither this Settlement Agreement nor the Stipulation shall in any event be construed or deemed to be evidence of an admission or concession on the part of any Defendant with respect to any claim or

of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defences that the Defendants have asserted; **and whereas** the Defendants have nonetheless concluded that further conduct of the Litigation would be protracted and expensive; **and whereas** the Defendants have therefore determined that it is desirable and beneficial to them that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement and in the Stipulation;

**NOW THEREFORE**, without any admission or concession on the part of the Canadian Representative Plaintiff of any lack of merit of the Canadian Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defences whatsoever by Defendants, **IT IS HEREBY AGREED**, by and among the Parties, through their respective counsel of record, that subject to the Ontario Court's approval, in consideration of the benefits flowing to the Parties from the Settlement (as hereinafter defined), that all Settled Claims (as hereinafter defined) as against the Released Parties (as hereinafter defined) and all Settled Defendants' Claims (as hereinafter defined) shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

#### A. DEFINITIONS

1. In this Settlement Agreement, in addition to the terms that are defined elsewhere herein, the following terms have the meanings specified below:
  - (a) "Approval Notice" means the form of notice annexed hereto as **Schedule "A"**, or such other form of notice as may be approved by the Courts for the purpose of providing Class Members with detailed information concerning the certification and court approval of the Settlement contemplated by this Settlement Agreement and the Stipulation and notice of the orders concerning payment of Canadian Class Counsel's fees and disbursements or attorneys' fees, as the case may be, which is to be sent to members of the Class;
  - (b) "Approval Order" means the proposed order to be entered in the Ontario Court approving this Settlement Agreement substantially in the form annexed hereto as **Schedule "B"**;
  - (c) "Canadian Class Counsel" means the law firms of Siskinds <sup>LLP</sup> and Cavalluzzo Hayes Shilton McIntyre & Cornish <sup>LLP</sup>;
  - (d) "Class" and "Class Member(s)" means, for the purposes of this Settlement Agreement only, all Persons who purchased the common stock of Biovail on the Toronto Stock Exchange or other Canadian stock exchanges during the period from February 7, 2003, through and including March 2, 2004. Excluded from the Class are Biovail, its subsidiaries, affiliates, predecessor and successor entities; Ernst & Young <sup>LLP</sup> [U.S. and Canada] and any of their affiliates, subsidiaries, and predecessor and successor entities; Ernst & Young <sup>LLP</sup> [U.S. and Canada] partners and partners of any of their affiliates, subsidiaries, and predecessor and successor entities; Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk, Kenneth Howling, and Rolf Reininghaus (collectively, the "Individual Defendants");

members of the immediate families of the Individual Defendants; any entity in which any defendant has a controlling interest; any person who was an officer or director of Biovail during the Class Period; and the legal representatives, heirs, successors or assigns of any of the foregoing excluded persons or entities. Also excluded from the Class are any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Publication Notice.

- (e) "Class Period" means, for the purposes of this Settlement only, the period between and including February 7, 2003, and March 2, 2004;
- (f) "Communications" means information released (by whatever means) by (i) Biovail, and (ii) in the Canadian Action: the Individual Defendants; or, in the U.S. Action: the Individual Defendants and others, as the case may be, in their capacities as officers and/or employees and/or directors of Biovail, communicating financial and business information to shareholders and the general public in the ordinary course of Biovail's business;
- (g) "Courts" means the Ontario Court and the SDNY Court;
- (h) "CPA" means the *Class Proceedings Act, 1992*, S.O. 1992, c.6, as amended;
- (i) "Defendants' Counsel" means, in Canada: Davies Ward Phillips & Vineberg <sup>LLP</sup> for Defendants; and in the United States: the law firms of Howrey <sup>LLP</sup> and Curtis, Mallet-Prevost, Colt & Mosle <sup>LLP</sup> for the U.S. Defendants;
- (j) "Effective Date" means the date upon which the Settlement contemplated by this Settlement Agreement and the Stipulation shall become effective, namely, the date when both (i) the Approval Order of the Ontario Court approving this Settlement Agreement, and (ii) a Judgment of the SDNY Court approving the Stipulation, become Final; or, in the event that the Courts enter orders or judgments in a form other than that provided above and none of the parties hereto elect to terminate this Settlement, the date that such alternative Approval Order or Judgment becomes Final;
- (k) "Final", when used in relation to an Ontario Court order or judgment, means that all rights of appeal from such order or judgment have expired or have been exhausted and the ultimate court of appeal to which an appeal (if any) was taken has upheld such order or judgment; and with respect to a SDNY Court judgment, such judgment shall become final according to the terms defined in the Stipulation annexed hereto as **Schedule "C"**.
- (l) "Gross Settlement Fund" means the Settlement Amount plus any income or interest earned thereon;

- (m) "Judgment" means the proposed judgment to be entered in the SDNY Court approving the Stipulation;
- (n) "Publication Notice" means the Summary Notice of Pendency of Class Action, Proposed Settlement and Settlement Hearing for publication substantially in the form annexed hereto as **Schedule "D"**;
- (o) "Order for Notice and Hearing" means the proposed order conditionally certifying the proceeding and directing notice thereof to the Class substantially in the form annexed hereto as **Schedule "E"**;
- (p) "Person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their predecessors, successors, representatives or assignees;
- (q) "Proof of Claim" means the proposed proof of claim and release form to be executed by Class Members electing to participate in the Settlement, substantially in the form attached as **Schedule "A-2"** to the Stipulation annexed hereto as **Schedule "C"**;
- (r) "Released Parties" means the Defendants, their past or present subsidiaries, parents, successors and predecessors, officers, directors, agents, employees, attorneys, insurers, advisors, and investment advisors, and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in interest or assigns of any of the Defendants;
- (s) "Settled Claims" means any and all claims, debts, demands, rights, causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, Class Counsel's fees or disbursements, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on provincial, territorial, local, statutory or common law or any other law, rule or regulation in Canada, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, including both known claims and Unknown Claims, (i) that have been asserted in the Canadian Action by the Canadian Representative Plaintiff against any of the Released Parties, or (ii) that could have been asserted in any forum by the Canadian Representative Plaintiff against any of the Released Parties which arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Canadian Action and which relate to the purchase of shares of the common stock of Biovail during the Class Period;

- (t) "Settled Defendants' Claims" means any and all claims, rights or causes of action or liabilities whatsoever, whether based on provincial, territorial, local, statutory or common law or any other law, rule or regulation in Canada, including both known claims and Unknown Claims (as defined herein), that have been or could have been asserted in the Canadian Action or any forum by any or all of the Released Parties against the Canadian Representative Plaintiff, which arise out of or relate in any way to the institution, prosecution, or settlement of the Canadian Action (except for claims to enforce the Settlement);
- (u) "Settlement" means the settlement contemplated by this Settlement Agreement and the Stipulation;
- (v) "Settlement Amount" means one hundred thirty eight million (\$138,000,000.00) United States dollars, paid by the U.S. Defendants, pursuant to the terms of the Stipulation annexed hereto as **Schedule "C"**, in consideration for the releases and discharges provided for in this Settlement Agreement and the Stipulation;
- (w) "Unknown Claims" means any and all Settled Claims which the Canadian Representative Plaintiff or other Class Member does not know or suspect to exist in his, her or its favour at the time of the release of the Released Parties, and any Settled Defendants' Claims which any Defendant does not know or suspect to exist in his or its favour, which if known by him or it might have affected his or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims and Settled Defendants' Claims, the Parties stipulate and agree that upon the Effective Date, the Canadian Representative Plaintiff and the Defendants shall expressly waive, and each other Class Member shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any province, or territory of Canada, or principle of common law. The Canadian Representative Plaintiff and the Defendants acknowledge, and all other Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settled Claims and Settled Defendants' Claims was separately bargained for and was a key element of the Settlement.
- (x) "U.S. Class" and "U.S. Class Members" means the class as defined at paragraph 1(c) of the Stipulation annexed hereto as **Schedule "C"**, which implicitly includes the Canadian Representative and the Class;
- (y) "U.S. Class Counsel" means the law firms of Bernstein Litowitz Berger & Grossmann <sup>LLP</sup> and Milberg Weiss <sup>LLP</sup>;

## B. SETTLEMENT BENEFITS

1. The obligations incurred pursuant to the Stipulation, annexed hereto as **Schedule "C"** shall be the sole source of compensation for Class Members in the Canadian Action, which compensation specifically includes the Defendants obligation to enact the corporate governance enhancements as described and annexed hereto in **Schedule "F"**.
2. This Settlement Agreement shall extend and inform the application of the Stipulation to the Canadian Action, the Canadian Representative Plaintiff and Canadian Class Counsel.
3. The Canadian Representative Plaintiff, Canadian Class Counsel, and the Ontario Court shall not have any obligations or duties in respect of the Settlement except as provided for in this Settlement Agreement.
4. The cost of all notices provided for in this Settlement Agreement shall be paid from the Gross Settlement Fund.
5. Within fifteen (15) days of Ontario Court approval, the Defendants shall pay the reasonable legal fees, disbursements and G.S.T. of Canadian Class Counsel, as agreed upon or ordered by the Ontario Court, but in any event not to exceed one million (\$1,000,000) Canadian dollars, all inclusive.

## C. COURT APPROVAL OF THE SETTLEMENT AGREEMENT

### Best Efforts

1. Canadian Class Counsel, and Defendants' Counsel agree to cooperate fully with one another in seeking the Ontario Court's issuance of the Order for Notice and Hearing, and issuance of the Approval Order, and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain Final approval by the Ontario Court of this Settlement Agreement.
2. Subject to the Ontario Court's approval, and for purposes of this Settlement Agreement only, the Defendants consent to the certification of the Ontario Action pursuant to sections 2, 5 and 6 of the *CPA*.

### Preliminary Approval and Notice of Hearing

3. Canadian Class Counsel shall bring a motion in the Ontario Court to certify the Class, and approve the Publication Notice. The Publication Notice shall be substantially in the form annexed hereto as **Schedule "D"**.

### Settlement Approval Hearings

4. Canadian Class Counsel shall bring a motion in the Ontario Court for the approval of the Settlement contemplated by this Settlement Agreement, and approval of the Approval Notice. The Approval Order and Approval Notice shall be substantially in the forms annexed hereto as **Schedules "B"** and **"A"**, respectively.



**D. OPT OUTS**

1. Class Members shall have the right to exclude themselves, or opt out, from the Litigation. Putative Class Members who elect to opt out of the Litigation must exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Publication Notice.
2. Putative Class Members who opt out shall be excluded from any and all rights and obligations under this Settlement Agreement and the Stipulation. Class Members who do not opt out in the manner and time prescribed above shall be deemed to have elected to participate in this Settlement Agreement and the Stipulation and in all Approval Orders or Judgments, regardless of whether such Class Members timely file a Proof of Claim.

**E. OPT OUT TERMINATION RIGHT**

1. The U.S. Defendants may terminate the Stipulation if Class Members who in total purchased in excess of ten percent (10%) of the shares of Biovail common stock purchased during the Class Period exclude themselves from the Class. In the event that the U.S. Defendants terminate the Stipulation, and provided that the total number of shares requesting exclusion does not fall below the ten percent (10%) threshold as a result of withdrawals of Class Members requests for exclusion, this Settlement Agreement shall also become null and void and shall be of no force or effect.

**F. FAILURE TO OBTAIN APPROVALS**

1. The Canadian Representative Plaintiff or the Canadian Defendants shall have the right to terminate this Settlement Agreement by providing written notice of their election to do so ("Termination Notice") to all other parties hereto within thirty (30) days of:
  - (a) one of the Courts declining to enter the Order for Notice and Hearing in any material respect;
  - (b) one of the Courts refusing to approve this Settlement as set forth in this Settlement Agreement and the Stipulation or any material part of them;
  - (c) one of the Courts declining to enter the Approval Order or Judgment in any material respect;
  - (d) the date upon which the Approval Order or Judgment is modified or reversed in any material respect by a Canadian or United States appellate court; or
  - (e) the date upon which an alternative Approval Order or Judgment is modified or reversed in any material respect by a Canadian or United States appellate court.

2. Except as otherwise provided herein, in the event this Settlement Agreement is terminated, then the Parties to this Settlement Agreement shall be restored to their respective status in the Canadian Action as of the date of the execution of this Settlement Agreement, and except as otherwise expressly provided, the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered.

**G. NO ADMISSION OF WRONGDOING**

1. This Settlement Agreement, whether or not consummated, and any proceedings taken pursuant to it:
  - (a) shall not be offered or received against any of the Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by the Canadian Representative Plaintiff or the validity of any claim that has been or could have been asserted in the Canadian Action, the U.S. Action or in any litigation, or the deficiency of any defence that has been or could have been asserted in the Canadian Action, the U.S. Action, or in any litigation, or of any liability, negligence, fault, or wrongdoing of any of the Defendants;
  - (b) shall not be offered or received against any of the Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any of the Defendants;
  - (c) shall not be offered or received against any of the Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement; provided, however, that if this Settlement Agreement is approved by the Ontario Court, the Defendants may refer to it to effectuate the liability protection granted them hereunder;
  - (d) shall not be construed against any of the Defendants as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and
  - (e) shall not be construed as or received in evidence as an admission, concession or presumption against the Canadian Representative Plaintiff or any of the other Class Members that any of their claims are without merit, or that any defences asserted by the Defendants have any merit, or that damages recoverable under the Claim would not have exceeded the Settlement Amount.

## **H. MISCELLANEOUS PROVISIONS**

### **Entire Agreement**

1. All of the Schedules annexed hereto are hereby incorporated by reference as though fully set forth herein.
2. This Settlement Agreement and its Schedules constitute the entire agreement among the parties hereto concerning the Settlement of the Canadian Action, and no representations, warranties, or inducements have been made by any Party hereto concerning this Settlement Agreement and its Schedules other than those contained and memorialized in such documents.

### **Warranties**

3. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.
4. The Parties to this Settlement Agreement intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Class Members against the Released Parties with respect to the Settled Claims. Accordingly, the Canadian Representative Plaintiff and the Defendants agree not to make any disparaging remarks about each other in any public statements concerning the Canadian Action or the Settlement of the Canadian Action and the Canadian Representative Plaintiff and the Defendants agree they will not assert in any forum that the Canadian Action was brought by the Canadian Representative Plaintiff or defended by the Defendants in bad faith or without a reasonable basis.

### **Binding Effect**

5. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.
6. This Settlement Agreement may not be modified or amended, nor may any of its provisions be waived except in writing signed by all Parties hereto or their successors-in-interest.
7. The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

### **Interpretation**

8. This Settlement Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Settlement Agreement.

9. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.
10. The terms "Settlement Agreement", "hereof," "hereunder," and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.
11. In the computation of time in this Settlement Agreement, except where a contrary intention appears.
  - (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
  - (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.
12. This Settlement Agreement shall be interpreted in accordance with the laws of the Province of Ontario without regard to choice of law rules.

#### **Ongoing Jurisdiction**

13. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the SDNY Court, and the Ontario Court shall only retain jurisdiction over this Settlement Agreement for the purpose of entering orders providing for: (i) the approval of this Settlement Agreement; and, (ii) awards of legal fees and disbursements to Canadian Class Counsel.

#### **Notice**

14. Any and all notices, requests, directives, or communications required by this Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, or by facsimile transmission followed by postage prepaid mail, and shall be addressed as follows:

If to: CANADIAN COMMERCIAL WORKERS INDUSTRY PENSION PLAN,

% Siskinds<sup>LLP</sup>  
680 Waterloo Street  
London, ON N6A 3V8

Tel.: 519.660.7753

Fax: 519.660.7754

Attention: Charles M. Wright and A. Dimitri Lascaris

And

% Cavalluzzo Hayes Shilton McIntyre & Cornish <sup>LLP</sup>  
300-474 Bathurst Street  
Toronto, ON M5T 2S6

Tel.: 416.964.5513  
Fax: 416.964.5895  
Attention: Michael D. Wright

If to: BIOVAIL COPORATION, EUGENE N. MELNYK,  
BRIAN H. CROMBIE, JOHN R. MISZUK, and KENNETH G. HOWLING

% Davies Ward Phillips & Vineberg <sup>LLP</sup>  
1 First Canadian Place, 44<sup>th</sup> floor  
Toronto, ON M5X 1B1

Tel.: 416.367.7473  
Fax: 416.836.0871

Attention: Kent E. Thomson

Or to any individual or address as may be designated by notice given by any Party to another.

**Counterparts**

15. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

**Authorized Signatures**

16. All counsel and any other person executing this Settlement Agreement and any of the Schedules hereto, or any related settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Settlement Agreement to be executed, by their duly authorized counsel, dated as of April 21, 2008.

**CANADIAN COMMERCIAL WORKERS INDUSTRY PENSION PLAN**

*By their counsel,*

Siskinds <sup>LLP</sup>

Per:

A. Dimitri Lascaris

*and,*

Cavalluzzo Hayes Shilton McIntyre  
& Cornish <sup>LLP</sup>

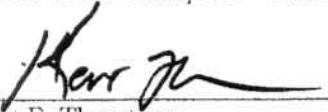
Per:

Michael D. Wright

**BIOVAIL COPORATION, EUGENE N. MELNYK, BRIAN H. CROMBIE,  
JOHN R. MISZUK, and KENNETH G. HOWLING**

*By their counsel,*  
Davies Ward Phillips & Vineberg <sup>LLP</sup>

Per:

  
\_\_\_\_\_  
Kent E. Thomson

# **Schedule "A"**

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT,  
MOTION FOR ATTORNEYS' FEES AND SETTLEMENT FAIRNESS HEARING**

This Notice relates to the following actions:

- *In re Biovail Corporation Securities Litigation*, Master File No. 03-CV-8917 (GEL) in the United States District Court for the Southern District of New York ("U.S. Action").
- *Canadian Commercial Workers Industry Pension Plan against Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling*, Court File No. 48172 CP in the Ontario Superior Court of Justice ("Canadian Action").

If you purchased Biovail Corporation ("Biovail") common stock on the New York Stock Exchange or other U.S. stock exchanges or the Toronto Stock Exchange or other Canadian stock exchanges during the period from February 7, 2003, through and including March 2, 2004, then you may be entitled to a payment from a proposed class action settlement.

*This notice is being sent to you pursuant to court orders.  
This is not a solicitation from a lawyer.<sup>1</sup>*

**THE U.S. ACTION**

- The Settlement of the U.S. Action will provide a \$138 million cash settlement fund for the benefit of the Class described herein (see response to question 5 below defining the "Class" and "Class Members") who bought shares of Biovail Corporation common stock during the period from February 7, 2003, through and including March 2, 2004 on stock exchanges in the United States or Canada. All dollar amounts referenced herein are in U.S. dollars.
- In addition, Biovail will adopt the corporate governance provisions posted on the Internet at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

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<sup>1</sup> Si vous avez acheté des actions ordinaires de Biovail Corporation ("Biovail") sur la bourse des valeurs de New York (NYSE) ou d'autres bourses des valeurs aux Etats-Unis, ou sur la bourse de Toronto (TSX) ou d'autres bourses des valeurs canadiennes pendant la période commençant le 7 février 2003 et terminant le 2 mars 2004 (inclusivement), vous pourriez avoir droit à un paiement d'un règlement proposé d'un recours collectif.

*Vous recevez cet avis suite à l'ordre de la cour. Cet avis n'est pas une sollicitation d'un avocat.*

Si vous souhaitez obtenir une version française de cet avis ou du Formulaire de Réclamation, vous pourriez télécharger les documents de [www.\\_\\_\\_\\_\\_.com](http://www._____.com), ou vous pourriez appeler le 1-800-\_\_\_\_-\_\_\_\_ pour demander qu'ils vous soient expédiés.



- The Settlement resolves a lawsuit over whether Biovail and the other Defendants in this action misled investors about a new drug that Biovail launched during the Class Period, Cardizem LA, as well as about Biovail's financial condition during the Class Period.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM BY _____, 2008</b>	The only way to get a payment from the Settlement.
<b>EXCLUDE YOURSELF (Opt-out of the Class) BY _____, 2008</b>	Get no payment. This is the only option that allows you ever to be part of any other lawsuit against Biovail and the other Released Parties about the Settled Claims as those terms are defined in the response to question 12 below.
<b>OBJECT BY _____, 2008</b>	Write to the Court about why you do not like the Settlement, the Plan of Allocation, or the application for attorneys' fees and reimbursement of expenses. See responses to questions 18 and 19 below.
<b>GO TO A HEARING ON _____, 2008</b>	Ask to speak in Court about the Settlement, the Plan of Allocation, or the application for attorneys' fees and reimbursement of expenses. See responses to questions 20-22 below.
<b>DO NOTHING</b>	Get no payment. Give up rights.

- These rights and options - and the deadlines to exercise them - are explained in this notice.
- The Court in charge of this Action still has to decide whether to approve the Settlement, the proposed Plan of Allocation and the application for attorneys' fees and expenses. Payments will be made if the Court approves the Settlement and after appeals, if any, are resolved. Please be patient.

### SUMMARY NOTICE

#### Statement of Plaintiff Recovery

Pursuant to the Settlement described herein, a Settlement Amount consisting of **\$138 million in cash** has been deposited in an interest bearing Escrow Account for the benefit of the Class. Lead Plaintiffs estimate that there were approximately 217.6 million shares of Biovail common stock traded on the relevant stock exchanges during the Class Period which may have been damaged. Lead Plaintiffs estimate that the average recovery per damaged share of Biovail common stock

purchased during the Class Period under the Settlement is \$0.63 per damaged share<sup>2</sup> before deduction of Court-awarded attorneys' fees and expenses and the costs of administration. A Class Member's actual recovery will be determined in accordance with the Plan of Allocation set forth on pages 19-24 below, if the Court approves the plan. The Court may modify the proposed Plan of Allocation or adopt a different plan, without further notice to the Class.

#### Statement of Potential Outcome of Case

The parties disagree on both liability and damages and do not agree on the average amount of damages per share that would be recoverable if plaintiffs were to have prevailed on each claim alleged. The issues on which the parties disagree include (a) the appropriate economic model for determining the amount by which Biovail's common stock was allegedly artificially inflated (if at all) during the Class Period; (b) the amount by which Biovail's common stock was allegedly artificially inflated (if at all) during the Class Period; (c) the effect of various market forces influencing the trading price of Biovail's common stock at various times during the Class Period; (d) the extent to which external factors, such as general market and industry conditions, influenced the trading price of Biovail's common stock at various times during the Class Period; (e) the extent to which the various matters that Plaintiffs alleged were materially false or misleading influenced (if at all) the trading price of Biovail's common stock at various times during the Class Period; (f) the extent to which the various allegedly adverse material facts that Plaintiffs alleged were omitted influenced (if at all) the trading price of Biovail's common stock at various times during the Class Period; and (g) whether the statements made or facts allegedly omitted were material or otherwise actionable under the federal securities laws. The Defendants deny that they are liable to the Lead Plaintiffs or the other members of the Class and deny that Plaintiffs or the other members of the Class have suffered any damages.

#### Statement of Attorneys' Fees and Costs Sought

Plaintiffs' Co-Lead Counsel are moving the Court to award attorneys' fees not to exceed 16.1% of the Gross Settlement Fund, and for reimbursement of expenses incurred in connection with the prosecution of this Action in an amount not to exceed \$3.5 million. The requested fees and expenses would amount to an average of approximately \$0.12 per damaged share in total for fees and expenses. Application will also be made for reimbursement to the Lead Plaintiffs and the other proposed class representative for an amount not to exceed \$65,000.00 for reimbursement of their reasonable costs and expenses (including lost wages) directly relating to their representation of the Class. Plaintiffs' Counsel have expended considerable time and effort in the prosecution of this litigation on a contingent fee basis, and have advanced the expenses of the litigation, in the expectation that if they were successful in obtaining a recovery for the Class they would be paid from such recovery. In this type of litigation, it is customary for counsel to be awarded a percentage of the common fund recovery as their attorneys' fees.

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<sup>2</sup> An allegedly damaged share might have been traded more than once during the Class Period, and the indicated average recovery would be the total for all purchasers of that share.

Further Information

Further information regarding the U.S. Action and this Notice may be obtained by contacting Plaintiffs' Co-Lead Counsel: Steven B. Singer, Esq., Bernstein Litowitz Berger & Grossmann LLP, 1285 Avenue of the Americas, New York, NY 10019, Telephone (212) 554-1400, or Sanford P. Dumain, Esq., Milberg LLP, One Penn Plaza, New York, NY 10119-0165, Telephone (212) 594-5300.

Reasons for the Settlement

For the Plaintiffs, the principal reason for the Settlement is the benefit to be provided to the Class now. This benefit must be considered in light of all the risks that Plaintiffs would face to succeed in proving liability and a larger amount of damages at a trial. Even if Plaintiffs were successful at trial, there would be further risks on appeal. The \$138 million in cash recovered now must be compared to the risks that no recovery, and importantly no *larger* recovery, might be achieved after a contested trial and likely appeals, possibly years into the future.

For the Defendants, who deny all allegations of wrongdoing or liability whatsoever, the principal reason for the Settlement is to eliminate the expense, risks, and uncertain outcome of the litigation.

[END OF COVER PAGE]

<b>WHAT THIS NOTICE CONTAINS</b>
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## BASIC INFORMATION

1. Why did I get this notice package?

You or someone in your family may have purchased Biovail common stock during the period from February 7, 2003, through and including March 2, 2004. Such purchasers may be members of the Class (as defined below) in this Action and are generally referred to herein as "Class Members" and are collectively referred to as the "Class."

The Court directed that this Notice be sent to Class Members because they have a right to know about a proposed settlement of a class action lawsuit, and about all of their options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement, after any objections and appeals that might be taken are resolved, an administrator appointed by the Court will make the payments that the Settlement allows.

This package explains the lawsuit, the Settlement, Class Members' legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Southern District of New York, and the case is known as *In re Biovail Corporation Securities Litigation*, Master File No. 03-CV-8917 (GEL). This case was originally assigned to United States District Judge Richard Owen but it was reassigned to United States District Judge Gerard E. Lynch. The people who are leading the action on behalf of the Class, Ontario Teachers' Pension Plan Board and Local 282 Welfare Trust Fund, are called the Lead Plaintiffs, and the company and the persons they sued, Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk, Kenneth Howling, and Rolf Reininghaus, are called the Defendants.

2. What is this lawsuit about?

Biovail is a Canadian pharmaceutical company engaged in the development, manufacturing, marketing, licensing, and distribution of pharmaceutical products for the treatment of chronic medical conditions. At the start of the Class Period, the key element of Biovail's business strategy was the application of its delivery technology to drugs developed by other pharmaceutical companies. Biovail reformulated existing drugs to make them easier to administer to patients. Beginning in 2002, Biovail began to attempt to change its business model by focusing its efforts on developing its own drugs. The first drug that Biovail self-developed and self-launched was Cardizem LA ("CLA"), a drug used for the treatment of hypertension.

On June 18, 2004, Lead Plaintiffs filed a Consolidated Amended Class Action Complaint, which was followed by the filing on August 25, 2006 of the Consolidated Second Amended Class Action Complaint (the "Complaint"). The Complaint generally asserts, among other things, that Defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder (i) by issuing a series of allegedly false and misleading statements

concerning the efficacy of and demand for CLA, as well as the purported success of the launch of the drug, and by concealing manufacturing problems which negatively impacted sales of CLA; and (ii) by issuing a series of allegedly false and misleading statements concerning Biovail's financial results which were impacted by alleged accounting improprieties in violation of Generally Accepted Accounting Principles. The Complaint generally alleges that, as a result of Defendants' dissemination of the allegedly false and misleading statements during the Class Period, the market price of Biovail's common stock was artificially inflated, thereby causing damage to Class Members. The Complaint also alleges that during the Class Period insider trading in violation of the securities laws occurred.

The Defendants deny all allegations of misconduct contained in the Complaint and deny having engaged in any wrongdoing whatsoever.

3. Why is this a class action?

In a class action, one or more people called class representatives sue on behalf of people who have similar claims. All these people are a class or class members. Bringing a case, such as this one, as a class action allows adjudication of many similar claims of persons and entities that might be economically too small to bring in individual actions. One court resolves the issues for all class members, except for those who exclude themselves from the class.

4. Why is there a settlement?

These consolidated actions were commenced in late 2003, and Lead Plaintiffs filed the Consolidated Amended Class Action Complaint in the summer of 2004. Defendants moved to dismiss that complaint on September 28, 2004. Their motion was denied by the Court by order entered December 22, 2004 (the "December 2004 Order"). On August 25, 2006, Plaintiffs filed the Consolidated Second Amended Class Action Complaint (the "Complaint"), which contains a number of additional allegations of wrongdoing and which added another individual defendant.<sup>3</sup> All Defendants answered the Complaint on October 20, 2006.

Discovery commenced shortly after the Court issued its December 2004 Order. In response to Plaintiffs' discovery requests, Defendants produced many millions of pages of documents, and several non-parties also produced documents. Additionally, Plaintiffs took the testimony of approximately fifteen fact witnesses.

Lead Plaintiffs moved for class certification on February 28, 2006, and after extensive briefing by both parties, the Court heard oral argument on the motion on March 23, 2007. The Court had

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<sup>3</sup> Because the Second Amended Complaint cited to a number of documents that were designated as "Confidential" by Defendants, the Complaint was filed under seal.

not yet ruled on Lead Plaintiffs' motion for class certification when the parties entered into an agreement to settle this Action.

In the fall of 2005, the parties engaged in a mediation before a former federal district court judge, but were unable to reach an agreement to resolve the Action. In December 2007, with the benefit of the further development of the Action and the extensive discovery conducted since the earlier mediation, and with the assistance of a second highly experienced mediator, Lead Plaintiffs, by their counsel, conducted discussions and arm's-length negotiations with counsel for Defendants with a view to settling the issues in dispute and achieving the best relief possible consistent with the interests of the Class. When the parties agreed to settle this Action, fact discovery, which was ongoing, was scheduled to be completed February 29, 2008, followed by expert discovery, which was to be completed by April 25, 2008.

At the time that the agreement to settle this Action was reached, Lead Plaintiffs had a clear understanding of the strengths and weaknesses of the case and the risks they would face in proceeding to trial. At trial, it is the plaintiffs' burden to establish every element of each of the claims they asserted against the defendants. One of the elements that plaintiffs have to establish in an action for violation of Section 10(b) of the Exchange Act is called loss causation. Another element that plaintiffs would have to establish is that defendants acted with the requisite level of intent to mislead investors, known as *scienter*. While Lead Plaintiffs believe that they could have met their burdens with respect to both of these elements, they also recognize that the law with respect to loss causation and *scienter* has been evolving and the risks to plaintiffs in satisfying these burdens have been becoming greater. Defendants had arguments that could find appeal with a jury. Lead Plaintiffs also recognized that, even if they prevailed at the trial level, the appeal that Defendants would have taken was potentially a more serious risk to the ultimate outcome of the case. Additionally, as noted above, given that the amount of damages sustained by the Class would be seriously disputed, there was the real possibility of no recovery after trial or a recovery that did not exceed the amount of the Settlement but which would still be in jeopardy on appeal. Finally, even if a jury verdict were ultimately sustained on appeal, it could take years before the Action was finally resolved.

Additionally, as noted above, at the time that the agreement to settle was reached, the Court had not yet ruled on Lead Plaintiffs' motion for Class Certification. It was clear that if Lead Plaintiffs prevailed on that motion, Defendants would seek leave to appeal that ruling. If the Court of Appeals heard that appeal, it would significantly delay the resolution of the Action.

The Court has not decided in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement. That way, they avoid the risks and cost of a trial and subsequent appeals. Additionally, settlement of the Action assures that persons affected by the alleged fraud can get compensation. The Class Representatives and their attorneys think the Settlement is fair, reasonable and adequate and in the best interests of all Class Members.



## WHO IS IN THE SETTLEMENT

To see if you will get money from this Settlement, you first have to decide if you are a Class Member.

5. How do I know if I am part of the Settlement?

The Court directed, for the purposes of the proposed Settlement, that everyone, except the persons and entities identified in response to question 6 below, who fits this description is a Class Member: *all persons and entities who purchased the common stock of Biovail on the New York Stock Exchange or other U.S. stock exchanges or the Toronto Stock Exchange or other Canadian stock exchanges during the period from February 7, 2003, through and including March 2, 2004.*

6. Are there exceptions to being included?

Excluded from the Class are Biovail, its subsidiaries, affiliates, predecessor and successor entities; Ernst & Young LLP [U.S. and Canada] and any of their affiliates, subsidiaries, and predecessor and successor entities; Ernst & Young LLP [U.S. and Canada] partners and partners of any of their affiliates, subsidiaries, and predecessor and successor entities; individual defendants Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk, Kenneth Howling and Rolf Reininghaus; members of their immediate families; any entity in which any defendant has a controlling interest; any person who was an officer or director of Biovail during the Class Period; and the legal representatives, heirs, successors or assigns of any of the foregoing excluded persons or entities.

If one of your mutual funds purchased shares of Biovail common stock on a relevant stock exchange during the Class Period, that alone does not make you a Class Member. You are a Class Member only if *you directly purchased shares of Biovail common stock on the New York Stock Exchange or other U.S. stock exchanges or the Toronto Stock Exchange or other Canadian stock exchanges during the period from February 7, 2003, through and including March 2, 2004.* Check your investment records or contact your broker to see if you purchased Biovail common stock on a relevant exchange during the Class Period.

If you **sold** Biovail common stock during the Class Period, that alone does not make you a Class Member. You are a Class Member only if you **purchased** shares of Biovail common stock on the New York Stock Exchange or other U.S. stock exchanges or the Toronto Stock Exchange or other Canadian stock exchanges during the period from February 7, 2003, through and including March 2, 2004.

7. What if I am still not sure if I am included?

If you are still not sure whether you are included, you can ask for free help. You can call 1-800-\_\_\_\_\_-\_\_\_\_\_- or visit [www.\\_\\_\\_\\_\\_.com](http://www._____.com) for more information. Or you can fill out and return the Proof of Claim form described in question 10, to see if you qualify.

#### THE SETTLEMENT BENEFITS — WHAT YOU GET

8. What does the Settlement provide?

In exchange for the Settlement and dismissal of the Action, Biovail and the Individual Defendants have agreed to create a \$138 million cash fund, which is earning interest, to be divided, after payment of fees and expenses as awarded by the Court, among all Class Members who submit valid Proof of Claim forms.

Biovail has also agreed to enact certain corporate governance changes posted on the Internet at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

9. How much will my payment be?

Your share of the Net Settlement Fund (*i.e.*, the Settlement Amount plus accrued interest less Court awarded fees and expenses and less Taxes) will depend on the total Recognized Claims represented by the valid Proof of Claim forms that Class Members send in, how many shares of Biovail common stock you bought, how much you paid for them, and when you bought and whether or when you sold them, and if so, for how much you sold them.

You can calculate your Recognized Claim in accordance with the formula shown below in the Plan of Allocation. It is unlikely that you will get a payment for all of your Recognized Claim. After all Class Members have sent in their Proof of Claim forms, the payment you get will be a part of the Net Settlement Fund equal to your Recognized Claim divided by the total of everyone's Recognized Claims. See the Plan of Allocation beginning on page 19 for more information on how your Recognized Claim will be determined.

#### HOW YOU GET A PAYMENT — SUBMITTING A PROOF OF CLAIM FORM

10. How can I get a payment?

To qualify for a payment, you must send in a Proof of Claim form. A Proof of Claim form is being circulated with this Notice. You may also get a Proof of Claim form, either in English or

French, on the Internet at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). Read the instructions carefully, fill out the Proof of Claim form, include all the documents the form asks for, sign it, and mail it postmarked no later than \_\_\_\_\_, 2008.

11. When would I get my payment?

The Court will hold a hearing on \_\_\_\_\_, 2008, to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. It also takes time for all the Proofs of Claim to be processed. Please be patient.

12. What am I giving up to get a payment or stay in the Class?

Unless you validly request exclusion, you are staying in the Class, and that means that, upon the "Effective Date," you will release all "Settled Claims" (as defined below) against the "Released Parties" (as defined below).

"Settled Claims" means any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, including both known claims and Unknown Claims (as defined below), (i) that have been asserted in this Action by the Class Members or any of them against any of the Released Parties, or (ii) that could have been asserted in any forum by the Class Members or any of them on behalf of the Class against any of the Released Parties which arise out of, are related to, or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint and which relate to the purchase, sale or ownership of Biovail securities during the Class Period.

"Released Parties" means Biovail and the Individual Defendants, their past or present subsidiaries, parents, successors and predecessors, officers, directors, agents, employees, attorneys, insurers, advisors, and investment advisors, and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in interest or assigns of any of the Defendants.

"Unknown Claims" means any and all Settled Claims which any Lead Plaintiff or other Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any Settled Defendants' Claims which any Defendant does not know or suspect to exist in his or its favor, which if known by him or it might have affected his or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims and Settled

Defendants' Claims, the parties stipulate and agree that upon the Effective Date, the Lead Plaintiffs and the Defendants shall expressly waive, and each other Class Member shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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

Lead Plaintiffs and Defendants acknowledge, and all other Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settled Claims and Settled Defendants' Claims was separately bargained for and was a key element of the Settlement.

In addition, upon the Effective Date of this Settlement, all Class Members on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, shall, with respect to each and every Settled Claim, release and forever discharge, and shall forever be enjoined from prosecuting, any Settled Claims against any of the Released Parties.

The "Effective Date" will occur when an Order entered by the Court approving the Settlement becomes final and not subject to appeal.

If you remain a member of the Class, all of the Court's orders will apply to you and legally bind you.

#### **EXCLUDING YOURSELF ("OPTING OUT") FROM THE SETTLEMENT**

If you do not want a payment from this Settlement, but you want to keep any right you may have to sue or continue to sue the Defendants and the other Released Parties, on your own, about the Settled Claims, then you must take steps to get out of the Class. This is called excluding yourself from -- or "opting out" of -- the Class. Defendants may withdraw from and terminate the Settlement if persons and entities who would otherwise be Class Members, and who purchased in excess of a certain amount of Biovail common stock, opt out of the Class.

13. How do I get out of the proposed Settlement?
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To opt out of the Class, you must send a signed letter by mail stating that you "request exclusion from the Class in *In re Biovail Corporation Securities Litigation*, Master File No. 03-CV-8917 (GEL)." Your letter should include the date(s), price(s), and number(s) of shares of all your purchases and sales of Biovail stock during the Class Period. In addition, be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request by first class mail postmarked no later than \_\_\_\_\_, 2008 to:

*In re Biovail Corporation Securities Litigation*  
Exclusions  
c/o Complete Claim Solutions, LLC, Claims Administrator  
P.O. Box \_\_\_\_\_  
West Palm Beach, FL 33416

You cannot exclude yourself by telephone or by e-mail. If you ask to be excluded, you will not get any Settlement payment, and you cannot object to the Settlement, the Plan of Allocation or the application for attorneys' fees and reimbursement of expenses. You will not be legally bound by anything that happens in this lawsuit, and you may be able to sue (or continue to sue) the Defendants and the other Released Parties in the future.

A request for exclusion from the Class in this Action shall also be deemed a request for exclusion from the class in the Canadian Action which is discussed on p. 24 below.

14. If I do not exclude myself, can I sue the Defendants and the other Released Parties for the same thing later?

No. Unless you exclude yourself, you give up any rights to sue the Defendants and the other Released Parties for any and all Settled Claims. If you have a pending lawsuit against any of the Defendants or any of the other Released Parties, speak to your lawyer in that case immediately. You must exclude yourself from the Class to continue your own lawsuit. Remember, the exclusion deadline is \_\_\_\_\_, 2008.

15. If I exclude myself, can I get money from the proposed Settlement?

No. If you exclude yourself, do not send in a Proof of Claim form to ask for any money. But you may exercise any right you may have to sue, continue to sue, or be part of a different lawsuit against the Defendants and the other Released Parties.

**THE LAWYERS REPRESENTING YOU**

16. Do I have a lawyer in this case?

The Court ordered that the law firms of Bernstein Litowitz Berger & Grossmann LLP, 1285 Avenue of the Americas, New York, NY 10019, Telephone (212) 554-1400 and Milberg LLP,<sup>4</sup>

<sup>4</sup> Milberg LLP was formerly known as Milberg Weiss Bershad & Schulman LLP. On May 18, 2006 in the United States District Court for the Central District of California (Los Angeles), Milberg Weiss Bershad & Schulman LLP and two of its partners, David J. Bershad and Steven G. Schulman, and others, were named as defendants in an indictment. On September 20, 2007, a superseding indictment was filed which added Melvyn I. Weiss as a named defendant. The

One Penn Plaza, New York, NY 10119-0165, Telephone (212) 594-5300 will represent all Class Members. These lawyers are called Class Counsel or Plaintiffs' Co-Lead Counsel. You will not be separately charged for these lawyers. The Court will determine the amount of fees and expenses to be paid to Class Counsel. All fees and expenses awarded by the Court will be paid from the Gross Settlement Fund. Class Members may, but are not required to, hire their own lawyers at their own expense.

17. How will the lawyers and Class Representatives be paid?

Plaintiffs' Co-Lead Counsel are moving the Court to award attorneys' fees from the Gross Settlement Fund in an amount not to exceed 16.1% of the Gross Settlement Fund and, for reimbursement of their expenses in an amount not to exceed \$3.5 million, plus interest on such expenses at the same rate as earned by the Gross Settlement Fund.

Plaintiffs' Co-Lead Counsel are also moving the Court to award a payment of up to \$65,000.00 to Lead Plaintiffs and the other proposed class representative, for their reasonable costs and expenses (including lost wages) directly relating to their representation of the Class.

Plaintiffs' Co-Lead Counsel, without further notice to the Class, will subsequently apply to the Court for payment of the Claims Administrator's fees and expenses incurred in connection with giving notice, administering the Settlement and distributing the Settlement proceeds to the members of the Class.

#### **OBJECTING TO THE SETTLEMENT, PLAN OF ALLOCATION AND APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

If you are a Class Member, you can tell the Court that you do not agree with the Settlement, or some part of it, the proposed Plan of Allocation, and/or the application for attorneys' fees and reimbursement of litigation expenses.

18. How do I tell the Court that I do not like the Settlement, the proposed Plan of Allocation, and/or the application for attorneys' fees and reimbursement of litigation expenses?

If you are a Class Member, you can object to the Settlement, or any of its terms, to the proposed Plan of Allocation and/or to the application by Plaintiffs' Co-Lead Counsel for an award of fees

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indictments alleged that, in certain cases identified in the indictments, portions of attorneys' fees awarded to the firm were improperly shared with certain plaintiffs. Milberg LLP has pleaded not guilty. The three partners named in the indictments have left the firm and have agreed to plead guilty to a charge of conspiracy. The indictments do not refer to this action, and make no allegations of any impropriety in the conduct of this action.

and expenses. You may write to the Court setting out your objection. You may give reasons why you think the Court should not approve any or all of the Settlement terms or arrangements, the proposed Plan of Allocation, and/or the application for attorneys' fees or expenses. The Court will consider your views if you file a proper objection within the deadline identified, and according to the following procedures.

To object to the Settlement, the proposed Plan of Allocation, and/or the application for attorneys' fees and expenses, you must send a signed letter stating that you object to the Settlement, the proposed Plan of Allocation, and/or the application for attorneys' fees and expenses in *In re Biovail Corporation Securities Litigation*, Master File No. 03-CV-8917 (GEL). Be sure to include your name, address, telephone number, and your signature, identify the date(s), price(s), and number(s) of shares of all purchases and sales of Biovail common stock you made during the Class Period (February 7, 2003 through and including March 2, 2004), and state the reasons why you object to the Settlement, the proposed Plan of Allocation, and/or the application for attorneys' fees and expenses. Your objection must be filed with the Court and served on all of the following counsel on or before \_\_\_\_\_, 2008:

COURT	PLAINTIFFS' CO-LEAD COUNSEL	DEFENDANTS' COUNSEL
Clerk of the Court United States District Court for the Southern District of New York 500 Pearl Street New York, NY 10007	Steven B. Singer, Esq. Bernstein Litowitz Berger & Grossmann LLP 1285 Avenue of the Americas New York, NY 10019  and  Sanford P. Dumain, Esq. Milberg LLP One Penn Plaza New York, NY 10119-0165	Martin F. Cunniff, Esq. Howrey LLP 1299 Pennsylvania Ave., N.W. Washington, D.C. 20004  and  T. Barry Kingham, Esq. Curtis, Mallet-Prevost, Colt & Mosle LLP 101 Park Avenue New York, NY 10178

You do not need to go to the Settlement Fairness Hearing to have your written objection considered by the Court. At the Settlement Fairness Hearing, any Class Member who has not previously submitted a request for exclusion from the Class and who has complied with the procedures set out in this response 18 and response to question 22 below for filing with the Court and providing to counsel for Plaintiffs and Defendants a statement of an intention to appear at the Settlement Fairness Hearing may also appear and be heard, to the extent allowed by the Court, to state any objection to the Settlement, the Plan of Allocation or Plaintiffs' Co-Lead Counsel's application for an award of attorneys' fees and reimbursement of expenses. Any such objector may appear in person or arrange, at that objector's expense, for a lawyer to represent the objector at the Hearing.

Any Class Member who does not object to the Settlement, the proposed Plan of Allocation, and/or the application for an award of attorneys' fees and reimbursement of litigation expenses in

the manner prescribed above shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the Settlement, the Judgment to be entered approving the Settlement, the proposed Plan of Allocation or the application for an award of attorneys' fees and reimbursement of expenses.

19. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement, the proposed Plan of Allocation or the application for attorneys' fees and reimbursement of expenses. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

#### THE COURT'S SETTLEMENT FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement, the proposed Plan of Allocation and the application for attorneys' fees and reimbursement of expenses. You may attend and you may ask to speak, but you do not have to.

20. When and where will the Court decide whether to approve the proposed Settlement?

The Court will hold a Settlement Fairness Hearing at \_\_\_:\_\_\_ .m. on \_\_\_ day, \_\_\_\_\_, 2008, at the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007. At this hearing the Court will consider whether the Settlement is fair, reasonable and adequate. At the Settlement Fairness Hearing, the Court also will consider the proposed Plan of Allocation for the proceeds of the Settlement and the application of Plaintiffs' Co-Lead Counsel for attorneys' fees and reimbursement of expenses. The Court will take into consideration any written objections filed in accordance with the instructions at question 18. The Court also may listen to people who have properly indicated, within the deadline identified above, an intention to speak at the hearing; but decisions regarding the conduct of the hearing will be made by the Court. See question 22 for more information about speaking at the hearing. At or after the hearing, the Court will decide whether to approve the Settlement. If the Court approves the Settlement, it will then consider whether or not to approve the proposed Plan of Allocation and the fee and expense application. Please be aware that the Court may adopt a plan of allocation that differs from the plan set forth herein without further notice to the Class. It is not known how long these decisions will take.

You should be aware that the Court may change the date and time of the Settlement Fairness Hearing. Thus, if you want to come to the hearing, you should check with Plaintiffs' Co-Lead Counsel before going to the Court to be sure that the date and/or time has not changed.



21. Do I have to come to the Settlement Fairness Hearing?

No. Plaintiffs' Co-Lead Counsel will answer questions the Court may have. However, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you served and filed your written objection in accordance with the directions set forth in the response to question 18 above, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary. Class Members do not need to appear at any hearing or take any other action to indicate their approval.

22. May I speak at the Settlement Fairness Hearing?

If you object to the Settlement, the proposed Plan of Allocation, and/or the application for an award of attorneys' fees and expenses, you may ask the Court for permission to speak at the Settlement Fairness Hearing. To do so, you must include with your objection (*see* question 18 above) a statement stating that it is your "Notice of Intention to Appear in *In re Biovail Corporation Securities Litigation*, Master File No. 03-CV-8917 (GEL)." Persons who intend to object to the Settlement, the Plan of Allocation, and/or counsel's application for an award of attorneys' fees and expenses and desire to present evidence at the Settlement Fairness Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Fairness Hearing. You cannot speak at the Settlement Fairness Hearing if you excluded yourself from the Class or if you have not provided written notice of your intention to speak at the Settlement Fairness Hearing by the deadline identified, and in accordance with the procedures described in the responses to questions 18 and 20 above and in this response.

#### IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you will get no money from this Settlement and you will be precluded from starting a lawsuit, continuing with a lawsuit, or being part of any other lawsuit against any of the Defendants and any of the other Released Parties about the Settled Claims in this case, ever again. To share in the Net Settlement Fund you must submit a Proof of Claim form (*see* question 10). To start, continue or be a part of any other lawsuit against any of the Defendants and/or any of the other Released Parties about the Settled Claims in this case you must exclude yourself from the Class in accordance with the procedures set forth in this Notice (*see* question 13).

## GETTING MORE INFORMATION

24. Are there more details about the proposed Settlement?

This notice summarizes the proposed Settlement. More details are in a Stipulation and Agreement of Settlement dated April 4, 2008 (the "Stipulation"). You can get a copy of the Stipulation by writing to Steven B. Singer, Esq., Bernstein Litowitz Berger & Grossmann LLP, 1285 Avenue of the Americas, New York, NY 10019, or Sanford P. Dumain, Esq., Milberg LLP, One Penn Plaza, New York, NY 10119-0165, or by visiting [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

You also can contact the Claims Administrator at 1-800-\_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_- toll free; write to *In re Biovail Corporation Securities Litigation Settlement*, c/o Complete Claim Solutions, LLC, P.O. Box \_\_\_\_\_, West Palm Beach, FL 33416; or visit the website at [www.\\_\\_\\_\\_\\_.com](http://www._____.com), where you will find answers to common questions about the Settlement, a Proof of Claim form, plus other information to help you determine whether you are a Class Member and whether you are eligible for a payment.

25. How do I get more information?

For even more detailed information concerning the matters involved in this Action, reference is made to the pleadings, to the Stipulation, to the Orders entered by the Court and to the other papers filed in the Action, which may be inspected at the Office of the Clerk of the Court, United States District Court, 500 Pearl Street, New York, NY 10007 during regular business hours.

### PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG CLASS MEMBERS

The \$138 million cash Settlement Amount and the interest earned thereon shall be the Gross Settlement Fund. The Gross Settlement Fund, less all Taxes, approved costs, fees and expenses (the "Net Settlement Fund") shall be distributed to members of the Class who submit acceptable Proofs of Claim ("Authorized Claimants").

The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's "Recognized Claim." The Recognized Claim formula is not intended to be an estimate of the amount of what a Class Member might have been able to recover after a trial; nor is it an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Claim formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants.

An Authorized Claimant's "Recognized Claim" will be calculated for purposes of the Settlement as follows:

1. For shares of common stock purchased between February 7, 2003 and October 2, 2003, and:
  - A. sold between February 7, 2003 and October 2, 2003, the Recognized Claim shall be zero.
  - B. sold between October 3, 2003 and October 7, 2003, the Recognized Claim shall be the lesser of:
    - (1) \$2.87 per share; or
    - (2) the difference between the purchase price per share and the sales price per share for each share sold.
  - C. sold between October 8, 2003 and October 13, 2003, the Recognized Claim shall be the lesser of:
    - (1) \$6.47 per share; or
    - (2) \$2.87 + the difference between \$29.05 and sales price per share; or
    - (3) the difference between the purchase price per share and the sales price per share for each share sold.
  - D. sold between October 14, 2003 and October 29, 2003, the Recognized Claim shall be the lesser of:
    - (1) \$2.87 per share; or
    - (2) the difference between the purchase price per share and the sales price per share for each share sold.
  - E. sold between October 30, 2003 and November 20, 2003, the Recognized Claim shall be the lesser of:
    - (1) \$3.75 per share; or
    - (2) the difference between the purchase price per share and the sales price per share for each share sold.
  - F. sold between November 21, 2003 and March 2, 2004, the Recognized Claim shall be the lesser of:
    - (1) \$7.83 per share; or
    - (2) the difference between the purchase price per share and the sales price per share for each share sold.
  - G. retained at the end of trading on March 2, 2004, the Recognized Claim shall be the lesser of:
    - (1) \$8.27 per share; or
    - (2) the difference between the purchase price per share and \$18.60.<sup>5</sup>
2. For shares of common stock purchased between October 3, 2003 and October 7, 2003, and:

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<sup>5</sup> March 3, 2004 closing price (\$ US) of Biovail common stock.

- A. sold between October 3, 2003 and October 7, 2003, the Recognized Claim shall be zero.
  - B. sold between October 8, 2003 and October 13, 2003, the Recognized Claim shall be the lesser of:
    - (1) \$3.61; or
    - (2) the difference between \$29.05 and sales price per share; or
    - (3) the difference between the purchase price per share and the sales price per share for each share sold.
  - C. sold between October 14, 2003 and October 29, 2003, the Recognized Claim shall be zero.
  - D. sold between October 30, 2003 and November 20, 2003, the Recognized Claim shall be the lesser of:
    - (1) \$0.88 per share; or
    - (2) the difference between the purchase price per share and the sales price per share for each share sold.
  - E. sold between November 21, 2003 and March 2, 2004, the Recognized Claim shall be the lesser of:
    - (1) \$4.96 per share; or
    - (2) the difference between the purchase price per share and the sales price per share for each share sold.
  - F. retained at the end of trading on March 2, 2004, the Recognized Claim shall be the lesser of:
    - (1) \$5.40 per share; or
    - (2) the difference between the purchase price per share and \$18.60.
3. For shares of common stock purchased between October 8, 2003 and October 29, 2003, and:
- A. sold between October 8, 2003 and October 29, 2003, the Recognized Claim shall be zero.
  - B. sold between October 30, 2003 and November 20, 2003, the Recognized Claim shall be the lesser of:
    - (1) \$0.88 per share; or
    - (2) the difference between the purchase price per share and the sales price per share for each share sold.
  - C. sold between November 21, 2003 and March 2, 2004, the Recognized Claim shall be the lesser of:
    - (1) \$4.96 per share; or
    - (2) the difference between the purchase price per share and the sales price per share for each share sold.

- D. retained at the end of trading on March 2, 2004, the Recognized Claim shall be the lesser of:
  - (1) \$5.40 per share; or
  - (2) the difference between the purchase price per share and \$18.60.
- 4. For shares of common stock purchased between October 30, 2003 and November 20, 2003, and:
  - A. sold between October 30, 2003 and November 20, 2003, the Recognized Claim shall be zero.
  - B. sold between November 21, 2003 and March 2, 2004, the Recognized Claim shall be the lesser of:
    - (1) \$4.08 per share; or
    - (2) the difference between the purchase price per share and the sales price per share for each share sold.
  - C. retained at the end of trading on March 2, 2004, the Recognized Claim shall be the lesser of:
    - (1) \$4.52 per share; or
    - (2) the difference between the purchase price per share and \$18.60.
- 5. For shares of common stock purchased between November 21, 2003 and March 2, 2004, and:
  - A. sold between November 21, 2003 and March 2, 2004, the Recognized Claim shall be zero.
  - B. retained at the end of trading on March 2, 2004, the Recognized Claim shall be the lesser of:
    - (1) \$0.44 per share; or
    - (2) the difference between the purchase price per share and \$18.60.

In the event a Class Member has more than one purchase or sale of Biovail common stock, all purchases and sales shall be matched on a First In First Out ("FIFO") basis, Class Period sales will be matched first against any Biovail shares held at the beginning of the Class Period and then against purchases in chronological order, beginning with the earliest purchase made during the Class Period. A purchase or sale of Biovail common stock shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, devise or operation of law of Biovail common stock during the Class Period shall not be deemed a purchase or sale of Biovail common stock for the calculation of an Authorized Claimant's Recognized Claim nor shall it be deemed an assignment of any claim relating to the purchase of such Biovail shares unless specifically provided in the instrument of gift or assignment and the original purchase occurred during the Class Period. The receipt of Biovail common stock during the Class Period in exchange for securities of any other corporation or entity shall not be deemed a purchase or sale of Biovail common stock.

To the extent a Claimant had a gain from his, her or its overall transactions in Biovail common stock during the Class Period, the value of the Recognized Claim will be zero. Such Claimants will in any event be bound by the Settlement. To the extent that a Claimant suffered an overall loss on his, her or its overall transactions in Biovail common stock during the Class Period, but that loss was less than the Recognized Claim calculated above, then the Recognized Claim shall be limited to the amount of the actual loss.

For purposes of determining whether a Claimant had a gain from his, her or its overall transactions in Biovail common stock during the Class Period or suffered a loss, the Claims Administrator shall: (i) total the amount paid for all Biovail common stock purchased during the Class Period by the Claimant (the "Total Purchase Amount"); (ii) match any sales of Biovail common stock during the Class Period first against the Claimant's opening position in the stock (the proceeds of those sales will not be considered for purposes of calculating gains or losses); (iii) total the amount received for sales of the remaining shares of Biovail common stock sold during the Class Period (the "Sales Proceeds"); and (iv) ascribe an \$18.60 per share holding value for the number of shares of Biovail common stock purchased during the Class Period and still held at the end of the Class Period ("Holding Value"). The difference between the Total Purchase Amount ((i) above) and the sum of the Sales Proceeds and the Holding Value ((iii) plus (iv) above) will be deemed a Claimant's gain or loss on his, her or its overall transactions in Biovail common stock during the Class Period.

Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its Recognized Claim as compared to the total Recognized Claims of all Authorized Claimants. A payment to an Authorized Claimant of less than \$10 in total will not be included in the calculation and will not be distributed.

Class Members who do not submit acceptable Proofs of Claim will not share in the Settlement proceeds. Class Members who do not either submit a request for exclusion or submit an acceptable Proof of Claim will nevertheless be bound by the Settlement and the Judgment of the Court dismissing this Action.

Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. If any funds remain in the Net Settlement Fund by reason of un-cashed distributions or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distributions, any balance remaining in the Net Settlement Fund one (1) year after the initial distribution of such funds shall be re-distributed to Class Members who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution. If after six months after such re-distribution any funds shall remain in the Net Settlement Fund, then such balance shall be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s) designated by Plaintiffs' Co-Lead Counsel after notice to the Court and subject to direction, if any, by the Court.

Plaintiffs, Defendants, their respective counsel, and all other Released Parties shall have no responsibility for or liability whatsoever for the investment or distribution of the Settlement Amount, the Net Settlement Fund, the Plan of Allocation or the determination, administration,

calculation, or payment of any Proof of Claim or non-performance of the Claims Administrator, the payment or withholding of Taxes owed by the Gross Settlement Fund or any losses incurred in connection therewith.

### **THE CANADIAN ACTION**

On September 21, 2005, a separate securities class action styled *Canadian Commercial Workers Industry Pension Plan against Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling*, Court File No. 48172 CP (the "Canadian Action"), was commenced in Canada in the Ontario Superior Court of Justice (the "Canadian Court"). The Canadian Action alleges violations of Canadian law based on essentially the same facts and circumstances as those cited in the Complaint in the U.S. Action. The Canadian Action was brought on behalf of essentially the same class represented in the U.S. Action, *i.e.*, all persons who purchased Biovail's common stock between February 7, 2003 and March 2, 2004, other than the defendants named in the Canadian Action. Plaintiff in the Canadian Action and its counsel have determined to ask the Canadian Court to approve the settlement of the Canadian Action based on the consideration obtained in settlement of the U.S. Action. The Canadian Court will hold a fairness hearing to determine whether to approve the settlement of the Canadian Action on \_\_\_\_\_.

The decision of the Canadian Court with respect to approval of the settlement of the Canadian Action does not affect the settlement of the U.S. Action or the determinations of the Court in the U.S. Action. Settlement of the U.S. Action is not conditioned on the decisions of the Canadian Court or approval of the settlement of the Canadian Action. Additionally, there will be no distribution of funds through the Canadian Action. The only Proof of Claim form that will be distributed is the claim form in the U.S. Action.

Canadian Class Counsel have had input into the notice and administration procedures which will govern the Settlement, and were involved in negotiating the provisions of the corporate governance reforms. Canadian Class Counsel will be compensated for their services by the Defendants in an amount to be approved by the Canadian Court, and not out of the Settlement Fund.

As described earlier, a request for exclusion from the U.S. proceedings will also serve to exclude a Class Member from the Canadian Action. Similarly, any objection made concerning the Settlement will be provided to the Canadian Court. A specific objection concerning the Canadian settlement may be provided to Canadian Class Counsel.

If you would like additional information regarding the Canadian Action, please contact: Charles M. Wright or A. Dimitri Lascaris at Siskinds LLP, 680 Waterloo Street, London, ON N6A 3V8, Tel: (519) 672-2121, or Michael D. Wright at Cavalluzzo Hayes Shilton McIntyre & Cornish LLP, 474 Bathurst Street, Suite 300, Toronto, ON M5T 2S6.

### **SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

If you purchased common stock of Biovail on the New York Stock Exchange or any other U.S. stock exchange or the Toronto Stock Exchange or any other Canadian stock exchange during the

period from February 7, 2003, through and including March 2, 2004 for the beneficial interest of a person or organization other than yourself, the Court has directed that, WITHIN SEVEN (7) DAYS OF YOUR RECEIPT OF THIS NOTICE, you either (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you purchased Biovail common stock on any such exchanges during such time period or (b) request additional copies of this Notice and the Proof of Claim form, which will be provided to you free of charge, and within seven (7) days of receipt of such copies mail the Notice and Proof of Claim form directly to the beneficial owners of that Biovail common stock. If you choose to follow alternative procedure (b), the Court has directed that, upon such mailing, you send a statement to the Claims Administrator confirming that the mailing was made as directed. You are entitled to reimbursement from the Gross Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Those expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator:

In re Biovail Securities Litigation  
c/o Complete Claim Solutions, LLC  
Claims Administrator  
P.O. Box \_\_\_\_\_  
West Palm Beach, FL 33416  
(800) \_\_\_\_ - \_\_\_\_

Dated:           New York, New York  
                  \_\_\_\_\_, 2008

By Court Order

#291435.10



## **Schedule "A2"**

Must be Postmarked  
No Later Than  
\_\_\_\_\_, 2008

**Biovail Corporation Securities Litigation**

c/o Complete Claim Solutions, LLC  
P.O. Box \_\_\_\_\_  
West Palm Beach, FL 33416  
Tel.: \_\_\_\_\_

**PROOF OF CLAIM AND RELEASE**

**PART I: CLAIMANT IDENTIFICATION**

Claim Number: \_\_\_\_\_ Control Number: \_\_\_\_\_

IF THE ABOVE AREA IS BLANK, YOU MUST ENTER  
YOUR FULL NAME AND ADDRESS HERE →

Please fill in the last four digits of your Social Security Number/  
Social Insurance Number/ Taxpayer ID Number/Business Number/  
Trust Number if box below is blank:

\_\_\_\_\_

Daytime Telephone Number: ( ) - \_\_\_\_\_

Evening Telephone Number: ( ) - \_\_\_\_\_

Email Address \_\_\_\_\_

**REQUIRED INFORMATION OR CORRECTIONS**

Write any name and address corrections below if any  
corrections are necessary **OR** if there is no preprinted data to  
the left, **YOU MUST** provide your full name and address here:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State/Country: \_\_\_\_\_  
Zip Code: \_\_\_\_\_

**Check appropriate box:**

- Individual       Joint Owners  
 Estate           Corporation  
 Trust             Partnership  
 Other \_\_\_\_\_  IRA, Keogh or other Retirement Plan  
(Specify) \_\_\_\_\_ (type of plan)

Name of Beneficial Owner, if different than Claimant:  
(PLEASE TYPE OR PRINT) \_\_\_\_\_

## **PART II: GENERAL INSTRUCTIONS**

If you purchased Biovail Corporation ("Biovail") common stock on the New York Stock Exchange ("NYSE") or other U.S. stock exchanges or the Toronto Stock Exchange or other Canadian stock exchanges during the period from February 7, 2003, through and including March 2, 2004, then you may be entitled to a payment from a proposed class action settlement.

Excluded from the Class are Biovail, its subsidiaries, affiliates, predecessor and successor entities; Ernst & Young LLP [U.S. and Canada] and any of their affiliates, subsidiaries, and predecessor and successor entities; Ernst & Young LLP [U.S. and Canada] partners and partners of any of their affiliates, subsidiaries, and predecessor and successor entities; individual defendants Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk, Kenneth Howling and Rolf Reininghaus; members of their immediate families; any entity in which any defendant has a controlling interest; any person who was an officer or director of Biovail during the Class Period; and the legal representatives, heirs, successors or assigns of any of the foregoing excluded persons or entities.

If you fall within the definition of the Class, but filed a request for exclusion pursuant to the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing dated \_\_\_\_\_, 2008 (the "Notice"), you are no longer a Class Member.

IF YOU ARE NOT A CLASS MEMBER, DO NOT SUBMIT A PROOF OF CLAIM AND RELEASE.

IF YOU ARE A CLASS MEMBER, YOU MUST COMPLETE AND SUBMIT THIS FORM IN ORDER TO BE ELIGIBLE FOR ANY SETTLEMENT BENEFITS.

YOU MUST COMPLETE AND SIGN THIS PROOF OF CLAIM AND MAIL IT BY FIRST CLASS MAIL, POSTMARKED NO LATER THAN \_\_\_\_\_, 2008 TO THE FOLLOWING ADDRESS:

**Biovail Corporation Securities Litigation Settlement**  
c/o Complete Claim Solutions, LLC  
Claims Administrator  
P.O. Box \_\_\_\_\_  
West Palm Beach, FL 33416

YOUR FAILURE TO SUBMIT YOUR CLAIM BY \_\_\_\_\_, 2008 WILL SUBJECT YOUR CLAIM TO REJECTION AND PRECLUDE YOUR RECEIVING ANY MONEY IN CONNECTION WITH THE SETTLEMENT OF THIS LITIGATION. DO NOT MAIL OR DELIVER YOUR CLAIM TO THE COURTS OR TO ANY OF THE PARTIES OR THEIR COUNSEL AS ANY SUCH CLAIM WILL BE DEEMED NOT TO HAVE BEEN SUBMITTED. SUBMIT YOUR CLAIM ONLY TO THE CLAIMS ADMINISTRATOR.

Submission of this Proof of Claim and Release does not ensure that you will share in the proceeds of the Net Settlement Fund. Distributions from the Net Settlement Fund will be governed by the Plan of Allocation approved by the Court.

If you are a Class Member, you are bound by the terms of the Judgments that the Courts enter whether or not you submit a Proof of Claim and Release. The Judgments entered with respect to the defendants enjoins the filing or continued prosecution of all Settled Claims against any of the Released Parties. The Settled Claims and Released Parties are defined in response to question 12 of the Notice. Additional copies of the Notice can be downloaded from [www.blbglaw.com](http://www.blbglaw.com).

You are required to submit genuine and sufficient documentation for all your transactions in Biovail common stock on the NYSE or other U.S. exchanges or the Toronto or other Canadian exchanges during the Class Period, i.e., between February 7, 2003 through and including March 2, 2004. In addition, if you held Biovail common stock at the opening or the close of the Class Period, you are required to submit genuine and sufficient documentation to show your holdings in Biovail common stock as of the opening of the Class Period

and as of the close of the Class Period. This documentation may be photocopies of stockbrokers' confirmation slips; stockbrokers' monthly statements (reflecting your opening and closing balances for the months specified on the claim form, and in which transactions during the Class Period occurred); or signed letters from brokers, on their letterheads, giving all the information that would be found on a confirmation slip.

**IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OR EQUIVALENT CONTEMPORANEOUS DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION COULD RESULT IN REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL STOCK CERTIFICATES. Please keep a copy of all documents that you send to the Claims Administrator.**

By submitting a signed Proof of Claim and Release, you will be affirming, under penalty of perjury, the truth of the statements contained therein and the genuineness of the documents attached thereto. The making of false statements, or the submission of forged or fraudulent documentation, will result in the rejection of your claim and may subject you to civil liability or criminal prosecution.

**NOTICE REGARDING ELECTRONIC FILES:** Certain claimants with large numbers of transactions may request to, or may be requested to, submit information regarding their transactions in electronic files. All Claimants MUST submit a manually signed paper Proof of Claim form listing all their transactions whether or not they also submit electronic copies. If you wish to file your claim electronically, you must contact the Claims Administrator at 1-(800) \_\_\_\_\_ or visit their website at [www.\_\_\_\_\_.com] to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the Claimant a written acknowledgment of receipt and acceptance of electronically submitted data.

A Proof of Claim received by the Claims Administrator shall be deemed to have been submitted when posted, if mailed by \_\_\_\_\_, 2008, and if a postmark is indicated on the envelope and it is mailed first class, and addressed in accordance with the above instructions. In all other cases, a Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator.

**NOTE: Receipt Acknowledgement Needed**

The Claims Administrator will send a written confirmation of its receipt of your Proof of Claim. Do not assume your claim is submitted until you receive written confirmation of its receipt. Your claim is not deemed fully filed until the Claims Administrator sends you written confirmation of its receipt of your Proof of Claim. If you do not receive an acknowledgement postcard within thirty (30) days of you mailing the Proof of Claim, then please call the Claims Administrator toll free at 1 (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_.

**PART III: CLAIMANT'S STATEMENT**

1. I (We) affirm that I (we) purchased the common stock of Biovail on the New York Stock Exchange or other U.S. stock exchanges or the Toronto Stock Exchange or other Canadian stock exchanges during the period from February 7, 2003, through and including March 2, 2004. (Do not submit this Proof of Claim if you did not purchase Biovail common stock on one or more of such exchanges during this period).

2. By submitting this Proof of Claim, I (we) state that I (we) believe in good faith that I am a (we are) Class Member(s) as defined above and in the Notice, or am (are) acting for such person; that I am (we are) not a Defendant(s) in the Action or anyone excluded from the Class; that I (we) have read and understand the Notice; that I (we) believe that I am (we are) entitled to receive a share of the Net Settlement Fund; that I (we) elect to participate in the proposed Settlement described in the Notice; and that I (we) have not filed a request for exclusion. (If you are acting in a representative capacity on behalf of a Class Member (e.g., as an executor, administrator, trustee, or other representative), you must submit evidence of your current authority to act on behalf of that Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.)

3. I (We) consent to the jurisdiction of the United States District Court for the Southern District of New York (the "Court") with respect to all questions concerning the validity of this Proof of Claim. I (We) understand and

agree that my (our) claim may be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to my (our) status as a Class Member(s) and the validity and amount of my (our) claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Proofs of Claim.

4. I (We) have set forth where requested below all relevant information with respect to each purchase of Biovail common stock during the Class Period, and each sale, if any, of such security. I (We) agree to furnish additional information (including transactions in other Biovail securities) to the Claims Administrator to support this claim if requested to do so.

5. I (We) have enclosed photocopies of the stockbroker's confirmation slips, stockbroker's statements, or other documents evidencing each purchase, sale or retention of Biovail common stock listed below in support of my (our) claim.

6. I (We) understand that the information contained in this Proof of Claim is subject to such verification as the Claims Administrator may request or as the Court may direct, and I (we) agree to cooperate in any such verification. (The information requested herein is designed to provide the minimum amount of information necessary to process most simple claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate your Recognized Claim. In some cases the Claims Administrator may condition acceptance of the claim based upon the production of additional information, including, where applicable, information concerning transactions in any derivatives of the subject securities such as options.)

7. Upon the occurrence of the Effective Date my (our) signature(s) hereto will constitute a full and complete release, remise and discharge by me (us) and my (our) heirs, executors, administrators, predecessors, successors, and assigns (or, if I am (we are) submitting this Proof of Claim on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their heirs, executors, administrators, predecessors, successors, and assigns) of each of the "Released Parties" of all "Settled Claims," as defined in the Notice.

**PART IV: SCHEDULE OF TRANSACTIONS IN BIOVAIL COMMON STOCK**

Separately list each of your purchases and sales on the NYSE or other U.S. exchanges or the Toronto or other Canadian exchanges of Biovail common stock below. Photocopy this page if more space is needed. Be sure to include your name and the last four digits of your Social Security number or Tax ID number on any additional sheets. Check here if additional transactions are included on additional schedules.

The date of purchase or sale is the "trade" or "contract" date, and not the "settlement" or "payment" date.

**SECTION B: BEGINNING HOLDINGS:** At the close of business on February 6, 2003, I owned the following number of shares of Biovail common stock. (If none, write "0" or "Zero.") (Must be documented if other than zero.)

**SECTION P: PURCHASES:** I made the following purchases of Biovail common stock on a United States or Canadian stock exchange during the period February 7, 2003 through March 2, 2004, inclusive.

Date(s) of Purchase (List Chronologically) (Month/Day/Year)	Number of Shares of Common Stock Purchased	Purchase Price Per Share of Common Stock	Total Purchase Price (excluding taxes, commissions, etc.)	Please Check One	
				Prices stated in U.S. Dollars	Prices stated in Canadian Dollars
____/____/____	_____	\$ _____	\$ _____	_____	_____
____/____/____	_____	\$ _____	\$ _____	_____	_____
____/____/____	_____	\$ _____	\$ _____	_____	_____
____/____/____	_____	\$ _____	\$ _____	_____	_____

**SECTION S: SALES:** I made the following sales of Biovail common stock during the period February 7, 2003 through March 2, 2004, inclusive. If none, check here.

Date(s) of Sale (List Chronologically) (Month/Day/Year)	Number of Shares of Common Stock Sold	Sale Price Per Share of Common Stock	Total Sale Price (excluding taxes, commissions, etc.)	Please Check One	
				Prices stated in U.S. Dollars	Prices stated in Canadian Dollars
____/____/____	_____	\$ _____	\$ _____	_____	_____
____/____/____	_____	\$ _____	\$ _____	_____	_____
____/____/____	_____	\$ _____	\$ _____	_____	_____
____/____/____	_____	\$ _____	\$ _____	_____	_____

**SECTION U: END HOLDINGS.** At the close of trading on March 2, 2004, I owned the following number of shares of Biovail common stock. (If none, write "0" or "Zero.") (Must be documented if  other than zero.)

**PART V: CERTIFICATION AND REQUEST FOR TAXPAYER IDENTIFICATION NUMBER**

U.S. Persons and Entities: / \_\_\_ / I (We) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because: (a) I am (We are) exempt from backup withholding, or (b) I (We) have not been notified by the I.R.S. that I am (we are) subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the I.R.S. has notified me (us) that I am (we are) no longer subject to backup withholding.

**NOTE:** If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike the language that you are not subject to backup withholding in the certification above.

Canadian or Other Non-U.S. Persons and Entities: / \_\_\_ / The beneficial owner is not a U.S. person and the income to which this form relates, if any, is not effectively connected with the conduct of a trade or business in the United States.

For tax purposes, if you are subject to backup withholding, enter the appropriate tax identification number below for the Beneficial Owner(s). For most United States individuals, this is your Social Security Number. For most United States entities, this is your Taxpayer Identification Number. For most Canadian individuals, this your Social Insurance Number. For most Canadian entities, this is your Business Number.

Individuals:

\_\_\_\_\_  
Social Security Number OR \_\_\_\_\_  
Social Insurance Number

Estates, Trusts, Corporations, etc.:

\_\_\_\_\_  
Taxpayer Identification Number OR \_\_\_\_\_  
Business Number/Trust Number

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION I (WE) PROVIDED ON THIS PROOF OF CLAIM IS TRUE, CORRECT AND COMPLETE.

Signature of Claimant (If this claim is being made on behalf of Joint Claimants, then each must sign)

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
(Type of Print Name)

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Joint Owner (if any)

\_\_\_\_\_  
(Type of Print Name)

If the Claimant is other than an individual, or if the Claimant is not the person completing this form, the following must also be provided:

\_\_\_\_\_  
Name of Person Signing

Date: \_\_\_\_\_

\_\_\_\_\_  
(Title/Capacity of person(s) signing, e.g., beneficial purchaser(s), president, executor, administrator, trustee, etc.)

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**ACCURATE CLAIM PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.  
THANK YOU FOR YOUR PATIENCE.**

**REMINDER CHECKLIST**

1. Please sign both the Proof of Claim and Release on page \_\_. If this claim is made on behalf of joint claimants, then both must sign.
2. Please, remember to attach supporting documents. Do NOT send any stock certificates.
3. DO NOT SEND ORIGINALS OF ANY SUPPORTING DOCUMENTS.
4. Keep a copy of your Proof of Claim and Release and all documentation submitted for your records.
5. Do NOT use highlighter on the Proof of Claim and Release form or supporting documentation.
6. If you do not receive an acknowledgement postcard of receipt of your claim form within thirty (30) days of your mailing the Proof of Claim, then please call the Claims Administrator toll free at 1 (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_
7. If you move after submitting this Proof of Claim, please notify the Claims Administrator of the change in your address.

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**YOU MUST MAIL THIS FORM AND YOUR SUPPORTING DOCUMENTATION BY \_\_\_\_\_, 2008.**

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#287273.4



## **Schedule "B"**

The Honourable ) , the day  
)  
Justice ) of , 2008

*ONTARIO*

SUPERIOR COURT OF JUSTICE

BETWEEN :

CANADIAN COMMERCIAL WORKERS INDUSTRY PENSION PLAN

Plaintiff

- and -

BIOVAIL CORPORATION, EUGENE N. MELNYK, BRIAN H. CROMBIE,  
JOHN R. MISZUK, AND KENNETH G. HOWLING

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**THIS MOTION** made by the Plaintiff for an Order approving the Settlement Agreement entered into with the Defendants was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed with the Court, including the settlement agreement dated as of April 15, 2008 between the parties, attached hereto as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendants:

1. **THIS COURT ORDERS** that, for the purposes of the Order, except as otherwise stated, the definitions set out in the Settlement Agreement apply and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
4. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into, and forms part of, the Order and is binding upon the Canadian Representative Plaintiff and upon all members of the Class.
5. **THIS COURT ORDERS AND DECLARES** that the Order, including the Settlement Agreement, is binding upon each Class Member, including those persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this action.
6. **THIS COURT ORDERS AND DECLARES** that the obligations incurred pursuant to the Settlement shall be in full and final disposition of the Canadian Action and any and all Settled Claims as against all Released Parties and any and all Settled Defendants' Claims.

7. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, the Canadian Representative Plaintiff and other members of the Class on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns shall release and forever discharge each and every Settled Claim, and shall forever be enjoined from prosecuting any Settled Claims against any of the Released Parties.
  
8. **THIS COURT ORDERS AND DECLARES** that each of the Defendants, on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, and the other Released Parties, shall release and forever discharge each and every of the Settled Defendants' Claims, and shall forever be enjoined from prosecuting the Settled Defendants' Claims against the Canadian Representative Plaintiff and Canadian Class Counsel.
  
9. **THIS COURT ORDERS** that, upon the Effective Date, the Canadian Action shall be and is hereby dismissed against the Defendants without costs and with prejudice.

Date:

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Justice Rady

## **Schedule "C"**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE BIOVAIL CORPORATION  
SECURITIES LITIGATION

Master File No. 03-CV-8917 (GEL)

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the "Stipulation") is entered into in the above-captioned action (the "Action") by and among Lead Plaintiffs Ontario Teachers' Pension Plan Board and Local 282 Welfare Trust Fund ("Lead Plaintiffs") on behalf of themselves and the other members of the Class (as hereinafter defined) and Defendants Biovail Corporation ("Biovail"), and individual defendants Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk, Kenneth Howling, and Rolf Reininghaus (the "Individual Defendants") (Biovail and the Individual Defendants are collectively referred to hereinafter as the "Defendants"), by and through their undersigned respective counsel, subject to approval of the United States District Court for the Southern District of New York pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

WHEREAS:

A. Beginning on or about November 12, 2003, thirteen class action complaints were filed in the United States District Court for the Southern District of New York against certain of the Defendants. The actions were styled *Hays v. Biovail Corp., et al.*, Civil Action No. 03-8917 (RO); *Chrapko v. Biovail Corp et al.*, Civil Action No. 03-8979 (RO); *Felgoise v. Biovail Corp. et al.*, Civil Action No. 03-09002 (unassigned); *Newby v. Biovail Corp. et al.*, Civil Action No. 03-9011 (unassigned); *Welsh v. Biovail Corp. et al.*, Civil Action No. 03-9293 (unassigned); *Sobel v. Biovail Corp. et al.*, Civil Action No. 03-9480 (unassigned); *Shi v. Biovail Corp. et al.*,

Civil Action No. 03-9590 (RO); *Abrahamson v. Biovail Corp. et al.*, Civil Action No. 03-9616 (JFK); *Gokhale v. Biovail Corp. et al.*, Civil Action No. 03-9701 (GBD); *Pierce v. Biovail et al.*, Civil Action No. 03-9914 (RO); *Emery v. Biovail Corp. et al.*, Civil Action No. 03-10058 (unassigned); *Wojciechowski v. Biovail Corp. et al.*, Civil Action No. 03-10221 (HB); *Rand v. Biovail Corp. et al.*, Civil Action No. 04-00188 (unassigned). By Order Consolidating All Related Actions, Appointing Co-Lead Plaintiffs and Approving Their Selection of Co-Lead Counsel entered March 9, 2004 ("March 9, 2004 Order"), these actions, together with any subsequently filed or transferred actions on behalf of investors who purchased Biovail securities related to the claims asserted in these actions were consolidated for all purposes. The March 9, 2004 Order also appointed Ontario Teachers' Pension Plan Board and Local 282 Welfare Trust Fund as Co-Lead Plaintiffs and approved their selection of co-lead counsel for the Action;<sup>1</sup>

B. On June 18, 2004, Lead Plaintiffs filed the Consolidated Amended Class Action Complaint asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder (the "First Amended Complaint"). The First Amended Complaint generally alleges violations of the federal securities laws through, among other things, misstatements and omissions by Defendants in Communications (as defined below) regarding two drugs that would be launched in 2003, Cardizem LA and Wellbutrin XL, and the projections that they gave Wall Street which were based on the successful launches of those drugs. The First Amended Complaint sought to proceed on behalf of a class consisting of all persons who purchased Biovail publicly traded common stock during the period February 7, 2003 through and including March 2, 2004, excluding certain named persons and entities;

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<sup>1</sup> The March 9, 2004 Order also appointed a third lead plaintiff whose motion to voluntarily withdraw as such was granted by Order entered on April 7, 2005.

C. On September 28, 2004 Defendants moved to dismiss the First Amended Complaint. The motion was denied by Order entered December 22, 2004. Defendants answered the First Amended Complaint on February 4, 2005;

D. On February 28, 2006, Lead Plaintiffs' filed their motion (i) to certify the Action as a class action, (ii) to certify Lead Plaintiffs as well as Plaintiff City of Dearborn Heights Act 345 Pension System as Class Representatives, and (iii) to certify Co-Lead Counsel as Class Counsel. The motion was fully briefed and argued to the Court and was *sub judice* at the time the agreement in principle to settle the Action was reached;

E. On August 25, 2006, Lead Plaintiffs filed the Consolidated Second Amended Class Action Complaint (the "Complaint") which generally alleges, among other things, that, in Communications in connection with the launching and marketing of Cardizem LA and reporting to the public about the launch of Cardizem LA, Biovail, with the participation of the Individual Defendants issued materially false and misleading press releases and other statements, including financial statements filed with the SEC, regarding Cardizem LA and Biovail's financial condition during the Class Period in a scheme to artificially inflate the value of Biovail's common stock;

F. The Complaint further alleges that Lead Plaintiffs and the other members of the Class purchased the common stock of Biovail during the Class Period at prices artificially inflated as a result of the Defendants' dissemination in Communications of materially false and misleading statements regarding Biovail in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder;

G. On October 20, 2006, Defendants answered the Complaint;



H. The Defendants deny any wrongdoing whatsoever and this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Defendant with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendants have asserted. The parties to this Stipulation recognize, however, that the litigation has been filed by Plaintiffs and defended by Defendants in good faith and in compliance with Federal Rule of Civil Procedure 11, that the litigation is being voluntarily settled after advice of counsel, and that the terms of the settlement are fair, adequate and reasonable. This Stipulation shall not be construed or deemed to be a concession by any Plaintiff of any infirmity in the claims asserted in the Action;

I. Plaintiffs' Co-Lead Counsel have conducted an extensive investigation and thorough discovery relating to the claims and the underlying events and transactions alleged in the Complaint, including the review of millions of pages of documents produced by Defendants and third parties and the deposing of approximately fifteen (15) fact witnesses as of the date the agreement in principle to settle was reached. Plaintiffs' Co-Lead Counsel have analyzed the evidence adduced during pretrial discovery and have researched the applicable law with respect to the claims of Lead Plaintiffs and the other members of the Class against the Defendants and the potential defenses thereto;

J. In the fall of 2005, the parties mediated before former Judge Nicholas Politan but were unable to reach an agreement to resolve the Action. In December 2007, with the benefit of the development of the Action and the extensive discovery had since the earlier mediation and with the assistance of Gary V. McGowan, Esq. acting as a mediator, Lead Plaintiffs, by their counsel, conducted discussions and arm's-length negotiations with counsel for Defendants with

respect to a compromise and settlement of the Action with a view to settling the issues in dispute and achieving the best relief possible consistent with the interests of the Class; and

K. Based upon their investigation and pretrial discovery as set forth above, Lead Plaintiffs and Plaintiffs' Co-Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Lead Plaintiffs and the other members of the Class, and in their best interests, and have agreed to settle the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering (i) the cash and other benefits that Lead Plaintiffs and the other members of the Class will receive from settlement of the Action, (ii) the attendant risks of litigation, including in particular the risks of establishing recoverable damages, and (iii) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

NOW THEREFORE, without any admission or concession on the part of Lead Plaintiffs of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by Defendants, it is hereby STIPULATED AND AGREED, by and among the parties to this Stipulation, through their respective attorneys, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the parties hereto from the Settlement, that all Settled Claims (as defined below) as against the Released Parties (as defined below) and all Settled Defendants' Claims (as defined below) shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

### CERTAIN DEFINITIONS

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) "Authorized Claimant" means a Class Member who submits a timely and valid Proof of Claim form to the Claims Administrator.

(b) "Claims Administrator" means the firm of Complete Claim Solutions, LLC, which shall administer the Settlement.

(c) "Class" means, for the purposes of this Settlement only, all persons and entities who purchased the common stock of Biovail on the New York Stock Exchange or other U.S. stock exchanges or the Toronto Stock Exchange or other Canadian stock exchanges during the period from February 7, 2003, through and including March 2, 2004. Excluded from the Class are Biovail, its subsidiaries, affiliates, predecessor and successor entities; Ernst & Young LLP [U.S. and Canada] and any of their affiliates, subsidiaries, and predecessor and successor entities; Ernst & Young LLP [U.S. and Canada] partners and partners of any of their affiliates, subsidiaries, and predecessor and successor entities; individual defendants Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk, Kenneth Howling, and Rolf Reininghaus; members of their immediate families; any entity in which any defendant has a controlling interest; any person who was an officer or director of Biovail during the Class Period; and the legal representatives, heirs, successors or assigns of any of the foregoing excluded persons or entities. Also excluded from the Class are any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice. "Class Member" means a member of the Class.

(d) "Class Period" means, for the purposes of this Settlement only, the period between and including February 7, 2003, and March 2, 2004.

(e) "Communications" means communications made by Biovail, and the Individual Defendants (as defined below) in their capacities as officers and/or employees and/or directors of Biovail, in communicating financial and business information to shareholders and the general public in the ordinary course of Biovail's business.

(f) "Court" means the United States District Court for the Southern District of New York.

(g) "Defendants" means Biovail and the Individual Defendants.

(h) "Defendants' Counsel" means the law firms of Howrey LLP and Curtis, Mallet-Prevost, Colt & Mosle LLP for Defendant Biovail and for the Individual Defendants.

(i) "Effective Date" means the date upon which the Settlement contemplated by this Stipulation shall become effective, as set forth in ¶ 23 below.

(j) "Escrow Account" means one or more interest-bearing accounts created, established, designated, controlled and maintained by Bernstein Litowitz Berger & Grossmann LLP, acting as agent for the Class, wherein the Settlement Amount (as specified in ¶ 4 herein) shall be deposited by or at its direction on behalf of the Class and held in escrow.

(k) "Escrow Agent" means Valley National Bank, or such other financial institution(s) as Plaintiffs' Co-Lead Counsel shall select, which shall be responsible for overseeing, safeguarding and distributing the Escrow Account, acting as agent for the Class.

(l) "Final," with respect to the Judgment (as defined herein), means: (i) if no appeal is filed, the expiration date of the time for filing or noticing of any appeal from the Court's Judgment approving the Settlement substantially in the form of Exhibit B hereto, i.e.,

thirty (30) days after entry of the Judgment; or (ii) if there is an appeal from the Judgment, the date of final dismissal of any appeal from the Judgment, or the final dismissal of any proceeding on certiorari to review the Judgment, or (iii) the date of final affirmance on an appeal of the Judgment, the expiration of the time to file a petition for a writ of certiorari, or the 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. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any plan of allocation and/or application for attorneys' fees, costs or expenses, shall not in any way delay or preclude the Judgment from becoming Final.

(m) "Gross Settlement Fund" means the Settlement Amount plus any income or interest earned thereon, while held by the Escrow Agent.

(n) "Individual Defendants" means Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk, Kenneth Howling, and Rolf Reininghaus.

(o) "Judgment" means the proposed judgment to be entered approving the Settlement substantially in the form attached hereto as Exhibit B.

(p) "Net Settlement Fund" has the meaning defined in ¶ 5 herein.

(q) "Notice" means the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing, which is to be sent to members of the Class substantially in the form attached hereto as Exhibit 1 to Exhibit A.

(r) "Order for Notice and Hearing" means the proposed order preliminarily approving the Settlement and directing notice thereof to the Class substantially in the form attached hereto as Exhibit A.

(s) "Plaintiffs' Counsel" means Plaintiffs' Co-Lead Counsel and all other counsel representing Class Member Plaintiffs in the Action.

(t) "Plaintiffs' Co-Lead Counsel" means the law firms of Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz") and Milberg LLP ("Milberg").

(u) "Proof of Claim" means the proposed proof of claim and release to be executed by Class Members substantially in the form attached hereto as Exhibit 2 to Exhibit A.

(v) "Publication Notice" means the Summary Notice of Pendency of Class Action, Proposed Settlement and Settlement Hearing for publication substantially in the form attached as Exhibit 3 to Exhibit A.

(w) "Released Parties" means Biovail and the Individual Defendants, their past or present subsidiaries, parents, successors and predecessors, officers, directors, agents, employees, attorneys, insurers, advisors, and investment advisors, and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in interest or assigns of any of the Defendants.

(x) "Settled Claims" means any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, including both known claims and Unknown Claims (as defined herein), (i) that have been asserted in this Action by the Class Members or any of them against any of the Released Parties,

or (ii) that could have been asserted in any forum by the Class Members or any of them on behalf of the Class against any of the Released Parties which arise out of, are related to, or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint and which relate to the purchase, sale or ownership of the securities of Biovail during the Class Period.

(y) "Settled Defendants' Claims" means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims (as defined herein), that have been or could have been asserted in the Action or any forum by any or all of the Released Parties against any of the Lead Plaintiffs, any of the other named plaintiffs in these consolidated actions or any of their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action (except for claims that arise out of, or are pursuant to, the provisions of this Settlement).

(z) "Settlement" means the settlement contemplated by this Stipulation.

(aa) "Settlement Amount" means the amount specified in ¶ 4 herein.

(bb) "Taxes" means collectively (i) any and all taxes, duties and similar charges (including any estimated taxes, withholdings, interest or penalties and interest thereon) arising in any jurisdiction with respect to the income or gains earned by or in respect of the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon the Defendants or their counsel with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund may be finally determined to not qualify as a Qualified Settlement Fund (within the meaning contemplated in paragraph 5(b) herein) for federal or state income tax purposes or any distribution of any portion of the Gross

Settlement Fund to Authorized Claimants and other persons entitled hereto pursuant to this Stipulation and (ii) expenses and costs incurred in connection with the taxation of the Gross Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

(cc) "Unknown Claims" means any and all Settled Claims which any Lead Plaintiff or other Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any Settled Defendants' Claims which any Defendant does not know or suspect to exist in his or its favor, which if known by him or it might have affected his or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims and Settled Defendants' Claims, the parties stipulate and agree that upon the Effective Date, the Lead Plaintiffs and the Defendants shall expressly waive, and each other Class Member shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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

Lead Plaintiffs and Defendants acknowledge, and all other Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settled Claims and Settled Defendants' Claims was separately bargained for and was a key element of the Settlement.



### SCOPE AND EFFECT OF SETTLEMENT

2. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and any and all Settled Claims as against all Released Parties and any and all Settled Defendants' Claims.

3. (a) Upon the Effective Date of this Settlement, Lead Plaintiffs and the other members of the Class on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, shall, with respect to each and every Settled Claim, release and forever discharge, and shall forever be enjoined from prosecuting, any Settled Claims against any of the Released Parties.

(b) Upon the Effective Date of this Settlement, each of the Defendants, on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, and the other Released Parties, shall release and forever discharge each and every of the Settled Defendants' Claims, and shall forever be enjoined from prosecuting the Settled Defendants' Claims against any of the Lead Plaintiffs, any of the other named plaintiffs in these consolidated actions and any of their attorneys.

(c) Notwithstanding the provisions of ¶¶ 3(a) and (b) herein, in the event that any of the Released Parties asserts against either or both of the Lead Plaintiffs, any of the other named plaintiffs in these consolidated actions or any of their counsel, any claim that is a Settled Defendants' Claim, then Lead Plaintiff(s), such other named plaintiff(s) or counsel shall be entitled to use and assert such factual matters included within the Settled Claims only against such Released Party in defense of such claim but not for the purposes of affirmatively asserting any claim against any Released Party.

### THE SETTLEMENT CONSIDERATION

4. In consideration for the releases and discharges provided for in ¶ 3:

(a) Within thirty (30) days of Preliminary Approval of the Settlement, Biovail shall pay and shall cause the insurers to pay their agreed upon portions of the Settlement Amount, *i.e.*, One Hundred Thirty-Eight Million Dollars (\$138,000,000.00) in cash, either by wire transfer or check, to the Escrow Agent, as agent for the benefit of Lead Plaintiffs and the other members of the Class.

(b) In addition, within six months after the Effective Date, Defendant Biovail will adopt the corporate governance enhancements described in Section A of Exhibit C to this Stipulation, and Defendant Biovail has agreed to maintain the corporate governance enhancements described in Section B of Exhibit C.

5. (a) The Gross Settlement Fund, net of any Taxes, shall be used to pay (i) the Notice and Administration Costs referred to in ¶ 7 herein, (ii) the attorneys' fee and expense award referred to in ¶ 8 herein, and (iii) the remaining administration expenses referred to in ¶ 9 herein. Additionally, Taxes shall be paid out of the Gross Settlement Fund, shall be considered to be a cost of administration of the Settlement and shall be timely paid by the Escrow Agent without prior Order of the Court.

(b) The balance of the Gross Settlement Fund after the above payments shall be the "Net Settlement Fund." The Net Settlement Fund shall be distributed to the Authorized Claimants as provided in ¶¶ 10-12 herein, subject to the obligation, to the extent required by law, to withhold from any distributions to Authorized Claimants and other persons entitled thereto pursuant to this Stipulation any funds necessary to pay Taxes including the establishment of adequate reserves for Taxes as well as any amount that may be required to be withheld under

United States Treasury Reg. 1.468B-1(l)(2) or otherwise under applicable law in respect of such distributions. Further, the Released Parties, Lead Plaintiffs and their respective counsel shall be indemnified and held harmless by the Escrow Account up to the amount in the Escrow Account for Taxes (including, without limitation, Taxes payable by reason of any such indemnification payments). Any sums required to be held in escrow hereunder shall be held by Bernstein Litowitz, acting as agent for the Class. All funds so held in the Escrow Account shall be deemed to be in the custody of the Court for the benefit of the Class and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed pursuant to this Stipulation and/or further order of the Court or the Settlement is terminated as provided herein. The Escrow Agent shall invest any funds held in escrow in short-term United States Agency or Treasury Securities (or a mutual fund invested solely in such instruments), pursuant to instructions from Bernstein Litowitz, acting as agent for the Class, and shall collect and reinvest all interest accrued thereon. The parties hereto agree that the Gross Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of United States Treasury Regulation § 1.468B-1 and that Plaintiffs' Co-Lead Counsel, as administrators of the Gross Settlement Fund within the meaning of United States Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing tax returns for the Gross Settlement Fund and paying from the Gross Settlement Fund any Taxes owed with respect to the Gross Settlement Fund. The parties hereto agree that the Gross Settlement Fund shall be treated as a Qualified Settlement Fund from the earliest date possible, and agree to any relation-back election required to treat the Gross Settlement Fund as a Qualified Settlement Fund from the earliest date possible. Counsel for Defendants agree to provide promptly to the Escrow Agent the statement described in United States Treasury Regulation § 1.468B-3(e).

### ADMINISTRATION

6. The Claims Administrator shall administer the Settlement for the benefit of the Class, subject to the jurisdiction of the Court. Except as stated in ¶ 14 herein, Defendants shall have no responsibility for the administration of the Settlement and shall have no liability to the Class in connection with such administration. In particular, the Defendants, Released Parties and their respective counsel have no responsibility for or liability whatsoever with respect to (a) acts, omissions or determinations of Plaintiffs' Co-Lead Counsel, the Claims Administrator or the Escrow Agent in connection with the administration of the Gross Settlement Fund or otherwise; (b) the management, investment or distribution of the Gross Settlement Fund; (c) losses suffered by or fluctuations in the value of the Gross Settlement Fund; (d) payment or withholding of any Taxes, expenses or costs incurred in connection with the taxation of the Gross Settlement Fund or the filing of any related returns; (e) the Plan of Allocation; or (f) the determination, administration, calculation or payment of any claims asserted against the Gross Settlement Fund (with the exception of providing the information referenced in the following sentence). Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms, including providing without charge all information from Biovail's transfer records concerning the identity of Class Members and their transactions.

7. Plaintiffs' Co-Lead Counsel may pay up to \$500,000 from the Settlement Amount, without further order of the Court, for the reasonable costs and expenses associated with identifying members of the Class and effecting mail Notice and Publication Notice to the Class, and the administration of the Settlement, including, but not limited to, the actual costs of publication, printing and mailing the Notice, reimbursements to nominee owners for forwarding notice to their beneficial owners, and the administrative expenses incurred and fees charged by

the Claims Administrator in connection with providing notice and processing the submitted claims.

**ATTORNEYS' FEES AND EXPENSES**

8. As part of their motion for final approval of the Settlement, Plaintiffs' Co-Lead Counsel will apply to the Court for an award from the Gross Settlement Fund of attorneys' fees and reimbursement of expenses, including the fees of any experts or consultants incurred in connection with prosecuting the Action. Such amounts as are awarded by the Court shall be payable from the Gross Settlement Fund to Plaintiffs' Co-Lead Counsel immediately upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, collateral attack on the Settlement or any part thereof, subject to Plaintiffs' Co-Lead Counsel's joint and several liability and obligation to make appropriate refunds or repayments to the Gross Settlement Fund plus accrued interest at the same net rate as is earned by the Gross Settlement Fund, if and when, as a result of any appeal and/or further proceedings on remand, successful collateral attack, or for any other reason, the Settlement is terminated or the fee or cost award is reduced or reversed. Such refunds or repayments will be made within thirty (30) days of any appeal and/or further proceedings on remand, or successful collateral attack, pursuant to which the Settlement is terminated or the fee or cost award is reduced or reversed. Plaintiffs' Co-Lead Counsel shall allocate the attorneys' fees amongst Plaintiffs' Counsel in a manner in which they in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Action with Defendants. The Released Parties have no liability or obligation to Lead Plaintiffs, the other members of the Class, or Plaintiffs' Counsel, with respect to any attorneys' fees, costs or expenses, other than the obligation to pay

or cause to be paid the Settlement Amount. It is not a condition of this Settlement that any particular attorneys' fees, costs or expenses be awarded by the Court.

#### **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

9. Plaintiffs' Co-Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for an order (the "Class Distribution Order") approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the claims submitted herein and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants.

10. The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim (as defined in the Plan of Allocation described in the Notice annexed hereto as Exhibit 1 to Exhibit A, or in such other Plan of Allocation as the Court approves).

11. The Plan of Allocation proposed in the Notice is not a necessary term of this Stipulation and it is not a condition of this Stipulation that any particular Plan of Allocation be approved.

12. Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its Recognized Claim compared to the total Recognized Claims of all accepted claimants. This is not a claims-made settlement. The entire Net Settlement Fund shall be distributed to the Authorized Claimants. The Defendants shall not be entitled to get back any of the Gross Settlement Fund and, prior to the Settlement becoming Final, shall be limited to the termination provisions outlined in ¶ 25. The Defendants shall have no involvement in reviewing or challenging claims.

### ADMINISTRATION OF THE SETTLEMENT

13. Any member of the Class who does not submit a valid Proof of Claim will not be entitled to receive any of the proceeds from the Net Settlement Fund but will otherwise be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims.

14. The Claims Administrator shall process the Proofs of Claim and, after entry of the Class Distribution Order, distribute the Net Settlement Fund to the Authorized Claimants. Except for their obligation to pay the Settlement Amount as set forth in ¶ 4(a), and to cooperate in the production of information with respect to the identification of Class Members from Biovail's shareholder transfer records, as provided herein, Defendants and their insurers shall have no liability, obligation or responsibility for the administration or disbursement of the Gross or Net Settlement Funds pursuant to the Stipulation. Plaintiffs' Co-Lead Counsel shall have the right, but not the obligation, to advise the Claims Administrator to waive what Plaintiffs' Co-Lead Counsel deem to be formal or technical defects in any Proofs of Claim submitted in the interests of achieving substantial justice.

15. 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:

(a) Each Class Member shall be required to submit a Proof of Claim (*see* attached Exhibit 2 to Exhibit A), supported by such documents as are designated therein, including proof of the transactions claimed and the losses incurred thereon, or such other documents or proof as Plaintiffs' Co-Lead Counsel, in their discretion may deem acceptable;

(b) All Proofs of Claim must be submitted by the date specified in the Notice, unless such period is extended by Order of the Court. Any Class Member who fails to submit a Proof of Claim by such date shall be forever barred from receiving any payment pursuant to this Stipulation (unless, by Order of the Court, a later submitted Proof of Claim by such Class Member is approved), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims. Provided that it is received before the motion for the Class Distribution Order is filed, a Proof of Claim 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 shall be deemed to have been submitted when actually received by the Claims Administrator;

(c) Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator, who shall determine in accordance with this Stipulation and the approved Plan of Allocation the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below;

(d) Proofs of Claim that do not meet the submission requirements may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the claimant in order to attempt to remedy the curable deficiencies in the Proof of Claim submitted. The Claims Administrator shall notify, in a timely fashion and in writing, each claimant whose Proof of Claim it proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the claimant whose claim is to be rejected has the



right to a review by the Court if the claimant so desires and complies with the requirements of subparagraph (e) below;

(e) If any claimant whose claim has been rejected in whole or in part desires to contest such rejection, the claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator 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 Court. If a dispute concerning a claim cannot be otherwise resolved, Plaintiffs' Co-Lead Counsel shall thereafter present the request for review to the Court; and

(f) The administrative determinations of the Claims Administrator accepting and rejecting claims shall be presented to the Court, on notice to Defendants' Counsel, for approval by the Court in the Class Distribution Order.

16. Each claimant shall be deemed to have submitted to the jurisdiction of the 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 Action or Settlement in connection with processing of the Proofs of Claim.

17. Payment pursuant to this Settlement shall be deemed final and conclusive against all Class Members. All Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the

Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims.

18. All proceedings with respect to the administration, processing and determination of claims described by ¶ 15 of this Stipulation 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 Court.

19. The Net Settlement Fund shall be distributed to Authorized Claimants by the Claims Administrator after the Effective Date on notice to Defendants' Counsel pursuant to Order of the Court.

#### **TERMS OF ORDER FOR NOTICE AND HEARING**

20. Concurrently with their application for preliminary Court approval of the Settlement contemplated by this Stipulation, Plaintiffs' Co-Lead Counsel and Defendants' Counsel jointly shall apply to the Court for entry of an Order for Notice and Hearing, substantially in the form annexed hereto as Exhibit A.

#### **TERMS OF FINAL JUDGMENT**

21. If the Settlement contemplated by this Stipulation is approved by the Court, counsel for the parties shall request that the Court enter a Judgment substantially in the form annexed hereto as Exhibit B.

#### **OPT-OUT TERMINATION RIGHT**

22. The Defendants may terminate this Settlement if Class Members who in total purchased in excess of ten percent (10%) of the shares of Biovail common stock purchased during the Class Period exclude themselves from the Class. In the event of a termination by the Defendants, this Stipulation shall become null and void and of no further force and effect and the provisions of ¶ 25 shall apply. If the Defendants elect to terminate this Settlement pursuant to

this paragraph written notice of such termination must be provided to Plaintiffs' Co-Lead Counsel on or before seven (7) calendar days prior to the Settlement Fairness Hearing. Plaintiffs' Co-Lead Counsel shall have the right to communicate with Class Members regarding their decisions to opt-out. If a sufficient number of Class Members withdraw their requests for exclusion such that the total number of remaining shares requesting exclusion falls below the ten percent (10%) threshold noted above, Plaintiffs' Co-Lead Counsel shall so advise Defendants' Counsel and any notice by Defendants of termination of the Settlement shall automatically and immediately become null and void.

**EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

23. The "Effective Date" of Settlement shall be the date when all the following shall have occurred:

(a) approval by the Court of the Settlement, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

(b) entry by the Court of a Judgment, substantially in the form set forth in Exhibit B annexed hereto, and the expiration of any time for appeal or review of such Judgment, or, if any appeal is filed and not dismissed, after such Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by writ of certiorari, or, in the event that the Court enters a judgment in a form other than that provided above ("Alternative Judgment") and none of the parties hereto elect to terminate this Settlement, the date that such Alternative Judgment becomes final and no longer subject to appeal or review.

24. Defendants or Lead Plaintiffs shall have the right to terminate the Settlement and thereby this Stipulation by providing written notice of their election to do so ("Termination Notice") to all other parties hereto within thirty (30) days of: (a) the Court's declining to enter

the Order for Notice and Hearing in any material respect; (b) the Court's refusal to approve this Settlement as set forth in this Stipulation or any material part of it; (c) the Court's declining to enter the Judgment in any material respect; (d) the date upon which the Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (e) the date upon which an Alternative Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

25. Except as otherwise provided herein, in the event the Settlement is terminated, then the parties to this Stipulation shall be restored to their respective status in the Action as of December 7, 2007 and, except as otherwise expressly provided, the parties shall proceed in all respects as if this Stipulation and any related orders had not been entered. Furthermore, the Escrow Agent shall pay from the Escrow Account the sum of (a) an amount equal to that portion of the Settlement Amount previously paid by Biovail and the insurers to the Escrow Agent as agent for the Class; and (b) an amount equal to any interest or other income earned thereon; less the sum of (c) an amount equal to any Taxes paid or due with respect to such income; and (d) an amount equal to costs of administration and notice actually incurred and paid or payable from the Settlement Amount, to Biovail or the insurers (as the case may be). For greater certainty, the amount to be paid to Biovail and each of the insurers will be an amount equal to the sum of each payor's pro-rata share of (a) and (b) in the preceding sentence, less each payor's pro-rata share of (c) in the preceding sentence. The amount in (d) shall be treated as a defense cost to be deducted from the payment due to the insurer then responsible for paying or advancing defense costs. Such payments will be made within thirty (30) days of termination. It shall be Defendants' responsibility to timely notify the Escrow Agent what the pro-rata share of each payor was and which insurer's payment is to be reduced by the amount in (d).

**NO ADMISSION OF WRONGDOING**

26. This Stipulation, whether or not consummated or terminated, and any proceedings taken pursuant to it:

(a) shall not be offered or received against any of the Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by any of the Plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of any of the Defendants;

(b) shall not be offered or received against any of the Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any of the Defendants;

(c) shall not be offered or received against any of the Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, the Defendants may refer to it to effectuate the liability protection granted them hereunder;

(d) shall not be construed against any of the Defendants as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(e) shall not be construed as or received in evidence as an admission, concession or presumption against Lead Plaintiffs or any of the other Class Members that any of their claims are without merit, or that any defenses asserted by the Defendants have any merit, or that damages recoverable under the Complaint would not have exceeded the Gross Settlement Fund.

#### **MISCELLANEOUS PROVISIONS**

27. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

28. Each Defendant contributing to the Settlement Amount warrants as to himself or itself that, as to the payments made by or on behalf of him or it to the Settlement Amount, at the time of such payment that the Defendant made or caused to be made pursuant to ¶ 4 above, he or it was not insolvent, nor will the payment required to be made by or on behalf of him or it render such Defendant insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This warranty is made by each such Defendant and not by such Defendant's Counsel.

29. If a case is commenced in respect of any Defendant contributing the Settlement Amount (or any insurer contributing funds to the Settlement Amount on behalf of any Defendant) under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver, conservator, or other fiduciary is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Gross Settlement Fund or any portion thereof by or on behalf of such Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned and is in fact returned to such bankrupt Defendant or to the insurer who

contributed the funds to the Settlement Amount on behalf of the Bankrupt Defendant, and such amount is not promptly deposited to the Gross Settlement Fund by others, then, at the election of Plaintiffs' Co-Lead Counsel, the parties shall jointly move the Court to vacate and set aside the releases given and Judgment entered in favor of the Defendants pursuant to this Stipulation, which releases and Judgment shall be null and void, and the parties shall be restored to their respective positions in the litigation as of December 7, 2007 and an amount equal to the amount computed in ¶ 25 above, less any amount already in fact returned to the bankrupt Defendant or to the insurer who contributed the funds to the Settlement Amount on behalf of the Bankrupt Defendant, shall be paid to Biovail or the insurers (as the case may be).

30. The parties to this Stipulation intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Class Members against the Released Parties with respect to the Settled Claims. Accordingly, Lead Plaintiffs and Defendants agree not to make any disparaging remarks about each other in any public statements concerning this litigation or the Settlement of this litigation and Lead Plaintiffs and Defendants agree they will not assert in any forum that the litigation was brought by Plaintiffs or defended by Defendants in bad faith or without a reasonable basis. The parties hereto shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Action. The parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length in good faith by the parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

31. This Stipulation may not be modified or amended, nor may any of its provisions be waived except by a writing signed by all parties hereto or their successors-in-interest.

32. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

33. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to Plaintiffs' Co-Lead Counsel and enforcing the terms of this Stipulation.

34. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

35. This Stipulation and its exhibits constitute the entire agreement among the parties hereto concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any party hereto concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

36. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

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

38. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law governs.

39. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Class Members is being given or will be given by Plaintiffs' Co-Lead Counsel or counsel for the Defendants; nor is any representation or warranty in this regard made by virtue of



this Stipulation. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

40. This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that it is the result of arm's-length negotiations between the parties and all parties have contributed substantially and materially to the preparation of this Stipulation.

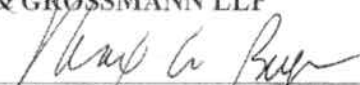
41. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

42. Plaintiffs' Co-Lead Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Order for Notice and Hearing, the Stipulation

and the Settlement, and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

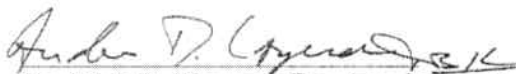
Dated: April 4, 2008

**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

  
By: Max W. Berger (MB-5010)  
Steven B. Singer (SS-5212)  
Rochelle Feder Hansen (RH-7061)  
1285 Avenue of the Americas  
New York, New York 10019  
Tel: 212-554-1400  
Fax: 212-554-1444


*Co-Lead Counsel and Counsel for Co-Lead  
Plaintiff Ontario Teachers' Pension Plan Board*

**HOWREY LLP**

  
By: Mark D. Wegener, Esq. (*pro hac vice*)  
Martin F. Cunniff, Esq. (*pro hac vice*)  
Andrew D. Lazerow, Esq. (*pro hac vice*)  
1299 Pennsylvania Ave., N.W.  
Washington, D.C. 20004  
Tel: 202-783-0800  
Fax: 202-383-6610


*Co-Counsel for Defendants*

**MILBERG LLP**

  
By: Sanford P. Dumain (SD-8712)  
Kent A. Bronson (KB-4906)  
Joshua E. Keller (JK-4882)  
One Penn Plaza  
New York, New York 10119  
Tel: 212-594-5300  
Fax: 212-868-1229

*Co-Lead Counsel and Counsel for Co-Lead  
Plaintiff Local 282 Welfare Trust Fund*

**CURTIS, MALLET-PREVOST,  
COLT & MOSLE LLP**

  
By: Peter Fleming, Jr., Esq. (PEF-1354)  
T. Barry Kingham, Esq. (TBK-1219)  
101 Park Avenue  
New York, New York 10178  
Tel.: 212-696-6000  
Fax: 212-697-1559

*Co-Counsel for Defendants*

## **Schedule "D"**

**BIOVAIL CORPORATION SECURITIES LITIGATION**

**SUMMARY NOTICE OF PENDENCY OF CLASS ACTION,  
PROPOSED SETTLEMENT AND SETTLEMENT HEARING**

TO: ALL PERSONS AND ENTITIES WHO PURCHASED THE COMMON STOCK OF BIOVAIL CORPORATION ON THE NEW YORK STOCK EXCHANGE OR OTHER U.S. STOCK EXCHANGES OR THE TORONTO STOCK EXCHANGE OR OTHER CANADIAN STOCK EXCHANGES DURING THE PERIOD FROM FEBRUARY 7, 2003, THROUGH AND INCLUDING MARCH 2, 2004. (THE "CLASS").

This Notice relates to the following actions:

- *In re Biovail Corporation Securities Litigation*, Master File No. 03-CV-8917 (GEL) in the United States District Court for the Southern District of New York ("U.S. Action").
- *Canadian Commercial Workers Industry Pension Plan against Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling*, Court File No. 48172 CP in the Ontario Superior Court of Justice ("Canadian Action").

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the Court, that the U.S. Action has been certified as a class action and that a Settlement for U.S.\$138 million in cash has been proposed. A hearing will be held before the Honorable Gerard E. Lynch in the United States District Court, 500 Pearl Street, New York, New York 10007 at \_\_\_\_:\_\_\_\_ \_\_.m., on \_\_\_\_\_, 2008 to determine (i) whether the proposed Settlement should be approved by the Court as fair, reasonable, and adequate; (ii) whether the proposed Plan of Allocation of the net proceeds of the Settlement should be approved by the Court as fair and reasonable; and (iii) to consider the application of Plaintiffs' Co-Lead Counsel for attorneys' fees and reimbursement of expenses.

YOU ARE ALSO NOTIFIED that a settlement of the Canadian Action, commenced in Ontario, has been reached, principally based on the same relief negotiated in the U.S. Action. A hearing will be held at the Ontario Superior Court of Justice, 80 Dundas St., London, Ontario,

N6A5, at 10:00 a.m. on \_\_\_\_\_, 2008, to determine whether the settlement is fair, reasonable and in the best interests of class members.

IF YOU ARE A MEMBER OF THE CLASS DESCRIBED ABOVE, YOUR RIGHTS WILL BE AFFECTED AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT FUND. If you have not yet received the full printed Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing (the "Notice") and a Proof of Claim form, you may obtain copies of these documents by contacting the Claims Administrator:

In re Biovail Securities Litigation  
c/o Complete Claim Solutions, LLC, Claims Administrator  
Post Office Box \_\_\_\_\_  
West Palm Beach, FL 33416  
(800) \_\_\_\_\_  
[www.\\_\\_\\_\\_\\_.com](http://www._____.com)

The U.S. and Canadian Actions are being resolved through a single Settlement Fund. However, there will be no distribution of funds through the Canadian Action. The only Proof of Claim form that will be distributed is the claim form in the U.S. Action.

To participate in the Settlement Fund, you must submit a Proof of Claim no later than \_\_\_\_\_, 2008. If you are a Class Member and do not exclude yourself from the Classes, you will be bound by the Judgments of the Courts. To exclude yourself from the Classes, you must submit a request for exclusion postmarked no later than \_\_\_\_\_, 2008, which will exclude you from both actions. Any objections to the proposed Settlement, Plan of Allocation and/or the application for attorneys' fees and reimbursement of expenses must be served and filed by \_\_\_\_\_, 2008. Requests for exclusion and objections must be made in accordance with the instructions set forth in the Notice. If you are a Class Member and

do not submit a proper Proof of Claim, you will not share in the Settlement Fund but you nevertheless will be bound by the Judgments of the Courts.

PLEASE DO NOT CONTACT THE COURTS OR THE CLERKS' OFFICES REGARDING THIS NOTICE. Inquiries regarding the U.S. Action, other than requests for the Notice and Proof of Claim, may be made to Plaintiffs' Co-Lead Counsel:

Steven B. Singer, Esq.  
Bernstein Litowitz Berger & Grossmann LLP  
1285 Avenue of the Americas  
New York, NY 10019  
(212) 554-1400

Sanford P. Dumain, Esq.  
Milberg LLP  
One Penn Plaza  
New York, NY 10119-0165  
(212) 594-5300

Canadian Class Counsel are: Charles M. Wright and A. Dimitri Lascaris at Siskinds LLP, 680 Waterloo Street, London, ON N6A 3V8, Tel: (519) 672-2121, and Michael D. Wright at Cavalluzzo Hayes Shilton McIntyre & Cornish LLP, 474 Bathurst Street, Suite 300, Toronto, ON M5T 2S6.

By Court Order

#287271.9

## **Schedule "E"**

The Honourable ) , the day  
)  
Justice ) of , 2008

*ONTARIO*

SUPERIOR COURT OF JUSTICE

BETWEEN :

CANADIAN COMMERCIAL WORKERS INDUSTRY PENSION PLAN

Plaintiff

- and -

BIOVAIL CORPORATION, EUGENE N. MELNYK, BRIAN H. CROMBIE,  
JOHN R. MISZUK, AND KENNETH G. HOWLING

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**THIS MOTION** made by the Plaintiff for an Order certifying the within action as a class proceeding for settlement purposes only, setting a date for the settlement approval hearing, approving the Notice of Pendency of Class Action, Proposed Settlement and Settlement Hearing and appointing a claims administrator, was heard this day at the Court House, 80 Dundas Street, London, Ontario.



**ON READING** the materials filed with the Court, including the settlement agreement dated as of April 15, 2008 between the parties, attached hereto as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendants:

1. **THIS COURT ORDERS** that for the purposes of the Order, except as otherwise stated, the definitions set out in the Settlement Agreement apply and are incorporated into this Order.
2. **THIS COURT ORDERS** that this action is certified as a class proceeding for settlement purposes only, pursuant to the *Class Proceeding Act, 1992*, S.O. 1992, c.6, sections 2 and 5.
3. **THIS COURT ORDERS** that the "Canadian Class" be defined as:

All Persons who purchased the common stock of Biovail on the Toronto Stock Exchange or other Canadian stock exchanges during the period from February 7, 2003, through and including March 2, 2004. Excluded from the Class are Biovail, its subsidiaries, affiliates, predecessor and successor entities; Ernst & Young <sup>LLP</sup> [U.S. and Canada] and any of their affiliates, subsidiaries, and predecessor and successor entities; Ernst & Young <sup>LLP</sup> [U.S. and Canada] partners and partners of any of their affiliates, subsidiaries, and predecessor and successor entities; Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk, Kenneth Howling, and Rolf Reininghaus (collectively, the "Individual Defendants"); members of the immediate families of the Individual Defendants; any entity in which any defendant has a controlling interest; any person who was an officer or director of Biovail during the Class Period; and the legal representatives, heirs, successors or assigns of any of the foregoing excluded persons or entities. Also excluded from the Class are any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Publication Notice.

4. **THIS COURT ORDERS** that the Canadian Commercial Workers Industry Pension Plan is appointed as Representative Plaintiff for the Canadian Class.

5. **THIS COURT ORDERS** that the within action be certified as a class proceeding for settlement purposes only on the basis of the following common issue:

What claims do the Class Members have against the Defendants arising from the Defendants' false and/or materially misleading statements with respect to the business, operations and financial position of Biovail Corporation?

6. **THIS COURT ORDERS** that the hearing of the Representative Plaintiff's motion for settlement approval in the within proceeding shall take place on \_\_\_\_\_, 2008 at \_\_:00 \_\_.m.
7. **THIS COURT ORDERS** that the form and content of the Notice of Pendency of Class Action, Proposed Settlement and Settlement Hearing (the "Notice") substantially in the form attached hereto as Schedule "B" is hereby approved.
8. **THIS COURT ORDERS** that the form and content of the summary Notice of Pendency of Class Action, Proposed Settlement and Settlement Hearing (the "Publication Notice") substantially in the form attached hereto as Schedule "C" is hereby approved.
9. **THIS COURT ORDERS** that the method of disseminating the Notice and Publication Notice, as set out in the U.S. Order for Notice and Hearing, attached hereto as Schedule "D", is fair and reasonable, and will adequately notify Canadian Class Members of the proceeding and the Settlement Agreement.
10. **THIS COURT ORDERS** that in order to be entitled to participate in the Net Settlement Fund, as defined in the Stipulation, each member of the Canadian Class shall file a properly completed Proof of Claim in accordance with the Stipulation.

11. **THIS COURT ORDERS** that Canadian Class Members who wish to opt out of the Settlement Agreement shall mail a request for exclusion in written form by first class mail postmarked not later than sixty (60) calendar days after the date set for the mailing of the Notice to the address designated in the Notice.
12. **THIS COURT ORDERS** that all requests for exclusion must include the following information:
  - (a) the name, address, telephone number and signature of the person seeking exclusion;
  - (b) the date(s), price(s) and number(s) of shares of all purchases and sales of Biovail stock made by the person during the Class Period; and
  - (c) a statement that the person "requests exclusion from the Class in *In re Biovail Corporation Securities Litigation*, Master File No. 03-CV-8917(RO)".
13. **THIS COURT ORDERS** that the request for exclusion shall not be effective unless it provides the required information and is made within the time stated above.
14. **THIS COURT ORDERS** that a request for exclusion from the U.S. Class shall be deemed to be a request for exclusion from the Canadian Class.
15. **THIS COURT ORDERS** that Canadian Class Members who request to be excluded from the Canadian Class shall be excluded from any and all rights and obligations under the Settlement Agreement and the Stipulation.
16. **THIS COURT ORDERS** that any Class Member who does not validly opt out in the manner and time prescribed above shall be deemed to have elected to participate in the Settlement Agreement, the Stipulation and all related Court orders, regardless of whether they filed a Proof of Claim in a timely manner.

17. **THIS COURT ORDERS** that Canadian Class Members who wish to file with the Court an objection to, or comment on, the Settlement or the approval of Canadian Class Counsel fees shall deliver a written submission to Canadian Class Counsel at the address indicated in the Notice, on or before sixty (60) calendar days after the date set for mailing of the Notice, and Canadian Class Counsel shall file all such submissions with the Court prior to the hearing of the Settlement Approval Motion.

Date:

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Justice

## **Schedule "F"**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE BIOVAIL CORPORATION  
SECURITIES LITIGATION

Master File No. 03-CV-8917 (GEL)

CORPORATE GOVERNANCE PROVISIONS

The following items relating to corporate governance were negotiated and agreed to as part of the consideration for the Settlement (as defined in the Stipulation and Agreement of Settlement). As indicated below, certain of the items are new corporate governance enhancements that Biovail Corporation ("Biovail" or the "Company") has agreed to put in place in connection with this Settlement and others reflect corporate governance enhancements that the Company had already implemented but which are now memorialized as part of this Settlement. Biovail has agreed not to change these enhancements within three years of the Effective Date of the Settlement unless Biovail's independent external counsel advises Biovail's Board of Directors that such changes are necessary to comply with new legal or regulatory requirements or to meet accepted best practices in corporate governance.

- A. **The following are new corporate governance enhancements that Biovail has agreed to implement within six (6) months of the Effective Date of the Settlement:**
1. Biovail will amend its Charter of the Board to provide that in order to transact business at a meeting of the Board, at least sixty percent (60%) of the directors present must be independent within the meaning of Section A(3) hereof.
  2. All directors must attend seventy-five percent (75%) of the Board meetings per year. The Charter of the Compensation, Nominating and Corporate Governance Committee (the "CNCGC") shall be revised to provide that directors who do not meet this standard (absent compelling circumstances) will not be renominated.

3. The Charter of the Board and/or the Categorical Standards for Director Independence, or the equivalent, shall be amended to incorporate the following requirements:
  - (a) The Board shall have a majority of independent directors, and the directors constituting that majority must be independent of any and all Biovail shareholders who own or control ten percent (10%) or more of Biovail's common stock.
  - (b) No director shall qualify as independent unless the Board affirmatively determines that the director has no direct or indirect material relationship with the Company (*e.g.*, either directly or indirectly as a partner, shareholder or officer of an organization that has a relationship with the Company). For purposes of this provision, a "material" relationship shall be a relationship, which, in the reasonable view of the Board, could interfere with the exercise of a director's independent judgment.
  - (c) For a director to be characterized as "independent," he or she shall meet all relevant and applicable regulatory and stock exchange requirements in the United States and Canada.
4. For a minimum of five years, none of the Individual Defendants may be designated as a proxy holder in the Company's proxy circular (the "Proxy Circular").
5. Biovail intends to amend the Charter of the Board to provide for the appointment of an independent Lead Director whenever the Board has an Executive Chairman. The Lead Director shall be chosen at a meeting of the independent directors that is not attended by non-independent Board members or Biovail management.
6. The CNCGC shall be comprised entirely of independent directors within the meaning of Section A(3) hereof, and shall report directly to the Board and not to Biovail's executive officers.
7. If the Charter of the CNCGC is to be revised, such revision shall be made only with good faith consultation with qualified United States and Canadian outside professional advisors.
8. The Charter of the CNCGC shall be amended to provide that all non Board-based services conducted by the compensation consultant retained by the CNCGC shall be pre-approved by the Chairperson of the CNCGC. Such compensation consultant's mandate, the amount of fees paid to such compensation consultant for services rendered to the CNCGC, and the nature of work performed and fees paid for other services (if any) provided by such compensation consultant to Biovail shall be disclosed in appropriate public documents.
9. The Charter of the CNCGC shall be revised to provide that if the Board adopts on recommendation of the committee any corporate governance guidelines that are different from guidelines recommended by applicable securities regulators, in addition to advising the Board why the committee considers the differences to be appropriate, the proposed guidelines, a statement of how they differ from guidelines recommended by applicable

securities regulators and the reasons for the committee's proposal to adopt the "nonconforming" guidelines shall be posted on Biovail's website and included in the next subsequent Proxy Circular.

10. Private meetings between the Head of Internal Audit and Audit Committee shall occur at each regularly scheduled Audit Committee Meeting.
11. The Parties to this Action agree that the consultant appointed pursuant to the Final Consent Judgment in the action entitled *Securities and Exchange Commission v. Biovail Corporation, et al.*, Case No. 1:08-cv-02979-LAK (the "SEC Action") shall be the consultant appointed pursuant to this paragraph and that the reports and activities of that consultant shall be identical, without duplication, in this action as in the SEC Action. Biovail shall retain an independent consultant to conduct a comprehensive examination and review of:
  - (a) Biovail's internal accounting controls and internal controls over financial reporting;
  - (b) The policies, procedures, and effectiveness of Biovail's regulatory and compliance functions;
  - (c) Biovail's training of its accounting staff concerning financial reporting and U.S. generally accepted accounting principles;
  - (d) Biovail's ethics and compliance policies;
  - (e) Biovail's records management and retention policies and procedures;
  - (f) The functioning of Biovail's audit committee;
  - (g) Biovail's policies and procedures with respect to compliance with Rule 302(b) of Regulation S-T;
  - (h) Biovail's investor relations and public affairs functions; and
  - (i) Biovail's policies and procedures concerning its communications with its outside auditors

The consultant shall have reasonable access to all of Biovail's books and records and the ability to meet privately with Biovail's personnel. Biovail shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the review conducted by the consultant, and inform its officers, directors, and employees that failure to cooperate with the review may be grounds for dismissal, other disciplinary action, or other appropriate actions. The consultant shall have the right, as reasonable and necessary in his or her judgment, to retain, at Biovail's expense, attorneys, accountants and other persons or firms, other than officers, directors, or employees of Biovail, to assist in the discharge of the consultant's obligations. The consultant shall issue a report, with recommendations to the Board, as appropriate, within six months of retention.



Biovail shall adopt all recommendations contained in the consultant's report unless Biovail advises the consultant in writing within forty-five days of receipt of the report of any recommendation that it considers to be unnecessary or inappropriate. With respect to any recommendation that Biovail considers unnecessary or inappropriate, Biovail need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose. As to any recommendations of the consultant with respect to which Biovail and the consultant do not agree, Biovail and the consultant shall attempt in good faith to reach an agreement within ninety days of the issuance of the consultant's report. In the event that Biovail and the consultant are unable to agree on an alternative proposal, Biovail shall abide by the determinations of the consultant. The consultant shall oversee the implementation of all recommendations and provide a report to the Board and Biovail's Audit Committee twelve months after retention concerning the progress of the implementation.

12. The Charter of the Audit Committee shall be revised to reflect the reform set forth in Section A(10) above.
13. Commencing with 2009 stock option grants, stock options granted shall be granted on no more than two pre-set dates per year, which shall be set by the CNCGC prior to the beginning of the fiscal year in which the options are to be granted, subject to laws and regulations concerning blackout dates and undisclosed material information. The only exception to the granting of options on the two pre-set dates shall be stock options awarded in connection with the hiring of a new employee.
14. The Board shall implement a plan and require the Company's Chief Executive Officer and Chief Financial Officer to agree in writing to a provision whereby they shall disgorge to the Company any bonus or other incentive-based or equity-based compensation ("Bonus Remuneration") resulting directly from a Malfeasance Event, as defined herein. A Malfeasance Event occurs when, as a direct result of the intentional misconduct of the CEO or CFO, Biovail is required to publicly issue an accounting restatement to correct a material accounting error on an interim or annual financial statement included in a report on Form 6-K or Form 20-F, due to material non-compliance with any financial reporting requirement under the U.S. federal securities laws which has a direct material and adverse consequence on the trading price of Biovail shares during the twelve months following the first public issuance or filing with the U.S. Securities and Exchange Commission ("SEC") (whichever first occurs) of the financial document embodying such error. The CNCGC will determine whether a Malfeasance Event has occurred and if that committee determines that a Malfeasance Event has occurred, the CNCGC will review the Malfeasance Event and, if and to the extent either the CEO or the CFO has profited by the receipt of Bonus Remuneration during such twelve month period as a direct result of such Malfeasance Event, the CNCGC will report to the independent directors who will review the matter and take such action as they reasonably determine on the advice of external counsel is in the best interests of Biovail and which they reasonably consider fairly addresses the matter.
15. Biovail shall disclose, annually, in all appropriate public documents, full and clear details about the number of options granted to each Named Executive Officer and Director, the

terms of the options, the number of options that have vested, the number of options that were and were not exercised, the value of the options held at the end of the year and the current market price of Biovail stock.

16. The relevant Minutes of the Board of Directors shall state the date of grant of options and identify grantees, amounts, and prices of all stock options granted on that particular date.
17. The Company shall maintain all records relating to all stock option grants until at least seven years after the expiration of the pertinent stock options.
18. All shareholder proposals (as provided for under the Company's governing corporate statute) shall be evaluated by a committee of at least three directors, and all members of that committee shall be independent within the meaning of Section A(3) hereof. Such committee shall determine, with the assistance of independent advisors, if necessary, whether the shareholder proposal is in the best interest of the Company. The committee shall recommend to the Board for or against such shareholder proposal and the reasons for such recommendation and a report of the committee's vote, recommendation, and the reasons for such recommendation shall be included in the Proxy Circular. The Board shall recommend for or against such proposal, and a report of the Board's vote on, recommendation, and the reasons for such recommendation shall be included in the Proxy Circular.
19. Absent compelling circumstances, the Chairman of the Board and the Chairperson of each Board Committee shall attend in person the Annual Meetings of Biovail's shareholders. Subject to applicable law, extenuating circumstances, the duties of the chairman in respect of the conduct of the meeting, confidential matters and competitive or strategic considerations, the Chairman of the Board and the Chairperson of each Board Committee shall make themselves available to answer shareholder questions on matters within Board or Committee oversight. Their availability to answer such questions shall be made known to shareholders in writing and in advance of each Annual Meeting of Biovail shareholders.

**B. The following are current practices of Biovail which are now memorialized as part of this Settlement:**

1. Biovail shall disclose, in convenient chart format, in print and on the Biovail web site, the attendance record of each director for all Board meetings and meetings of Board committees of which the director is a member and held during the Company's most recently completed financial year.
2. Biovail shall disclose, in convenient chart format, in print and on the Biovail web site, each director's committee memberships, as well as each Board committee (if any) of which the director is Chairperson.
3. Biovail's independent directors shall hold regularly scheduled meetings at which non-independent directors and members of management are not in attendance and Biovail shall disclose the number of times such meetings occurred during the most recently completed year.

4. The Board shall maintain position descriptions for the Chairman of the Board, the independent Lead Director and the Chairperson of each Board Committee. Such Position Descriptions shall be complete, accurate, detailed, clear, reviewed annually, benchmarked against regulatory requirements and best practices, published in all appropriate documents and posted on Biovail's web site.
5. An assessment of the performance and contribution of the Chairman of the Board and the Chairpersons of Biovail's three principal Board Committees (Audit Committee, CNCGC, and Risk and Compliance Committee) shall be conducted annually, under the direction and supervision of the CNCGC, and:
  - a. shall consider the applicable position description and the competencies and skills each individual director is expected to possess and apply in the discharge of his or her duties;
  - b. shall provide feedback to the assessed individual; and
  - c. shall be followed where appropriate by timely, corrective action.
6. Biovail shall disclose the general nature of these assessments in sufficient detail in all appropriate public documents so as to demonstrate that a robust and effective Board Chairman and Committee Chairperson assessment process is in place.
7. At least one member of the CNCGC shall have significant experience in management compensation.
8. The Charter of the CNCGC, as may be revised from time to time, shall be complete, accurate, detailed, clear, reviewed annually, benchmarked against regulatory requirements and best practices, published in all appropriate documents and posted on Biovail's web site.
9. At least once annually, the CNCGC shall select and retain an independent consultant to conduct a comprehensive review and assessment of the Company's policies, procedures and internal controls for setting compensation for Biovail's Chief Executive Officer and other members of senior management, including but not limited to the comparator group of companies being used in the setting of such compensation. The consultant shall prepare and submit a report to the CNCGC.
10. The CNCGC shall have sole authority over the engagement of independent compensation consultants, including over the appointment, compensation, oversight and retention terms and conditions of such engagements.
11. The CNCGC shall establish its compensation structures, policies and procedures consistent with current, independent and qualified views of best practices. In particular, the CNCGC shall:

- a. familiarize itself with the best practice views of institutional shareholders and corporate governance institutes and associations, such as the Canadian Coalition for Good Governance, in respect of the oversight of executive compensation;
  - b. consult with the Committee's independent compensation consultants regularly to review the current state of affairs on best practices in the various areas of executive and other employee compensation; and
  - c. undertake to adopt, implement or utilize, as necessary and appropriate, approaches, practices and tools to facilitate thoughtful and informed decision making in respect of the oversight of executive and other employee compensation, including with respect to the relative balance between annual and long-term compensation.
12. The Company shall maintain an Audit Committee (the members of which shall be independent within the meaning of section A.3 above), and the Audit Committee shall report directly to the Board and not to Biovail's executive officers.
13. All members of the Audit Committee shall have:
  - a. a reasonable understanding of both U.S. and Canadian generally accepted accounting principles; and
  - b. a reasonable understanding of how Biovail earns income and how its business transactions impact management's choice and application of critical accounting policies, judgments and estimates.
14. The Company shall maintain an internal audit department, which shall: (a) be adequately staffed and supervised; (b) be led by a Head of Internal Audit, who shall report directly to the Audit Committee; and (c) be independent of the accounting department.
15. The Audit Committee shall recommend to the Board, CEO and CFO the appointment, evaluation, compensation (at least annually, including incentive structure) and retention of the Head of Internal Audit.
16. The Audit Committee shall review and approve the mandate, budget and resources for the Internal Audit Department.
17. The Internal Audit work plan shall be approved by the Audit Committee, including any changes to the plan and the reasons for such changes.
18. Biovail shall ensure that the functions and responsibilities carried out by the Internal Audit Department remain separate from management functions and involvement and do not include operational duties or non-Internal Audit transactions or oversight.
19. Biovail's General Counsel shall be responsible for monitoring compliance with Biovail's Insider Trading Policy and shall report at least quarterly to the CNCGC with respect to trading compliance matters.

20. Company will regularly update its web site:
  - a. to reflect its current corporate governance guidelines and procedures, its charters for the Board and each committee of the Board as well as the position descriptions of the Chairman of the Board, the Chairperson of each committee thereof and the Chief Executive Officer in addition to any other information that may be required by any regulatory authority including but not limited to the SEC or any exchange on which Biovail's securities trade and its policies and procedures for determining executive compensation; and
  - b. to reflect any changes that were made to the earlier posted version of the respective documents.
21. The Board shall maintain a comprehensive and responsible set of assumptions, policies and procedures for determining executive compensation (e.g., company compensation levels should be compared to similar-sized businesses in similar industries or with similar profitability and annual and long-term performance goals for each executive officer of the Company should be established) which shall be posted on the Company's website and disclosed in the Proxy Circular.
22. Transparent, objective measures shall be established for the award and/or allowance of all cash and non-cash compensation, including bonuses, stock options, grants and benefits such as health care, use of company vehicles, memberships, travel for friends, relatives or personal trips, personal housing, and tax or legal services paid for or provided by the Company, which shall be disclosed in the Proxy Circular.
23. Internal controls over the issuance of Biovail stock options shall be designed, operated, tested, monitored, remedied and validated to ensure that:
  - a. the data of the recordkeeping system is secure and accurate;
  - b. transactions are properly captured and reconciled;
  - c. grants and awards have been appropriately and timely approved;
  - d. grants and awards comply with Biovail's option plans and guidelines;
  - e. the grant and exercise of insider stock options are timely reported; and
  - f. Biovail's option plans and the administration thereof comply with applicable laws and regulations.
24. The Company has no current intention to change its current policy that independent directors are not eligible to receive stock options or Restricted Share Units.
25. The Company shall not backdate the grants of any stock options. The Company shall not lower the exercise prices of any stock options after they are granted, nor exchange stock

options for options with lower exercise prices, unless in accordance with applicable laws and regulatory requirements.

26. Stock options shall be granted only in accordance with all applicable laws and regulatory requirements.
27. Executive officers shall be prohibited from determining the date of any option award.

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