

ENDORSED
FILED
ALAMEDA COUNTY

APR 06 2010

K. McCoy, Exec. Off./Clerk

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

THE PENNSYLVANIA AVENUE FUNDS,
individually and on behalf of all others similarly
situated,

Plaintiff,

v.

AVIGEN, INC.; ZOLA HOROVITZ; JOHN
K.A. PRENDERGAST; KENNETH
CHAHINE; RICHARD WALLACE; JAN K.
ÖHRSTRÖM; STEPHEN G. DILLY;
MEDICINOVA, INC.

Defendants.

Case No. RG09470224

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**[PROPOSED] ORDER
PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING
FOR NOTICE**

Judge Steven A. Brick
Department 17

1 WHEREAS, a putative class action is pending before the Court entitled *The Pennsylvania*
2 *Avenue Funds v. Avigen, Inc., et al.*, Case No. RG09470224 (the "Action");

3 WHEREAS, the parties having made an application for an order approving the settlement of
4 this Action, in accordance with a Stipulation of Settlement dated as of March 11, 2010 (the
5 "Stipulation"), which, together with the Exhibits annexed thereto, sets forth the terms and
6 conditions for a proposed settlement of the Action and for dismissal of the Action with prejudice
7 upon the terms and conditions set forth therein; and the Court having read and considered the
8 Stipulation and the Exhibits annexed thereto; and

9 WHEREAS, all defined terms contained herein shall have the same meanings as set forth in
10 the Stipulation.

11 NOW, THEREFORE, IT IS HEREBY ORDERED:

12 1. Pursuant to California Code of Civil Procedure section 382 and California Rules of
13 Court, Rule 3.760, *et seq.*, the Court preliminarily certifies, for purposes of effectuating this
14 settlement only, a Class of all persons or entities who held Avigen stock, either of record or
15 beneficially, at any time between August 20, 2009, through and including December 18, 2009, the
16 Closing Date as defined in the Agreement and Plan of Merger dated August 20, 2009 by Avigen,
17 Inc. ("Avigen") and MediciNova, Inc. ("MediciNova") (the "Merger Agreement"), including their
18 respective successors-in-interest, predecessors, representatives, trustees, executors, administrators,
19 heirs, assigns or transferees, immediate and remote and any person or entity acting for or on behalf
20 of, or claiming under any of them, and each of them. Excluded from the Class are Defendants,
21 Defendants' Affiliates, members of the immediate family of any Individual Defendant, any entity in
22 which a Defendant has or had a controlling interest, directors and officers of Avigen and their legal
23 representatives, heirs, successors, or assigns of any such excluded person or entity.

24 2. With respect to the Class, this Court conditionally finds and concludes, for purposes
25 of effectuating this Settlement only, that: (a) the Members of the Class are so numerous that joinder
26 of all Class Members in the Action is impracticable; (b) there are questions of law and fact common
27 to the Class which predominate over any individual questions; (c) Plaintiff's claims are typical of
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1 the claims of the Class; (d) Plaintiff and Plaintiff's Counsel have fairly and adequately represented
2 and protected the interests of all of the Class Members; and (e) a class action is superior to other
3 methods for the fair and efficient adjudication of the matter. The Court hereby appoints Plaintiff
4 The Pennsylvania Avenue Funds as Class Representative for the Class and Finkelstein Thompson
5 LLP as Class Counsel for the Class.

6 3. The Court does hereby preliminarily approve the Stipulation and the settlement set forth
7 therein, subject to further consideration at the Settlement Hearing described below.

8 4. A hearing (the "Settlement Hearing") shall be held before this Court on
9 6/24/10, at Department 17 of the Alameda County Superior Court, located at 1221 Oak
10 Street, Oakland, California 94612, to determine whether the proposed settlement of the Action on
11 the terms and conditions provided for in the Stipulation is fair, reasonable and adequate to the Class
12 and should be approved by the Court; and whether a Judgment as provided in the Stipulation should
13 be entered herein.

14 5. The Court approves, as to form and content, the Notice of Pendency and Settlement
15 of Class Action (the "Notice") annexed as Exhibit A-1 hereto, and finds that the publication of the
16 Notice substantially in the manner and form set forth in this Order meet the requirements of
17 California Rules of Court, Rule 3.766 and due process, and is the best notice practicable under the
18 circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

19 6. Counsel for the parties are hereby ordered to cooperate to supervise and administer
20 the notice procedure as more fully set forth below:

21 (a) Not later than 4/23/10 (the "Notice Date"), Defendants shall cause a copy of the
22 Stipulation to be filed with the Securities and Exchange Commission on Form 8-K; shall mail the
23 Notice to all Avigen shareholders of record; shall publish the Notice substantially in the form
24 annexed hereto as Exhibit A-1 on Defendants' website with a link to the Notice appearing on the
25 home page; and shall publish the Notice on Businesswire.

26 (b) At least seven (7) calendar days prior to the Settlement Hearing, counsel for Defendants
27 shall file with the Court proof, by affidavit or declaration, of mailing and publication.
28

1 7. All Members of the Class who do not request exclusion from the Settlement shall be
2 bound by all determinations and judgments in the Action concerning the settlement, whether
3 favorable or unfavorable to the Class.

4 8. Any Class Member may enter an appearance in the Action, at the Class Member's
5 own expense, individually or through counsel of the Class Member's own choice. Any Class
6 Member who does not enter an appearance will be represented by Plaintiff's Counsel.

7 9. Unless and until the settlement is canceled and terminated pursuant to the
8 Stipulation, neither the Plaintiff nor any Class Member, either directly, representatively, or in any
9 other capacity, shall commence or prosecute against any of the Released Persons, any action or
10 proceeding in any court or tribunal asserting any of the Settled Claims, including Unknown Claims.

11 10. All memoranda or briefs in support of the settlement or attorneys' fees and expenses,
12 shall be filed no later than fourteen (14) calendar days prior to the Settlement Hearing.

13 11. Any Member of the Class may appear and show cause, if the Class Member has any
14 reason why the proposed settlement of the Action should or should not be approved as fair,
15 reasonable and adequate, or why the Judgment should or should not be entered thereon provided,
16 however, that no Class Member shall be heard or entitled to contest the approval of the terms and
17 conditions of the proposed settlement, or, if approved, the Judgment to be entered thereon
18 approving the same unless that Person has delivered by hand or sent by first-class mail written
19 objections and copies of any papers and briefs, such that they are received seven (7) days before the
20 Settlement Hearing by: Rosemary M. Rivas, Finkelstein Thompson LLP, 100 Bush St., Suite 1450,
21 San Francisco, CA 94104; William S. Freeman, Cooley Godward Kronish LLP, Five Palo Alto
22 Square, 3000 El Camino Real, Palo Alto, CA 94306; and Matthew L. Larrabee, Dechert LLP, One
23 Maritime Plaza, Suite 2300, San Francisco, CA 94111-3513; and filed said objections, papers and
24 briefs with the Clerk of the Court of the Superior Court of California for Alameda County, 1221
25 Oak Street, Oakland, California 94612, seven (7) days before the Settlement Hearing. Any Member
26 of the Class who does not make his, her or its objection in the manner provided shall be deemed to
27 have waived such objection and shall forever be foreclosed from making any objection to the
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1 fairness or adequacy of the proposed settlement as incorporated in the Stipulation unless otherwise
2 ordered by the Court.

3 12. Any Member of the Class may request exclusion from the Settlement Class by
4 sending a letter by mail no later than requesting exclusion no later than 6/7/10 to:
5 Clerk of the Court of the Superior Court of California for Alameda County, 1221 Oak Street,
6 Oakland, California 94612; Rosemary M. Rivas, Finkelstein Thompson LLP, 100 Bush St., Suite
7 1450, San Francisco, CA 94104; William S. Freeman, Cooley Godward Kronish LLP, Five Palo
8 Alto Square, 3000 El Camino Real, Palo Alto, CA 94306; and Matthew L. Larrabee, Dechert LLP,
9 One Maritime Plaza, Suite 2300, San Francisco, CA 94111-3513.

10 13. All memoranda or briefs responding to any objections to the proposed settlement,
11 application for attorneys' fees and expenses, and any application for the incentive award shall be
12 filed no later than five (5) calendar days prior to the Settlement Hearing
13

14 14. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations
15 or proceedings connected with it, shall be construed as an admission or concession by Defendants
16 of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any
17 kind.

18 IT IS SO ORDERED.

19 Dated: APR 06 2010

STEVEN A. BRICK

20 The Honorable Steven A. Brick
21 Judge of the Superior Court
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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

THE PENNSYLVANIA AVENUE FUNDS,
individually and on behalf of all others similarly
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Plaintiff,

v.

AVIGEN, INC.; ZOLA HOROVITZ; JOHN
K.A. PRENDERGAST; KENNETH
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ÖHRSTRÖM; STEPHEN G. DILLY;
MEDICINOVA, INC.

Defendants.

Case No. RG09470224

**NOTICE OF PENDENCY AND
SETTLEMENT OF CLASS ACTION**

EXHIBIT A-1

1 This notice (the "Notice") provides you with important information in connection with the
2 settlement (the "Settlement") of a civil action concerning the acquisition of Avigen, Inc. ("Avigen") by
3 MediciNova, Inc. ("MediciNova"). Your legal rights may be affected by this Notice and the
4 proceedings in this litigation, whether you act or do not act. You should read this Notice carefully.

- 5 ▪ This Notice is dated April 23, 2010 (the "Notice Date").
- 6 ▪ This Notice is being published pursuant to an Order of the Superior Court of California,
7 Alameda County, granting preliminary approval of the Stipulation of Settlement (the
8 "Stipulation"), dated March 11, 2010, by and among the Settling Parties (defined below). This is
9 not a solicitation from a lawyer.
- 10 ▪ The Settlement resolves a case filed in this Court as a proposed class action (the "Action") that
11 raised the issues of whether the directors of Avigen fulfilled their fiduciary duties to the
12 stockholders of Avigen when Avigen entered into a merger agreement with MediciNova (the
13 "Transaction"), including whether the Forms S-4 as amended filed with the Securities and
14 Exchange Commission (the "SEC") on September 17, 2009 and October 23, 2009, provided
15 adequate disclosures to the stockholders of Avigen with regard to the Transaction.
- 16 ▪ The Settlement provides for the disclosure of additional information by Avigen and
17 MediciNova. Plaintiff believes the disclosure of such information was necessary in order for
18 Avigen shareholders to make an informed vote on the Transaction. Defendants do not believe
19 that any additional disclosures were necessary.
- 20 ▪ Your legal rights and options are explained in this Notice.
- 21 ▪ The Court in charge of this case must decide whether to approve the Settlement.

22 **BASIC INFORMATION**

23 **1. Why Did I Get This Notice?**

24 You or someone in your family may have held shares of Avigen common stock at some time
25 from August 20, 2009 through and including December 18, 2009, the Closing Date as defined in the
26 Agreement and Plan of Merger between Avigen and MediciNova (the "Merger Agreement").

27 The Court sent you this Notice because you have a right to know about a proposed settlement of
28 a class action lawsuit before the Court decides whether to approve the settlement.

.....
This Notice explains the lawsuit, the Settlement and your legal rights.

The Court in charge of the case is the Superior Court of California for Alameda County, and
the case is known as *The Pennsylvania Avenue Funds v. Avigen, Inc., et al.*, Case No. RG09470224
(the "Action"). Zola Horovitz, John K.A. Prendergast, Kenneth Chahine, Richard Wallace, Jan K.
Öhrström, Stephen G. Dilly (collectively the "Individual Defendants"), Avigen, Inc. ("Avigen") and
MediciNova, Inc. ("MediciNova") are collectively called "the Defendants."

1 **2. What Is This Lawsuit About?**

2 This case was brought as a class action alleging that certain of the Defendants breached their
3 fiduciary duties to the shareholders of Avigen common stock in connection with the acquisition of
4 Avigen by MediciNova. Plaintiff sought to stop the Defendants from proceeding with the acquisition
5 and alleged omission of information necessary for Avigen shareholders to make an informed vote on
6 the Transaction and/or monetary relief. Defendants contend that the allegations have no merit. In the
7 interests of settlement and avoiding the time, expense and inconvenience of litigation, among other
8 considerations, Defendants agreed to provide certain additional disclosures to Avigen shareholders
9 about the Transaction.

10 **3. Why Is This a Class Action?**

11 In a class action, one or more people called class representatives (in this case The
12 Pennsylvania Avenue Funds) sue on behalf of people and entities who have similar claims. Here,
13 these people and/or entities are collectively called a Class or Class Members. One court resolves the
14 issues for all Class Members.

15 **4. Why Is There a Settlement?**

16 The Court did not decide in favor of Plaintiff or Defendants. Instead, both sides agreed to a
17 Settlement, thereby avoiding the cost of a trial.

18 While Plaintiff originally sought injunctive and monetary relief, after filing its suit, Plaintiff,
19 through its Counsel's investigation, believed that obtaining additional monetary relief on behalf of
20 Avigen shareholders would have been difficult because of the hurdles in showing that: (a) the
21 consideration offered in the Merger was insufficient in light of the additional Contingent Payment
22 Right ("CPR") provided with the cash and/or Convertible Notes, and (b) Avigen's approval of the
23 Merger was unreasonable given the Company's financial situation. Plaintiff, however, continued to
24 believe that Defendants had not made proper disclosures in their original and amended Form S-4 in
25 advance of the shareholder vote, particularly with regard to disclosing the details and considerations
26 involved in the Board's process in approving the Merger. After arm's length negotiations, Plaintiff
27 and Defendants agreed on the substantive terms of a Settlement that would provide additional
28 disclosures to Avigen shareholders (as detailed below) before the close of the shareholder vote. These
additional disclosures were provided to shareholders on November 18, 2009.

 Before agreeing to finalize the Settlement, Plaintiff's Counsel negotiated for the right to
conduct discovery to confirm that the material terms of the Transaction were fair. Following
completion of that discovery, which included a review of documents and interviewing Avigen's
former Chief Executive Officer under oath, Plaintiff's Counsel determined that the additional
disclosures that Defendants agreed to provide to shareholders were sufficient to allow Avigen
shareholders to make an informed vote on the Transaction, and that the share price paid in connection
with the Transaction was within the acceptable range of consideration for the shares of the Company.

 In addition, Plaintiff and Defendants considered the following factors favoring
Settlement:

- the uncertainty of the legal issues underlying the allegations in the litigation;

- 1 ▪ the assurance that Avigen’s shareholders obtained benefits regardless of the outcome of
- 2 further litigation;
- 3 ▪ the economy of costs/exposure reduction for the benefit of the Parties;
- 4 ▪ the costs of continued litigation; and
- 5 ▪ the prevailing consideration in all compromises and settlements that the parties weigh
- 6 the advantages and benefits of settlement against the risks of loss.

7 **5. How Do I Know if I am Part of the Settlement?**

8 The Class includes all persons or entities who held Avigen stock, either of record or beneficially,

9 at any time between August 20, 2009, through and including December 18, 2009, including all such

10 persons' or entities' respective successors in-interest, predecessors, representatives, trustees, executors,

11 administrators, heirs, assigns or transferees, immediate and remote and any person or entity acting for

12 or on behalf of, or claiming under any of them, and each of them. Excluded from the Class are

13 Defendants, Defendants' Affiliates, members of the immediate family of any Individual Defendant, any

 entity in which a Defendant has or had a controlling interest, directors and officers of Avigen and their

 legal representatives, heirs, successors, or assigns of any such excluded Person or entity.

14 **THE SETTLEMENT BENEFITS**

15 **6. What Does the Settlement Provide?**

16 Plaintiff has alleged that the Defendants failed to disclose to shareholders certain material

17 information relating to the Transaction. To settle the lawsuit, Defendants made available to Avigen’s

18 shareholders additional information related to the Transaction, and amended the Preliminary Form S-4

19 Registration Statement in a relevant manner by adding significant additional information to pages 13,

20 74, 75, 83, 88, 92, 93 and 236 of the Definitive Form S-4 Registration Statement filed with the United

 States Securities and Exchange Commission.

21 The disclosures included additional information about the following:

22 (a) Merger proposals Avigen received from parties other than MediciNova, including the value

23 of the consideration offered in these proposals, disclosing the terms of various offers Avigen received

 as of March 17, 2009;

24 (b) Potential conflicts of interests or financial incentives of any members of Avigen’s Board of

25 Directors in connection with the Proposed Transaction, disclosing the specific payments Avigen’s

26 Directors and executive officers would receive under the Management Transition Plan;

27 (c) The data inputs used by Ladenburg Thalman & Co. Inc. (“Ladenburg”) in its analyses in

28 connection with preparing its Fairness Opinion for the Proposed Transaction, disclosing the 14 specific

 partnering transactions Ladenburg analyzed;

1 (d) The values and methodology RBC Capital Markets Corporation (“RBC”) used to estimate
2 the values of certain assets relating to its liquidation analysis of Avigen, disclosing the values of: (i)
3 Avigen’s AV411 intellectual property as \$3.0 million (based upon the non-binding term sheet for the
4 cash purchase of AV411 that had been submitted by Suitor A on June 22, 2009), (ii) the Genzyme
5 milestone as \$6.0 million, and (iii) the amount withheld from initial distribution to Avigen stockholders
6 for additional liabilities and expenses as approximately \$4.0 million;

7 (e) The reasons the Avigen board of directors terminated discussions relating to a proposed
8 merger on March 25, 2009 after determining that such proposal was “not feasible” in light of
9 Biotechnology Value Fund’s (“BVF”) position on the potential transactions, disclosing the reasoning
10 that BVF owned 30% of Avigen’s stock and that BVF would only support a transaction with a structure
11 that allowed Avigen’s stockholders to receive primarily cash for their stock;

12 (f) The factors and inputs RBC used in its Black-Scholes valuation analysis of the Convertible
13 Notes offered in the Proposed Transaction, disclosing MediciNova’s stock price of \$7.12 per share (the
14 closing price of MediciNova common stock on August 17, 2009), exercise price of \$6.80, term of 1.5
15 years, risk-free rate of 1.06 percent, and standard deviation estimate of 0.69; and

16 (g) The liquidity and transferability of the Convertible Notes offered in the Proposed
17 Transaction, disclosing that the Convertible Notes would be generally transferable without restriction
18 under the securities laws but that there was currently no trading market for the Convertible Notes,
19 which could have an effect on the Notes’ liquidity and trading prices.

20 **7. What Does It Mean to Be Part of the Class?**

21 If you are in the Class, that means you cannot sue or be part of any other lawsuit against the
22 Defendants or their affiliates about the legal issues in this case. Defendants and their affiliates means
23 each of the Defendants and/or their respective families' past and present affiliates, parent entities,
24 associates, subsidiaries or general partners, limited partnership partners and partnerships, and each and
25 all of their respective past, present or future officers, directors, stockholders, agents, representatives,
26 employees, attorneys, legal counsel, financial or investment advisors, persons who provided opinions
27 relating to the Transaction, appraisers, and any other advisors, consultants, accountants, investment and
28 commercial bankers, commercial bank lenders, trustees, engineers, agents, insurers, co-insurers and
reinsurers, heirs, executors, trustees, general or limited partners or partnerships, limited liability
companies, members and managers; and each of their respective heirs, executors, personal or legal
representatives, estates, administrators, predecessors, successors and assigns (the "Released Persons").

..... If you are in the Class that also means that all of the Court's orders will apply to you and legally
bind you. In addition, if the Court approves the settlement, you will lose all claims, rights and causes of
action, whether legal or equitable or any other type, known or unknown, you or any Class Member ever
had, now have, or hereafter can, shall, or may have, arising from the acts, omissions or failures to act
occurring prior to the Settlement, whether directly, derivatively, representatively or in any other
capacity against any of the Defendants or their affiliates, by reason of, or arising out of, or relating to,
or in connection with: (i) the claims or allegations asserted by Plaintiff in the Action, and any other
facts, matters, transactions, actions or conduct, actual, alleged or that could have been alleged in this

1 case; (ii) the Transaction or the Merger Agreement; (iii) any other agreements, contracts, actions or
2 approvals relating to the foregoing; (iv) the fiduciary obligations of any of the Defendants or Released
3 Persons in connection with the Transaction or the Merger Agreement; (v) the negotiations in
4 connection with the Transaction or the Merger Agreement; or (vi) any disclosures made by or
5 disclosure obligations of any of the Released Persons, to any party, including but not limited to the
6 Securities and Exchange Commission (the "SEC") in connection with the Transaction or the Merger
7 Agreement ("Released Claims"). The Defendants believe that no such claims exist but, if you are in the
8 Class, you will not be able to pursue any such claims, if and to the extent they exist. The Settlement
9 does not affect or release any statutory appraisal rights that may pertain to any Avigen shareholder
10 under applicable law.

11 **THE LAWYERS REPRESENTING YOU**

12 **8. Do I Have a Lawyer in This Case?**

13 The law firm of FINKELSTEIN THOMPSON LLP represents you and other Class Members.
14 The lawyers at this firm are called Plaintiff's Counsel. You will not be charged for these lawyers. If you
15 want to be represented by your own lawyer, you may hire one at your own expense.

16 **9. How Will the Lawyers Be Paid?**

17 Defendants have agreed to pay and not to oppose Plaintiff's Counsel's application for attorneys'
18 fees and expenses, not to exceed \$140,000, and an award to the named Plaintiff for its time and
19 expenses in prosecuting the litigation, totaling no more than \$2,500. The amounts awarded will be
20 subject to Court approval. The attorneys' fees and expenses will be the only payment to Plaintiff's
21 Counsel for their efforts in achieving this Settlement and for their risk in undertaking this
22 representation on a wholly contingent basis.

23 **EXCLUDING YOURSELF FROM THE SETTLEMENT**

24 If you do not want to be included in this settlement and you want to keep any right you may
25 have to sue or continue to sue the Defendants and the other Released Persons on your own about the
26 Released Claims, then you must take steps to exclude yourself — or as it is sometimes referred to, you
27 must "opt out" of the settlement Class.

28 **10. How do I exclude myself from the proposed settlement?**

To exclude yourself from the settlement Class, you must send a letter by mail stating that you
"request exclusion from the Class in *The Pennsylvania Avenue Funds v. Avigen, Inc., et al.*, Case No.
RG09470224." Be sure to include your name, address, telephone number, your signature, and the
number of shares of Avigen common stock that you held at any time from August 20, 2009 through and
including December 18, 2009. Mail the letter to the Court, with a copy to the following three different
places such that it is received no later than June 7, 2010 by each of the following:

Court

Clerk of Court

1 Superior Court of California, County of Alameda
2 Administration Building
3 1221 Oak Street
4 Oakland, California 94612

5 Counsel for Plaintiff

6 Rosemary M. Rivas
7 FINKELSTEIN THOMPSON LLP
8 100 Bush St., Suite 1450
9 San Francisco, CA 94104

10 Counsel for Defendants Avigen, Inc., Zola Horovitz, John K.A. Prendergast, Kenneth Chahine,
11 Richard Wallace, Jan K. Öhrström, Stephen G. Dilly

12 William S. Freeman
13 COOLEY GODWARD KRONISH LLP
14 Five Palo Alto Square
15 3000 El Camino Real
16 Palo Alto, CA 94306

17 Counsel for Defendant MediciNova, Inc.

18 Matthew L. Larrabee
19 DECHERT LLP
20 One Maritime Plaza, Suite 2300
21 San Francisco, CA 94111-3513

22 **You cannot exclude yourself by telephone, by fax or by e-mail.** If you ask to be excluded,
23 you will not be included in the Settlement, and you cannot object to the Settlement. You will not be
24 legally bound by anything that happens in this lawsuit, and you may be able to sue Defendants and the
25 other Released Persons about the Released Claims in the future.

26 **11. If I do not exclude myself, can I sue Defendants and the other Released Persons later
27 for the Released Claims?**

28 No. Unless you exclude yourself, you give up any rights to sue Defendants and the other
Released Persons, or to enforce any existing judgments against any of the Released Persons, for any
and all Released Claims. If you have a pending lawsuit against Defendants or the other Released
Persons, speak to your lawyer in that case immediately, to determine if you have to exclude yourself
from *this* Class to continue your own lawsuit. Remember, the exclusion deadline is June 7, 2010.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it if you
consider it necessary.

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2 **12. What is the difference between objecting and excluding?**

3 Objecting is simply telling the Court that you do not like something about the proposed
4 settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that
5 you do not want to be part of the Class. If you exclude yourself, you have no basis to object because
6 the case no longer affects you.

7 **13. How Do I Tell the Court that I Object to the Settlement?**

8 If you are a Class Member, you can object to the Settlement if you do not like any part of it.
9 You can give reasons why you think the Court should not approve it. The Court will consider your
10 views. To object, you must send a letter saying that you object to the Settlement in *The Pennsylvania*
11 *Avenue Funds v. Avigen, Inc., et al.*, Case No. RG09470224. Be sure to include your name, address,
12 telephone number, your signature, the number of shares of Avigen common stock that you held at any
time from August 20, 2009 through and including December 18, 2009, and the reasons you object to
the Settlement. Mail the objection to the Court, with a copy to the following three different places such
that it is received no later than June 17, 2010 by each of the following:

13 Court

14 Clerk of Court
15 Superior Court of California, County of Alameda
16 Administration Building
17 1221 Oak Street
Oakland, California 94612

18 Counsel for Plaintiff

19 Rosemary M. Rivas.
20 FINKELSTEIN THOMPSON LLP
21 100 Bush St., Suite 1450
San Francisco, CA 94104

22 Counsel for Defendants Avigen, Inc., Zola Horovitz, John K.A. Prendergast, Kenneth Chahine,
23 Richard Wallace, Jan K. Öhrström, Stephen G. Dilly

24 William S. Freeman
25 COOLEY GODWARD KRONISH LLP
26 Five Palo Alto Square
3000 El Camino Real
27 Palo Alto, CA 94306

28 Counsel for Defendant MediciNova, Inc.

1 Matthew L. Larrabee
2 DECHERT LLP
3 One Maritime Plaza, Suite 2300
4 San Francisco, CA 94111-3513

5 **THE COURT'S FAIRNESS HEARING**

6 The Court will hold a hearing to decide whether to approve the Settlement. You may attend
7 and you may ask to speak, but you do not have to.

8 **14. When and Where Will the Court Decide Whether to Approve the Settlement?**

9 A Final Fairness Hearing will be held before Judge Steven A. Brick on June 24, 2010, in
10 Department 17 of the Alameda County Superior Court, located at 1221 Oak Street, Oakland, California
11 94612. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and
12 adequate. If there are objections, the Court will consider them. The Court will listen to people who
13 have asked to speak at the hearing. The Court may decide these issues at the hearing or take them
14 under consideration. We do not know how long the Court's decision will take.

15 **15. Do I Have to Come to the Hearing?**

16 No. Plaintiff's' Counsel will answer questions the Court may have. But you are welcome to
17 come at your own expense. If you send an objection, you don't have to come to Court to talk about it.
18 As long as you submitted your written objection on time, the Court will consider it. You may also pay
19 your own lawyer to attend, but it is not necessary.

20 **16. May I Speak at the Hearing?**

21 You may ask the Court for permission to speak at the fairness hearing. To do so, you must send
22 a letter saying that it is your intention to appear in *The Pennsylvania Avenue Funds v. Avigen, Inc., et*
23 *al.*, Case No. RG09470224. Be sure to include your name, address, telephone number, and your
24 signature. Your letter stating your intent to appear must be received no later than June 17, 2010 by the
25 Clerk of the Court, Plaintiff's' Counsel, and Defendants' counsel, at the four addresses listed in question
26 10.

27 **GETTING MORE INFORMATION**

28 **17. Are There More Details About the Settlement?**

This Notice summarizes the proposed Settlement. More details are in the Stipulation of
Settlement entered into as of March 11, 2010. You can download a copy of the complaint, Stipulation
of Settlement, Motion for Preliminary Approval of Settlement, and other documents related to the
Settlement by visiting Finkelstein Thompson LLP's website at <http://www.finkelsteinthompson.com/>;
or by visiting the Public Access Website of the Superior Court of California, County of Alameda, at
<http://apps.alameda.courts.ca.gov/domainweb/html/index.html>.

1 **18. How Do I Get More Information?**

2 Further information regarding the Action and this Settlement may be obtained by contacting
3 FINKELSTEIN THOMPSON LLP at the contact information below:

4 Address: 100 Bush St., Suite 1450, San Francisco, CA 94104
5 Telephone: (877) 800-1450
6 Email: contact@finkelsteinthompson.com

7 ***DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE***

8 DATED: April 6, 2010

9 BY ORDER OF THE SUPERIOR COURT
10 OF CALIFORNIA, ALAMEDA COUNTY
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