

**KINGSLEY & KINGSLEY, APC**  
**GEORGE R. KINGSLEY, ESQ. SBN-38022**  
**ERIC B. KINGSLEY, ESQ. SBN-185123**  
*eric@kingsleykingsley.com*  
**DARREN M. COHEN, ESQ. SBN-221938**  
**16133 VENTURA BL., SUITE 1200**  
**ENCINO, CA 91436**  
**(818) 990-8300, FAX (818) 990-2903**

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**CHARLES JOSEPH, ESQ. FED BAR #CJ-9442**  
**JOSEPH & HERZFELD LLP**  
**757 THIRD AVENUE, 25TH FLOOR**  
**NEW YORK, NY 10017**  
**(212) 688-5640; FAX (212) 688-2548**  
**Seeking Admission Pro Hac Vice**

**MATTHEW D. BRINCKERHOFF ESQ. FED BAR #**  
**EMERY CELLI BRINCKERHOFF & ABADY LLP**  
**75 ROCKEFELLER PLAZA, 20th FLOOR**  
**NEW YORK, NY 10019**  
**(212) 763-5000; FAX (212) 763-5001**  
**Seeking Admission Pro Hac Vice**

**Attorneys for Plaintiffs**

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

**PHILIP M. CONTRERAS, on**  
**behalf of himself and all others**  
**similarly situated,**

**Plaintiffs,**

**v.**

**PFIZER INC., a Delaware**  
**corporation, doing business in**  
**California as PFIZER PRODUCTS,**  
**INC.; and DOES 1 to 50, Inclusive,**

**Defendants.**

**CASE NO.: CV 09-03405 PVT**  
**ORDER APPROVING**  
**STIPULATION TO STAY ACTION**

1           **THE PARTIES HEREBY STIPULATE AS FOLLOWS:**

2           **PLEASE TAKE NOTICE** that all parties desire to stay the proceedings in this  
3 action pending the outcome of three appeals that directly implicate the central issue in  
4 this case, i.e., whether pharmaceutical sales representatives are properly classified as  
5 exempt from Cal. Labor Code overtime requirements under either the outside sales or  
6 administrative exemptions. *See D'Este v. Bayer*, 07-56577, *Barnick v. Wyeth*, 07-56684,  
7 *Menes v. Roche*, 08-55286 (consolidated 9th Circuit appeals); *In Re Novartis Wage and*  
8 *Hour Litigation*, No. 09-0437 (2nd Cir.); and [Add J&J Case in 3d Circuit). A stay of  
9 this action pending a decision concerning the applicability of the outside sales and/or  
10 administrative exemptions under California law will promote efficiency and conserve  
11 the resources of the court and the parties.

12           On February 11, 2009, the Ninth Circuit Court of Appeals heard oral argument  
13 in the consolidated cases of *Menes v. Roche*, 08-55286, *D'Este v. Bayer*, 07-56577, and  
14 *Barnick v. Wyeth*, 07-56684. In all three appeals, the district courts had awarded  
15 summary judgment to defendants based on the outside sales exemption under California  
16 law.

17           On May 5, 2009, the Ninth Circuit certified two questions to the California  
18 Supreme Court, addressing both the outside sales and the administrative exemptions as  
19 applied to pharmaceutical representatives. On June 10, 2009, the California Supreme  
20 Court denied the Ninth Circuit's request. On July 15, 2009, the Ninth Circuit entered  
21 an order withdrawing *Menes v. Roche*, 08-55286, *D'Este v. Bayer*, 07-56577, and  
22 *Barnick v. Wyeth*, 07-56684 from submission pending issuance of the mandate in *Harris*  
23 *v. Superior Court*, No. 515655, review granted by 171 P.3d 545 (Cal. 2007). The  
24 consolidated cases will be resubmitted to the Ninth Circuit within twenty days of the  
25 California Supreme Court's decision in *Harris v. Superior Court*.

26           The Second Circuit Court of Appeals is also considering an appeal from a district  
27 court order awarding summary judgment to a defendant pharmaceutical company by  
28 concluding that pharmaceutical sales representatives are properly classified as exempt  
outside sales or administrative employees under the Fair Labor Standards Act as well

1 as New York and California law. *See In Re Novartis Wage and Hour Litigation*, 593  
2 F.Supp.2d 697 (S.D.N.Y. 2009), *appeal pending*, No. 09-0437 (2nd Cir). The  
3 Plaintiffs/Appellants filed their opening brief on June 8, 2009. The Department of  
4 Labor filed an amicus brief in support of Plaintiffs/Appellants on October 14, 2009.  
5 Defendant/Appellee filed its brief on October 26, 2009.

6 Other federal district courts have stayed similar cases concerning the  
7 classification of pharmaceutical sales representatives pending appeals in related actions.  
8 *See Silverman v. GlaxoSmithKline PLC*, 06 cv 7272 DSF (C.D. Cal. Dec. 17, 2008)  
9 [Dkt. No. 188]; *Thorpe v. Abbott Laboratories, Inc.*, 5:07-cv-05672 RMW (N.D. Cal.  
10 Mar. 5, 2009) [Dkt. No. 54]. *See also Freeman v. Hoffman LaRoche Inc.*, 07-1503 JLL  
11 (D.N.J. Mar. 24, 2009) [Dkt. No. 110] (upon plaintiffs' unopposed motion to stay,  
12 district court administratively terminated the action subject to plaintiffs' right to request  
13 reinstatement within 60 days of final resolution of appeal); *Brody v. Astrazeneca*  
14 *Pharmaceuticals, LP*, 08-56120 (9th Cir. Mar. 3, 2009). Moreover, neither party would  
15 be prejudiced by a stay in this action.

16 Wherefore, the parties respectfully request that the Court approve this stipulation  
17 for a Stay of Proceedings, and continue the Joint Case Management Conference set for  
18 November 20, 2009 pending the resolution of one or both of the aforementioned  
19 appeals.

20  
21 **IT IS SO STIPULATED**

22  
23 DATED: October 30, 2009

DATED: October 30, 2009

24 KINGSLEY & KINGSLEY, APC

LITTLER MENDELSON

25  
26 By: /s/  
ERIC B. KINGSLEY  
Attorney for Plaintiff

By: /s/  
TODD K. BOYER  
JAMES N. BOUDREAU  
Attorneys for Defendants

27 IT IS SO ORDERED.

28 DATED: 11/5/2009

  
JEFFREY FOGEL  
3 United States District Judge