

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re PVC Pipe Antitrust Litigation

This Document Relates to:

Non-Converter Seller Purchaser Class

Case No. 1:24-cv-07639

Hon. LaShonda A. Hunt

**JOINT DECLARATION OF BRIAN D. CLARK AND KARIN E. GARVEY IN
SUPPORT OF NON-CONVERTER SELLER PURCHASER CLASS PLAINTIFFS'
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT
AGREEMENT WITH ATKORE DEFENDANTS AND RELATED RELIEF**

Pursuant to 28 U.S.C. §1746, I, Brian D. Clark, declare as follows:

1. I am a partner at the law firm of Lockridge Grindal Nauen PLLP (“Lockridge Grindal Nauen”). This Court appointed Lockridge Grindal Nauen and Scott+Scott Attorneys at Law LLP as Interim Co-Lead Class Counsel for the Non-Converter Seller Purchaser Class in this Action. This Declaration is based upon my personal knowledge and experience, and, if called on to do so, I could and would testify competently thereto.

Pursuant to 28 U.S.C. §1746, I, Karin E. Garvey, declare as follows:

2. I am a partner at the law firm of Scott+Scott Attorneys at Law LLP (“Scott+Scott”). This Court appointed Lockridge Grindal Nauen and Scott+Scott as Interim Co-Lead Class Counsel for the Non-Converter Seller Purchaser Class in this Action. This Declaration is based upon my personal knowledge and experience, and, if called on to do so, I could and would testify competently thereto.

Pursuant to 28 U.S.C. §1746, we, Brian D. Clark and Karin E. Garvey, declare as follows:

3. Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the Settlement Agreement, dated April 28, 2026 (“Settlement Agreement” or “Settlement”), which is attached as **Exhibit 1** to this Joint Declaration. Unless otherwise noted, ECF cites are to the docket in this Action, and all internal citations and quotations are omitted.

4. We submit this Joint Declaration in support of Plaintiffs’ Motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for preliminary approval of the Settlement between Plaintiffs George Bavolak, Delta Line Construction Co., TC Construction, Inc., Blake Wrobbel, Stephen Bell, Bell Electric, LLC, Russell Jacobs, Kecia Newton, Alpha and Omega Development LLC, Eric Wasman, Adam Kennedy, My Flooring, Inc., and Victor Silva (collectively, the “NCSPs” or “Plaintiffs”) and Defendants Atkore Inc., Atkore International, Inc., Atkore Plastic

Pipe Corp., Atkore RMCP, Inc., and Allied Tube & Conduit Corporation (“Atkore” and together with NCSPs, the “Parties”).

5. The Settlement provides for a total of \$64,000,000 in cash and Atkore’s agreement to provide extensive cooperation, which we believe will assist NCSPs in pursuing their claims against the remaining Defendants. If approved, the Settlement will resolve the Action against Atkore.

6. Based on NCSP counsel’s analysis, Atkore’s market share is between 6% and 7% of the NCSP class. Importantly, all commerce associated with the alleged conspiracy remains in the case, as the other Defendants remain jointly and severally liable for any damages caused by Atkore’s conduct.

7. Importantly, the amount of sales by Atkore to the Distributor Co-Conspirators (Core & Main Inc., Ferguson Enterprises, Inc., Fortiline Waterworks, Hajoca Corporation, Porter Pipe & Supply Co., and United Pipe & Steel Corp.) is *de minimis* (less than 2%). Therefore, this Settlement is all the more valuable as it leaves unsettled and within the NCSP Class such sales that are subject to the *Illinois Brick* co-conspirator exception and are treated as direct claims for NCSP class members.

I. LITIGATION BACKGROUND

8. Interim Co-Lead Counsel’s extensive pre-suit investigation, done prior to the U.S. Department of Justice (“DOJ”) publicly revealing its parallel investigation, led to the filing of the first three class action complaints in this consolidated action, alleging an industry-wide conspiracy involving Converter Defendants, Atkore, and certain named and unnamed co-conspirators.

9. On September 30, 2024, the Court granted NCSPs’ motion (i) appointing Lockridge Grindal Nauen and Scott+Scott as Interim Co-Lead Counsel for a putative class consisting of “all

purchasers of PVC Pipes through a non-converter seller” and (ii) consolidating all actions alleging such purchases under Interim Co-Lead Counsel’s leadership. ECF No. 122, *as amended*, ECF No. 164.

10. Since filing the initial complaints in this Action, Interim Co-Lead Counsel have appeared at multiple in-person hearings, coordinated with all parties on consolidation and case deadlines, ensured service of the complaints, held a discovery conference with all defense counsel, served discovery, opposed Defendants’ motions to dismiss, coordinated with DOJ on a limited stay of discovery, settled with Defendant Oil Price Information Service (“OPIS”), participated in multiple proffers and reviewed documents produced by OPIS in connection with that settlement, filed a robust amended complaint bolstered by information learned from the OPIS documents, and vetted potential class representatives.

11. On October 30, 2024, NCSPs filed the First Consolidated Class Action Complaint (“Complaint”). ECF Nos. 179 (sealed version) and 180 (public redacted version). The depth and detail of the allegations in the Complaint showcase Interim Co-Lead Counsel’s extensive investigation which spanned numerous fronts—legal, factual, and economic—and entailed substantial resources, in both attorney time and monetary expense. Interim Co-Lead Counsel held discussions with class members and other industry participants, developed sources, collected relevant information, retained expert economists, and conducted considerable industry research.

12. On November 7, 2024, DOJ’s inquiry into price-fixing in the PVC Pipe industry was publicly disclosed for the first time when defendant Otter Tail¹ revealed that it had received a federal criminal grand jury inquiry into price-fixing in the PVC pipe industry. Subsequently,

¹ <https://www.nasdaq.com/articles/otter-tail-lower-after-disclosing-receipt-doj-subpoena-pvc-pipe-probe> (last visited June 2, 2025).

Defendants Atkore² and Westlake³ have also confirmed that they too received criminal grand jury subpoenas.

13. On May 5, 2025, NCSPs and DPPs informed the Court that they had reached proposed settlements with OPIS. ECF Nos. 282-83. Following the notification, NCSPs and OPIS negotiated the Long-Form Settlement Agreement, which was executed on May 16, 2025.

14. On May 8, 2025, the proposed End-User Plaintiffs (“EUPs”) class counsel raised concerns regarding potential intraclass conflict within the NCSP class and moved the Court to create a separate end-user class. Subsequently, the Court granted the motion and created the EUP class which included: (1) all public water systems who purchased for end-use; (2) public wastewater systems who purchased PVC for end-use; (3) all suppliers of public energy or electricity, in connection with the supply of electricity for public consumption; or (4) individuals who purchased PVC product from a seller, who purchased indirectly from a Converter Defendant on June 6, 2025. ECF No. 307.

15. On June 23, 2025, the Court granted EUPs’ motion appointing Fegan Scott LLC and Pearson Warshaw, LLP as Interim Co-Lead Counsel for a putative class consisting of “end-users of PVC Pipe who purchased through a non-converter seller.” ECF Nos. 307, 340.

16. On July 17, 2025, the Court granted Preliminary Approval of the OPIS Settlement. ECF No. 362. Subsequently, the Court granted the NCSP Notice Plan on July 31, 2025.

17. On August 18, 2025, NCSPs, DPPs and EUPs each filed detailed amended complaints, incorporating information learned from the materials they had received from OPIS.

² <https://www.msn.com/en-us/money/companies/Atkore-receives-doj-subpoena-over-product-pricing/ar-AA1z5lcP> (last visited June 2, 2025).

³ <https://www.ft.com/content/de2ac6e1-c5ef-4b0a-aa70-c936c46fe9f3> (last visited June 2, 2025).

ECF Nos. 391, 394, 398. Defendants⁴ moved to dismiss by November 11, 2025. *See* ECF Nos. 534, 538, 549, 552, 555, 567, 571, 575. All motion to dismiss briefing was completed by January 26, 2026. The Court has indicated it is endeavoring to rule on the fully briefed motions to dismiss by July 1, 2026. ECF No. 671.

II. SETTLEMENT NEGOTIATIONS

18. NCSPs' settlement posture was informed by Interim Co-Lead Counsel's extensive factual investigation that preceded the Settlement, including review of tens of thousands of pages of documents produced by OPIS as part of its settlement, discussions with class members and other industry participants, developing sources, collecting relevant information, retaining expert economists, and conducting considerable industry research. Interim Co-Lead Counsel comprehensively vetted the factual record, analyzed Atkore's arguments and contrary facts, and thoroughly considered the costs and risks of ongoing litigation. Interim Co-Lead Counsel, who have extensive experience litigating antitrust class actions, were well informed of the strengths and weaknesses of the claims and defenses in this Action and conducted the settlement negotiations seeking to achieve the best possible result for the Settlement Class in light of the risks, costs, and delays of continued litigation.

19. The Parties negotiated the Settlement over the course of three months, beginning in January 2026 when Atkore, through its experienced and respected counsel at Mayer Brown (Britt Miller) initially approached NCSP Interim Co-Lead Counsel and expressed an interest in exploring a potential resolution of the case. The negotiations were hard-fought over both the monetary and non-monetary (e.g., cooperation) components of the Settlement. Over the course of many phone

⁴ Pre-Existing Defendants moved to dismiss on October 30, 2025; New Defendants moved to dismiss on November 11, 2025.

calls and a 10-hour in-person mediation session with mediator Miles Ruthberg,⁵ the Parties reached a settlement agreement executed on April 28, 2026. At all times, the negotiations were at arm's length, and counsel zealously advocated for their respective clients.

III. COOPERATION

20. In addition to agreeing to pay \$64,000,000 in monetary consideration, Atkore has agreed to provide NCSPs as part of the Settlement extensive cooperation in their ongoing prosecution of claims against the remaining Defendants. Atkore's cooperation includes providing NCSPs with: (a) four depositions; (b) three live trial witnesses, in the event that NCSPs' claims against any of the remaining Defendants proceed to trial; (c) all documents produced by Atkore to DOJ in connection with DOJ's investigation; (d) collection and search of five document custodians' files that NCSP counsel selects; and (e) declarations to establish the authenticity and admissibility of Atkore's documents.

21. The value of Atkore's cooperation is critical at this juncture of the lawsuit. While NCSPs have obtained highly valuable information from OPIS, to date NCSPs do not have access to the Converter Defendants' files. This is significant because only through such access can NCSPs gain (a) an understanding of how information from OPIS was used to make decisions and (b) visibility into communications between Converter Defendants that did not flow through OPIS. This information will allow NCSPs to streamline discovery through knowing far more than usual about the who, what, where, and when of the alleged conspiracy.

⁵ The Parties selected Miles Ruthberg of Phillips ADR to serve as mediator. Mr. Ruthberg is a former Global Chair of Latham & Watkins LLP's Litigation & Trial Department and a law clerk to Justice Thurgood Marshall, who has personally closed over \$4 billion in settlements across antitrust, securities, and complex commercial matters and is widely regarded as one of the preeminent mediators in the country.

IV. SELECTION OF ESCROW AGENT AND SETTLEMENT ADMINISTRATOR

22. Interim Co-Lead Counsel propose Kroll Settlement Administration (“Kroll”) to serve as Settlement Administrator, having the duties and responsibilities as described in the Settlement Agreement. Interim Co-Lead Counsel previously selected Kroll after reviewing the available options and undertaking a rigorous bidding process consisting of bids from four experienced settlement administration firms. As indicated in the Reed Declaration, Kroll has been in the business of administering class action settlements for decades and has administered hundreds of class action settlements, including many well-known antitrust settlements. Interim Co-Lead Counsel believe Kroll is qualified to serve as Settlement Administrator and request that the Court approve this selection. The Court previously appointed Kroll as Settlement Administrator in connection with the OPIS Settlement. ECF No. 374.

23. Interim Co-Lead Counsel propose Huntington National Bank (“HNB”) to serve as Escrow Agent, having the duties and responsibilities as described in the Settlement Agreement. HNB was established in 1866, holds over \$60 billion in assets, and has more than 700 branches nationwide. HNB’s National Settlement Team has handled more than 1,000 settlements for law firms, claims administrators, and regulatory agencies. *See, e.g., In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Practices & Antitrust Litig.*, No. 2:17-md-02785, ECF No. 2590-1 (D. Kan.) (preliminary approval motion seeking appointment of Huntington Bank as escrow agent) (Joint Decl., Ex. 4); *id.* at ECF No. 2594 (order granting preliminary approval) (Joint Decl., Ex. 5); *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-md-02503, ECF No. 1145 (D. Mass. Apr. 5, 2018) (appointing Huntington Bank as escrow agent) (Joint Decl., Ex. 6). Interim Co-Lead Counsel believe HNB is qualified to serve as Escrow Agent and request that the Court

approve our selection. The Court previously appointed Huntington as Escrow Agent in connection with the OPIS Settlement. ECF No. 362.

V. MISCELLANEOUS

24. This Declaration and the Memorandum attach a number of relevant unpublished cases, which are attached as exhibits to this declaration as noted below:

- a. **Exhibit 2:** *In re Broiler Antitrust Litigation*, 1:16-cv-08637, ECF No. 462 (N.D. Ill. Aug. 8, 2017).
- b. **Exhibit 3:** *In re Turkey Antitrust Litigation*, No. 1:19-cv-08318 (KLH), ECF No. 1100-1 (N.D. Ill. Jan. 15, 2025).
- c. **Exhibit 4:** *In re EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices & Antitrust Litigation*, No. 2:17-md-02785, ECF No. 2590-1 (D. Kan.).
- d. **Exhibit 5:** *In re EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices & Antitrust Litigation*, No. 2:17-md-02785, ECF No. 2594 (D. Kan.).
- e. **Exhibit 6:** *In re Solodyn (Minocycline Hydrochloride) Antitrust Litigation*, No. 1:14-md-02503, ECF No. 1145 (D. Mass. Apr. 5, 2018).

VI. CONCLUSION

25. For the reasons set forth herein, in Plaintiffs' motion for preliminary approval of the Settlement, and in the documents filed in support thereof, we believe the Settlement is fair, reasonable, and adequate and will substantially advance NCSPs' knowledge of acts taken in furtherance of the conspiracy by the remaining Converter Defendants. As such, we believe that the Court should grant Plaintiffs' motion for preliminary approval of the Settlement and to certify, for purposes of effectuating the Settlement, the Settlement Class.

* * *

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed on the 29th day of April, 2026 in Minneapolis, Minnesota.

/s/ Brian D. Clark
Brian D. Clark

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct. Executed on the 29th day of April, 2026 in New York, New York.

/s/ Karin E. Garvey
Karin E. Garvey

Exhibit 1

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE PVC PIPE ANTITRUST LITIGATION,

Case No. 1:24-cv-07639

This Document Relates To:

Hon. LaShonda A. Hunt

Non-Converter Seller Purchaser Action

**SETTLEMENT AGREEMENT BETWEEN NON-CONVERTER SELLER
PURCHASERS AND ATKORE**

THIS SETTLEMENT AGREEMENT (“Settlement Agreement”) is made and entered into as of April 28, 2026 (“Execution Date”), by and between the Non-Converter Seller Purchasers (“NCSPs”),¹ through Interim Co-Lead Counsel (as hereinafter defined) for the proposed Settlement Class (as hereinafter defined), and Atkore Inc., Atkore International, Inc., Atkore Plastic Pipe Corp., Atkore RMCP, Inc., and Allied Tube & Conduit Corporation and all of their predecessors, successors, assigns, and Affiliates (as hereinafter defined) (including without limitation any Affiliates who are alleged co-conspirators); and any and all past, present, and future parents, owners, subsidiaries, divisions, departments (collectively referred to as “Settling Defendant” or “Atkore”). NCSPs, on behalf of themselves and the Settlement Class, and Atkore are referred to herein collectively as the “Parties” or individually as a “Party.”

WHEREAS, NCSPs on behalf of themselves and as representatives of the putative class of similarly situated persons or entities allege in the Action (as hereinafter defined), among other things, that Atkore participated in a conspiracy—with other Defendants (as hereinafter defined)

¹ As used herein, “NCSPs” means Plaintiffs George Bovolak, Delta Line Construction Co., TC Construction, Inc., Blake Wrobbel, Stephen Bell, Bell Electric, LLC, Russell Jacobs, Kecia Newton, Alpha and Omega Development LLC, Eric Wasman, Adam Kennedy, My Flooring, Inc., and Victor Silva.

and alleged non-Defendant co-conspirators—from at least January 1, 2020 through the present to fix, raise, maintain, and stabilize the price of PVC Pipe Systems (as hereinafter defined);

WHEREAS, Interim Co-Lead Counsel have been appointed by the Court to represent, on an interim basis, the putative class of purchasers of PVC Pipe Systems from non-converter sellers (as defined in Paragraph 5);

WHEREAS, the Parties wish to resolve all claims asserted and all claims that could have been asserted against Atkore in any way arising out of or relating in any way to the purchase from a non-converter seller of PVC Pipe Systems (as hereinafter defined) produced, processed or sold by Atkore or any of the Defendants or their alleged co-conspirators;

WHEREAS, counsel for the Parties have engaged in arm's-length negotiations, including mediation with a nationally recognized and highly experienced mediator, on the terms of this Settlement Agreement, and this Settlement Agreement embodies all of the terms and conditions of the Settlement (as hereinafter defined);

WHEREAS, NCSPs have concluded, after investigation of the facts and after considering the circumstances and the applicable law, that it is in the best interests of NCSPs to enter into this Settlement Agreement with Atkore to avoid the uncertainties of further complex litigation, and to obtain the benefits described herein for the Settlement Class (as hereinafter defined), and, further, that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of NCSPs and the Settlement Class;

WHEREAS, NCSPs and Interim Co-Lead Counsel believe that the Settlement Fund (as hereinafter defined) reflects fair, reasonable and adequate compensation for the Settlement Class to release, settle and discharge their claims that they were overcharged by the alleged anticompetitive conduct of which Atkore is accused;

WHEREAS, Atkore, notwithstanding its belief that the claims that are or could be asserted by NCSPs against it are without merit, that it has legitimate defenses to any such claims, and that it would ultimately prevail at trial on such claims, enters into this Settlement Agreement to avoid the costs, expenses, and uncertainties of this complex litigation, and thereby put this controversy to rest;

WHEREAS, NCSPs, notwithstanding their belief that they would ultimately prevail at trial and establish liability by Atkore for the conspiracy they have alleged, enter into this Settlement Agreement to avoid the costs, expenses, and uncertainties of this complex litigation; and

WHEREAS, both Parties wish to preserve all arguments, defenses and responses to all claims in the Action, including any arguments, defenses and responses to any proposed litigation class proposed by NCSPs in the event this Settlement does not obtain Final Approval;

NOW THEREFORE, in consideration of the foregoing, the terms and conditions set forth below, and other good and valuable consideration, it is agreed by and among the Parties that the claims of the NCSPs be settled, compromised, and dismissed on the merits with prejudice as to the Atkore Released Parties (as hereinafter defined), subject to Court approval, and that the Atkore Released Parties be forever fully discharged and released from any and all claims covered by this Settlement Agreement:

1. General Definitions. The terms used below and elsewhere in this Settlement Agreement with initial capital letters shall have the following meanings ascribed to them.

- a. “Action” means the putative class action filed by NCSPs in the above-captioned proceeding as well as all putative class action and direct action lawsuits which have been consolidated for pretrial purposes before the Hon. LaShonda A. Hunt, in the United States District Court for the Northern

District of Illinois under the title *In re PVC Pipe Antitrust Litigation*, along with any others that are pending or which may be filed based on substantially similar allegations.

- b. “Affiliate” means with respect to any person, entity or company, a person, entity, or company that directly or indirectly controls, is controlled by or is under common control with such person, entity or company.
- c. “Atkore Released Parties” means, collectively and individually, Atkore (as defined above) together with any and all of Atkore’s past, current, and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities, Affiliates, associates, divisions, joint ventures, predecessors, and successors, specifically including, without limitation, all alleged subsidiaries, Affiliates, and divisions of Atkore named by NCSPs in the Action; and each of their respective past or present, direct or indirect, officers, directors, trustees, partners, managing directors, shareholders, managers, members, attorneys, equity holders, agents, beneficiaries, executors, insurers, advisors, assigns, heirs, legal or other representatives. Notwithstanding the foregoing, “Atkore Released Parties” does not include any Defendant other than Atkore (as defined above) and the alleged subsidiaries, Affiliates, and divisions of Atkore named by NCSPs in the Action, either explicitly or as a third-party beneficiary.
- d. “Complaint” means the NCSPs’ Second Consolidated Class Action Complaint (ECF No. 394).

- e. “Confidential Letter Agreement” means that certain confidential letter agreement dated April 28, 2026, between NCSPs and Atkore.
- f. “Court” means the United States District Court for the Northern District of Illinois and the Honorable LaShonda A. Hunt or her successors, or any other court in which the Action is proceeding.
- g. “Defendant” means any named defendant in the Action; and “Converter Defendant” means any named defendant in the Action other than Oil Price Information Service, LLC. For the avoidance of doubt, “Defendant” includes any Defendants that have been dismissed from the Action.
- h. “DPPs” means Direct Purchaser Plaintiffs and the proposed Direct Purchaser Plaintiff class, including Bill Wagner & Son, Inc., Vitolite Electric Sales Co., and Hodges Supply Company.
- i. “Escrow Account” means the escrow account established with the escrow agent to receive and maintain funds contributed by Atkore for the benefit of the Settlement Class.
- j. “Escrow Agreement” means that certain agreement between the escrow agent that holds the Settlement Fund and NCSPs (by and through Interim Co-Lead Counsel) pursuant to which the Escrow Account is established and funded for the benefit of the Settlement Class, as set forth in Paragraphs 8 and 9.
- k. “Fairness Hearing” means a hearing by the Court to determine whether the Settlement Agreement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

- l. “Final Approval” means an order and judgment by the Court which finally approves this Settlement Agreement, including all of its material terms and conditions without modification, and the Settlement pursuant to Federal Rule of Civil Procedure 23 and dismisses Atkore with prejudice from the Action.
- m. “Final Judgment” means the first date upon which both of the following conditions shall have been satisfied: (a) Final Approval; and (b) either (1) no appeal or petition to seek permission to appeal the Court’s Final Approval has been made within the time for filing or noticing any appeal under the Federal Rules of Appellate Procedure, *i.e.*, thirty (30) Days after entry of the order of Final Approval; or (2) if any timely appeals from the Final Approval or notices of appeal from the Final Approval are filed, (i) the date of final dismissal of all such appeals or the final dismissal of any proceeding on certiorari or otherwise, or (ii) the date the Final Approval is finally affirmed on appeal and affirmance is no longer subject to further appeal or review.
- n. “Interim Co-Lead Counsel” means Lockridge Grindal Nauen PLLP and Scott+Scott Attorneys at Law LLP as appointed by the Court on an interim basis to represent the putative class of non-converter seller purchasers of PVC Pipe Systems.
- o. “Preliminary Approval” means an order by the Court to preliminarily approve this Settlement Agreement pursuant to Federal Rule of Civil Procedure 23.

- p. “Released Claims” shall have the meaning set forth in Paragraph 14.
- q. “Releasing Parties” means, collectively and individually, NCSPs, the Settlement Class, and all members of the Settlement Class, including the NCSPs, each on behalf of themselves and their respective predecessors, successors, and all of their respective past, present and future (i) direct and indirect parents, subsidiaries, associates and Affiliates, (ii) agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions, and (iii) shareholders, partners, directors, officers, owners of any kind, principals, members, agents, employees, contractors, insurers, heirs, executors, administrators, devisees, representatives; the assigns of all such persons or entities, as well as any person or entity acting on behalf of or through any of them in any capacity whatsoever, jointly and severally; and also means, to the full extent of the power of the signatories hereto to release past, present and future claims, persons or entities acting in a private attorney general, qui tam, taxpayer or any other capacity, whether or not any of them participate in the Settlement.
- r. “Settlement” means the settlement of all claims that are or could have been asserted by NCSPs and the Settlement Class in the Action and specifically includes, without limitation, the Released Claims, according to the terms set forth in the Settlement Agreement.
- s. “Settlement Administrator” means the firm retained to disseminate the Settlement Class Notice and to administer payments from the Settlement Fund to the Settlement Class, subject to approval of the Court.

- t. “Settlement Class” means the class defined in Paragraph 5, including each member of such class.
- u. “Settlement Class Notice” means any notice sent to the Settlement Class pursuant to Preliminary Approval or otherwise approved by the Court pursuant to Federal Rule of Civil Procedure 23.
- v. “Settlement Class Period” means January 1, 2020, through Preliminary Approval.
- w. “Settlement Fund” means \$64,000,000.00 (sixty-four million U.S. dollars) (the “Settlement Sum”), the amount Atkore shall pay or cause to be paid into a non-reversionary settlement fund. The Settlement Fund will be held in an interest-bearing Escrow Account maintained by an escrow agent on behalf of the Settlement Class, pursuant to Paragraphs 8 and 9, and shall include any interest accruing within the interest-bearing Escrow Account. The Settlement Fund will be used to pay all valid settlement claims submitted by Settlement Class members, as well as all settlement notice and administration costs, and all attorneys’ fees and any service awards approved by the court. For the avoidance of doubt, the Settlement Sum is the maximum amount that Atkore will be obligated to pay in consideration of the Settlement, and under no circumstances will Atkore be obligated to provide any additional monetary consideration in connection with the Settlement.
- x. “PVC Pipe Systems” consist of (1) Pipes and (2) Fittings made in whole or in part with polyvinyl chloride (“PVC”) that connect PVC Pipe segments

into piping systems. For the avoidance of doubt, PVC Pipe Systems include PVC Pipes sold without PVC Fittings, and vice-versa, and include all products made in whole or in part from PVC that are defined as “PVCPs” and “Fittings” in the DPP Second Consolidated Amended Class Action Complaint (ECF No. 390) filed in the Action and that are defined as “PVC Pipe Products” in the Consolidated Class Action Complaint for the End-User Class (ECF No. 398) filed in the Action.

- y. “Days,” when used in this Settlement Agreement to specify a deadline or time period by which some event will occur, means the number of calendar days stated, excluding the day that triggers the period, except that if the last day is a Saturday, Sunday, or legal holiday, the period shall continue to run until the next day that is not a Saturday, Sunday, or legal holiday. But when a deadline or time period by which some event will occur in this Settlement Agreement is stated as a number of “Business Days,” it shall mean the number of days, excluding the day that triggers the period, that are not a Saturday, Sunday, or legal holiday. “Legal holiday” has the same meaning as in Federal Rule of Civil Procedure 6(a)(6).

2. The Parties’ Efforts to Effectuate this Settlement Agreement. The Parties will cooperate in good faith and use their best efforts to seek the Court’s Preliminary Approval and Final Approval of the Settlement Agreement.

3. Litigation Standstill.

- a. Upon execution of this Settlement Agreement, NCSPs and the Settlement Class shall cease all litigation activities in the Action with respect to the

Atkore Released Parties except to the extent expressly authorized in this Settlement Agreement, and Atkore shall cease all litigation activities in the Action with respect to NCSPs and the Settlement Class except to the extent expressly authorized in this Settlement Agreement.

- b. Atkore may not seek discovery from NCSPs in the Action, but Atkore may participate in meet and confers which involve NCSPs and other plaintiffs. This litigation standstill precludes Atkore or Atkore's counsel from directly assisting any other Defendant or alleged co-conspirator in this Action in prosecuting claims or pursuing relief that is solely applicable to NCSPs, making oral arguments to the presiding court or conducting direct or cross-examination of witnesses on merits- or class-related issues that are solely applicable to NCSPs (and in no event, will Atkore's attorneys be the attorneys arguing on behalf of other plaintiffs or plaintiff classes on issues that solely apply to NCSPs), working with expert witnesses or on expert materials in connection with opinion testimony and disclosures that are specifically and exclusively related to NCSPs, providing documents for use in other cases in the Action that remain pending against NCSPs that have not otherwise been produced in discovery, or through the provision of documents, affidavits or declarations for use in the NCSP case (not requested by NCSPs) or by offering witnesses at trial (not requested by NCSPs) in any trial in which NCSPs are the only plaintiffs. Nothing in this Settlement Agreement shall be construed to prohibit Atkore, in any way, from defending itself against claims brought by plaintiffs other than NCSPs

or the Settlement Class in the Action or from coordinating with non-settling Defendants in the joint defense of such claims, including through the retention and disclosure of joint experts as to such claims, or from defending itself in proceedings outside of the Action. None of the foregoing will prevent Atkore from obtaining discovery from any plaintiff or plaintiff class member in this Action who is pursuing claims that are not released under this Settlement Agreement, even if such plaintiff or plaintiff class member is also a member of the Settlement Class.

- c. NCSPs may not seek discovery from Atkore in the Action except as expressly authorized pursuant to the cooperation terms of the Settlement Agreement, but NCSPs may participate in meet and confers which involve Atkore and other Defendants. This litigation standstill precludes NCSPs or NCSPs' counsel from directly assisting any other plaintiff or plaintiff class in this Action in prosecuting claims or pursuing relief that is solely applicable to Atkore, making oral arguments to the presiding court or conducting direct or cross-examination of witnesses on merits- or class-related issues that are solely applicable to Atkore (and in no event, will NCSPs' attorneys be the attorneys arguing on behalf of other plaintiffs or plaintiff classes on issues that solely apply to Atkore), working with expert witnesses or on expert materials in connection with opinion testimony and disclosures that are specifically and exclusively related to Atkore, providing documents for use in other cases in the Action that remain pending against Atkore that have not otherwise been produced in discovery, or through the

provision of documents, affidavits or declarations for use in other cases in the Action that remain pending against Atkore or by offering witnesses at trial in any trial in which NCSPs are not one of the plaintiffs with live claims against other Defendants. For the avoidance of doubt, none of the foregoing provisions shall be construed to prohibit NCSPs and the proposed Settlement Class from (1) seeking appropriate discovery from any other entity or person other than the Atkore Released Parties; (2) seeking to prove the conspiracy alleged in this Action, including through discovery, motion practice or oral argument; (3) presenting any analysis by NCSPs' economic expert(s) that those experts deem necessary to show classwide impact or damages to NCSPs, or to respond to Defendants' expert analyses concerning the same; and (4) arguing on behalf of NCSPs on issues that are permitted by the terms of this standstill, even if those issues benefit other plaintiffs or apply to Atkore.

- d. The Parties' litigation standstill shall cease in the event that this Settlement Agreement does not receive Preliminary Approval or Final Approval from the Court, or this Settlement Agreement is terminated.
- e. The Parties' litigation standstill under this Settlement Agreement shall not prevent the Parties from raising disputes related to this Settlement Agreement.

4. Motion for Preliminary Approval. As soon as practicable, but no sooner than the Execution Date, NCSPs will move the Court for Preliminary Approval of this Settlement. A reasonable time in advance of submission to the Court, the papers in support of the motion for

Preliminary Approval shall be provided by Interim Co-Lead Counsel to Atkore for its review. To the extent that Atkore objects to any aspect of the motion, it shall communicate such objection to Interim Co-Lead Counsel, and the Parties shall meet and confer to resolve any such objection. The Parties shall take all reasonable actions as may be necessary to obtain Preliminary Approval and certification of the Settlement Class for settlement purposes.

5. Certification of a Settlement Class. As part of the motion for Preliminary Approval of this Settlement, NCSPs shall seek, and Atkore shall take no position with respect to,² appointment of Interim Co-Lead Counsel as Settlement Class counsel for purposes of this Settlement and certification in the Action of the following Settlement Class for settlement purposes only:

All entities and persons who purchased PVC Pipe Systems in the United States between January 1, 2020 through Preliminary Approval (1) directly from a seller that purchased PVC Pipe Systems from a Converter Defendant that was (2) manufactured by a Converter Defendant.

Specifically excluded from the Settlement Class are (1) the following categories of purchasers: (a) All public water systems that purchased PVC Pipe Products for end-use, including in connection with the treatment or supply of water; (b) All public wastewater systems that purchased PVC Pipe Products for end-use, including for the collection, disposal, or treatment of wastewater; (c) All suppliers of public energy or electricity that purchased PVC Pipe Products for end-use, including in connection with the supply of electricity for public consumption; or (d) All purchasers of PVC Pipe Products that purchased from a seller who purchased the product indirectly from a Converter Defendant; (2) Defendants; the officers, directors, or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any Affiliate, legal representative, heir, or assign of any Defendant, (3) any federal government entities, (4) any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, any juror assigned to this action, and any business majority-owned by any such person, and (5) and the following alleged co-

² By agreeing not to object to the proposed Settlement Class and appointment of Interim Co-Lead Counsel as Settlement Class counsel, Atkore is not waiving any rights, arguments or defenses and Atkore expressly preserves all such rights, arguments and defenses including with respect to any situation where the Settlement Agreement is not approved in all material respects by the Court.

conspirators: Core & Main Inc., Ferguson Enterprises, Inc., Fortiline Waterworks, Hajoca Corporation, Porter Pipe & Supply Co., and United Pipe & Steel Corp.

6. Settlement Class Notices. After Preliminary Approval, and subject to approval by the Court of the means for dissemination:

- a. A reasonable time in advance of submission to the Court for approval, or within a reasonable time in advance of dissemination if Court approval is not required, proposed communications to the Settlement Class regarding the Settlement (including, but not limited to, email notice, detailed notice, and advertisements) shall be provided by Interim Co-Lead Counsel to Atkore for its review. To the extent that Atkore has edits or comments to the class notices, Interim Co-Lead Counsel will consider such edits. Each Party reserves all rights in the event that disputes as to form or contents of class notices cannot be resolved informally, and for the avoidance of doubt, any litigation or disputed motions practice arising between the Parties concerning such disputes shall not be subject to the litigation standstill obligations set forth in Paragraph 3.
- b. Individual notice of this Settlement shall be emailed, or otherwise sent by the Settlement Administrator, at the direction of Interim Co-Lead Counsel, to potential members of the Settlement Class, in conformance with a notice plan to be approved by the Court.
- c. Neither the Settlement Class nor Interim Co-Lead Counsel shall have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing notice to the Settlement Class or obtaining

approval of the Settlement or administering the Settlement. Such fees, costs, or expenses shall be paid solely from the Settlement Fund, subject to any necessary Court approval.

- d. Atkore shall not object to Interim Co-Lead Counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to \$325,000.00 to pay settlement notice and administration costs.
- e. Interim Co-Lead Counsel shall use best efforts to send out notice to the Settlement Class within twenty-eight (28) Days of Preliminary Approval by the Court of the Settlement Agreement. Any costs of notice actually incurred that Interim Co-Lead Counsel are permitted to withdraw from the Settlement Fund up to \$325,000.00, either pursuant to the Parties' Settlement Agreement or order of the Court, shall be nonrefundable if, for any reason, the Settlement Agreement is terminated according to its terms or is not finally approved by the Court.
- f. The Settlement Class Notice shall include provisions stating that requests to be excluded from the Settlement Class must (i) be submitted only by individuals or entities on behalf of themselves (and their subsidiaries and Affiliates) and must be personally signed by each person or entity requesting exclusion, (ii) comply with the instructions and deadlines set forth in this Settlement Agreement, the notice plan to be approved by the Court, and the Preliminary Approval order, and (iii) include information on the total dollar value of purchases of PVC Pipe Systems during the Settlement Class Period, which will be used to calculate the Opt-Out Percentage as set forth in the

Parties' Confidential Letter Agreement. The purchase information required from Settlement Class members who request exclusion shall be comparable to the information required from Settlement Class members who will submit claims for *pro rata* distribution of Settlement Fund in instances where the Settlement Administrator is without information necessary to determine their total purchase of the PVC Pipe Systems.

- g. Any Settlement Class member, or Affiliate or assign thereof, who requests to be excluded from the Settlement with respect to an assigned claim must identify the assignor, the assignee, and the total value of purchases of PVC Pipe Systems during the Settlement Class Period that is subject to the assignment, and provide a copy of the assignment agreement.
- h. Copies of exclusion requests received by the Settlement Administrator during the exclusion period shall be provided to counsel for Atkore upon reasonable request and in any event within three (3) Days after the deadline to request exclusion from the Settlement. Within three (3) Days of the deadline to request exclusion from the Settlement, the Settlement Administrator shall provide to Atkore a list of all Settlement Class members, including Affiliates and assigns thereof, who have submitted requests to be excluded from the Settlement.

7. Motion for Final Approval and Entry of Final Judgment. If the Court grants Preliminary Approval and preliminarily certifies the Settlement Class, then NCSPs, through Interim Co-Lead Counsel—in accordance with the schedule set forth in the Court's Preliminary Approval—shall submit to the Court a separate motion for Final Approval of this Settlement

Agreement by the Court. No less than seven (7) Days in advance of submission to the Court, the papers in support of the motion for Final Approval shall be provided by Interim Co-Lead Counsel to Atkore for its review. To the extent that Atkore objects to any aspect of the motion, it shall communicate such objection to Interim Co-Lead Counsel, and the Parties shall meet and confer to resolve any such objection. The motion for Final Approval shall seek entry of an order and judgment:

- a. Finally approving the Settlement Agreement as being a fair, reasonable, and adequate settlement for the Settlement Class within the meaning of Federal Rules of Civil Procedure 23, and directing the implementation, performance, and consummation of the Settlement Agreement and its material terms and conditions, without material modification of those terms and conditions;
- b. Determining that the Settlement Class Notice constituted the best notice practicable under the circumstances of this Settlement Agreement and the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all persons entitled to receive notice;
- c. Dismissing all complaints asserted by Releasing Parties in the Action with prejudice as to the Atkore Released Parties without further costs or fees;
- d. Discharging and releasing the Atkore Released Parties from all Released Claims;
- e. Enjoining the Releasing Parties from suing any of the Atkore Released Parties for any of the Released Claims;

- f. Filing a declaration prepared by counsel for Atkore confirming that Atkore has provided the appropriate notice pursuant to the Class Action Fairness Act, 28 U.S.C. §1711, *et seq.* (“CAFA”);
- g. Reserving continuing and exclusive jurisdiction over the Settlement Agreement for all purposes; and
- h. Determining under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to Atkore shall be final and appealable and entered forthwith.

The Parties shall use all best efforts to obtain Final Approval of the Settlement Agreement without modification to any of its material terms and conditions.

8. Escrow Account. The Escrow Account shall be administered by Interim Co-Lead Counsel for the NCSPs and Settlement Class under the Court’s continuing supervision and control pursuant to the Escrow Agreement.

9. Settlement Consideration. In consideration for the release of Released Claims, the dismissal of the Action, and the other material terms and conditions herein, within twenty-one (21) Days after Preliminary Approval is granted by the Court, Atkore will pay or cause to be paid the Settlement Sum into the Escrow Account.

10. Cooperation. Cooperation by Atkore is a material term of the Settlement Agreement and shall include the following upon Preliminary Approval:

- a. Government Productions. Atkore will produce, electronically, any documents and data already (or that are in the future) produced by Atkore to the U.S. Department of Justice (“DOJ”) or any other governmental entity as part of its investigation into alleged antitrust violations in the sale of PVC

Pipes and PVC Fittings, any written analysis, interrogatory response, or other written submission (excluding ordinary correspondence related to productions, administrative issues, scheduling matters, or the like) provided to the DOJ or any other governmental entity in connection with its investigation into alleged antitrust violations in the sale of PVC Pipes and PVC Fittings. These productions will be made by the later of the date that is seven (7) Business Days after Preliminary Approval or five (5) Business Days after the materials are produced by Atkore to the DOJ or any other governmental entity.

- b. Structured Data. Within fourteen (14) Days after Preliminary Approval, Atkore will produce transactional sales data related to the sale of PVC Pipes and PVC Fittings in the United States from the period January 1, 2018, through December 31, 2025. To the extent it exists in structured form and is reasonably available on active systems, within ninety (90) Days after Preliminary Approval, Atkore will produce cost input data (including PVC resin, energy, labor, and all other material factors contributing to the cost of producing PVC Pipe and PVC Fittings), P&L data, inventory data, and plant capacity and capacity utilization data related to the sale of PVC Pipe and PVC Fittings products in the United States from the period January 1, 2018, through December 31, 2025. Atkore will respond to reasonable follow-up questions regarding the data. In addition, to the extent that Atkore produces transactional data related to the sale of PVC Pipes and PVC Fittings in the United States from earlier periods to other plaintiffs in the Action, either

pursuant to discovery in the Action or as a condition of any settlement, and NCSPs do not receive a copy of such data at the time it is produced, Atkore will produce such data to NCSPs within fourteen (14) Days after its production. Atkore will also consider in good faith requests by NCSPs to produce additional transactional data from earlier periods if a subsequent order or decision in the Action unrelated to this Settlement Agreement holds that transactional data from such earlier periods are relevant and proportional to the Action and Atkore is not otherwise required to produce such data pursuant to the terms of this Paragraph. However, in no event will Atkore be required by the terms of this Settlement Agreement to produce transactional data to NCSPs from periods that pre-date the period of transactional data that Atkore produces to other plaintiffs in the Action, either pursuant to discovery in the Action or as a condition of any settlement.

- c. Documents from Centralized Sources. To the extent they exist in active systems and repositories and are maintained in centralized non-custodial sources (e.g., Sharepoint locations) maintained by Atkore at its corporate headquarters and/or centralized servers, within ninety (90) Days after Preliminary Approval, Atkore will produce to NCSPs the following go-get non-privileged documents for the period from January 1, 2018 through December 31, 2025, related to PVC Pipes and PVC Fittings sold in the United States:

- i. Profit and loss data for each level (e.g., company-wide, plant-by-plant, etc.) for which it is maintained on as granular a basis as maintained (e.g., daily, weekly, monthly, or quarterly);
 - ii. Inventory data for each level (e.g., company-wide, plant-by-plant, etc.) for which it is maintained on as granular a basis as maintained (e.g., daily, weekly, monthly, or quarterly);
 - iii. Plant capacity and capacity utilization, on a plant-by-plant basis;
 - iv. Investor relations reports related to prices or pricing of PVC Pipes and PVC Fittings; and
 - v. Board meeting agendas, books, presentations, and minutes related to prices or pricing of PVC Pipes and PVC Fittings.
- d. Telephone Numbers. Within fourteen (14) Days after Preliminary Approval, Atkore will provide phone numbers and email addresses that Atkore has in its possession for all “C-suite” level leadership at Atkore, as well as Atkore employees with responsibility for pricing, sales and/or marketing of PVC Pipes and PVC Fittings, during the time period January 1, 2018, through December 31, 2025. Atkore will not object to NCSPs’ subpoenas to third-party phone carriers for phone records relating to such phone numbers.
- e. Depositions. NCSPs may take a total of up to four (4) depositions, each to last no more than seven (7) hours on the record. DPPs and NCSPs must jointly select at least two of those deponents, and up to two (2) other current or former Atkore employees may be selected separately by NCSPs. Atkore

will make any then-current employees noticed for deposition by NCSPs available for deposition prior to the scheduled end of fact discovery. If NCSPs take depositions of fewer than four (4) current employees of Atkore, NCSPs may subpoena for deposition in the Action former employees of Atkore, whom they may select, for depositions pursuant to Federal Rule of Civil Procedure 45 provided that the total number of current and former employees of Atkore noticed for deposition by NCSPs does not exceed four (4) (with at least two (2) of those current or former employees jointly selected by DPPs and NCSPs). For the avoidance of doubt, nothing herein shall require Atkore to produce for deposition former employees who are not within Atkore's control or prohibit Atkore's counsel from representing former employees in connection with such depositions.

- f. Witnesses for Live Testimony at Trial. Atkore will make available up to three (3) then-current employees, whom NCSPs may select, to provide live testimony at trial if requested by NCSPs, assuming those individuals remain employed by Atkore at the time of any trial. This limitation does not apply to prohibit NCSPs from calling former employees of Atkore who could be called at trial either by subpoena or who agree to voluntarily appear at trial; provided, however, that in no event shall NCSPs call more than five (5) total then-current or former employees of Atkore to provide live testimony at trial. For the avoidance of doubt, this Paragraph shall not limit NCSPs' ability to designate deposition testimony of any current or former Atkore witnesses for use at trial. Notwithstanding the foregoing, if DPPs and

NCSPs proceed to trial jointly in the same trial, then the limits in this Paragraph shall be applicable to both DPPs and NCSPs collectively (and not cumulatively).

- g. Custodial Documents. NCSPs will identify five (5) current or former employees from Atkore as document custodians. DPPs and NCSPs must jointly select at least three (3) of those custodians, and up two (2) other current or former employees may be selected separately by NCSPs. Atkore will produce non-privileged custodial documents in the possession, custody, or control of Atkore that are responsive to agreed-upon search terms for the period from January 1, 2018, to December 31, 2025, and that are responsive to Plaintiffs' Revised First Set of Requests to Converter Defendants for the Production of Documents and Electronically Stored Information. Such production will further be limited to PVC Pipes and PVC Fittings sold in the United States. NCSPs will propose custodians and search terms to Atkore no later than twenty-eight (28) Days after Preliminary Approval. NCSPs and Atkore will confer in good faith and attempt to reach agreement on custodians and search terms. Any disputes regarding custodians or search terms will be submitted to Miles N. Ruthberg of Phillips ADR (the "Mediator") for final resolution. Atkore will produce custodial documents by the later of sixty (60) Days after the expiration of the stay of discovery in the Action (ECF No. 690) or ninety (90) Days after the search terms are finalized.

- h. OPIS Communications. Atkore will produce all communications in any form with Donna Todd, Kathy Hall, Joe Link, Bobby Clark, or Ben Scribner of Oil Price Information Service, LLC located in the custodial files, to the extent within Atkore's possession, custody, or control, of the five (5) current or former employees identified by NCSPs as document custodians pursuant to Paragraph 10(g) above.
- i. Authentication of Documents. Atkore will use reasonable efforts to provide declarations and/or affidavits (or, if specifically required by the Court, testimony) relating to whether up to 150 documents identified by NCSPs are authentic and otherwise admissible under, without limitation, Federal Rule of Evidence 803(6). For the avoidance of doubt, nothing in this provision shall: (1) require Atkore to accept NCSPs' factual characterizations of documents that Atkore has a good faith basis to dispute, such as, by way of example only, assertions that the document reflects an admission by Atkore as a purported co-conspirator of a non-settling Defendant; or (2) be interpreted to enlarge the number of then-current employees that Atkore is required to provide for live trial testimony pursuant to Paragraph 10(f) above. If DPPs and NCSPs are in a joint trial, then they shall collectively have no more than 200 documents pursuant to this Paragraph.
- j. Confidentiality of Cooperation Materials. No cooperation provided by Atkore pursuant to the settlement may be provided to a non-settling Defendant absent the agreement of the Parties or an order of the Court.

However, the foregoing shall not be construed to require Atkore to oppose any application to the Court by a non-settling Defendant for documents or information provided by Atkore pursuant to the cooperation terms of this Settlement or to refuse to comply with any discovery request served by a non-settling Defendant for the production of such materials, provided that Atkore will provide notice of such discovery request to NCSPs and allow NCSPs fourteen (14) Days from receipt of notice to intervene and move for an order prohibiting Atkore's production of such materials.

- k. Production of Discovery and Cooperation to Other Plaintiffs. To the extent that Atkore responds to discovery, produces documents, or provides proffers or other cooperation to any other plaintiff in the Action, it will provide the same information to NCSPs within five (5) Business Days thereof. For the avoidance of doubt, Atkore will provide NCSPs with no less cooperation than it provides any other plaintiff in the Action pursuant to a settlement including, without limitation, witnesses, declarations, affidavits, proffers, witness interviews, documents and data.

11. Qualified Settlement Fund. The Parties agree to treat the Settlement Fund as being at all times a "Qualified Settlement Fund" within the meaning of Treas. Reg. § 1.468B-1, and to that end, the Parties shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. In addition, Interim Co-Lead Counsel shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the relation-back election (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and

requirements contained in such regulations. It shall be the responsibility of Interim Co-Lead Counsel to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Settlement Fund being a Qualified Settlement Fund within the meaning of Treas. Reg. § 1.4688-1. The Settlement Administrator shall timely and properly file all information and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k), (1)). Such returns shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund. Atkore shall not be responsible for the filing or payment of any taxes or expenses connected to the Qualified Settlement Fund.

12. Distribution of Settlement Fund to Settlement Class. Members of the Settlement Class shall be entitled to look solely to the Settlement Fund for settlement and satisfaction of the Settlement Agreement or in connection with any of the Released Claims against the Atkore Released Parties and shall not be entitled to any other payment or relief from the Atkore Released Parties. Except as provided by order of the Court, no member of the Settlement Class shall have any interest in the Settlement Fund or any portion thereof. NCSPs, members of the Settlement Class, and their counsel will be reimbursed solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees and expenses and the costs of notice of the Settlement Agreement to potential members of the Settlement Class. Atkore and the other Atkore Released Parties shall not be liable for any costs, fees, or expenses of any of NCSPs' or Interim Co-Lead Counsel's attorneys, experts, advisors, or representatives, but all such costs and expenses as approved by the Court shall be paid out of the Settlement Fund.

13. Fee Awards, Costs and Expenses, and Service Awards to NCSPs. Subject to Interim Co-Lead Counsel's sole discretion as to timing, Interim Co-Lead Counsel may apply for a fee award, plus expenses and costs incurred, and service awards to the NCSPs to be paid from the Settlement Fund. Atkore shall have no responsibility, financial obligation, or liability for any such fees, costs, expenses, or awards, which shall be paid exclusively from the Settlement Fund. Attorneys' fees and expenses awarded by the Court to Interim Co-Lead Counsel shall be payable from the Settlement Fund immediately upon entry by the Court of both (1) Final Approval and (2) an order awarding such amounts, notwithstanding the existence of any timely filed objections thereto, or potential for appeal or collateral attack on the Settlement Agreement or any part thereof. However, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, any attorneys' fees and expense award is overturned or reduced, or if the Settlement Agreement is terminated or is not approved by the Court, or if there is an appeal and any order approving the Settlement does not become final and binding upon the Settlement Class, then, within thirty (30) Days after receiving such an order from a court of appropriate jurisdiction, each Interim Co-Lead Counsel law firm that has received any fees or expenses shall refund to the Settlement Fund such funds previously paid to it, plus interest thereon at the same rate as earned on the Settlement Fund, in an amount consistent with such reversal or reduction. Each law firm that serves as Interim Co-Lead Counsel, as a condition of receiving a portion of the attorneys' fees and expense award, on behalf of itself and each partner, shareholder, or member of it, agrees that the law firm and its partners, shareholders, and/or members are jointly and severally liable for any damage, loss, or injury resulting from a breach of this Paragraph and subject to the jurisdiction of the Court for purposes of enforcing the provisions of this Paragraph. Any service awards authorized by the Court may be paid only after Final Judgment. Atkore shall have no

responsibility, financial obligation, or liability for any such fees, costs, expenses, or awards, which shall be paid exclusively from the Settlement Fund. If a service award or award of fees, costs, or expenses is vacated, reversed, or reduced subsequent to the disbursement of any such award, the recipient of such award shall within thirty (30) Days after receiving written notice from the Court or a Party of such vacatur, reversal, or reduction, make a refund to the Escrow Account in the amount of such vacatur, reversal, or reduction, plus interest earned (net of any taxes paid on such interest).

14. NCSPs' Release. Upon Final Judgment, the Releasing Parties shall be deemed to have fully, finally and forever completely compromised, settled, released, acquitted, resolved, relinquished, waived, and discharged the Atkore Released Parties from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any member of the Settlement Class has objected to the Settlement or makes a claim upon or participates in the Settlement, whether directly, representatively, derivatively or in any other capacity) that the Releasing Parties ever had, now have, or hereafter can, shall, or may ever have, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, causes of action, injuries, losses, or damages arising from or in connection with any act or omission from January 1, 2020 through date of the order granting Preliminary Approval of this Settlement Agreement relating to or referred to in the Action or arising from the factual predicate of the Action (the "Released Claims"). **This release is intended to be and is as broad and comprehensive as the law allows, both as to its subject matter and as to the persons and entities released.** Notwithstanding the above, Released Claims do not include claims (i) asserted against any Defendant other than the Atkore Released Parties; (ii) arising in the ordinary course of business

under Article 2 of the Uniform Commercial Code (pertaining to sales), other than claims based in whole or in part on any of the Released Claims; (iii) solely for the purchase of PVC Pipe Systems made directly from the Atkore Released Parties; (iv) by the following categories of purchasers against the Atkore Released Parties: (a) All public water systems that purchased PVC Pipe Products for end-use, including in connection with the treatment or supply of water, (b) All public wastewater systems that purchased PVC Pipe Products for end-use, including for the collection, disposal, or treatment of wastewater, (c) All suppliers of public energy or electricity that purchased PVC Pipe Products for end-use, including in connection with the supply of electricity for public consumption, or (d) All purchasers of PVC Pipe Products that purchased from a seller who purchased the product indirectly from a Converter Defendant; nor (v) any claims wholly unrelated to the allegations in the Action that are based on negligence, breach of contract, bailment, failure to deliver, lost goods, damaged or delayed goods, breach of warranty, or product liability claims, other than claims based in whole or in part on any of the Released Claims. This reservation of claims set forth in (i)-(v) of this Paragraph does not impair or diminish the right of the Atkore Released Parties to assert any and all defenses to such claims, and the Parties agree that all such arguments and defenses are preserved.

15. Further Release. In addition to the provisions of Paragraph 14, the Releasing Parties hereby expressly waive and release, solely with respect to the Released Claims, upon Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY

AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
OR RELEASED PARTY;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code, including without limitation 20-7-11 of the South Dakota Codified Laws (providing “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR”). Each Releasing Party may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 14, but each Releasing Party hereby expressly waives and fully, finally, and forever settles and releases, upon Final Judgment, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that the Releasing Parties have agreed to release pursuant to Paragraph 14 whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The foregoing release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims is contractual and not a mere recital. For the avoidance of doubt, Releasing Parties also hereby agree that upon Final Judgment, they expressly waive and fully, finally, and forever settle and release any and all claims that would otherwise fall within the definition of Released Claims they may have against any Atkore Released Parties under §§ 17200, *et seq.*, of the California Business and Professions Code or any similar, comparable, or equivalent provision of the law of any other state or territory of the United States or other jurisdiction, which claims are hereby expressly incorporated into the definition of Released Claims.

16. Covenant Not to Sue. NCSPs and each Settlement Class member covenant not to sue any of the Atkore Released Parties for any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type arising out of the Released Claims, including, without limitation, seeking to recover damages relating to any of the Released Claims. Subject to the provisions of Paragraph 10, Releasing Parties further agree that they shall not hereafter initiate or participate (absent a subpoena) in any claim, lawsuit, administrative or other proceeding of any type in any way arising out of, related to, or involving those claims or allegations which were the subject of the Action or that are released hereunder and that implicate the Atkore Released Parties. Nothing in this provision is intended to restrict or prohibit cooperation with any governmental investigation or inquiry. This Paragraph shall not apply to any action to enforce this Settlement Agreement.

17. Public Comment. The Parties shall not publicly comment on the Parties' Settlement or the Settlement Agreement other than through court filings, as may be required by public reporting obligations, or to announce the fact that a settlement has been reached, and shall refer any member of the press or other person seeking a public comment on the Parties' Settlement or Settlement Agreement to publicly-available filings in the Action and/or the settlement website maintained by the Settlement Administrator if one has been established. In no event will either party disparage the other party in a public comment.

18. No Admission. This Settlement Agreement shall not be construed as an admission of liability, or used as evidence of liability, for any purpose in any legal proceeding, claim, regulatory proceeding, or government investigation.

19. Enforceability. This Settlement Agreement constitutes a binding, enforceable agreement as to the terms contained herein when executed.

20. Termination Rights. The Settlement is conditioned upon Preliminary and Final Approval of the Parties' Settlement Agreement, and all terms and conditions thereof, without material changes, material amendments, or material modifications (except to the extent such changes, amendments, or modifications are agreed to in writing by the Parties). Either Party may elect to terminate the Settlement upon written notice to the other Party if the Court refuses to grant Preliminary or Final Approval of the Settlement Agreement or certify the Settlement Class as defined in Paragraph 5, the order(s) granting Preliminary or Final Approval of the Settlement Agreement are substantially modified or reversed, or the Court refuses to enter a Final Judgment in any material respect. In addition, if the Opt-Out Percentage exceeds the Opt-Out Termination Threshold (a number provided for in the Parties' Confidential Letter Agreement, available to the Court *in camera* upon request), then Atkore may, in its sole discretion, elect to terminate the Settlement. For the avoidance of doubt, in no way shall NCSPs have the right to rescind, cancel, or terminate this Settlement Agreement if the Court fails or refuses to grant any requested attorney's fees, any costs, or any awards to NCSPs.

21. Effect of Termination. In the event that this Settlement Agreement is terminated, this Settlement Agreement shall become null and void, any Preliminary Approval entered by the Court and all of its provisions shall be vacated, any certification of a Settlement Class for settlement purposes will be vacated, the Parties will be restored to their respective positions as if no Settlement Agreement had occurred, and any cooperation materials provided to NCSPs by Atkore pursuant to Paragraph 10 will be destroyed or returned to Atkore within seven (7) Days; provided, however, that the confidentiality obligations set forth in Paragraphs 10 and 40 shall survive any such termination. Further, in the event of termination by either Party under the terms of this Settlement Agreement, no term of this Settlement Agreement or any draft thereof, or any

aspect of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in or used as evidence for any purpose in any proceeding. Interim Co-Lead Counsel shall take all steps necessary to ensure that the escrow agent returns all funds in the Escrow Account to Atkore, plus interest earned (net of any taxes paid on such interest), within 10 Days of written notice of termination, except for any funds from the Settlement Fund used for notice and administration purposes that are nonrefundable pursuant to Paragraph 6(e). None of the foregoing provisions shall be construed to prevent the Parties from agreeing to modify this Settlement Agreement to cure the reasons for any rejection, denial, modification, non-affirmance, or alteration of this Settlement Agreement by the Court or any appellate court.

22. Effect of Disapproval. If the Court does not certify the Settlement Class as defined in this Settlement Agreement, or if the Court does not approve this Settlement Agreement in all material respects, or if the Court does not enter Final Approval as provided for in Paragraph 7, or if any judgment approving this Settlement Agreement is materially modified or set aside on appeal, or if all of the conditions for Final Judgment do not occur as set forth in Paragraph 1(m), then this Settlement Agreement may be rescinded, cancelled, or terminated by Atkore or NCSPs on behalf of the Settlement Class. If rescinded, cancelled, or terminated, this Settlement Agreement shall become null and void, and, with the exception of any amounts used for notice purposes that are nonrefundable pursuant to Paragraph 6(e), all other funds in the Escrow Account shall be returned to Atkore, and the Parties' positions shall be returned to the status quo ante as of the Execution Date.

23. Choice of Law and Dispute Resolution. Any disputes relating to this Settlement Agreement or the Confidential Letter Agreement shall be governed by Illinois law without regard

to conflicts of law provisions, and any and all disputes regarding this Settlement Agreement or the Confidential Letter Agreement will be mediated in good faith before the Mediator (as defined in Paragraph 10(g)) before any suit, action, proceeding or dispute may be filed in the Court pursuant to Paragraph 24.

24. Consent to Jurisdiction. The Parties and any Releasing Parties hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the Confidential Letter Agreement, or the applicability of this Settlement Agreement or the Confidential Letter Agreement. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of Paragraphs 14-16, including but not limited to, any suit, action, or proceeding in which the provisions of Paragraphs 14-16 are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit, action, or proceeding arising out of or relating to this Settlement Agreement. In the event that the provisions of Paragraphs 14-16 are asserted by any Atkore Released Party as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any suit, action or proceeding, it is hereby agreed that such Atkore Released Party shall be entitled to a stay of that suit, action, or proceeding until the mediation required by Paragraph 23 is complete and, if the matter is not resolved by mediation, the Court has entered a Final Judgment no longer subject to any appeal or review determining any issues relating to the defense or objection based on such provisions. Solely for purposes of such suit, action, or proceeding, to the fullest extent that they may effectively do so under applicable law, the Parties and any Releasing Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the in personam jurisdiction of the Court. Nothing shall be construed as a submission to jurisdiction for

any purpose other than enforcement of this Settlement Agreement and the Confidential Letter Agreement.

25. Class Action Fairness Act. Within ten (10) Days of filing of this Settlement Agreement in court with the abovementioned motion for Preliminary Approval, Atkore, at its sole expense, shall serve upon appropriate Federal and State officials all materials required pursuant to CAFA and shall confirm to Interim Co-Lead Counsel via a filing on CM/ECF that such notices have been served.

26. Costs Relating to Administration. The Atkore Released Parties shall have no responsibility or liability relating to the administration, investment, or distribution of the Settlement Fund.

27. Binding Effect. This Settlement Agreement constitutes a binding, enforceable agreement as to the terms contained herein. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, and heirs of the Parties, Settlement Class members, the Releasing Parties, and the Atkore Released Parties. Without limiting the generality of the foregoing, upon certification of the Settlement Class and Final Approval, each and every covenant and agreement herein by the NCSPs shall be binding upon all members and potential members of the Settlement Class and Releasing Parties who have not validly excluded themselves from the Settlement Class.

28. Sole Remedy. This Settlement Agreement shall provide the sole and exclusive remedy for any and all Released Claims against any Atkore Released Party, and upon entry of Final Judgment, the Releasing Parties shall be forever barred from initiating, asserting, maintaining, or prosecuting any and all Released Claims against any Atkore Released Party.

29. Counsel's Express Authority. Each counsel signing this Settlement Agreement on behalf of a Party or Parties has full and express authority to enter into all of the terms reflected herein on behalf of each and every one of the clients for which counsel is signing.

30. Admissibility. It is agreed that this Settlement Agreement shall be admissible in any proceeding for establishing the terms of the Parties' agreement or for any other purpose with respect to implementing or enforcing this Settlement Agreement.

31. Notices. All notices under this Settlement Agreement shall be in writing. Each such notice shall be given either by: (a) hand delivery; (b) registered or certified mail, return receipt requested, postage pre-paid; or (c) Federal Express or similar overnight courier, and, in the case of either (a), (b) or (c) shall be addressed:

If directed to Interim Co-Lead Counsel, NCSPs, the Settlement Class, or any member of the Settlement Class, to:

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Minneapolis, MN 55401
bdclark@locklaw.com

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New York, NY 10169
kgarvey@scott-scott.com

If directed to Atkore, to:

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Matthew D. Provance
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71 South Wacker Drive
Chicago, IL 60606
bmiller@mayerbrown.com
mprovance@mayerbrown.com

and

Atkore Inc. – Legal Department
16100 South Lathrop Avenue
Harvey, IL 60426
legal@atkore.com

or such other address as the Parties may designate, from time to time, by giving notice to all parties hereto in the manner described in this Paragraph. The Parties shall also provide courtesy copies of all notices by electronic mail.

32. No Admission. Whether or not Preliminary Approval is granted, Final Judgment is entered, or this Settlement Agreement is terminated, the Parties expressly agree that this Settlement Agreement and its contents, and any and all statements, negotiations, documents, and discussions associated with it, are not and shall not be deemed or construed to be an admission of liability or wrongdoing by any Party or Atkore Released Party. Without making any admission of liability or wrongdoing, Atkore agrees that from the entry of Final Judgment and for a period of two (2) years thereafter, it will not engage in conduct that has been expressly determined in a final, non-appealable judgment entered in the Action to constitute a per se violation of Section 1 of the Sherman Act in a relevant market for PVC Pipe Systems. For the avoidance of doubt, Atkore's obligation to refrain from conduct pursuant to this Paragraph shall arise only after a final judgment as to such conduct has been entered in the Action and has become non-appealable. Further, the Parties agree that any disputes that may arise over Atkore's compliance with the obligations set forth in this Paragraph shall not alter or affect the Releasing Parties' release of claims pursuant to the Settlement, including, without limitation, as set forth in Paragraphs 14-16.

33. No Rule 11 Violations. The Parties and their counsel agree that they shall not assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecuting, defense, or settlement of the Action, and the Judgment and Order of Dismissal shall

contain a finding that all Parties and their counsel complied with the requirements of Rule 11 with respect to the institution, prosecution, defense, and resolution of the Action.

34. No Unstated Third-Party Beneficiaries. Except as expressly stated in this Settlement Agreement, no provision of this Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Atkore Released Party, NCSP, member of the Settlement Class, or Interim Co-Lead Counsel.

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

36. Amendment and Waiver. This Settlement Agreement shall not be modified in any respect except by a writing executed by the Parties, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving Party. The waiver by any Party of any particular breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement. This Settlement Agreement does not waive or otherwise limit the Parties' rights and remedies for any breach of this Settlement Agreement. Any breach of this Settlement Agreement may result in irreparable damage to a Party for which such Party will not have an adequate remedy at law. Accordingly, in addition to any other remedies and damages available, the Parties acknowledge and agree that the Parties may immediately seek enforcement of this Settlement Agreement by means injunction, without the requirement of posting a bond or other security.

37. Execution in Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute a single agreement. Electronic signatures (including DocuSign) shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement and filed with the Court.

38. Integrated Agreement. This Settlement Agreement comprises the entire, complete, and integrated agreement between the Parties, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations, and discussions, either oral or written, between the Parties. The Parties agree that this Settlement Agreement may be modified only by a written instrument signed by the Parties and that no Party will assert any claim against another based on any alleged agreement affecting or relating to the terms of this Settlement Agreement not in writing and signed by the Parties.

39. Voluntary Settlement. The Parties agree that this Settlement Agreement was negotiated in good faith by the Parties and reflects a settlement that was reached voluntarily after consultation with competent counsel and the participation of a neutral mediator, and no Party has entered this Settlement Agreement as the result of any coercion or duress.

40. Confidentiality. The Parties agree to keep the terms of the Settlement Agreement confidential until such time as NCSPs seek Preliminary Approval of the Settlement in the Action. The Parties further agree to continue to maintain the confidentiality of all settlement discussions exchanged in the course of reaching and entering into this Settlement.

41. No Reliance. Each Party acknowledges that (1) it is not entitled to any disclosure and is not relying upon any statement, understanding, representation, expectation, or agreement other than those expressly set forth in this Settlement Agreement; (2) it is relying upon its own

knowledge and investigation, including formal and informal discovery in and relating to the Action, and upon the advice of its own counsel; (3) it knowingly waives any claim that this Settlement Agreement was induced by any misrepresentation or nondisclosure; and (4) it knowingly waives any right to rescind, amend, or avoid this Settlement Agreement based upon presently existing facts, known or unknown.

42. Assignment. NCSPs represent and warrant that they have not assigned any of the Released Claims to any other person or entity. NCSPs and Interim Co-Lead Counsel further represent and warrant that, to their knowledge, no member of the Settlement Class has assigned any of the Released Claims to any other person or entity, and NCSPs and Interim Co-Lead Counsel covenant that they will not encourage, solicit, or assist any member of the Settlement Class in assigning any of the Released Claims.

43. Irrespective of any term in this Settlement Agreement, it is expressly agreed that nothing in this Settlement Agreement prohibits NCSPs and NCSP counsel in ongoing litigation of the Action from establishing a conspiracy under the Sherman Act, including discovering and introducing evidence of Settling Defendant as a co-conspirator in the Action for purposes of prosecuting NCSPs' claims against non-settling Defendants or from effecting the cooperation provisions herein.

44. Irrespective of any term in this Settlement Agreement, the Parties agree that (1) NCSPs and NCSP counsel will not share any material obtained through the cooperation terms set forth in Paragraph 10 with any other plaintiff or plaintiff group in related actions (unless authorized by Atkore), but (2) nothing in this Settlement Agreement otherwise prevents NCSPs from continuing to jointly prosecute this case in accordance with the standstill obligations set forth in Paragraph 3 and utilizing any work product developed in this matter.

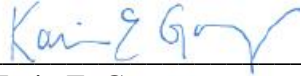
IN WITNESS WHEREOF, the Parties, individually or through their duly authorized representatives, enter into this Settlement Agreement on the Execution Date.



Dated: April 28, 2026

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*On behalf of Lockridge Grindal Nauen P.L.L.P.
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EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

In re EPIPEN (EPINEPHRINE INJECTION,) Civil Action No. 2:17-md-02785-DDC-TJJ
USP) MARKETING, SALES PRACTICES) (MDL No. 2785)
AND ANTITRUST LITIGATION)
_____)
)
This Document Relates To:)
)
CONSUMER CLASS CASES.)
_____)

**MEMORANDUM OF LAW IN SUPPORT OF CLASS PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENT WITH THE MYLAN DEFENDANTS**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. SUMMARY OF THE ACTION.....	4
III. TERMS OF THE SETTLEMENT	6
IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	9
A. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT.	9
B. STANDARDS FOR PRELIMINARY APPROVAL OF A PROPOSED SETTLEMENT.....	10
C. THE SETTLEMENT SATISFIES THE RULE 23(E)(2) FACTORS.	12
1. Plaintiffs and Co-Lead Counsel Have Adequately Represented the Class.	12
2. The Proposed Settlement Was Negotiated at Arm’s Length.....	14
3. The Proposed Settlement Is Adequate in Light of the Costs, Risks, and Delay of Trial and Appeal.	15
4. Serious Legal and Factual Questions Placed the Litigation’s Outcome in Doubt.	16
5. Immediate Recovery Is More Valuable than the Mere Possibility of a More Favorable Outcome After Further Litigation.....	17
6. The Proposed Method for Distributing Relief Is Effective.	18
7. Attorneys’ Fees and Expenses.....	19
8. The Settling Parties Have No Additional Agreement.	21
9. Class Members Are Treated Equitably.....	21
D. THE SETTLEMENT SATISFIES THE REMAINING FACTOR CONSIDERED BY COURTS IN THE TENTH CIRCUIT.	21
V. THE PROPOSED FORM AND METHOD OF PROVIDING NOTICE TO THE CLASS ARE APPROPRIATE.....	22
A. THE COURT SHOULD PRELIMINARILY APPROVE THE PROPOSED NOTICE OF SETTLEMENT.	22
B. AN ADDITIONAL SETTLEMENT OPT-OUT IS NEITHER REQUIRED BY DUE PROCESS NOR WARRANTED UNDER RULE 23(E).....	23
C. APPOINTMENT OF A.B. DATA TO SERVE AS THE SETTLEMENT ADMINISTRATOR IS PROPER.....	28
D. APPOINTMENT OF HUNTINGTON BANK AS ESCROW AGENT IS PROPER.	29
E. PROPOSED SCHEDULE OF SETTLEMENT EVENTS.....	29
VI. THE COURT SHOULD STAY PROCEEDINGS IN THE ACTION.....	29
VII. CONCLUSION	30

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Albrecht v. Oasis Power, LLC</i> , No. 1:18-cv-1061, 2019 U.S. Dist. LEXIS 162876 (N.D. Ill. Sep. 24, 2019)	30
<i>Amoco Prod. Co. v. Fed. Power Comm’n</i> , 465 F.2d 1350 (10th Cir. 1972).....	9
<i>Big O Tires, Inc. v. Bigfoot 4x4, Inc.</i> , 167 F. Supp. 2d 1216 (D. Colo. 2001)	9
<i>Chavez Rodriguez v. Hermes Landscaping, Inc.</i> , No. 17-2142-JWB-KGG, 2020 WL 3288059 (D. Kan. June 18, 2020).....	<i>passim</i>
<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268 (9th Cir. 1992).....	27
<i>Dare v. Knox Cnty.</i> , 457 F. Supp. 2d 52 (D. Me. 2006).....	27
<i>Davis v. Abercrombie</i> , No. 11-00144 LEK-BMK, 2017 WL 2234175 (D. Haw. May 22, 2017).....	27
<i>Denney v. Deutsche Bank AG</i> , 443 F.3d 253 (2d Cir. 2006).....	25, 27
<i>Denney v. Jenkins & Gilchrist</i> , 230 F.R.D. 317 (S.D.N.Y. 2005).....	27
<i>Fager v. CenturyLink Commc’ns, LLC</i> , 854 F.3d 1167, 1170 (10th Cir. 2016).....	23
<i>Hapka v. CareCentrix, Inc.</i> , No. 2:16-cv-02372-KGG, 2018 WL 1871449 (D. Kan. Feb. 15, 2018).....	22
<i>Harris v. Chevron U.S.A., Inc.</i> , No. 6:19-cv-00355-SPS, 2020 WL 8187464 (E.D. Okla. Feb. 27, 2020)	13
<i>In re (Epinephrine Injection, USP) EpiPen Mktg., Sales Pracs. & Antitrust Litig.</i> , 336 F. Supp. 3d 1256 (D. Kan. 2018)	4
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In re Crocs, Inc. Sec. Litig.,
306 F.R.D. 672 (D. Colo. 2014)..... 18, 22

In re King Res. Co. Sec. Litig.,
420 F. Supp. 610 (D. Colo. Aug. 10, 1976) 18

In re Linerboard Antitrust Litig.,
No. CIV. 98-5055, 2004 WL 1221350 (E.D. Pa. June 2, 2004) 15

In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices and Prods. Liab. Litig.,
952 F.3d 471 (4th Cir. 2020)..... 20

In re MetLife Demutualization Litig.,
689 F. Supp. 2d 297 (E.D.N.Y. 2010)..... 26, 27

In re Motor Fuel Temperature Sales Pracs. Litig.,
258 F.R.D. 671 (D. Kan. 2009)..... 10, 15

In re Motor Fuel Temperature Sales Pracs. Litig.,
271 F.R.D. 221 (D. Kan. 2010)..... 12

In re NASDAQ Market-Makers Antitrust Litig.,
187 F.R.D. 465 (S.D.N.Y. 1998)..... 20

In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.,
No. 4:14-md-2541-CW, 2017 WL 6040065 (N.D. Cal. Dec. 6, 2017)..... 13

In re Nissan Motor Corp. Antitrust Litig.,
552 F.2d 1088 (5th Cir. 1977)..... 26

In re Qwest Commc’ns Int’l, Inc. Sec. Litig.,
625 F. Supp. 2d 1133 (D. Colo. 2009) 16

In re SandRidge Energy, Inc. Sec. Litig.,
No. CIV-12-1341-G, 2019 WL 4752268 (W.D. Okla. Sept. 30, 2019)..... 13

In re Sony PS3 “Other OS” Litig.,
No. 10-cv-01811-YGR, 2017 WL 5598726 (N.D. Cal. Nov. 21, 2017)..... 30

In re Syngenta AG MIR 162 Corn Litig.,
No. 14-md-2591-JWL, 2018 WL 1726345 (D. Kan. Apr. 10, 2018) *passim*

In re Syngenta AG MIR 162 Corn Litig.,
No. 14-md-2591-JWL, 2021 WL 102819 (D. Kan. Jan. 12, 2021) 20

In re Thornburg Mortg., Inc. Sec. Litig.,
912 F. Supp. 2d 1178 (D.N.M. 2012) 17

In re Washington Mutual, Inc.,
No. 2:08-md-1919 MJP, 2015 WL 12803633 (W.D. Wash. June 22, 2015)..... 27

In re Whirlpool Corp. Front-loading Washer Prods. Liab. Litig.,
No. 1:08-WP-65000, 2016 WL 5338012 (N.D. Ohio Sept. 23, 2016) 20

In re WorldCom, Inc. ERISA Litig.,
No. 02 Civ. 4816(DLC), 2004 WL 2338151 (S.D.N.Y. 2004)..... 13

Kjessler v. Zaappaaz, Inc.,
No. 4:18-cv-430, 2018 WL 8755737 (S.D. Tex. Aug. 31, 2018) 14

Low v. Trump Univ., LLC,
246 F. Supp. 3d 1295 (S.D. Cal. 2017) 25, 27

Low v. Trump Univ., LLC,
881 F.3d 1111 (9th Cir. 2018)..... 24, 25, 27

Lowery v. City of Albuquerque,
No. CIV 09–0457 JB/WDS, 2013 WL 1010384 (D.N.M. February 27, 2013) 25, 26, 27

Lucas v. Kmart Corp.,
234 F.R.D. 688 (D. Colo. 2006)..... 10, 16, 18, 23

Marcus v. Kansas Dep’t of Revenue,
206 F.R.D. 509 (D. Kan. 2002)..... 30

Marcus v. Kansas Dep’t of Revenue,
209 F. Supp. 2d 1179 (D. Kan. 2002) 14, 22

McNeely v. Nat’l Mobile Health Care, LLC,
No. CIV-07-933-M, 2008 WL 4816510 (W.D. Okla. Oct. 27, 2008) 15, 16, 18

Moulton v. U.S. Steel Corp.,
581 F.3d 344 (6th Cir. 2009)..... 25

Mullane v. Cent. Hanover Bank & Tr. Co.,
339 U.S. 306 (1950) 23, 25

O’Dowd v. Anthem, Inc.,
No. 14-cv-02787-KLM-NYW, 2019 WL 4279123 (D. Colo. Sept. 9, 2019)..... 22

Officers for Just. v. Civ. Serv. Comm’n of City & Cnty. of S.F.,
688 F.2d 615 (9th Cir. 1982)..... 25, 27

Pelzer v. Vassalle,
655 F. App’x 352 (6th Cir. 2016)..... 20

Phillips Petroleum Co. v. Shutts,
472 U.S. 797 (1985)..... 24

Reynolds v. Beneficial Nat’l Bank,
288 F.3d 277 (7th Cir. 2002)..... 17

Sears v. Atchison, Topeka & Santa Fe Ry., Co.,
749 F.2d 1451 (10th Cir. 1984)..... 9

Tardiff v. Knox Cnty.,
567 F. Supp. 2d 201 (D. Me. 2008)..... 27

Tennille v. W. Union Co.,
785 F.3d 422 (10th Cir. 2015)..... 11, 16, 23

Tennille v. W. Union Co.,
No. 09-cv-00938-JLK-KMT, 2014 WL 5394624 (D. Colo. Oct. 15, 2014)..... 18

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649 F.2d 823 (10th Cir. 1981)..... 9

Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.,
396 F.3d 96 (2d Cir. 2005)..... 26, 27

Rules

Fed. R. Civ. P. 23(e)..... 9, 24, 27

Fed. R. Civ. P. 23(e)(2)(B)..... 10, 14

Fed. R. Civ. P. 23(e)(2)(C)(iii)..... 19

Fed. R. Civ. P. 54(b)..... 6

Rule 23..... 16, 20, 23, 24

Rule 23(b)(3)..... 22, 25, 27

Rule 23(c)(2)..... 26

Rule 23(c)(2)(B)..... 22, 23, 24

Rule 23(e)(1) of the Federal Rules of Civil Procedure..... 10

Rule 23(e)(2)(A).....	12
Rule 23(e)(2)(C)(i)	15
Rule 23(e)(2)(C)(iv)	21
Rule 23(e)(2)(D).....	21
Rule 23(e)(2); and (ii).....	10, 11, 12
Rule 23(e)(3).....	11
Rule 23(e)(4).....	26, 27
Rule 23(f); (vii).....	13

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Bolch Jud. Inst., Guidelines and Best Practices: Implementing 2018 Amendments to Rule 23 Class Action Settlement Provisions 21 (2018)	20
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2 McLaughlin on Class Actions §6:21 (17th ed. 2020).....	26
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I. INTRODUCTION

More than fifteen EpiPen-related lawsuits were filed in late 2016 and 2017 against Mylan; these cases were then centralized or transferred into an MDL before this Court. After nearly five years of vigorous, often contentious litigation in this Action,² and shortly before trial was scheduled to commence on February 22, 2022, Class Plaintiffs³ and the Mylan Defendants (together, the “Settling Parties”) have reached a Settlement that resolves the Class Plaintiffs’ claims in the Action and Other Actions⁴ against the Mylan Defendants and creates an additional non-reversionary common fund of \$264 million for the certified Class. Combined with the prior \$345 million Pfizer Settlement, the Mylan Settlement brings the total recovery to \$609 million—an extraordinary

“Mylan” refers collectively to Mylan N.V., Mylan Specialty L.P., Mylan Pharmaceuticals Inc., and Heather Bresch. “Mylan Defendants” refers collectively to Mylan and Viatriis Inc.

² All capitalized terms not otherwise defined herein shall have the meaning given to them in the February 27, 2022, Stipulation of Class Action Settlement (“Settlement Agreement”), a copy of which is attached hereto as Exhibit 1. All emphasis is added, and citations are omitted, unless otherwise noted.

³ “Class Plaintiffs” or “Plaintiffs” refers collectively to the appointed representatives of the certified Class: Shannon Clements; Lesley Huston; Rosetta Serrano; Kenneth Evans; Elizabeth Williamson; Vishal Aggarwal; Teia Amell; Todd Beaulieu; Carly Bowerstock; Raymond Butcha III; Laura Chapin; Heather Destefano; Donna Anne Dvorak; Michael Gill; Suzanne Harwood; Elizabeth Huelsman; Landon Ipson; Anastasia Johnston; Mark Kovarik; Meredith Krimmel; Nikitia Marshall; Angie Nordstrum; Sonya North; Christopher Rippy; Lee Seltzer; Joy Shepard; Kenneth Steinhauser; April Sumner; Annette Sutorik; Stacey Svites; Linda Wagner; Jennifer Walton; Donna Wemple; Lorraine Wright; and Local 282 Welfare Trust Fund.

⁴ As defined in the Settlement Agreement, the “Other Actions” include additional actions pending before this Court, entitled *Ipson v. Viatriis Inc.*, No. 2:21-cv-02556-DDC-TJJ (D. Kan.); *Gill v. Viatriis Inc.*, No. 2:21-cv-02534-DDC-TJJ (D. Kan.); *Dvorak v. Viatriis Inc.*, No. 2:21-cv-02561-DDC-TJJ (D. Kan.); and *Sumner v. Viatriis Inc.*, No. 2:21-cv-02555-DDC-TJJ (D. Kan.). Although settlement of the Other Actions is not subject to court approval, the Settling Parties have agreed that Plaintiffs will dismiss the Other Actions with prejudice as a condition of the Settlement.

success for the Class. And, as the Court is aware, the work and persistence of Class Plaintiffs and their counsel achieved these results.

The Mylan Settlement is substantially similar to the court-approved Pfizer Settlement. In many respects, the arguments supporting preliminary approval here echo those in Plaintiffs' papers seeking approval of the Pfizer Settlement. The Mylan Settlement satisfies the standards for preliminary approval under Rule 23 for the same reasons as with the Pfizer Settlement.

The Mylan Settlement is the result of well-informed, arm's-length negotiations between highly-experienced counsel possessing a thorough understanding of the strengths and weaknesses of the claims at issue due to extensive investigation, significant discovery, numerous rulings from the Court, and expert analysis. Considering the value of the proposed Settlement, in light of the costs and risks of further litigation, trial, and appeal, the Settlement provides an immediate and equitable result for the certified Class. The Settlement is fair, reasonable, and adequate under Rule 23(e)(2) and Tenth Circuit precedent. Class Counsel's proposed form and method of providing notice of the Settlement to certified Class Members builds on the success of the notice program the Court approved in the Pfizer Settlement, with additional information clarifying that any Class Member who already submitted a claim pursuant to the Pfizer Settlement will automatically be eligible to receive a payment from the Mylan Settlement without the need to file an additional claim form. Here, too, the notice program satisfies the requirements of due process, as well as the conditions set forth in Rules 23(c) and (e). And just as in the Pfizer Settlement, because Class Counsel's initial class certification notice program surpassed the requirements of due process and Rule 23(c) in adequacy of class notice, sufficiency and clarity of exclusion language and opportunity, and overall reasonableness (ECF No. 2240), no additional exclusion opportunity is required by due process, nor warranted under Rule 23(e).

Accordingly, Plaintiffs respectfully request that the Court enter the Settling Parties' agreed-upon Preliminary Approval Order, submitted to chambers in Word format pursuant to the Local Rules and attached as Exhibit A to the Settlement Agreement (Exhibit 1 hereto). That Order will:

1. Preliminarily approve the terms of the Settlement as set forth in the Settlement Agreement;
2. Approve the form and content of the Notice of Proposed Settlement of Class Action ("Notice"), Proof of Claim Forms, and Summary Notice (also known as Short-Form Notice) attached as Exhibits B-D to the Settlement Agreement, as well as the appointment of A.B. Data Ltd. as Settlement Administrator;
3. Find that the procedures for distribution and publication of the Notice and Summary Notice in the manner and form set forth in the Declaration of Eric Schachter of A.B. Data, Ltd. in Support of Class Plaintiffs' Motion for Preliminary Approval of Settlement with the Mylan Defendants ("Schachter Decl."), attached as Exhibit 2 hereto, constitute the best practicable notice under the circumstances and comply with the notice requirements of due process and Rule 23;
4. Set a Hearing on Final Approval of Settlement, Plan of Allocation, Attorneys' Fees, Expenses, and Service Awards ("Final Fairness Hearing") and associated deadlines in anticipation of that hearing; and
5. Provide such other related relief as is necessary to carry out the Settlement, as set forth in the Preliminary Approval Order, including a stay of proceedings pending a final determination as to whether the Settlement should be approved.

II. SUMMARY OF THE ACTION

In 2016, various putative class action lawsuits were filed against both Mylan and Pfizer⁵ “involv[ing] allegations of anticompetitive conduct or unfair methods of competition” with respect to the EpiPen, an epinephrine auto-injector used in the emergency treatment of anaphylaxis. ECF No. 1 at 1. These cases were transferred and/or centralized by the Judicial Panel on Multidistrict Litigation into MDL No. 2785, *In re EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices and Antitrust Litigation*, No. 17-md-2785, and transferred to the United States District Court in the District of Kansas before the Honorable Daniel D. Crabtree (referred to herein as the “Litigation”) on August 4, 2017. ECF No. 1.

On September 12, 2017, the Court appointed Co-Lead Counsel and approved Plaintiffs’ proposed organizational structure, including Liaison Counsel and a Steering Committee. ECF No. 40. The Court has since substituted a member of the Steering Committee (ECF No. 2111) and added an additional Co-Lead Counsel (ECF No. 2018).

On October 17, 2017, Plaintiffs filed a Consolidated Class Action Complaint (“Complaint”) stating claims for violations of the federal Racketeer Influenced and Corrupt Organizations (“RICO”) Act, certain federal and state antitrust laws, and other causes of action. Complaint (ECF No. 60) & Pretrial Order (ECF No. 2169). These claims arose from allegedly supracompetitive pricing of the EpiPen and related conduct. *See In re (Epinephrine Injection, USP) EpiPen Mktg., Sales Pracs. & Antitrust Litig.*, 336 F. Supp. 3d 1256, 1282 (D. Kan. 2018) (explaining that the Complaint alleged “a pricing scheme” that centered on EpiPen price increases).

⁵ Pfizer, Inc., Meridian Medical Technologies, Inc., and King Pharmaceuticals, Inc. (n/k/a King Pharmaceuticals LLC) (collectively, “Pfizer” or the “Pfizer Defendants” and together with Mylan, the “Defendants”).

Subsequently, Defendants filed Motions to Dismiss the Complaint, which the Court granted in part and denied in part on August 20, 2018. ECF No. 896. Defendants answered the Complaint, denying all remaining allegations. Plaintiffs then moved for class certification under Rule 23(b)(3). On February 27, 2020, the Court granted in part and denied in part Plaintiffs' motion for class certification and certified a nationwide RICO Class and a State Antitrust Class under Rule 23(b)(3). ECF No. 2018. The Court also appointed Warren T. Burns, Paul J. Geller, Elizabeth Pritzker, Lynn Lincoln Sarko, and Rex A. Sharp as Co-Lead Counsel for the certified Class. Defendants then filed a Rule 23(f) petition for review of that decision with the Tenth Circuit on March 12, 2020, and the Tenth Circuit denied Rule 23(f) review on May 26, 2020. ECF Nos. 2035, 2071. On October 13, 2020, the Court approved the appointment of A.B. Data, Ltd. to provide notice to the certified Class and approved the form and manner of that notice, which commenced on November 1, 2020, and ended on January 15, 2021.

During the pendency of the Action, Plaintiffs engaged in substantial discovery that involved the Defendants, Plaintiffs, and numerous third parties. This discovery resulted in the production of over 1.75 million documents (totaling over 11 million pages) and 158 depositions, including those of Defendants, Plaintiffs, third parties, and experts. Plaintiffs also engaged in substantial expert discovery, including consulting with and preparing expert witnesses, preparing class certification and merits expert reports, and vigorously defending many *Daubert* motions that challenged their experts at both the class certification and merits stages. From October 2019 to February 2020, the parties served over one dozen expert reports on the merits of their respective claims and defenses in the Action.

On July 15, 2020, Defendants moved for summary judgment and filed *Daubert* motions to strike Plaintiffs' experts in whole or in part. ECF Nos. 2133, 2134, 2135, 2136, 2141, 2148, 2151, 2156. On June 10, 2021, while Defendants' motions for summary judgment were pending, Plaintiffs

and the Pfizer Defendants agreed to settle the claims against Pfizer in the Action (the “Pfizer Settlement”). On November 17, 2021, the Court granted final approval of the Pfizer Settlement and entered a Final Judgment and Order of Dismissal with Prejudice Under Fed. R. Civ. P. 54(b) for the Pfizer Defendants Only (ECF No. 2507).

On June 23, 2021, the Court entered Memoranda and Orders resolving the motions for summary judgment and *Daubert* motions as to Mylan. The Court denied Mylan’s motion for summary judgment as to the Plaintiffs’ generic delay state antitrust claims, but granted Mylan’s motion for summary judgment as to Plaintiffs’ branded exclusion antitrust claims and RICO claims. The Court also granted in part and denied in part Mylan’s *Daubert* motions. ECF Nos. 2380, 2381. The summary judgment order dismissed the claims of plaintiffs Landon Ipson, Michael Gill, Donna Dvorak, and April Sumner, who then subsequently sued the Mylan Defendants in the Other Actions for violations of certain state antitrust laws and other federal and state laws, as delineated in their respective complaints, which were centralized into *In re EpiPen* MDL. See ECF Nos. 2504, 2505.

Trial in this Action was rescheduled multiple times due to COVID-19-related and other concerns. Most recently, trial was set to commence on February 22, 2022, based on the Pretrial Order dated July 17, 2020 (ECF No. 2169), later modified with a Trial Order entered on January 12, 2022 (ECF No. 2562).

As the trial date approached, Plaintiffs and the Mylan Defendants engaged in settlement negotiations. Plaintiffs subsequently agreed to settle all claims brought in or related to the Action and Other Actions against the Mylan Defendants under the terms memorialized in the Settlement Agreement.

III. TERMS OF THE SETTLEMENT

The Settlement Agreement, attached as Exhibit 1 hereto, provides that the Mylan Defendants will deposit \$5 million of the Settlement Amount into an Escrow Account within five

business days from the District Court's order granting preliminary approval. Settlement Agreement, ¶ 2.1. The remainder of the Settlement Amount will be deposited by the later of July 1, 2022 or five calendar days before the date of the Fairness Hearing. *Id.* The cost of settlement administration, including the costs of notice to the Class, taxes, and tax expenses, will be funded by the Settlement Fund (*id.*, ¶¶ 2.7, 2.8), which consists of the Settlement Amount, plus all interest and accretions thereto. *Id.*, ¶ 1.38. The Settlement Agreement also provides for a Settlement Administrator. *Id.*, ¶ 1.36. Class Counsel propose that the Court appoint A.B. Data, Ltd. to serve as the Settlement Administrator. The Court previously approved A.B. Data to provide notice to the Class following class certification and appointed it as the settlement administrator for the Pfizer Settlement. A.B. Data has fulfilled its responsibilities to date, has the requisite expertise, experience and capabilities, and is fully familiar with the facts of this case and the notice program that will be required here to comport with Rule 23 and due process. The proposed notice plan is discussed below and in the accompanying Schachter Declaration. *See* Exhibit 2.

In summary, Plaintiffs and A.B. Data propose a notice program that is substantially similar to the Court-approved notice programs used successfully to provide notice of pendency of the Action and the Pfizer Settlement to the certified Class. Consistent with the Court's previous findings (ECF Nos. 2240, 2401, 2506), the proposed notice program also satisfies the requirements of Rule 23 and due process. It includes: (i) individual notice by email or mail to all Class Members who can reasonably be located; (ii) publication notice in a national publication likely to be read by Class Members; (iii) digital media advertisements posted on websites likely to be viewed by Class Members; (iv) a press release to be widely disseminated; (v) a settlement website that will contain information about the Litigation and the Settlement, as well as all important Settlement documents; and (vi) a toll-free phone number and call center to field inquiries. The Settlement website will allow Class Members to file their claims electronically. *See* Schachter Declaration, *passim*.

The Notice (Settlement Agreement, Exhibit B) explains the terms of the Settlement, including that the Net Settlement Fund will be distributed to eligible Class Members who submit valid and timely Proofs of Claim and pursuant to the proposed Plan of Allocation. The Notice explains that any Class Member who already submitted a claim pursuant to the Pfizer Settlement will automatically be eligible to receive a payment from the Mylan Settlement without the need to file an additional claim form. The Notice also advises Class Members of: (i) Class Counsel's application for an award of attorneys' fees and expenses, as well as Plaintiffs' application for a service award in connection with their representation of the certified Class; (ii) the procedures for objecting to the Settlement, the Plan of Allocation, Class Counsel's request for attorneys' fees and expenses, and/or Plaintiffs' application for a service award; and (iii) the date and time for the Fairness Hearing. Notice (Settlement Agreement, Exhibit B) at 4, 5, 12-13, 15-16.

The Plan of Allocation, attached as Exhibit 3 hereto, and that is substantially similar to the Plan of Allocation the Court approved in the Pfizer Settlement, will create two pools of funds from the Net Settlement Fund, one for individual consumers and one for third-party payors. The allocation of funds as between the two pools is based on the work done by Plaintiffs' experts and tracks, as a percentage, the relative damages allegedly suffered by individual consumers and third-party payors as calculated in the Rebuttal Merits Expert Report of Professor Meredith Rosenthal (ECF No. 2216-2). Within each pool, funds will be distributed on a *pro rata* basis to all eligible Class Members who file a timely and valid Proof of Claim. Funds remaining in one pool will spill-over to the other pool in certain circumstances. Plaintiffs anticipate that all funds will be distributed to Class Members pursuant to the Plan of Allocation.⁶ There is no right of reversion under the

⁶ Class Counsel anticipate that, under the Plan of Allocation's distribution terms, there will be no remaining funds for *cy pres* distribution. If there is any remaining balance in the Net Settlement Fund after the initial distribution—*e.g.* due to uncashed checks—the Settlement

Settlement and under no circumstances will any portion of the Settlement Amount be returned to the Mylan Defendants once the Settlement becomes final.

Under the terms of the Settlement, the Mylan Defendants expressly disclaim and deny any wrongdoing or liability whatsoever. In exchange for the benefits provided under the Settlement Agreement, Class Members will release the Mylan Defendants as provided for in Paragraphs 1.28, 4.1 & 4.2 of the Settlement Agreement. The Settling Parties have also agreed that, in the event that the Court permits a second opportunity to opt out of the Class, the Parties will meet and confer to determine mutually-agreeable terms to govern the second opt out. Settlement Agreement ¶ 8.1; *see also id.* ¶ 2.10(c).

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Court Should Grant Preliminary Approval of the Proposed Settlement.

Settlement is strongly favored as a method for resolving disputes. *See Sears v. Atchison, Topeka & Santa Fe Ry., Co.*, 749 F.2d 1451, 1455 (10th Cir. 1984); *see also Trujillo v. State of Colo.*, 649 F.2d 823, 826 (10th Cir. 1981) (citing “important public policy concerns that support voluntary settlements”); *Amoco Prod. Co. v. Fed. Power Comm’n*, 465 F.2d 1350, 1354 (10th Cir. 1972). This is particularly true in large, complex class actions such as the current case. *See Big O Tires, Inc. v. Bigfoot 4x4, Inc.*, 167 F. Supp. 2d 1216, 1229 (D. Colo. 2001).

Under Rule 23(e), the trial court must approve a class action settlement. Fed. R. Civ. P. 23(e) (“The claims . . . of a certified class – or a class proposed to be certified for purposes of settlement – may be settled . . . only with the court’s approval.”). The procedure for review of a

Administrator will reallocate such balance among Class Members pursuant to the terms of the Plan of Allocation. Any funds remaining for *cypres* distribution should therefore be *de minimis*, existing only if a Class Member does not cash their check or otherwise deposit or accept their distribution after submitting a claim, *and* after additional distributions to qualifying claimants.

proposed class action settlement is a well-established two-step process. *In re Motor Fuel Temperature Sales Pracs. Litig.*, 258 F.R.D. 671, 675 (D. Kan. 2009); see *Manual for Complex Litigation* (“*Manual*”), §13.14 (4th ed. 2004). First, the court conducts a preliminary approval analysis to determine if there is any reason not to notify the class or proceed with the proposed settlement. *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006). Second, after the court preliminarily approves the settlement, the class is notified and provided an opportunity to be heard at a final fairness hearing where the court considers the merits of the settlement to determine if it should be finally approved. See *In re Motor Fuel*, 258 F.R.D. at 675; accord, 4 William B. Rubenstein, *Newberg on Class Actions* (“*Newberg*”), §13.10 (5th ed. 2021).

Through this Preliminary Approval Motion, Plaintiffs request the Court take the first step in this two-step process: granting preliminary approval. Preliminary approval should be granted if “the proposed settlement was ‘neither illegal nor collusive and is within the range of possible approval.’” *Newberg*, §13.10; *In re Syngenta AG MIR 162 Corn Litig.*, No. 14-md-2591-JWL, 2018 WL 1726345, at *2 (D. Kan. Apr. 10, 2018) (Lungstrum, J.) (same). Although “[t]he standards for preliminary approval are not as stringent as those applied for final approval,” courts frequently refer to the final approval factors to determine whether a proposed settlement should be *preliminarily* approved. *In re Motor Fuel*, 258 F.R.D. at 675-76, 680 (“While the Court will consider these factors in depth at the final approval hearing, they are a useful guide at the preliminary approval stage as well.”).

B. Standards for Preliminary Approval of a Proposed Settlement.

Under Rule 23(e)(1) of the Federal Rules of Civil Procedure the inquiry at preliminary approval is whether the Court “will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(2)(B). Rule 23(e)(2) provides that a class action settlement may be approved by the court “only after a

hearing and only on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). In deciding whether to approve a class action settlement, courts should consider whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Also, in deciding whether a settlement is “fair, reasonable, and adequate,” courts in the Tenth Circuit traditionally consider whether:

- (1) the settlement was fairly and honestly negotiated, (2) serious legal and factual questions placed the litigation’s outcome in doubt, (3) the immediate recovery was more valuable than the mere possibility of a more favorable outcome after further litigation, and (4) the parties believed the settlement was fair and reasonable.

In re (Epinephrine Injection, USP) EpiPen Mktg., Sales Pracs. & Antitrust Litig., No. 17-MD-2785-DDC, 2021 WL 5369798, at *1 (D. Kan. Nov. 17, 2021); *Syngenta*, 2018 WL 1726345, at *2 (citing *Tennille v. W. Union Co.*, 785 F.3d 422, 434 (10th Cir. 2015)). Because the Tenth Circuit’s additional factors “largely overlap” with the Rule 23(e)(2) factors, “with only the fourth factor not being subsumed” into it, courts in this District now “consider[] the Rule 23(e)(2) factors as the main tool in evaluating the propriety of [a] settlement,” while still addressing the Tenth Circuit’s factors.

Chavez Rodriguez v. Hermes Landscaping, Inc., No. 17-2142-JWB-KGG, 2020 WL 3288059, at *2 (D. Kan. June 18, 2020).

As discussed below, the proposed Settlement for \$264 million in cash easily satisfies each of the Rule 23(e)(2) and Tenth Circuit factors. Accordingly, Plaintiffs request that the Court grant preliminary approval of the Settlement.

C. The Settlement Satisfies the Rule 23(e)(2) Factors.

1. Plaintiffs and Co-Lead Counsel Have Adequately Represented the Class.

The adequacy of representation requirement is met when the representative plaintiffs' "interests do not conflict with those of the class members" and the representatives and their counsel "prosecute the action vigorously." *In re Motor Fuel Temperature Sales Pracs. Litig.*, 271 F.R.D. 221, 231 (D. Kan. 2010) (citations omitted). As the Court found in its order granting final approval of the Pfizer Settlement, Class Plaintiffs share the same interests and types of alleged injuries as the absent Class Members. *In re EpiPen*, 2021 WL 5369798 at *2. Class Plaintiffs have participated in extensive discovery and adequately represented and protected the interests of the Class. *Id.*

Co-Lead Counsel also have adequately represented the certified Class as required by Rule 23(e)(2)(A). Prior to reaching the Settlement, Co-Lead Counsel conducted extensive investigation and research into the claims asserted, reviewed extensive data, and consulted with numerous experts. Co-Lead Counsel vigorously prosecuted the Action by, among other activities: (i) investigating the relevant factual events; (ii) drafting the detailed, 400-page Complaint; (iii) successfully in part opposing Defendants' motions to dismiss; (iv) engaging in extensive document and written discovery, through both coordinated and non-coordinated phases, including reviewing over 11 million pages of documents produced by Defendants and third parties; (v) successfully in part moving for class certification supported by four expert reports; (vi) successfully

opposing Defendants’ petition to appeal the same pursuant to Rule 23(f); (vii) vigorously opposing summary judgment and *Daubert* motions, and achieving partial victories; (vii) preparing for a month-long trial; and (viii) at the same time, engaging in settlement negotiations with the Mylan Defendants’ counsel. As a result of these extensive efforts, spanning thousands of hours of work and several years, Co-Lead Counsel have achieved a significant all-cash Settlement of \$264 million with the Mylan Defendants, which will provide immediate relief to the certified Class.

Each of the Co-Lead Counsel (Elizabeth C. Pritzker of Pritzker Levine LLP, Paul J. Geller of Robbins Geller Rudman & Dowd LLP, Rex A. Sharp of Sharp Law LLP, Warren T. Burns of Burns Charest LLP, and Lynn Lincoln Sarko of Keller Rohrback L.L.P.) has significant experience prosecuting complex antitrust and RICO class actions. This Court, *see In re EpiPen*, 2021 WL 5369798 at *5, and courts around the country have recognized the expertise and ability of Co-Lead Counsel to litigate effectively complex class actions.⁷

⁷ *See, e.g., Harris v. Chevron U.S.A., Inc.*, No. 6:19-cv-00355-SPS, 2020 WL 8187464, at *4 (E.D. Okla. Feb. 27, 2020) (noting that Sharp Law LLP is among the “[f]ew law firms [who] are willing to litigate cases requiring review of tens of thousands of pages of detailed contracts and accounting records, advance payment of hundreds of thousands of dollars in consultants and expert witness fees, and investment of substantial time, effort, and other expenses throughout an unknown number of years to prosecute a case with high risk, both at the trial and appellate levels”); *In re SandRidge Energy, Inc. Sec. Litig.*, No. CIV-12-1341-G, 2019 WL 4752268, at *9 (W.D. Okla. Sept. 30, 2019) (“the attorneys of Robbins Geller are experienced class-action litigators and are sufficiently committed to this litigation”); *In re WorldCom, Inc. ERISA Litig.*, No. Civ. 02-4816 (DLC), 2004 WL 2338151 at *10 (S.D.N.Y. 2004) (regarding Lynn Sarko’s work as lead counsel, Judge Cote stated, “Lead Counsel has performed an important public service in this action and has done so efficiently and with integrity [Keller Rohrback] has also worked creatively and diligently to obtain a settlement from WorldCom in the context of complex and difficult legal questions”); The Hon. H. Russel Holland, D. Alaska, Presentation to Alaska Chapter of the Federal Bar Association, Nov. 12, 2015 (regarding Lynn Sarko’s administration of two court-supervised \$1.128 billion *Exxon* settlement funds, Judge Holland observed: “[T]he money went into the Exxon Qualified Settlement Fund that was administered by Lynn Sarko and his law firm in Seattle. Those guys did a superb job. And it was a huge effort to notify all potential claimants, to get the claims documented, to evaluate the documentation, and then to apply the sharing concepts to the individual losses. . . . I can’t imagine that they could possibly have done a better job.”); *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-md-2541-CW, 2017

To support a finding of adequate representation, the parties must “[b]alanc[e] the entirety of the case with the ultimate resolution.” *Chavez Rodriguez v. Hermes Landscaping, Inc.*, 2020 WL 3288059, at *3 (D. Kan. June 18, 2020). Here, the collective tenacity and sophistication of Plaintiffs and Class Counsel were instrumental in achieving the substantial \$264 million Settlement, which will provide significant and immediate relief to the certified Class.

2. The Proposed Settlement Was Negotiated at Arm’s Length.

The second factor under Rule 23(e)(2)(B) overlaps with the first factor considered by courts in the Tenth Circuit and assesses whether “the settlement was fairly and honestly negotiated.” *Syngenta*, 2018 WL 1726345, at *2. A settlement is considered to be fairly and honestly negotiated when reached after arm’s-length negotiations by experienced counsel. *See In re Urethane Antitrust Litig.*, No. 04-1616-JWL, ECF No. 3274, at 2 (D. Kan. July 29, 2016) (settlement is “fairly and honestly negotiated” when it results from “negotiations which were undertaken in good faith by counsel with significant experience litigating antitrust class actions”); *Marcus v. Kansas Dep’t of Revenue*, 209 F. Supp. 2d 1179, 1182 (D. Kan. 2002) (finding this factor satisfied where the settlement was reached “by experienced counsel for the class”).

Here, the Settlement is the product of vigorous negotiations between the Settling Parties, advised by their sophisticated counsel, who possessed more than sufficient evidence and knowledge to allow them to make informed decisions about the strengths and weaknesses of their respective

WL 6040065, at *10 (N.D. Cal. Dec. 6, 2017), *aff’d*, 768 F. App’x 651 (9th Cir. 2019) (noting that Pritzker Levine, as one of three firms representing the certified student-athlete class, is “among the most well-respected class action litigation firms in the country, as this Court has witnessed in numerous cases. And the efficiency with which plaintiffs’ counsel achieved such exceptional results is laudable because it benefits the classes.”) (footnote omitted); *Kjessler v. Zaappaaz, Inc.*, No. 4:18-cv-430, 2018 WL 8755737, at *5–6 (S.D. Tex. Aug. 31, 2018) (appointing Burns Charest as sole interim lead class counsel based on the firm’s “significant experience” in class action litigation).

cases. Counsel participated in numerous meetings and phone calls where they exchanged their respective, opposing views regarding the merits of Plaintiffs' claims, issues for appeal, and the terms of the Settlement. The relevant legal and factual issues were fully developed and ready for trial. Additionally, Plaintiffs had previously worked with a mediator to settle similar claims with the Pfizer Defendants, which provided valuable insight into the value of the claims as well as the strengths and weaknesses of their case. As a result, the Settling Parties were well prepared for the serious negotiations that led to the Settlement and were well-informed of the respective parties' arguments. *See In re Motor Fuel*, 258 F.R.D. at 675-76. And the \$264 million settlement amount (\$609 million total when combined with the \$345 million Pfizer Settlement), by any measure, is an outstanding result. Antitrust class action settlements reached prior to trial typically settle for a fraction of the alleged damages. *See, e.g., In re Linerboard Antitrust Litig.*, No. CIV. 98-5055, 2004 WL 1221350, at *4 (E.D. Pa. June 2, 2004) (collecting cases in which courts have approved settlements of 5.35% to 28% of potential damages).

In sum, the parties' negotiations and the Settlement's terms demonstrate that the Settlement was fairly and honestly negotiated.

3. The Proposed Settlement Is Adequate in Light of the Costs, Risks, and Delay of Trial and Appeal.

In assessing the Settlement, the Court should also balance the benefits afforded to the certified Class, including the immediacy and certainty of a recovery, against the significant costs, risks, and delay of proceeding with the Action. *See* Rule 23(e)(2)(C)(i). This third factor is based on the premise that the Class "is better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted." *See McNeely v. Nat'l Mobile Health Care, LLC*, No. CIV-07-933-M, 2008 WL 4816510, at *13 (W.D. Okla. Oct. 27, 2008). This consideration largely overlaps with the second

(“whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt”) and third factors (“whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation”) traditionally considered by courts in the Tenth Circuit. *Chavez Rodriguez*, 2020 WL 3288059, at *2-*3. Thus, courts consider these factors to be “subsumed under Rule 23’s requirement.” *Id.*

4. Serious Legal and Factual Questions Placed the Litigation’s Outcome in Doubt.

The presence of serious legal and factual questions concerning the outcome of the Litigation weighs heavily in favor of settlement, “because settlement creates a certainty of some recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation.” *In re Qwest Commc’ns Int’l, Inc. Sec. Litig.*, 625 F. Supp. 2d 1133, 1138 (D. Colo. 2009). “Although it is not the role of the Court at this stage of the litigation to evaluate the merits, it is clear that the parties could reasonably conclude that there are serious questions of law and fact that exist such that they could significantly impact the case if it were litigated.” *Lucas*, 234 F.R.D. at 693-94. The presence of questions of law and fact “tips the balance in favor of settlement because settlement creates a certainty of some recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation.” *McNeely, LLC*, 2008 WL 4816510, at *13; *see also Tennille*, 785 F.3d at 435 (affirming final approval of settlement where “serious disputed legal issues” rendered “the outcome of th[e] litigation . . . uncertain and further litigation would have been costly”).

The current proposed Settlement notwithstanding, there remain numerous factual and legal issues on which the Settling Parties still intensely disagree. The Mylan Defendants deny that they have engaged in any wrongdoing as alleged by Plaintiffs, deny any liability whatsoever for any of the claims alleged by Plaintiffs, and deny that Plaintiffs have suffered any injuries or damages.

Conversely, Plaintiffs have advanced numerous complex legal and factual issues under federal and state antitrust laws, federal RICO statutes, and other causes of action, with certain state antitrust claims proceeding to trial and the other claims preserved for appeal. The issues on which the Settling Parties disagree are many, but include: (1) whether any of the Mylan Defendants engaged in conduct that would give rise to any liability to Plaintiffs under the RICO statute or certain state antitrust laws; (2) whether the Mylan Defendants have valid defenses to any such claims of liability; (3) whether any conduct by the Mylan Defendants caused Plaintiffs any injuries; (4) the amount of damages, if any, that Plaintiffs suffered by reason of the Mylan Defendants' alleged wrongdoing, as well as the methodology for estimating any such damages; and (5) whether the Court properly certified the Class. Had the parties not settled this Action and the Other Actions, the Court and/or a jury would ultimately be required to decide these issues, placing the ultimate outcome in doubt. While Plaintiffs believe their claims would be borne out by the evidence presented at trial, they recognize that there are significant hurdles to proving liability and damages in trial and prevailing in any appeals.

5. Immediate Recovery Is More Valuable than the Mere Possibility of a More Favorable Outcome After Further Litigation.

Considering the risks associated with continued litigation, as discussed above, the immediate, substantial relief offered by the Settlement outweighs the “mere possibility of a more favorable outcome after protracted and expensive litigation over many years in the future.” *Syngenta*, 2018 WL 1726345, at *2; *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1244 (D.N.M. 2012) (“[t]o most people, a dollar today is worth a great deal more than a dollar ten years from now”) (quoting *Reynolds v. Beneficial Nat’l Bank*, 288 F.3d 277, 284 (7th Cir. 2002)).

Further, this Action has already been pending for nearly five years in this Court, and the Settling Parties and the Court would expend significant additional time, resources, and costs to

proceed to trial, and the inevitable appeals likely extending years into the future. *Chavez Rodriguez*, 2020 WL 3288059, at *3 (observing that “the costs and time of moving forward in litigation would be substantial”); *Lucas*, 234 F.R.D. at 694 (“If this case were to be litigated, in all probability it would be many years before it was resolved.”). Considering the complex legal and factual issues associated with continued litigation, there is an undeniable and substantial risk that, after years of continued litigation, Plaintiffs could receive an amount significantly less than the Settlement Amount, or nothing at all, for their claims against Mylan.

“By contrast, the proposed settlement agreement provides the class with substantial, guaranteed relief” now. *Lucas*, 234 F.R.D. at 694; *see also McNeely*, 2008 WL 4816510, at *13 (“The class . . . is better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted.”). “[The] immediate recovery in this case outweighs the time and costs inherent in complex securities litigation, especially when the prospect is some recovery versus no recovery.” *In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 691 (D. Colo. 2014); *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 625 (D. Colo. Aug. 10, 1976) (“In this respect, ‘[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush.’”); *accord Tennille v. W. Union Co.*, No. 09-cv-00938-JLK-KMT, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014), *appeal dismissed*, 809 F.3d 555 (10th Cir. 2015). Thus, the \$264 million immediate recovery, particularly when viewed in the context of the risks, costs, delay, and the uncertainties of further proceedings, weighs in favor of preliminary approval of the Settlement.

6. The Proposed Method for Distributing Relief Is Effective.

As demonstrated below, the proposed notice program and claims administration process are effective and were previously approved by the Court for the Pfizer Settlement. The settlement notice plan involves individual notice by email or First-Class Mail to all Class Members who can be

identified with reasonable effort, supplemented by various forms of internet and publication notice, targeted to reach likely EpiPen purchasers. *See* Schachter Declaration, ¶¶ 7-18 & Exhibit B thereto (Notice Plan). In addition, a case-designated website has been created where settlement-related and other key documents will be posted, including the Settlement Agreement, Notices, Proofs of Claim (Claim Forms), and Preliminary Approval Order. *Id.* ¶¶ 7, 19. The Settlement website will allow for Proof of Claim forms to be filed electronically. The claims process will be streamlined even further because Class Members who already submitted claims pursuant to the Pfizer Settlement will automatically be eligible to receive payments from the Mylan Settlement without the need to file an additional claim form.

Plaintiffs propose a fair and orderly claims administration process in which Class Members who wish to participate in the Settlement will complete and submit Proofs of Claim in accordance with the instructions contained therein. *See id.* ¶¶ 20-21; Plan of Allocation (Exhibit 3). The Settlement Administrator will distribute the Net Settlement Fund to Authorized Claimants on a *pro rata* basis under a Court-approved Plan of Allocation. *See* Plan of Allocation (Exhibit 3). The Plan of Allocation proposed here was prepared with information provided by Plaintiffs' experts and in consultation with A.B. Data.

7. Attorneys' Fees and Expenses.

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). The Notice provides that Class Counsel will apply to the Court for an award of attorneys' fees in an amount up to one-third of the Settlement Amount, plus payment of Plaintiffs' counsel's expenses incurred in connection with this Litigation, plus interest earned on these amounts at the same rate as earned by the Settlement Fund.

Class Counsel's anticipated fee request is the same percentage as the fee the Court approved in the Pfizer Settlement and well within the range that other courts in this District have approved in

complex class actions. *See In re EpiPen*, 2021 WL 5369798, at *4; ECF No. 2435-6, Table 1 (listing nine fee awards of one third or greater within the District of Kansas for class recoveries ranging from \$16.9 million to \$1.51 billion).

With respect to the timing of payment, the Settlement Agreement provides that any Plaintiffs' attorneys' fees and expenses, as awarded by the Court, shall be paid to Class Counsel within ten (10) days of the Court executing the Judgment and an order awarding such fees and expenses, subject to Class Counsel's several obligations to make appropriate refunds or repayments to the Settlement Fund plus interest thereon if, and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or expense award is lowered or the Settlement is disapproved by a final order not subject to final review. Settlement Agreement, ¶¶ 6.1-6.3; *see Syngenta*, 2021 WL 102819, at *4 (D. Kan. Jan. 12, 2021) (approving immediate payment of plaintiff counsel attorneys' fees and costs) (citing *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices and Prods. Liab. Litig.*, 952 F.3d 471, 487 (4th Cir. 2020)) (finding immediate payment provisions have generally been approved by federal courts); *see also In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 479-80 (S.D.N.Y. 1998); *Pelzer v. Vassalle*, 655 F. App'x 352, 365 (6th Cir. 2016) ("The quick-pay provision does not harm the class members in any discernible way, as the size of the settlement fund available to the class will be the same regardless of when the attorneys get paid."); *In re Whirlpool Corp. Front-loading Washer Prods. Liab. Litig.*, No. 1:08-WP-6500, 2016 WL 5338012, at *21 (N.D. Ohio Sept. 23, 2016) ("[q]uick-pay clauses substantially reduce the leverage a professional objector can wield"); Bolch Jud. Inst., Guidelines and Best Practices: Implementing 2018 Amendments to Rule

23 Class Action Settlement Provisions 21 (2018), (suggesting that the parties' efforts to discourage bad-faith objectors "include a 'quick-pay clause'").⁸

8. The Settling Parties Have No Additional Agreement.

Rule 23(e)(2)(C)(iv) requires the disclosure of any other agreements. The Settling Parties have no additional agreements.

9. Class Members Are Treated Equitably.

The final factor, Rule 23(e)(2)(D), looks at whether certified Class Members are treated equitably. The proposed Plan of Allocation (Exhibit 3) is substantively the same as the one approved by the Court in the Pfizer Settlement. As the Court found, this Plan of Allocation treats Class Members equitably. *In re EpiPen*, 2021 WL 5369798, at *10-11. The Net Settlement Fund will be allocated based on estimated damages as alleged and calculated in the Rebuttal Merits Expert Report of Professor Meredith Rosenthal (ECF No. 2216-2) and then distributed on a *pro rata* basis to Class Members based on total amounts paid for EpiPens during the Class Period. Two separate pools are established for TPPs and individual consumers because of their differing claim rates. The Plan of Allocation provides for a spill-over from one pool to the other if one pool exhausts but the other does not. Therefore, all Class Members are treated alike in receiving their *pro rata* share of the Settlement.

D. The Settlement Satisfies the Remaining Factor Considered by Courts in the Tenth Circuit.

The final, additional factor courts in the Tenth Circuit consider is "the judgment of the parties that the settlement is fair and reasonable." *Chavez Rodriguez*, 2020 WL 3288059, at *2. In analyzing this factor, courts recognize that "the recommendation of a settlement by experienced plaintiff[s'] counsel is entitled to great weight." *O'Dowd v. Anthem, Inc.*, No. 14-cv-02787-KLM-

⁸ Available at: <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1003&context=bolch>.

NYW, 2019 WL 4279123, at *14 (D. Colo. Sept. 9, 2019); *Hapka v. CareCentrix, Inc.*, No. 2:16-cv-02372-KGG, 2018 WL 1871449, at *5 (D. Kan. Feb. 15, 2018); *Marcus v. Kansas Dep't of Revenue*, 209 F. Supp. 2d 1179, 1183 (D. Kan. 2002) (“Counsels’ judgment as to the fairness of the agreement is entitled to considerable weight.”); *see also Crocs*, 306 F.R.D. at 690 (finding that, even without formal discovery, the parties were able to give adequate consideration to the strengths and weaknesses of their respective claims).

Class Counsel—all senior attorneys at law firms with considerable experience in complex antitrust and civil RICO class actions—only agreed to settle this Litigation after extensive investigation, written discovery, motion practice, deposition testimony, data analyses, substantial trial preparation, and rigorous arm’s-length negotiations. Additionally, as noted above, Plaintiffs and their Counsel have compared the recovery the certified Class will receive from the Settlement against the risks, delays, and uncertainties of continued litigation and appeals. Plaintiffs and their Counsel believe the Settlement is fair, adequate, and reasonable and should be approved. The Mylan Defendants likewise believe the Settlement should be approved. Because the above factors weigh in favor of the Settlement, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement.

V. THE PROPOSED FORM AND METHOD OF PROVIDING NOTICE TO THE CLASS ARE APPROPRIATE

A. The Court Should Preliminarily Approve the Proposed Notice of Settlement.

Rule 23(c)(2)(B) requires that notice in a Rule 23(b)(3) class action constitute “the best notice . . . practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). In terms of content, a settlement notice need only be “reasonably calculated, under all of the circumstances, to apprise [the] interested parties of the pendency of the [settlement proposed] and [to] afford them an

opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950); *see also*, *Fager*, 854 F.3d 1167, 1170 (10th Cir. 2016) (same); *Tennille*, 785 F.3d at 436 (same). “The hallmark of the notice inquiry . . . is reasonableness.” *Lucas*, 234 F.R.D. at 696.

Plaintiffs have submitted to the Court for approval the Notice and Summary Notice that will be provided to the certified Class and are substantially similar to those the Court approved in the Pfizer Settlement. In accordance with Rule 23(c)(2)(B), the proposed Notice will fully inform Class Members about the Action, the proposed Settlement, and the facts they need to make informed decisions about their rights and options in connection with the Settlement. Specifically, the Notice clearly describes: (i) the nature of the (proposed) Settlement and the (proposed) Plan of Allocation; (ii) the nature and extent of the release of claims; (iii) Class Counsel’s intent to request attorneys’ fees and expenses; (iv) the method for submitting a Proof of Claim; (v) the procedure and timing for objecting to the Settlement; (vi) the date, time, and place of the Final Fairness Hearing; and (vii) ways to receive additional information about this Litigation and the proposed Settlement. The Notices also provide Class Members with a toll-free telephone number, email address, and a Settlement website where Class Members may obtain additional information. Thus, the Notices are reasonably calculated to apprise the interested parties of the pendency of the Settlement and afford them a fair opportunity to object. As such, the form and manner of the proposed Notice meets the requirements of both Rule 23 and due process. As in the Pfizer Settlement, the Court should approve the Notices and the manner through which they will be delivered and communicated to the certified Class.

B. An Additional Settlement Opt-Out Is Neither Required By Due Process Nor Warranted Under Rule 23(e).

The initial class notice in this Litigation met and surpassed the constitutional standards for due process and all the requirements of Rule 23, and there has been no change in information

available to the certified Class since the first notice that warrants an additional, discretionary opt-out at settlement. *See* ECF No. 2240 (order approving notice). From start to finish of the class certification notice process, Class Counsel and A.B. Data administered a comprehensive notice program that included: acquiring expert input, using best practices recommended by the Federal Judicial Center, and, at every stage, coordinating the notice program with the United States District Court for the District of Kansas.

As required by due process and Rule 23(c)(2)(B), the initial class notice was “the best practicable [notice], ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Class Counsel made every reasonable effort to identify and deliver direct, individual notice to all Class Members. *See* Fed. R. Civ. P. 23(c)(2)(B). And to the greatest extent practicable under the circumstances, Class Counsel apprised all interested parties who could be contacted with reasonable effort of the impending Litigation, their rights to participate in or be excluded from the Action, and the legal effect(s) of either choice.

Not only did the exclusion language within the notice sufficiently inform Class Members of their right to be excluded from the Class (and the method and deadline for doing so in clear, concise, conspicuous, and plainly written language, so as to be easily understood by the average class member) – it did so repeatedly throughout the notice. *See Low v. Trump Univ., LLC*, 881 F.3d 1111, 1120 (9th Cir. 2018) (reviewing the sufficiency of previous class notice to satisfy due process related to class settlement); *see also Mullane*, 339 U.S. at 315 (holding that the measure for sufficiency of notice is reasonableness). The explicit exclusion language clearly informed Class Members of the legal consequences of either remaining in or opting out of the Action and expressly stated the possible outcomes of the Action included trial or settlement. *See* ECF No. 2209 (at 2209-

2 (Short Form Notice) & 2209-3 (Notice)) & ECF No. 2240 (order approving notices). Class Members were given reasonable opportunity to opt-out within seventy-five days of issuance of the notice, from November 1, 2020, until January 15, 2021. *Manual*, §21.321 (“Courts usually establish a period of thirty to sixty days (or longer if appropriate) following mailing or publication of the notice for class members to opt out.”). Therefore, as part of the Settlement Agreement, the Settling Parties have expressly agreed not to provide a second opt-out opportunity.

Allowing an unnecessary second opt-out opportunity could disrupt the Settlement Agreement the parties have carefully negotiated, putting at risk the \$264 million recovery for the Class. Courts consistently find that fair settlements do not require a second opt-out provision. *See Officers for Just. v. Civ. Serv. Comm’n of City & Cnty. of S.F.*, 688 F.2d 615, 634-35 (9th Cir. 1982); *Low*, 881 F.3d at 1121-22; *Low v. Trump Univ., LLC*, 246 F. Supp. 3d 1295, 1306 (S.D. Cal. 2017) (concluding that the initial notice and exclusion opportunity “undoubtedly” met the due process requirements); *Lowery v. City of Albuquerque*, No. CIV 09-0457 JB/WDS, 2013 WL 1010384, at *32 (D.N.M. February 27, 2013) (noting “the rule defers to the district court’s discretion and does not proscribe that a fair settlement must allow class members the opportunity to opt out”) (citing *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 354 (6th Cir. 2009)). “Requiring a second opt-out period as a blanket rule would disrupt settlement proceedings because no certification would be final until after the final settlement terms had been reached.” *Denney v. Deutsche Bank AG*, 443 F.3d 253, 271 (2d Cir. 2006); *see also, e.g., Low*, 881 F.3d at 1121 (“[There is] no authority of any kind suggesting that due process requires that members of a Rule 23(b)(3) class be given a second chance to opt out. . . . [Plaintiff’s] rights are protected by the mechanism provided in the rule: approval by the district court after notice to the class and a fairness hearing at which dissenters can voice their objections, and the availability of review on appeal.”).

Additionally, there are no factors warranting a discretionary opt-out at settlement under Rule 23(e)(4). The initial notice expressly conveyed to Class Members that possible outcomes of the Litigation included trial or settlement. The only relevant change in information available to Class Members since prior notice is that Plaintiffs and the Mylan Defendants have now agreed to a \$264 million settlement, which, as noted, provides immediate and valuable relief to the Class. “Courts have rejected the suggestion that a second opt-out should be granted as a matter of course, even if the terms of the settlement change after the expiration of the initial opt-out period.” 2 McLaughlin on Class Actions §6:21 (17th ed. 2020); *accord Lowery*, 2013 WL 1010384, at *42 (concluding that the change in circumstances of a more “significant recovery” at settlement than previously anticipated by the class weighed against providing an additional opt-out opportunity).

In rejecting the provision of a second opt-out period, multiple federal courts have noted that the Rule 23(c)(2) procedures for class certification provide absentee class members in a 23(b)(3) action with a choice: exclude themselves from the case or remain a party and be bound by the final judgment. This procedure “requires each absentee member to take affirmative action at the outset of the suit if he or she wishes to be excluded from the class.” *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1104 (5th Cir. 1977); *accord In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 325, 345-46 (E.D.N.Y. 2010) (concluding that “[i]f any class members wished to control the prosecution or settlement of their own claims, they could have opted out or sought to intervene after notice of pendency was given”) (citing *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114-115 (2d Cir. 2005)). These courts almost uniformly note the high cost to the settlement process at little benefit to objectors because the class members have had previous opportunities to opt-out. This was the court’s reasoning in *In re MetLife Demutualization Litig.* when it declined to offer a second exclusion opportunity at settlement:

Where, as here, a class action has been certified and class members have had a previous opportunity to request exclusion by opting out of the class, the court may afford individual class members a new opportunity to request exclusion, but it is not required to do so. In the present cases there shall not be provided a second opportunity for exclusion. The administration of any new exclusion procedures would be expensive. The number of policyholders who would opt out now, after failing to exclude themselves previously, is likely to be minimal to the vanishing point.

689 F. Supp. 2d at 325; *accord In re Washington Mutual, Inc.*, No. 2:08-md-1919 MJP, 2015 WL 12803633, at *1 (W.D. Wash. June 22, 2015) (concluding that a second opt-out opportunity need not be provided “in light of the extensive notice program undertaken in connection with the earlier settlements, the ample opportunity provided to Class Members to request exclusion from the Class at that time, and the fact that there would be no potential benefit to any Class Member who opts out”). As the Second Circuit noted, the costs are potentially high for allowing objectors to demand additional opt-out periods after settlement agreements whenever there is a change of information from the last notice and opportunity for exclusion: “Requiring a second opt-out period as a blanket rule [on any changed information] would disrupt settlement proceedings because no certification would be final until after the final settlement terms had been reached.” *Denney*, 443 F.3d at 271.

Where, as here and in the Pfizer Settlement, the prior class notice was adequate, the explicit exclusion language therein was sufficient and reasonable, and the costs of providing an additional opt-out outweigh any potential benefits, courts have overwhelmingly approved settlement agreements that do not provide for an additional opt-out opportunity.⁹ Plaintiffs and the Mylan

⁹ See, e.g., *Low*, 881 F.3d at 1120-22 (weighing the benefit and fairness of the settlement as a whole and determining district court acted well within its discretion by approving the settlement without a second opt-out period); *Denney*, 443 F.3d at 271 (“Neither due process nor Rule 23(e)[(4)] requires... a second opt-out period whenever the final terms [of a settlement] change after the initial opt-out period.”); *Wal-Mart*, 396 F.3d at 114 (holding that a single opt-out at certification of a settlement class was sufficient to protect a party’s interest in the proceedings and right to be excluded); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1289-90 (9th Cir. 1992) (holding that because class members were given an opportunity to opt out, notice of the proposed settlement, and

Defendants respectfully submit that no additional opt-out opportunity should be provided during notice to the Class for settlement purposes.

C. Appointment of A.B. Data to Serve as the Settlement Administrator Is Proper.

As with the Pfizer Settlement, Plaintiffs request that the Court appoint A.B. Data to serve as the Settlement Administrator with respect to the Settlement, which includes providing notice of the Settlement and administering the claims process and distribution of the Net Settlement Fund. A.B. Data is a highly experienced and well-qualified notice administrator (*see* Schachter Declaration at Exhibit A), and was appointed by the Court and successfully administered the class certification-stage notice, the Pfizer Settlement notice, and is currently administering the Pfizer Settlement. Class Counsel have worked favorably with A.B. Data and are confident in the firm's ability to continue the successful administration of notice and this Settlement, as well as the Pfizer Settlement.

the opportunity to object, no additional opt-out would be provided); *Officers for Just.*, 688 F.2d at 635 (finding “no authority of any kind suggesting that due process requires members of a Rule 23(b)(3) be given a second chance to opt out”); *Davis v. Abercrombie*, No. 11-00144 LEK-BMK, 2017 WL 2234175, at *9 (D. Haw. May 22, 2017) (rejecting plaintiff’s argument that a second opt-out period is necessary to protect class members’ due process rights or warranted under its discretionary powers); *Low*, 246 F. Supp. 3d at 1306 (concluding that the initial notice and exclusion opportunity “undoubtedly” met the due process requirements); *Lowery*, 2013 WL 1010384, at *42 (concluding that the parties arriving at more favorable terms in the final settlement than previously known or anticipated by class members *weighed against* the need for a late opt-out); *Denney v. Jenkins & Gilchrist*, 230 F.R.D. 317, 344 (S.D.N.Y. 2005) *aff’d in part, vacated in part on other grounds, remanded to Denney*, 443 F.3d 253 (finding no further opt out opportunity was required when prior notice was “more than adequate, both procedurally and with respect to its content”). District courts have very rarely refused to approve a settlement agreement for lack of a second opt-out provision. Indeed, our research has only identified two such cases in the same federal district: the District of Maine. That court did so twice and for similar reasons of fairness, due process, and the efficient administration of justice within the context of conditions affecting class members at settlement that were significantly different than those anticipated at the initial opt-out opportunity. *See Dare v. Knox Cnty.*, 457 F. Supp. 2d 52 (D. Me. 2006); *see also Tardiff v. Knox Cnty.*, 567 F. Supp. 2d 201, 204, 206, 209-10 (D. Me. 2008) (applying the *Dare* Court’s interpretation of liberal judicial discretion under Rule 23(e)(4)).

D. Appointment of Huntington Bank as Escrow Agent Is Proper.

Plaintiffs request the Court appoint Huntington Bank (“Huntington”) as Escrow Agent. Huntington is a well-known and highly-respected global bank providing consumers, corporations, governments and institutions with a broad range of financial services. Class Counsel in this case have worked favorably with Huntington for the Pfizer Settlement and in the past. Based on Huntington’s experience and familiarity with performing the services of an escrow agent, Class Counsel are confident Huntington will properly perform the duties of Escrow Agent as ordered by the Court.

E. Proposed Schedule of Settlement Events

If the Court grants preliminary approval of the proposed Settlement, the Settling Parties respectfully submit the following proposed procedural schedule:

DATE	EVENT
March 10, 2022	Mylan provides Class Action Fairness Act Notice
March 11, 2022 at 9:30 am	Hearing on Preliminary Approval of Settlement
Five business days after entry of Preliminary Approval Order	Settlement Notice Program Begins
May 20, 2022	Plaintiffs file Motion for Final Approval of Settlement, Attorneys’ Fees, Expenses, and Service Awards
June 8, 2022	Deadline to file Comments/Objections
June 27, 2022	Plaintiffs file Response to Objections for Final Approval of Settlement, Attorneys’ Fees, Expenses, and Service Awards
July 6, 2022 at 9:30 am	Hearing on Final Approval of Settlement, Attorneys’ Fees, Expenses, and Service Awards

VI. THE COURT SHOULD STAY PROCEEDINGS IN THE ACTION

The Settling Parties further request that the Court stay all proceedings in the Action and Other Actions pending a final determination as to whether the Settlement should be approved, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Courts routinely stay proceedings pending final approval of settlement agreements in circumstances such as these. *See, e.g.,* Memorandum and Order at 19 (Lungstrum, J.), *Syngenta*,

No. 14-md-2591-JWL (D. Kan. April 10, 2018), ECF No. 3531; Order Preliminarily Approving Settlement at 6 (Lungstrum, J.), *In re Urethane Antitrust Litig.*, No. 04-md-1616-JWL (D. Kan. June 13, 2006), ECF No. 380; *Marcus v. Kansas Dep't of Revenue*, 206 F.R.D. 509, 514 (D. Kan. 2002) (“All further litigation of this proceeding is hereby stayed pending final determination of the acceptance of the settlement agreement at the fairness hearing.”); *Albrecht v. Oasis Power, LLC*, No. 1:18-cv-1061, 2019 U.S. Dist. LEXIS 162876, at *19 (N.D. Ill. Sep. 24, 2019) (“Pending final determination of whether the Settlement should be approved, all discovery and all proceedings in the Litigation unrelated to the approval of the Settlement are stayed.”); *In re Sony PS3 “Other OS” Litig.*, No. 10-cv-01811-YGR, 2017 WL 5598726, at *6 (N.D. Cal. Nov. 21, 2017) (same).

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant Plaintiffs’ motion for preliminary approval and enter the agreed proposed Preliminary Approval Order, attached as Exhibit A to the Settlement Agreement and submitted in Word format herewith.

Respectfully submitted,

DATED: February 28, 2022

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By: /s/ Rex A. Sharp

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EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**IN RE: EpiPen (Epinephrine
Injection, USP) Marketing,
Sales Practices and Antitrust
Litigation**

MDL No: 2785

Case No. 17-md-2785-DDC-TJJ

**(This Document Applies to Consumer
Class Cases)**

**ORDER (I) PRELIMINARILY APPROVING SETTLEMENT UNDER
FED. R. CIV. P. 23(e)(1), (II) APPOINTING THE SETTLEMENT ADMINISTRATOR,
(III) APPROVING FORM AND MANNER OF NOTICE TO CLASS MEMBERS,
(IV) SCHEDULING A FINAL FAIRNESS HEARING TO CONSIDER FINAL
APPROVAL OF THE SETTLEMENT, AND (V) GRANTING RELATED RELIEF**

An MDL proceeding entitled *In re EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices and Antitrust Litigation*, Civil Action No. 2:17-md-02785-DDC-TJJ (D. Kan.) (the “Action”) is pending before this court. Plaintiff Class Representatives, on behalf of the certified Class, have filed a motion under Federal Rule of Civil Procedure 23(e). Doc. 2590. The motion asks the court to enter an order preliminarily approving the Settlement of this Action against Defendants Mylan N.V., Mylan Specialty L.P., Mylan Pharmaceuticals Inc., and Heather Bresch (collectively, “Mylan”), in accordance with a Stipulation of Class Action Settlement dated as of February 27, 2022 (the “Settlement Agreement”), which, together with the Exhibits attached to it, sets forth the terms and conditions for a proposed Settlement of the Action and Other Actions against Mylan and Viatris Inc. (collectively, the “Mylan Defendants”) and for dismissal of the Action and Other Actions with prejudice against the Mylan Defendants upon the terms and conditions set forth therein. The court has read and considered the Settlement Agreement and the Exhibits attached to it. Also, the court held a hearing on the motion on

March 11, 2022. Now, the court considers whether it should grant preliminary approval of that Settlement Agreement under Rule 23(e).

Rule 23(e) permits the parties to settle the claims of a certified class action, but “only with the court’s approval.” And, the court may approve a settlement only upon finding that it is “fair, reasonable, and adequate[.]” Fed. R. Civ. P. 23(e)(2). The Tenth Circuit has identified four factors that a district court must consider when assessing whether a proposed settlement is “fair, reasonable, and adequate”:

- (1) whether the proposed settlement was fairly and honestly negotiated;
- (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;
- (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and
- (4) the judgment of the parties that the settlement is fair and reasonable.

Rutter & Willbanks Corp. v. Shell Oil Co., 314 F.3d 1180, 1188 (10th Cir. 2002).

The settlement approval process typically transpires in two phases. *First*, the court considers whether preliminary approval of the settlement is appropriate. William B. Rubenstein, *Newberg on Class Actions* § 13:10 (5th ed.); *Freebird, Inc. v. Merit Energy Co.*, No. 10-1154-KHV, 2012 WL 6085135, at *4 (D. Kan. Dec. 6, 2012). “If the Court grants preliminary approval, it directs notice to class members and sets a hearing at which it will make a final determination on the fairness of the class settlement.” *In re Motor Fuel Temperature Sales Pracs. Litig.*, 286 F.R.D. 488, 492 (D. Kan. 2012); *see also Newberg on Class Actions* § 13:10 (“[T]he court’s primary objective [at the preliminary approval stage] is to establish whether to direct notice of the proposed settlement to the class, invite the class’s reaction, and schedule a final fairness hearing.” *Second*, “taking account of all of the information learned during [the preliminary approval] process, the court decides whether or not to give ‘final approval’ to the settlement.” *Newberg on Class Actions* § 13:10.

Because preliminary approval is just the first step of the approval process, courts apply a “less stringent” standard than they apply at the final approval stage. *Freebird*, 2012 WL 6085135, at *5. “[D]istrict courts have developed a jurisprudence whereby they undertake some review of the settlement at preliminary approval, but perhaps just enough to ensure that sending notice to the class is not a complete waste of time.” *Newberg on Class Actions* § 13:10. “The general rule [is] that a court will grant preliminary approval where the proposed settlement [is] neither illegal nor collusive and is within the range of possible approval.” *Id.* (internal citation omitted). “While the Court will consider [the Tenth Circuit’s] factors in depth at the final approval hearing, they are a useful guide at the preliminary approval stage as well.” *In re Motor Fuel Temperature Sales Pracs. Litig.*, 286 F.R.D. at 502–03.

Applying this governing legal standard, the court grants the Motion for Preliminary Approval of Settlement (Doc. 2590), as follows:

IT IS HEREBY ORDERED:

1. The court has reviewed the Settlement Agreement and preliminarily approves the Settlement between Plaintiffs and the Mylan Defendants set forth therein as fair, reasonable, and adequate, subject to further consideration at the Fairness Hearing described below.

2. As the court previously certified in its Memorandum and Order dated February 27, 2020 (ECF No. 2018-1), the classes are defined as follows, which are collectively referred to as the “Class”:

All persons and entities in the United States who paid or provided reimbursement for some or all of the purchase price of Branded or authorized generic EpiPens for the purpose of consumption, and not resale, by themselves, their family member(s), insureds, plan participants, employees, or beneficiaries, at any time between August 24, 2011, and November 1, 2020;

All persons and entities in the Antitrust States who paid or provided reimbursement for some or all of the purchase price of Branded EpiPens at any

time between January 28, 2013, and November 1, 2020, for the purpose of consumption, and not resale, by themselves, their family member(s), insureds, plan participants, employees, or beneficiaries.

The “Antitrust States” are: Alabama, California, Florida, Hawaii, Illinois, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New York, North Carolina, Tennessee, and Utah.

The following groups are excluded from the Class:

- a. Defendants and their officers, directors, management, employees, subsidiaries, and affiliates;
- b. Government entities, other than government-funded employee benefit plans;
- c. Fully insured health plans (i.e., plans that purchased insurance that covered 100% of the plan’s reimbursement obligations to its members);
- d. “Single flat co-pay” consumers who purchased EpiPens or generic EpiPens only via a fixed dollar co-payment that is the same for all covered devices, whether branded or generic (*e.g.*, \$20 for all branded and generic devices);
- e. Consumers who purchased or received EpiPens or authorized generic equivalents only through a Medicaid program;
- f. All persons or entities who purchased branded or generic EpiPens directly from defendants;
- g. The judges in this case and members of their immediate families;
- h. All third-party payors who own or otherwise function as a Pharmacy Benefit Manager or control an entity who functions as a Pharmacy Benefit Manager; and
- i. Individual consumers whose only purchases of an EpiPen occurred before March 13, 2014 (the Generic Start Date).

3. Also excluded from the Class are those persons and entities who timely and validly requested exclusion from the Class under the court’s Memorandum and Order dated October 13, 2020 (Doc. 2240), and are listed on Exhibit F to Class Plaintiffs’ Final Status Report

Re Implementation of Class Notice (Doc. 2323-1) as well as those persons excluded from the Class as set forth in the Pfizer Final Judgment (Doc. 2507 at 8).

4. The court preliminarily finds that the court should approve the proposed Settlement of the Action between Plaintiff Class Representatives and Mylan because: (i) it is the result of serious, extensive arm's-length and non-collusive negotiations; (ii) it falls within a range of reasonableness warranting final approval; (iii) it suffers no obvious deficiencies; and (iv) the proposed settlement deserves notice of the proposed Settlement to Class Members and further consideration at the Fairness Hearing described below.

5. The court will conduct a Fairness Hearing on July 6, 2022 at 9:30 a.m., Central Time, at the United States District Court for the District of Kansas, 500 State Avenue, Kansas City, Kansas 66101, Courtroom 643, (A) to determine (i) whether the proposed Settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate to the Class and should be finally approved by the court; (ii) whether the proposed Final Judgment and Order of Dismissal with Prejudice as provided under the Settlement Agreement should be entered as to the Mylan Defendants; (iii) whether the proposed Plan of Allocation is fair, reasonable, and adequate and should be approved; (iv) the amount of attorneys' fees, costs, and expenses that the court should award to Class Counsel; and (v) any service award to Plaintiff Class Representatives; (B) to hear any objections by Class Members to (i) the Settlement or Plan of Allocation; (ii) the award of attorneys' fees and expenses to Class Counsel; and (iii) service awards to Plaintiff Class Representatives; and (C) to consider such other matters the court deems appropriate. The court may adjourn the Fairness Hearing without further notice to the Class Members.

6. The court approves the form and content of the Notice substantially in the form annexed as Exhibit B to the Settlement Agreement.

7. The court approves the form and content of the Summary Notice and Proof of Claim forms (together, the “Notice Package”), substantially in the forms annexed as Exhibits C and D to the Settlement Agreement, respectively.

8. The court finds that the distribution and publication of the Notice and Notice Package substantially in the manner and form set forth in ¶¶ 10, 11 of this Order: (a) constitute the best notice to Class Members practicable under the circumstances; (b) are reasonably calculated, under the circumstances, to describe the terms and effect of the Settlement Agreement and of the Settlement and to apprise Class Members of their right to object to the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive such notice; and (d) satisfy all applicable requirements of the Federal Rules of Civil Procedure (including Rules 23(c)–(e)), the United States Constitution (including the Due Process Clause), the Rules of this court, and other applicable law.

9. The firm of A.B. Data, Ltd. (“Settlement Administrator”) is appointed to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below.

10. Not later than five business days after entry of this order (the “Notice Date”), the Settlement Administrator shall commence distributing the Notice Package to all Class Members who it can identify with reasonable effort and post it on the case-designated website, www.EpiPenClassAction.com, according to the Notice Plan in the Declaration of Eric Schachter filed in support of Preliminary Approval.

11. Not later than the Notice Date, the Settlement Administrator shall publish the Summary Notice, according to the Notice Plan in the Declaration of Eric Schachter filed in support of Preliminary Approval.

12. At least seven (7) calendar days prior to the Fairness Hearing, Class Counsel shall serve on Mylan's counsel and file with the court proof, by affidavit or declaration, of such distribution and publishing.

13. The Settlement Fund shall pay all fees and expenses incurred in identifying and notifying Class Members and in no event shall any of the Mylan Defendants' Released Parties bear any responsibility or liability for such fees or expenses.

14. The Settlement Administrator shall submit a projected budget to Class Counsel for performing its duties and shall not make expenditures that exceed the projected budget by more than five percent without the prior approval of Class Counsel. Consistent with the requirements of Rules 1, 23, and due process, the Settlement Administrator shall coordinate to minimize costs in effectuating its duties.

15. All determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class, shall bind all Class Members regardless of whether such persons or entities seek or obtain by any means, including, without limitation, by submitting a Proof of Claim or any similar documentation, any distribution from the Settlement Fund or the Net Settlement Fund.

16. Class Members who wish to participate in the Settlement shall complete and submit Proofs of Claim in accordance with the instructions contained therein. Unless the court orders otherwise, Class Members must postmark or submit electronically all Proofs of Claim, no later than July 25, 2022. Any Class Member who submits a Proof of Claim shall reasonably

cooperate with the Settlement Administrator, including by promptly responding to any inquiry made by the Settlement Administrator. Any Class Member who does not timely submit a Proof of Claim within the time provided shall be barred from sharing in the distribution of the proceeds of the Settlement but shall nonetheless be bound by the Settlement Agreement, the Judgment, and the releases therein, unless otherwise ordered by the court. Notwithstanding the foregoing, the Settlement Administrator may, in its discretion, accept late-submitted claims for processing so long as distribution of the Net Settlement Fund to Class Members is not materially delayed thereby.

17. Each Class Member must submit the Proof of Claim that: (a) is properly completed, signed, and submitted in a timely manner in accordance with the preceding paragraph; (b) is deemed adequate by the Settlement Administrator or Class Counsel; (c) if the person executing the Proof of Claim is acting in a representative capacity, include a certification of his or her current authority to act on behalf of the claimant; (d) is complete and contains no deletions or modifications of any of the printed matter contained therein; and (e) is signed under penalty of perjury. As part of the Proof of Claim, each claimant shall submit to the jurisdiction of the court with respect to the claim submitted.

18. Class Members who previously submitted a claim in connection with the settlement with the Pfizer Defendants in this Action shall not be required to submit a new claim in this Settlement, and the Distribution Amount for any Class Member's share of the Net Settlement Fund from this Settlement shall be combined with the Distribution Amount from the settlement with the Pfizer Defendants, if any, such that the Settlement Administrator may make one payment to each Class Member who submitted a timely and valid claim. Class Members

who did not previously submit a claim in connection with the settlement with the Pfizer Defendants in this Action shall only receive a payment for this Settlement.

19. Any Class Member may enter an appearance in the Action, at the Class Member's own expense, individually or through counsel of the Class Member's own choice. If a Class Member does not enter an appearance, Class Counsel will continue to represent that Class Member.

20. Any Class Member may appear at the Fairness Hearing and show cause why the court should or should not approve the proposed Settlement of the Action as fair, reasonable, and adequate, why the court should or should not enter a judgment thereon, why the court should or should not approve the Plan of Allocation, why the court should or should not award attorneys' fees and expenses to Class Counsel, or why the court should or should not award an amount of Service Awards to Plaintiff Class Representatives; provided, however, that no Class Member or any other person or entity shall be heard or entitled to contest such matters, unless that person or entity has delivered by hand or sent by First-Class Mail written objections and copies of any papers and briefs such that they are received, not simply postmarked, on or before June 8, 2022, by Rex A. Sharp, SHARP LAW, LLP, 4820 West 75th Street, Prairie Village, KS 66208, and Adam K. Levin, HOGAN LOVELLS US LLP, 555 13th Street, NW, Washington, DC 20004, and filed said objections, papers, and briefs with the Clerk of the United States District Court for the District of Kansas, 500 State Avenue, Kansas City, Kansas 66101, on or before June 8, 2022, unless otherwise ordered by the court. Any objections must: (i) state the name, address, and telephone number of the objector and must be signed by the objector even if represented by counsel; (ii) state that the objector is objecting to the proposed Settlement, Plan of Allocation, application for Attorneys' Fees and Expenses, and/or application for Service Awards to

Plaintiffs; (iii) state the objection(s) and the specific reasons for each objection, including any legal and evidentiary support the objector wishes to bring to the court's attention; (iv) state whether the objection applies only to the objector, to a subset of the Class, or to the entire Class; (v) identify all class actions to which the objector and his, her, or its counsel has previously objected; (vi) include documents sufficient to prove the objector's membership in the Class, such as the number of EpiPens purchased, acquired, or paid for during the Class Period, as well as the dates and prices of each such purchase, acquisition, or payment; (vii) state whether the objector intends to appear at the Fairness Hearing; (viii) if the objector intends to appear at the Fairness Hearing through counsel, state the identity of all attorneys who will appear on the objector's behalf at the Fairness Hearing; and (ix) state that the objector submits to the jurisdiction of the court with respect to the objection or request to be heard and the subject matter of the Settlement of the Action, including, but not limited to, enforcement of the terms of the Settlement. Any Class Member who does not make his, her, or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as set forth in the Settlement Agreement, to the Plan of Allocation, or to the award of fees, charges, and expenses to Class Counsel or any incentive awards to Plaintiff Class Representatives, unless otherwise ordered by the court. Class Members submitting written objections are not required to attend the Fairness Hearing, but any Class Member wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses must file a written objection and indicate in the written objection their intention to appear at the hearing and to include in their written objections the identity of any witnesses they may call to testify and copies of any exhibits they intend to introduce into evidence at the

Fairness Hearing. Class Members do not need to appear at the Fairness Hearing or take any other action to indicate their approval.

21. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the court, and shall remain subject to the jurisdiction of the court, until such time as such funds shall be distributed under the Settlement Agreement and/or further order(s) of the court.

22. All opening briefs and supporting documents in support of the Settlement, the Plan of Allocation, and any application by Class Counsel for attorneys' fees, charges, and expenses and Service Awards to Plaintiff Class Representatives shall be filed and served by no later than May 20, 2022, and any reply papers shall be filed and served no later than June 27, 2022. The Mylan Defendants' Released Parties shall have no responsibility for the Plan of Allocation or any application for attorneys' fees, charges, or expenses submitted by Class Counsel or any Service Award to Plaintiff Class Representatives, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

23. At or after the Fairness Hearing, the court shall determine whether it should approve the Plan of Allocation proposed by Class Counsel, and any application for attorneys' fees, charges, expenses, or awards. The court reserves the right to enter the Final Judgment approving the Settlement regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and/or charges and expenses.

24. All reasonable expenses incurred in identifying and notifying Class Members, as well as administering the Settlement Fund, shall be paid as set forth in the Settlement Agreement. In the event the Settlement is not approved by the court, or otherwise fails to become effective, neither Plaintiff Class Representatives nor any of their counsel shall have any

obligation to repay any amounts incurred and properly disbursed, except as set forth in the Settlement Agreement.

25. Neither this Order, the Settlement Agreement, nor any of its terms or provisions, nor any act performed or document executed under or in furtherance of the Settlement Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Plaintiffs' Released Claim, or of any wrongdoing or liability of the Mylan Defendants or Mylan Defendants' Related Parties, or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Mylan Defendants or Mylan Defendants' Related Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal.

26. The court reserves the right to adjourn the date of the Fairness Hearing without further notice to the members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The court may approve the Settlement, with such modifications as the Settling Parties may agree to, if appropriate, without further notice to the Class.

27. If the Settlement Agreement and the Settlement set forth therein is not approved or consummated for any reason whatsoever, the Settlement Agreement and Settlement and all proceedings had in connection therewith shall be without prejudice to the rights of the Settling Parties *status quo ante* as set forth in ¶ 7.2 of the Settlement Agreement.

28. Pending a final determination about the approval of the settlement, the court shall stay all proceedings in the Action and Other Actions for the Mylan Defendants, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Pending final determination of whether the court should approve the proposed

Settlement, neither Plaintiff Class Representatives nor any Class Member, directly or indirectly, representatively, or in any other capacity, nor anyone claiming through or on behalf of any such Class Members, shall commence or prosecute against any of the Mylan Defendants, any action or proceeding in any court or tribunal asserting any of the Plaintiffs' Released Claims.

29. The court retains exclusive jurisdiction over the Action and Other Actions to consider all further matters arising out of or connected with the Settlement.

IT IS THEREFORE ORDERED BY THE COURT THAT the Class Plaintiffs' Motion for Preliminary Approval of Settlement With Mylan (Doc. 2590) is granted.

IT IS SO ORDERED.

Dated this 11th day of March, 2022, at Kansas City, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge

APPROVED SCHEDULE FOR FINAL APPROVAL PROCESS

DATE	EVENT
March 10, 2022	Mylan provides Class Action Fairness Act Notice
March 11, 2022 at 9:30 am	Hearing on Preliminary Approval of Settlement
Five business days after the entry of this Order	Settlement Notice Program Begins
May 20, 2022	Plaintiffs file Motion for Final Approval of Settlement, Attorneys' Fees, Expenses, and Service Awards
June 8, 2022	Deadline to file Comments/Objections
June 27, 2022	Plaintiffs file Response to Objections for Final Approval of Settlement, Attorneys' Fees, Expenses, and Service Awards
July 6, 2022 at 9:30 am	Hearing on Final Approval of Settlement, Attorneys' Fees, Expenses, and Service Awards

EXHIBIT 4

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE SOLODYN (MINOCYCLINE
HYDROCHLORIDE) ANTITRUST
LITIGATION

MDL No. 2503

1:14-md-2503-DJC

THIS DOCUMENT RELATES TO:
ALL END-PAYOR ACTIONS

**[PROPOSED] ORDER PRELIMINARILY APPROVING END-PAYOR CLASS
PLAINTIFFS' SETTLEMENTS WITH IMPAX LABORATORIES, INC.**

WHEREAS, on March 28, 2018, Plaintiffs, United Food and Commercial Workers Local 1776 & Participating Employers Health and Welfare Fund; City of Providence, Rhode Island; Fraternal Order of Police, Fort Lauderdale Lodge 31 Insurance Trust Fund; International Union of Operating Engineers Local 132 Health and Welfare Fund; International Union of Operating Engineers Stationary Engineers Local 39 Health & Welfare Trust Fund; Painters District Council No. 30 Health and Welfare Fund; Plumbers & Pipefitters Local 178 Health & Welfare Trust Fund; Heather Morgan; Man-U Service Contract Trust Fund; Sheet Metal Workers Local No. 25 Health & Welfare Fund; Local 274 Health & Welfare Fund; and Allied Services Welfare Fund (collectively, "End-Payor Class Plaintiffs"), on behalf of themselves and the certified End-Payor Class, entered into a settlement agreement ("Impax Settlement"), which sets forth the terms and conditions of the parties' proposed settlement and the release and dismissal with prejudice of the End-Payor Class' claims against Impax Laboratories, Inc. ("Impax");

WHEREAS, on April 4, 2014, End-Payor Class Plaintiffs filed a Motion for Preliminary Approval of Proposed Class Action Settlement with Impax ("End-Payor Class Plaintiffs' Motion"), requesting the entry of an Order: (i) preliminarily approving the Impax Settlement; (ii)

approving the plan of allocation; (iii) approving the proposed notice to the Class; (iv) appointing A.B. Data, Ltd. (“A.B. Data”) to serve as claims administrator; (v) appointing The Huntington National Bank to serve as Escrow Agent; (vi) setting a schedule for final approval of the Impax Settlement; and (vii) staying End-Payor Class Plaintiffs’ litigation against Impax;

WHEREAS, Impax does not oppose End-Payor Class Plaintiffs’ Motion;

WHEREAS, the Court is familiar with and has reviewed the record in this case and has reviewed the Settlement Agreement, including the attached exhibits, and has found good cause for entering the following Order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

JURISDICTION

1. This Court has jurisdiction to enter this Order. The Court has jurisdiction over the subject matter of this action and over all parties to the action, including all members of the End-Payor Class.

PREVIOUSLY CERTIFIED CLASS

2. In light of this Court’s previous order dated October 16, 2017 [ECF No. 682] certifying the End-Payor Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3), and the now proposed settlement in the above-captioned action (the “Action”) with Impax, for purposes of this Settlement the Class is defined as follows:

All persons or entities in the United States and its territories and possessions, including the Commonwealth of Puerto Rico, who indirectly purchased, paid and/or provided reimbursement for some or all of the purchase price for Solodyn 45mg, 55mg, 65mg, 80mg, 90mg, 105mg, 115mg and/or 135mg tablets and/or generic versions of one or more of these dosages in Alabama, Alaska, Arizona, Arkansas, California, Florida,

Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, the District of Columbia and Puerto Rico, for consumption by themselves, their families, or their members, employees, insureds, participants, or beneficiaries, other than for resale, at any time from July 23, 2009 to February 25, 2018.

The following persons or entities are excluded from the End-Payor Class:

Defendant and their counsel, officers, directors, management, employees, subsidiaries, or affiliates;

All federal or state governmental entities, excluding cities, towns, or municipalities with self-funded prescription drug plans;

All persons or entities who purchased Solodyn or its generic equivalents for purposes of resale or directly from the Defendant or its affiliates;

Fully insured health plans (plans that purchased insurance from another third-party payor covering 100% of the plan's reimbursement obligations to its members);

Pharmacy Benefits Managers;

Flat co-payers (consumers who paid the same co-payment amount for brand and generic drugs); and

The judges in this case and any members of their immediate families.

PRELIMINARY APPROVAL OF SETTLEMENT

3. The terms of the Impax Settlement Agreement, dated March 28, 2018, including all exhibits thereto, are hereby preliminarily approved. This Order incorporates the Settlement

Agreement, and terms used in this Order that are defined in the Settlement Agreement have the same meanings. The Settlement Agreement was entered into after full fact and expert discovery, class certification and summary judgment/*Daubert* motions decided after extensive briefing and argument, and ten days of trial. The Settlement Agreement was concluded after arm's-length negotiations by experienced counsel on behalf of the certified End-Payor Class. Because the parties reached the settlement as a result of good-faith negotiations and after sufficient discovery, a presumption of fairness attaches to the settlement. *See In re Pharm. Indus. Avg. Wholesale Price Litig.*, 588 F.3d 24, 32-33 (1st Cir. 2009). Accordingly, the Court preliminarily finds that the Settlement is fair, reasonable and adequate, and in the best interests of the End-Payor Class, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and that preliminary approval is warranted.

4. Huntington Bank is hereby appointed as Escrow Agent pursuant to the Settlement Agreement.

5. A.B. Data is hereby appointed as claims administrator.

6. Pending further Order of the Court, all litigation activity against Impax on behalf of End-Payor Class Plaintiffs is hereby stayed, and all hearings, deadlines, and other proceedings related to End-Payor Class Plaintiffs' claims against Impax, other than those incident to the settlement process, are hereby taken off calendar. The stay shall remain in effect until such time that: (i) the Impax or End-Payor Class Plaintiffs exercise their right to terminate the Impax Settlement Agreement pursuant to its terms; (ii) the Settlement Agreement is terminated pursuant to its terms; or (iii) the Court renders a final decision regarding approval of the Impax Settlement, and, if it approves the Impax Settlement, enters final judgment and dismisses End-Payor Class Plaintiffs' claims against Impax with prejudice. Impax shall not be a party to the

ongoing proceedings in this case, and Impax is neither bound nor estopped by any findings made hereafter.

7. In the event that the Impax Settlement Agreement fails to become effective in accordance with its terms, or if an Order granting final approval to the Impax Settlement Agreement and dismissing End-Payor Class Plaintiffs' claims against Impax with prejudice is not entered or is reversed, vacated, or materially modified on appeal, this Order shall be null and void.

8. In the event the Impax Settlement Agreement is terminated, not approved by the Court, or the Impax Settlement does not become final pursuant to the terms of the Impax Settlement Agreement, litigation against Impax shall resume in a reasonable manner as approved by the Court upon joint application of End-Payor Class Plaintiffs and Impax.

APPROVAL OF SCHEDULE

9. A.B. Data and End-Payor Class Plaintiffs shall adhere to the following schedule:

- a. Within 5 days of the date of this Order, A.B. Data shall update the Class Website (www.solodyncase.com) to announce the Settlement.
- b. Within 5 days of the date of this Order, A.B. Data shall begin the process of providing notice to the Class of this Settlement, in accordance with the Plan of Notice.
- c. A.B. Data shall complete publication of Notice of the Settlement by June 11, 2018.
- d. Members of the End-Payor Class may object to the Impax Settlement not later than June 18, 2018.
- e. Class members who wish to object to the proposed Settlement and/or appear in person at the hearing on final approval of the settlement ("Fairness Hearing") must first

send an objection and, if intending to appear, a notice of intention to appear, along with a summary statement outlining the position(s) to be asserted and the grounds therefore, together with copies of any supporting papers or briefs, via first class mail, postage prepaid, to the Clerk of the U.S. District Court for the District of Massachusetts, United States Courthouse, 1 Courthouse Way, Boston, MA 02210, with copies to the following counsel:

Counsel for the End-Payor Class:

Steve D. Shadowen
Hilliard & Shadowen LLP
2407 S. Congress Ave., Ste. E 122
Austin, TX 78704
Tel: (855) 344-3298
Email: steve@hilliardshadowenlaw.com

Michael M. Buchman
Motley Rice LLC
600 Third Avenue, 21st Floor
New York, NY 10016
Tel: (212) 577-0040
Email: mbuchman@motleyrice.com

Counsel for Impax:

Lisa Jose Fales
J. Douglas Baldrige
Danielle R. Foley
Venable LLP
600 Massachusetts Ave NW
Washington, DC 20001
Tel: (202) 344-4000

The objection and/or notice of intention to appear shall state that they relate to *In re: Solodyn (Minocycline Hydrochloride) Antitrust Litigation*, MDL No. 2503 (D. Mass.). To be valid, any such objection to the Settlement and/or notice of intention to appear must be postmarked no later than June 18, 2018, and it must include the class member's name, address, telephone number, and signature. Except as herein provided, no person or entity shall be entitled to contest the terms of the proposed Settlement. All persons and entities who fail to file a notice of intention to

appear or a letter stating reasons for objecting as provided above shall be deemed to have waived any objections by appeal, collateral attack, or otherwise and will not be heard at the Fairness Hearing.

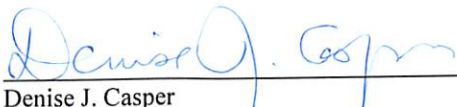
f. All briefs and materials in support of final approval of the settlements and entry of the final judgment proposed by the parties to the Settlement Agreement shall be filed with the Court no later than 30 days before the date of the Fairness Hearing.

g. A hearing on final approval of the settlement or Fairness Hearing shall be held before this Court on July 18, 2018, at 3 p.m. Eastern Time, in Courtroom 11 of the United States District Court for the District of Massachusetts, United States Courthouse, 1 Courthouse Way, Boston, MA 02210.

10. Neither this Order nor the Settlement Agreement nor any other Settlement-related document or anything contained herein or therein or contemplated hereby or thereby nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein or in any other Settlement-related document shall constitute, be construed as or be deemed to be evidence of or an admission or concession by Impax as to the validity of any claim that has been or could have been asserted against Impax or as to any liability of Impax or as to any matter set forth in this Order.

SO ORDERED:

Dated: April 5, 2018



Denise J. Casper
United States District Court Judge
U.S. District Court for the District of Massachusetts

Exhibit 5

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

IN RE: BROILER CHICKEN ANTITRUST LITIGATION	Case No. 1:16-cv-08637
THIS DOCUMENT RELATES TO: DIRECT PURCHASER ACTION	

**ORDER PRELIMINARILY APPROVING PROPOSED
SETTLEMENT BETWEEN DIRECT PURCHASER PLAINTIFF CLASS
AND FIELDALE FARMS CORPORATION AND CONDITIONALLY CERTIFYING
THE PROPOSED SETTLEMENT CLASS**

THIS CAUSE came before the Court on the Direct Purchaser Plaintiff Class’s Motion For Preliminary Approval Of Settlement Between Direct Purchaser Plaintiff Class And Fieldale Farms Corporation And For Conditional Certification Of The Proposed Settlement Class. Direct Purchaser Plaintiffs (“Plaintiffs”) have entered into a Settlement Agreement with Defendant Fieldale Farms Corporation (“Settling Defendant” or “Fieldale Farms”). The Court, having reviewed the Motion, its accompanying memorandum, and the exhibits thereto, the Settlement Agreement, and the file, hereby:

ORDERS AND ADJUDGES:

Preliminary Approval of Settlement Agreement

1. This Court has jurisdiction over this action and each of the parties to the Settlement Agreement. Upon review of the record, the Court finds that the proposed Settlement Agreement, which was arrived at by arm’s-length negotiations by highly experienced counsel, falls within the range of possible approval and is hereby preliminarily approved, subject to further consideration at

the Court's Fairness Hearing. The Court preliminarily finds that the Settlement encompassed by the Settlement Agreement is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Class, raises no obvious reasons to doubt its fairness, and raises a reasonable basis for presuming that the Settlement and its terms satisfy the requirements of Federal Rules of Civil Procedure 23(c)(2) and 23(e) and due process so that Notice of the Settlement should be given.

Class Certification

2. This Court certifies a Settlement Class defined as:

All persons who purchased Broilers directly from any of the Defendants or any co-conspirator identified in this action, or their respective subsidiaries or affiliates for use or delivery in the United States from at least as early as January 1, 2008 until the date of this Preliminary Approval Order. Specifically excluded from this Class are the Defendants, the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant. Also excluded from this Class are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, any juror assigned to this action, and any co-conspirator identified in this action.

The Court appoints the law firms of Lockridge Grindal Nauen P.L.L.P., and Pearson, Simon & Warshaw, LLP as co-lead counsel for the Settlement Class.

Class Notice and Fairness Hearing

3. Co-Lead Counsel for Plaintiffs shall submit for the Court's approval a Motion to Approve a Plan of Notice of Settlement for this and any other settlements at an appropriate time prior to moving for final approval of the Fieldale Farms Settlement Agreement.

4. Co-Lead Counsel shall identify a date in consultation with the Court for the Final Approval Hearing concerning the Fieldale Farms Settlement Agreement and any other Settlement Agreements included in the Plan of Notice.

Other Provisions

6. Terms used in this Order that are defined in the Settlement Agreement are, unless otherwise defined herein, used as defined in the Settlement Agreement.

7. In aid of the Court's jurisdiction to implement and enforce the proposed Settlement, as of the date of entry of this Order, Plaintiffs and all members of the Class shall be preliminarily enjoined from commencing or prosecuting any action or other proceeding against the Settling Defendant asserting any of the Claims released in Section II(B) of the Settlement Agreement pending final approval of the Settlement Agreement or until such time as this Court lifts such injunction by subsequent order.

8. If the Settlement Agreement is terminated in accordance with its provisions, or is not approved by the Court or any appellate court, then the Settlement Agreement and all proceedings in connection therewith shall be vacated, and shall be null and void, except insofar as expressly provided otherwise in the Settlement Agreement, and without prejudice to the *status quo ante* rights of Plaintiffs, the Settling Defendant, and the members of the Class.

9. If the Settlement Agreement is terminated or is ultimately not approved, the Court will modify any existing scheduling orders as necessary to ensure that the Plaintiffs and Settling Defendant will have sufficient time to prepare for the resumption of litigation.

IT IS SO ORDERED.



DATED: August 18, 2017

HON. THOMAS M. DURKIN
United States District Judge

Exhibit 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE TURKEY ANTITRUST LITIGATION,

This Document Relates To:

Direct Purchaser Plaintiff Action

Civil No. 1:19-cv-08318

Hon. Sunil R. Harjani

Hon. Keri L. Holleb Hotaling

**LONG-FORM SETTLEMENT AGREEMENT BETWEEN
DIRECT PURCHASER PLAINTIFFS AND CARGILL**

THIS SETTLEMENT AGREEMENT (“Settlement Agreement”) is made and entered into as of January 8, 2025 (“Execution Date”), by and between the Direct Purchaser Plaintiffs (“DPPs”),¹ through Interim Co-Lead Counsel (as hereinafter defined) for the proposed Settlement Class (as hereinafter defined), and Cargill, Incorporated and Cargill Meat Solutions Corporation and all of their predecessors, successors, assigns, and Affiliates (as hereinafter defined) (including without limitation any affiliates who are alleged co-conspirators); and any and all past, present, and future parents, owners, subsidiaries, divisions, departments (collectively referred to as “Settling Defendant” or “Cargill”). DPPs, on behalf of themselves and the Settlement Class, and Cargill are referred to herein collectively as the “Parties” or individually as a “Party.”

WHEREAS, DPPs on behalf of themselves and as representatives of the putative class of similarly situated persons or entities allege in the Action, among other things, that Cargill participated in a conspiracy — with other Defendants and alleged non-Defendant co-conspirators

¹ As used herein, “DPPs” means Maplevale Farms, Inc., and John Gross and Company, Inc.

in the Action— from at least January 1, 2010 to January 1, 2017 to fix, raise, maintain, and stabilize the price of Turkeys (as hereinafter defined);

WHEREAS, Interim Co-Lead Counsel have been appointed by the Court to represent, on an interim basis, the putative class of direct purchasers of Turkeys (as hereinafter defined);

WHEREAS, the Parties wish to resolve all claims asserted and all claims that could have been asserted against Cargill in any way arising out of or relating in any way to the direct purchase of Turkeys (as hereinafter defined) produced, processed or sold by Cargill or any of the Defendants or their alleged co-conspirators;

WHEREAS, counsel for the Parties have engaged in arm's-length negotiations, including mediation with a nationally recognized and highly experienced mediator, on the terms of this Settlement Agreement, and this Settlement Agreement embodies all of the terms and conditions of the settlement;

WHEREAS, DPPs have concluded, after investigation of the facts and after considering the circumstances and the applicable law, that it is in the best interests of DPPs to enter into this Settlement Agreement with Cargill to avoid the uncertainties of further complex litigation, and to obtain the benefits described herein for the Settlement Class (as hereinafter defined), and, further, that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of DPPs and the Settlement Class;

WHEREAS, DPPs and Interim Co-Lead Counsel believe that the Settlement Fund (as hereinafter defined) reflects fair, reasonable and adequate compensation for the Settlement Class (as hereinafter defined) to release, settle and discharge their claims that they were overcharged by the alleged anticompetitive conduct of which Cargill is accused;

WHEREAS, Cargill, notwithstanding its beliefs that the claims that are or could be asserted by DPPs against it are without merit, that it has legitimate defenses to any such claims, and that it would ultimately prevail at trial on such claims, enters into this Settlement Agreement to avoid the costs, expenses, and uncertainties of this complex litigation, and thereby put this controversy to rest;

WHEREAS, DPPs, notwithstanding their belief that they would ultimately prevail at trial and establish liability by Cargill, for the conspiracy they have alleged, enter into this Settlement Agreement to avoid the costs, expenses, and uncertainties of this complex litigation; and

WHEREAS, both Parties wish to preserve all arguments, defenses and responses to all claims in the Action, including any arguments, defenses and responses to any proposed litigation class proposed by DPPs in the event this Settlement does not obtain Final Approval;

NOW THEREFORE, in consideration of the foregoing, the terms and conditions set forth below, and other good and valuable consideration, it is agreed by and among the Parties that the claims of the DPPs be settled, compromised, and dismissed on the merits with prejudice as to Cargill subject to Court approval and that Cargill be forever fully discharged and released from any and all claims covered by this Settlement Agreement:

1. General Definitions. The terms below and elsewhere in this Settlement Agreement with initial capital letters shall have the meanings ascribed to them for purposes of this Settlement Agreement.

- a. “Action” means the putative class action filed by DPPs in the above-captioned proceeding as well as all putative class action and direct action lawsuits which have been consolidated for pretrial purposes before the Hon. Sunil R. Harjani, in the United States District Court for the Northern District

of Illinois under the title *In re Turkey Antitrust Litigation*, along with any others that are pending or which may be filed based on substantially similar allegations.

- b. “Affiliate” means with respect to any person, entity or company, a person, entity, or company that directly or indirectly controls, is controlled by or is under common control with such person, entity or company.
- c. “Cargill Released Parties” means, collectively and individually, Cargill (as defined above) together with any and all of Cargill’s past, current, and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities, Affiliates, associates, divisions, joint ventures, predecessors, successors and each of their respective past or present, direct or indirect, officers, directors, trustees, partners, managing directors, shareholders, managers, members, attorneys, equity holders, agents, beneficiaries, executors, insurers, advisors, assigns, heirs, legal or other representatives. Notwithstanding the foregoing, “Cargill Released Parties” does not include any Defendant other than Cargill (as defined above) named by DPPs in the Action, either explicitly or as a third-party beneficiary.
- d. “Complaint” means the DPPs’ Third Amended Class Action Complaint (ECF No. 665).
- e. “Court” means the United States District Court for the Northern District of Illinois and the Honorable Sunil R. Harjani and the Honorable Keri L. Holleb Hotaling or their successors, or any other court in which the Action is proceeding.

- f. “Defendant” means any named defendant in the Action. For the avoidance of doubt, “Defendant” includes any defendants that have been dismissed from the Action.
- g. “Escrow Account” means the escrow account established with the escrow agent to receive and maintain funds contributed by Cargill for the benefit of the Settlement Class.
- h. “Escrow Agreement” means that certain agreement between the escrow agent that holds the Settlement Fund and DPPs (by and through Interim Co-Lead Counsel) pursuant to which the Escrow Account is established and funded for the benefit of the Settlement Class, as set forth in Paragraphs 8 and 9 below.
- i. “Fairness Hearing” means a hearing by the Court to determine whether the Settlement Agreement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.
- j. “Final Approval” means an order and judgment by the Court which finally approves this Settlement Agreement, including all of its material terms and conditions without modification, and the settlement pursuant to Federal Rule of Civil Procedure 23 and dismisses Cargill with prejudice from the Action.
- k. “Final Judgment” means the first date upon which both of the following conditions shall have been satisfied: (a) Final Approval; and (b) either (1) no appeal or petition to seek permission to appeal the Court’s Final Approval has been made within the time for filing or noticing any appeal

under the Federal Rules of Appellate Procedure, *i.e.*, thirty (30) days after entry of the order of Final Approval; or (2) if any timely appeals from the Final Approval or notices of appeal from the Final Approval are filed, (i) the date of final dismissal of all such appeals or the final dismissal of any proceeding on certiorari or otherwise, or (ii) the date the Final Approval is finally affirmed on appeal and affirmance is no longer subject to further appeal or review.

- l. “Interim Co-Lead Counsel” means Lockridge Grindal Nauen PLLP and Hagens Berman Sobol Shapiro LLP as appointed by the Court on an interim basis to represent the putative class of direct purchasers of Turkey.
- m. “Preliminary Approval” means an order by the Court to preliminarily approve this Settlement Agreement pursuant to Federal Rule of Civil Procedure 23.
- n. “Released Claims” shall have the meaning set forth in Paragraph 16 of this Settlement Agreement.
- o. “Releasing Parties” means, collectively and individually, DPPs, the Settlement Class, and all members of the Settlement Class, including the DPPs, each on behalf of themselves and their respective predecessors, successors, and all of their respective past, present and future (i) direct and indirect parents, subsidiaries, associates and Affiliates, (ii) agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions, and (iii) shareholders, partners, directors, officers, owners of any kind, principals, members, agents,

employees, contractors, insurers, heirs, executors, administrators, devisees, representatives; the assigns of all such persons or entities, as well as any person or entity acting on behalf of or through any of them in any capacity whatsoever, jointly and severally; and also means, to the full extent of the power of the signatories hereto to release past, present and future claims, persons or entities acting in a private attorney general, qui tam, taxpayer or any other capacity, whether or not any of them participate in the Settlement.

- p. “Settlement” means the settlement of all claims that are or could have been asserted by DPPs and the Settlement Class in the Action according to the terms set forth in the Settlement Agreement.
- q. “Settlement Administrator” means the firm retained to disseminate the Settlement Class Notice and to administer the payment of Settlement Funds to the Settlement Class, subject to approval of the Court.
- r. “Settlement Class” means the class defined in Paragraph 5 below, excluding all persons who file a valid request for exclusion from the Settlement.
- s. “Settlement Class Notice” means any notice sent to the Settlement Class pursuant to Preliminary Approval or otherwise approved by the Court pursuant to Federal Rule of Civil Procedure 23.
- t. “Settlement Class Period” means January 1, 2010, through January 1, 2017.
- u. “Settlement Fund” means \$32,500,000 (thirty-two million, five hundred thousand U.S. dollars) (the “Settlement Sum”), the amount Cargill shall pay or cause to be paid into a non-reversionary settlement fund. The Settlement Fund will be held in an interest-bearing Escrow Account maintained by an

escrow agent on behalf of the Settlement Class, pursuant to Paragraphs 8 and 9 below, and shall include any interest accruing with in the interest-bearing Escrow Account. The Settlement Fund will be used to pay all valid settlement claims submitted by Settlement Class members, as well as all settlement notice and administration costs, and all attorneys' fees and any service awards approved by the court. For the avoidance of doubt, the Settlement Sum is the maximum amount that Cargill will be obligated to pay in consideration of the Settlement, and under no circumstances will Cargill be obligated to provide any additional monetary consideration in connection with the Settlement. The Settlement Sum may be reduced under the conditions set forth in Paragraph 11(c), below.

- v. "Turkey" means turkey meat, which may be sold in a variety of forms, including fresh or frozen, ground or parts, and raw or cooked. Turkey includes, but is not limited to: breasts, wings, drums, legs, thighs, tenderloins, necks, tails, gizzards, feet, trim, tenders, mechanically separated turkey ("MST"), ground turkey, and further processed and value added turkey products. Turkey also includes, but is not limited to, products containing turkey meat such as lunch meat, deli meat, sausage, franks, bacon, and corn dogs.
- w. The term "days," when used in this Settlement Agreement to specify a deadline or time period by which some event will occur, shall mean the number of calendar days stated, excluding the day that triggers the period, except that if the last day is a Saturday, Sunday, or legal holiday, the period

shall continue to run until the next day that is not a Saturday, Sunday, or legal holiday.

2. The Parties' Efforts to Effectuate this Settlement Agreement. The Parties will cooperate in good faith and use their best efforts to seek the Court's Preliminary Approval and Final Approval of the Settlement Agreement.

3. Litigation Standstill.

- a. DPPs shall cease all litigation activities against Cargill except to the extent expressly authorized in the Settlement Agreement. Cargill and its counsel shall cease all litigation activities against DPPs except to the extent expressly authorized in the Settlement Agreement or as it pertains to any cooperation terms arising under Paragraph 10 hereof. None of the foregoing provisions shall be construed to prohibit DPPs from (1) seeking appropriate discovery from non-settling Defendants or alleged co-conspirators or any other person other than Cargill and (2) seeking to prove the conspiracy alleged in this Action. Once the Parties have executed the Settlement Agreement, Cargill shall cease all litigation activities against the putative DPP class, except to the extent any putative class member has filed or files a direct action complaint in the Action ("Direct Action Plaintiff").² No Mayer Brown attorney who has represented Cargill in this Action may

² For the avoidance of doubt, "Direct Action Plaintiffs" includes all plaintiffs who have filed or may file direct action lawsuits based on factual allegations that are substantially similar to those asserted in the Action, including but not limited to the presently pending actions *Winn-Dixie Stores, Inc., et al. v. Agri Stats, Inc., et al.*, No. 1:21-cv-04131 (N.D. Ill.), *Amory Investments LLC v. Agri Stats, Inc., et al.*, No. 1:21-cv-06600 (N.D. Ill.), *Aramark Food and Support Servs. Grp., Inc. v. Agri Stats, Inc., et al.*, No. 1:23-cv-4404 (N.D. Ill.), and *Carina Ventures LLC v. Agri Stats, Inc., et al.*, No. No. 1:23-cv-16948 (N.D. Ill.).

directly assist the Mayer Brown attorneys representing Foster Farms in its defense of claims asserted against it in the putative DPP class action for so long as Mayer Brown represents Cargill in the Action.

- b. This litigation standstill precludes Cargill or Cargill's counsel from directly assisting any non-settling Defendant in this Action in opposing the DPPs' motion for class certification, making oral arguments to the presiding court or conducting direct or cross-examination of witnesses on merits- or class-related issues that are solely applicable to DPPs or the putative DPP class (but in no event, will Cargill's attorneys be the attorneys arguing on behalf of multiple Defendants on issues that apply to both DPPs and any other plaintiffs), working with expert witnesses or on expert materials in connection with opinion testimony and disclosures that are specifically and exclusively related to the putative DPP class action, providing documents for use in the putative DPP class action that have not otherwise been produced in discovery, or through the provision of documents, affidavits or declarations for use in the putative DPP class action (not requested by DPPs) or by offering witnesses at trial (not requested by the DPPs) in any trial in which DPPs are the only plaintiffs; provided however, that none of the foregoing provisions shall be construed to limit Cargill's ability to fully defend itself against claims asserted by Direct Action Plaintiffs or any other parties other than DPPs in the Action or from coordinating with non-settling Defendants in the joint defense of such claims, including through the retention and disclosure of joint experts as to such claims. Opinions

disclosed by any such experts retained jointly by Cargill and non-settling Defendants will be used affirmatively by Cargill only in the defense of claims asserted by Direct Action Plaintiffs or any other parties other than DPPs in the Action. For the avoidance of doubt, nothing in the foregoing shall limit any Mayer Brown attorney who has represented Cargill in this Action from continuing to represent Cargill against claims asserted by Direct Action Plaintiffs or any other parties other than DPPs in the Action. In the event that Cargill fully settles with all plaintiffs in the Action, Cargill and Cargill's attorneys shall cease any and all litigation activities in this Action (provided, however, that Cargill may reinstate litigation activities should new plaintiffs assert claims in the Action). The Parties' litigation standstill shall cease in the event that the Settlement is terminated for any reason set forth in the Parties' Settlement Agreement.

4. Motion for Preliminary Approval. No later than seven (7) days after the Execution Date, DPPs will move the Court for Preliminary Approval of this Settlement. A reasonable time in advance of submission to the Court, the papers in support of the motion for Preliminary Approval shall be provided by Interim Co-Lead Counsel to Cargill for its review. To the extent that Cargill objects to any aspect of the motion, it shall communicate such objection to Interim Co-Lead Counsel and the Parties shall meet and confer to resolve any such objection. The Parties shall take all reasonable actions as may be necessary to obtain Preliminary Approval and certification of the Settlement Class for settlement purposes.

5. Certification of a Settlement Class. As part of the motion for Preliminary Approval of this Settlement, DPPs shall seek, and Cargill shall take no position with respect to,³ appointment of Interim Co-Lead Counsel as Settlement Class Counsel for purposes of this Settlement and certification in the Action of the following Settlement Class for settlement purposes only:

All persons and entities who directly purchased Turkey from any Defendant or alleged co-conspirator in the United States at any time during the Settlement Class Period. Specifically excluded from the Settlement Class are Defendants and any alleged co-conspirators identified in the Action; the officers, directors or employees of any Defendant or alleged co-conspirator; any entity in which any Defendant or alleged co-conspirator has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant or alleged co-conspirator. Also excluded from the Settlement Class are any federal, state or local governmental entities, any judicial officer presiding over the Action and the members of his/her immediate family and judicial staff, and any juror assigned to the Action.

6. Settlement Class Notices. After Preliminary Approval, and subject to approval by the Court of the means for dissemination:

- a. A reasonable time in advance of submission to the Court for approval, or within a reasonable time in advance of dissemination if Court approval is not required, proposed communications to the Settlement Class regarding the Settlement (including, but not limited to, short-form and long-form notices and advertisements) shall be provided by Interim Co-Lead Counsel to Cargill for its review. To the extent that Cargill has edits or comments to the class notices, Interim Co-Lead Counsel will consider such edits. Each Party reserves all rights in the event that disputes as to form or contents of

³ By agreeing not to object to the proposed Settlement Class and appointment of Interim Co-Lead Counsel as Settlement Class Counsel, Cargill is not waiving any rights, arguments or defenses and Cargill expressly preserves all such rights, arguments and defenses including with respect to any situation where the Settlement Agreement is not approved in all material respects by the Court.

class notices cannot be resolved informally, and for the avoidance of doubt, any litigation or disputed motions practice arising between the Parties concerning such disputes shall not be subject to the litigation standstill obligations set forth in Paragraph 3 hereof.

- b. Individual notice of this Settlement shall be mailed, emailed, or otherwise sent by the Settlement Administrator, at the direction of Interim Co-Lead Counsel, to potential members of the Settlement Class, in conformance with a notice plan to be approved by the Court.
- c. Neither the Settlement Class, Interim Co-Lead Counsel, nor Cargill shall have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing notice to the Settlement Class or obtaining approval of the Settlement or administering the Settlement. Such fees, costs, or expenses shall be paid solely from the Settlement Fund, subject to any necessary Court approval.
- d. Cargill shall not object to Interim Co-Lead Counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to \$250,000 to pay the costs for notice and for Preliminary Approval, Final Approval, and administration of the claims process for this Settlement Agreement.
- e. Interim Co-Lead Counsel shall use best efforts to send out notice to the Settlement Class within twenty-one (21) days of Preliminary Approval by the Court of the Settlement Agreement. Any costs of notice actually incurred that Interim Co-Lead Counsel are permitted to withdraw from the Settlement Fund up to \$250,000, either pursuant to the Parties' Settlement

Agreement or order of the Court, shall be nonrefundable if, for any reason, the Settlement Agreement is terminated according to its terms or is not finally approved by the Court.

7. Motion for Final Approval and Entry of Final Judgment. If the Court grants Preliminary Approval and preliminarily certifies the Settlement Class, then DPPs, through Interim Co-Lead Counsel — in accordance with the schedule set forth in the Court’s Preliminary Approval — shall submit to the Court a separate motion for Final Approval of this Settlement Agreement by the Court. A reasonable time in advance of submission to the Court, the papers in support of the motion for Final Approval shall be provided by Interim Co-Lead Counsel to Cargill for its review. To the extent that Cargill objects to any aspect of the motion, it shall communicate such objection to Interim Co-Lead Counsel and the parties shall meet and confer to resolve any such objection. The motion for Final Approval shall seek entry of an order and Final Judgment:

- a. Finally approving the Settlement Agreement as being a fair, reasonable, and adequate settlement for the Settlement Class within the meaning of Federal Rules of Civil Procedure 23, and directing the implementation, performance, and consummation of the Settlement Agreement and its material terms and conditions, without material modification of those terms and conditions;
- b. Determining that the Settlement Class Notice constituted the best notice practicable under the circumstances of this Settlement Agreement and the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;

- c. Dismissing all complaints asserted by Releasing Parties in the Action with prejudice as to Cargill without further costs or fees;
- d. Discharging and releasing the Cargill Released Parties from all Released Claims;
- e. Enjoining the Releasing Parties from suing any of the Cargill Released Parties for any of the Released Claims;
- f. Filing a declaration prepared by counsel for Cargill confirming that Cargill has provided the appropriate notice pursuant to the Class Action Fairness Act, 28 U.S.C. §1711 *et seq.* (“CAFA”);
- g. Reserving continuing and exclusive jurisdiction over the Settlement Agreement for all purposes; and
- h. Determining under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to Cargill shall be final and appealable and entered forthwith.

The Parties shall use all best efforts to obtain Final Approval of the Settlement Agreement without modification to any of its material terms and conditions.

8. Escrow Account. The Escrow Account shall be administered by Interim Co-Lead Counsel for the DPPs and Settlement Class under the Court’s continuing supervision and control pursuant to the Escrow Agreement.

9. Settlement Consideration. In consideration for the release of Released Claims, the dismissal of the Action, and the other material terms and conditions herein, within twenty-one (21) days after Preliminary Approval is granted by the Court, Cargill will pay \$32,500,000 (thirty-two million, five hundred thousand U.S. dollars) into the Escrow Account.

10. Cooperation. Cooperation by Cargill is a material term of the Settlement Agreement and shall include the following once the Settlement becomes final:

- a. Notwithstanding anything to the contrary set forth in Paragraph 3, above, once Final Judgment has occurred, Cargill agrees to use reasonable efforts to provide declarations or affidavits relating to whether documents identified in Appendix A of the parties' Evidentiary Stipulation dated December 20, 2024, satisfy the factual predicates for a record of regularly conducted activity within the meaning of F.R.E. 803(6), if reasonably requested by the DPPs in connection with this Action. Additionally, Cargill agrees to use reasonable efforts to provide comparable declarations or affidavits relating to up to 30 additional documents not on the aforementioned Appendix A.
- b. DPPs will identify up to three (3) then-current employees of Cargill who will appear as witnesses at trial if requested by DPPs, assuming they remain employed at the time of trial. This limitation does not apply to former employees of Cargill who could be called at trial or who agree to voluntarily appear at trial.

11. Opt-Out Reduction. DPPs have disclosed expert opinion testimony in the Action, which includes an analysis of certain transactional sales data indicating that Cargill's direct Turkey sales during the Settlement Class Period to the Settlement Class totaled approximately \$7,830,125,134 ("Cargill Sales Data"). By reference to the Cargill Sales Data, the Parties will enter into a separate confidential letter agreement no later than February 18, 2025, that summarizes the dollar value of each Settlement Class member's direct purchases of Turkey from Cargill during

the Settlement Class Period. This letter agreement will be used to calculate the percentage of Cargill's Turkey sales during the Settlement Class Period to Settlement Class members, including Affiliates and assigns thereof, who (1) timely and validly request to be excluded from the Settlement in accordance with the applicable provisions set forth in the Settlement Agreement and order preliminarily approving the Settlement or (2) file a direct action complaint related to this Action before the deadline to request exclusion ("Opt-Out Percentage").

- a. Any Settlement Class member, or Affiliate or assign thereof, who requests to be excluded from the Settlement with respect to an assigned claim must identify the assignor, the assignee, and the total value of direct Turkey purchases during the Settlement Class Period from each Defendant or alleged co-conspirator that is subject to the assignment.
- b. Within seven (7) days after the deadline to request exclusion from the Settlement, the Settlement Administrator will provide to counsel for the Parties a list of Settlement Class members, including Affiliates or assigns thereof, who timely and validly requested exclusion, along with the information described in Paragraph 11(a), above. The Parties will then meet and confer to determine the Opt-Out Percentage. If the Parties are unable to agree in writing on the Opt-Out Percentage at least fourteen (14) days before the deadline for DPPs to move for Final Approval of the Settlement, the matter will be submitted for confidential mediation by a mediator jointly selected by the Parties. If mediation is unsuccessful, the Opt-Out Percentage shall be determined by way of final, binding, non-appealable decision by an

arbitrator jointly selected by the Parties, who will choose between final proposals made by each of the Parties.

- c. If the Opt-Out Percentage exceeds a certain number (“Opt-Out Reduction Threshold”) provided for in a separate confidential letter agreement among the Parties, available to the Court under seal upon request (“Confidential Letter Agreement”), then the Settlement Sum shall be reduced by a percentage amount that is equal to the Opt-Out Percentage less the Opt-Out Reduction Threshold. However, DPPs will take from the Settlement Fund the amount reduced from the Settlement Sum in accordance with this Paragraph 11(c) and do the following: (1) refund 75% of the amount to Cargill and (2) deposit 25% of the amount into an Opt-Out Fee and Expense Account, to be paid to DPPs’ counsel, upon application and approval by the Court. In the event that the Court does not approve any DPP counsel’s payment request, any funds in the Opt-Out Fee and Expense Account shall be returned to the Settlement Fund. By way of example, if the Opt-Out Percentage exceeds the Opt-Out Reduction Threshold by 2%, then the Settlement Sum will be reduced by \$650,000 (2% of the original Settlement Sum (the difference between the Opt-Out Reduction Threshold and the Opt-Out Percentage)), \$487,500 (75% of the amount by which the Settlement Sum has been reduced) will be refunded to Cargill, and \$162,500 (25% of the amount by which the Settlement Sum has been reduced) will be deposited into the Opt-Out Fee and Expense Account.

12. Additional Reduction Term. DPPs have been provided with a copy of the agreement entered into by certain Defendants dated March 28, 2024 (hereinafter referred to as “Defendants’ Agreement”). The defined terms in Defendants’ Agreement shall have the same meaning when used in this Paragraph 12. DPPs agree that notwithstanding anything to the contrary contained in this Settlement Agreement, DPPs shall reduce the dollar amount collectible from the Parties to the Defendants’ Agreement pursuant to any Final Judgment by a percentage equal to the Sharing Percentage of Cargill, calculated pursuant to Section 4 and Exhibits A and B of Defendants’ Agreement (as illustrated by the Appendix to Defendants’ Agreement) as if Cargill had not settled, had been found liable on the claim, and was a Sharing Party with respect to the Final Judgment. DPPs agree that this undertaking is also for the benefit of any Defendant that is a Party to the Defendants’ Agreement and that this undertaking may be enforced by any or all of such Defendants as third party beneficiaries thereof. Any ambiguity in this Paragraph 12 or inconsistency between this Settlement Agreement and the Defendants’ Agreement shall be resolved in favor of the Defendants’ Agreement, including without limitation, Sections 6.D.1 and 6.D.2 thereof. DPPs further represent and warrant that they have not reached any agreement to provide any portion of the settlement proceeds provided hereunder to any person or entity that is not explicitly identified as a releasor in this Settlement Agreement, except for the proceeds received by DPPs’ attorneys for payment of attorneys’ fees.

13. Qualified Settlement Fund. The Parties agree to treat the Settlement Fund as being at all times a “Qualified Settlement Fund” within the meaning of Treas. Reg. § 1.468B-1, and to that end, the Parties shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. In addition, Interim Co-Lead Counsel shall timely make such elections as necessary or advisable to carry out the provisions of

this Paragraph 13, including the relation-back election (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Interim Co-Lead Counsel to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Settlement Funds being a Qualified Settlement Fund within the meaning of Treas. Reg. § 1.4688-1. Interim Co-Lead Counsel shall timely and properly file all information and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k), (1)). Such returns shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund. Cargill shall not be responsible for the filing or payment of any taxes or expenses connected to the Qualified Settlement Fund.

14. Distribution of Settlement Fund to Settlement Class. Members of the Settlement Class shall be entitled to look solely to the Settlement Fund for settlement and satisfaction of the Settlement Agreement or in connection with any of the Released Claims against the Cargill Released Parties and shall not be entitled to any other payment or relief from the Cargill Released Parties. Except as provided by order of the Court, no member of the Settlement Class shall have any interest in the Settlement Fund or any portion thereof. DPPs, members of the Settlement Class, and their counsel will be reimbursed solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees and expenses and the costs of notice of the Settlement Agreement to potential members of the Settlement Class. Cargill and the other Cargill Released Parties shall not be liable for any costs, fees, or expenses of any of DPPs' and Interim Co-Lead

Counsel's attorneys, experts, advisors, or representatives, but all such costs and expenses as approved by the Court shall be paid out of the Settlement Fund.

15. Fee Awards, Costs and Expenses, and Service Awards to DPPs. Subject to Interim Co-Lead Counsel's sole discretion as to timing, Interim Co-Lead Counsel will apply for a fee award, plus expenses and costs incurred, and service awards to the DPPs to be paid from the Settlement Fund. Cargill shall not oppose such a motion. Cargill shall have no responsibility, financial obligation, or liability for any such fees, costs, expenses, or awards, which shall be paid exclusively from the Settlement Sum.

16. Settlement Release. Upon Final Judgment, the Releasing Parties shall be deemed to have fully, finally and forever completely compromised, settled, released, acquitted, resolved, relinquished, waived, and discharged the Cargill Released Parties from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any member of the Settlement Class has objected to the Settlement or makes a claim upon or participates in the Settlement, whether directly, representatively, derivatively or in any other capacity) that the Releasing Parties ever had, now have, or hereafter can, shall, or may ever have, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, causes of action, injuries, losses, or damages arising from or in connection with any act or omission through date of the order granting Preliminary Approval of this Settlement Agreement relating to or referred to in the Action or arising from the factual predicate of the Action (the "Released Claims"). Notwithstanding the above, "Released Claims" do not include (i) claims asserted against any Defendant other than the Cargill Released Parties nor (ii) any claims wholly unrelated to the allegations in the Action that are based on breach of contract, any negligence,

personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, or securities claim. This reservation of claims set forth in (i) and (ii) of this Paragraph does not impair or diminish the right of the Cargill Released Parties to assert any and all defenses to such claims, and the Parties agree that all such arguments and defenses are preserved.

17. Further Release. In addition to the provisions of Paragraph 16, the Releasing Parties hereby expressly waive and release, solely with respect to the Released Claims, upon Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code, including without limitation 20-7-11 of the South Dakota Codified Laws (providing “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR”). Each Releasing Party may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 16, but each Releasing Party hereby expressly waives and fully, finally, and forever settles and releases, upon Final Judgment, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that the Releasing Parties

have agreed to release pursuant to Paragraph 16 whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The foregoing release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims is contractual and not a mere recital.

18. Covenant Not to Sue. DPPs and each Settlement Class Member covenant not to sue any of the Cargill Released Parties for any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type arising out of the Released Claims, including, without limitation, seeking to recover damages relating to any of the Released Claims. This Paragraph shall not apply to any action to enforce this Settlement Agreement.

19. Public Comment. The Parties agree not to publicly comment on the Settlement other than through court filings. In addition, unless the Parties specifically agree otherwise, if any Party or attorney is contacted by a member of the press or other person seeking a public comment on the Settlement, the Party or attorney may only refer the inquiring party to publicly available filings in the Action and/or the settlement website if one has been established.

20. This Settlement Agreement shall not be construed as an admission of liability, or used as evidence of liability, for any purpose in any legal proceeding, claim, regulatory proceeding, or government investigation.

21. This Settlement Agreement constitutes a binding, enforceable agreement as to the terms contained herein when executed.

22. Termination Rights. The Settlement is conditioned upon Preliminary and Final Approval of the Parties' Settlement Agreement, and all terms and conditions thereof, without material changes, material amendments, or material modifications (except to the extent such changes, amendments, or modifications are agreed to in writing by the Parties). Either Party may

elect to terminate the Settlement upon written notice to the other Party if the Court refuses to grant Preliminary or Final Approval of the Settlement Agreement, the order(s) granting Preliminary or Final Approval of the Settlement Agreement are substantially modified or reversed, or the Court refuses to enter a Final Judgment in any material respect. In addition, if the Opt-Out Percentage exceeds the Opt-Out Termination Threshold (a number provided for in the Parties' Confidential Letter Agreement, available to the Court under seal upon request) then Cargill may, in its sole discretion, elect to terminate the Settlement. In the event that the Settlement is terminated by either Party, the Settlement Agreement shall become null and void, any Preliminary Approval entered by the Court and all of its provisions shall be vacated by its own terms, any certification of a Settlement Class for settlement purposes will be vacated, and the Parties will be restored to their respective positions as if no Settlement had occurred. No term of the Settlement Agreement or any draft thereof, or any aspect of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in any proceeding.

23. Effect of Disapproval. If the Court does not certify the Settlement Class as defined in this Settlement Agreement, or if the Court does not approve this Settlement Agreement in all material respects, or if the Court does not enter Final Approval as provided for in Paragraph 7 herein, or if any judgment approving this Settlement Agreement is materially modified or set aside on appeal, or if all of the conditions for Final Judgment do not occur as set forth in Paragraph 1(k) of this Settlement Agreement, then this Settlement Agreement may be rescinded, cancelled, or terminated by Cargill or DPPs on behalf of the Settlement Class. If rescinded, cancelled, or terminated, this Settlement Agreement shall become null and void, and, with the exception of any Settlement Funds used for notice purposes that are nonrefundable pursuant to Paragraph 6(e), in

the event the Settlement is not preliminarily or finally approved by the Court, all other funds in the Escrow Account shall be returned to Cargill and the Parties' positions shall be returned to the status quo ante. In no way shall DPPs have the right to rescind, cancel or terminate this Settlement Agreement if the Court fails or refuses to grant any requested attorney's fees, any costs, or any awards to DPPs.

24. Choice of Law and Dispute Resolution. Any disputes relating to this Settlement Agreement or the Confidential Letter Agreement shall be governed by Illinois law without regard to conflicts of law provisions, and any and all disputes regarding this Settlement Agreement or the Confidential Letter Agreement will be mediated in good faith before a mutually agreed-upon mediator before any suit, action, proceeding or dispute may be filed in the Court pursuant to Paragraph 25 below.

25. Consent to Jurisdiction. The Parties and any Releasing Parties hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the Confidential Letter Agreement, or the applicability of this Settlement Agreement or the Confidential Letter Agreement. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of Paragraphs 16-18, including but not limited to, any suit, action, or proceeding in which the provisions of Paragraphs 16-18 are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit, action, or proceeding arising out of or relating to this Settlement Agreement. In the event that the provisions of Paragraphs 16-18 are asserted by any Cargill Released Party as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any suit, action or proceeding, it is hereby agreed that such Cargill Released Party shall be entitled to a stay of that

suit, action, or proceeding until the mediation required by Paragraph 24 is complete and, if the matter is not resolved by mediation, the Court has entered a Final Judgment no longer subject to any appeal or review determining any issues relating to the defense or objection based on such provisions. Solely for purposes of such suit, action, or proceeding, to the fullest extent that they may effectively do so under applicable law, the Parties and any Releasing Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the in personam jurisdiction of the Court. Nothing shall be construed as a submission to jurisdiction for any purpose other than enforcement of this Settlement Agreement and the Confidential Letter Agreement.

26. Class Action Fairness Act. Within ten (10) days of filing of this Settlement Agreement in court with the abovementioned motion for Preliminary Approval, Cargill, at its sole expense, shall serve upon appropriate Federal and State officials all materials required pursuant to CAFA, and shall confirm to DPPs' Interim Co-Lead Counsel that such notices have been served.

27. Costs Relating to Administration. The Cargill Released Parties shall have no responsibility or liability relating to the administration, investment, or distribution of the Settlement Fund.

28. Binding Effect. This Settlement Agreement constitutes a binding, enforceable agreement as to the terms contained herein. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, and heirs of the Parties, Settlement Class Members, the Releasing Parties, and the Cargill Released Parties. Without limiting the generality of the foregoing, upon certification of the Settlement Class and Final Approval, each and every covenant and agreement herein by the DPPs shall be binding upon all members and potential

members of the Settlement Class and Releasing Parties who have not validly excluded themselves from the Settlement Class.

29. Sole Remedy. This Settlement Agreement shall provide the sole and exclusive remedy for any and all Released Claims against any Cargill Released Party, and upon entry of Final Judgment, the Releasing Parties shall be forever barred from initiating, asserting, maintaining, or prosecuting any and all Released Claims against any Cargill Released Party.

30. Counsel's Express Authority. Each counsel signing this Settlement Agreement on behalf of a Party or Parties has full and express authority to enter into all of the terms reflected herein on behalf of each and every one of the clients for which counsel is signing.

31. It is agreed that this Settlement Agreement shall be admissible in any proceeding for establishing the terms of the Parties' agreement or for any other purpose with respect to implementing or enforcing this Settlement Agreement.

32. Notices. All notices under this Settlement Agreement shall be in writing. Each such notice shall be given either by: (a) hand delivery; (b) registered or certified mail, return receipt requested, postage pre-paid; or (c) Federal Express or similar overnight courier, and, in the case of either (a), (b) or (c) shall be addressed:

If directed to DPPs, the Settlement Class, or any member of the Settlement Class, to:

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or such other address as the Parties may designate, from time to time, by giving notice to all parties hereto in the manner described in this Paragraph. The Parties shall also provide courtesy copies of all notices by electronic mail.

33. No Admission. Whether or not Preliminary Approval is granted, Final Judgment is entered, or this Settlement Agreement is terminated, the Parties expressly agree that this Settlement Agreement and its contents, and any and all statements, negotiations, documents, and discussions associated with it, are not and shall not be deemed or construed to be an admission of liability or wrongdoing by any Party or Cargill Released Party.

34. No Unstated Third-Party Beneficiaries. Except as expressly stated in this Settlement Agreement, no provision of this Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Cargill Released Party, DPP, member of the Settlement Class, or Interim Co-Lead Counsel.

35. No Party is the Drafter. None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case

law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

36. Amendment and Waiver. This Settlement Agreement shall not be modified in any respect except by a writing executed by the Parties, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving Party. The waiver by any Party of any particular breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement. This Settlement Agreement does not waive or otherwise limit the Parties' rights and remedies for any breach of this Settlement Agreement. Any breach of this Settlement Agreement may result in irreparable damage to a Party for which such Party will not have an adequate remedy at law. Accordingly, in addition to any other remedies and damages available, the Parties acknowledge and agree that the Parties may immediately seek enforcement of this Settlement Agreement by means injunction, without the requirement of posting a bond or other security.

37. Execution in Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement. Facsimile or Electronic Mail signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement and filed with the Court.

38. Integrated Agreement. This Settlement Agreement comprises the entire, complete, and integrated agreement between the Parties, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations, and discussions, either oral or written, between the Parties. The Parties agree that this Settlement Agreement may

be modified only by a written instrument signed by the Parties and that no Party will assert any claim against another based on any alleged agreement affecting or relating to the terms of this Settlement Agreement not in writing and signed by the Parties.

39. Voluntary Settlement. The Parties agree that this Settlement Agreement was negotiated in good faith by the Parties and reflects a settlement that was reached voluntarily after consultation with competent counsel and the participation of a neutral mediator, and no Party has entered this Settlement Agreement as the result of any coercion or duress.

40. Confidentiality. The Parties agree to keep the terms of the Settlement Agreement confidential until such time as DPPs seek Preliminary Approval of the Settlement in the Action (except to the extent Cargill is required by the terms of Defendants' Agreement to share the terms of the Settlement with non-settling Defendants on a confidential basis). The Parties further agree to continue to maintain the confidentiality of all settlement discussions communications exchanged in the course of reaching and entering into this Settlement.

41. Irrespective of any term in this Settlement Agreement, it is expressly agreed that nothing in this Settlement Agreement prohibits DPPs and DPP counsel in ongoing litigation of the Action from establishing a conspiracy under the Sherman Act, including discovering and introducing evidence of Settling Defendant as a co-conspirator in the Action for purposes of prosecuting DPPs' claims against non-settling Defendants or from effecting the cooperation provisions herein.

42. Irrespective of any term in this Settlement Agreement, the Parties agree that (1) DPPs and DPP counsel will not share any material obtained through the cooperation terms set forth in Paragraph 10 of this Settlement Agreement with any other plaintiff or plaintiff group in related actions (unless authorized by Cargill) but (2) nothing in this Settlement Agreement otherwise

prevents DPPs from continuing to jointly prosecute this case and utilizing any work product developed in this matter.

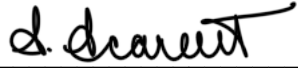
IN WITNESS WHEREOF, the Parties, individually or through their duly authorized representatives, enter into this Settlement Agreement on the Execution Date.



Dated: January 8, 2025

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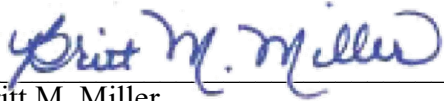
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Exhibit 7

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

In re EPIPEN (EPINEPHRINE INJECTION,) Civil Action No. 2:17-md-02785-DDC-TJJ
USP) MARKETING, SALES PRACTICES) (MDL No. 2785)
AND ANTITRUST LITIGATION)
_____)
)
This Document Relates To:)
)
CONSUMER CLASS CASES.)
_____)

**MEMORANDUM OF LAW IN SUPPORT OF CLASS PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENT WITH THE MYLAN DEFENDANTS**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. SUMMARY OF THE ACTION.....	4
III. TERMS OF THE SETTLEMENT	6
IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	9
A. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT.	9
B. STANDARDS FOR PRELIMINARY APPROVAL OF A PROPOSED SETTLEMENT.....	10
C. THE SETTLEMENT SATISFIES THE RULE 23(E)(2) FACTORS.	12
1. Plaintiffs and Co-Lead Counsel Have Adequately Represented the Class.	12
2. The Proposed Settlement Was Negotiated at Arm’s Length.....	14
3. The Proposed Settlement Is Adequate in Light of the Costs, Risks, and Delay of Trial and Appeal.	15
4. Serious Legal and Factual Questions Placed the Litigation’s Outcome in Doubt.	16
5. Immediate Recovery Is More Valuable than the Mere Possibility of a More Favorable Outcome After Further Litigation.....	17
6. The Proposed Method for Distributing Relief Is Effective.	18
7. Attorneys’ Fees and Expenses.....	19
8. The Settling Parties Have No Additional Agreement.	21
9. Class Members Are Treated Equitably.....	21
D. THE SETTLEMENT SATISFIES THE REMAINING FACTOR CONSIDERED BY COURTS IN THE TENTH CIRCUIT.	21
V. THE PROPOSED FORM AND METHOD OF PROVIDING NOTICE TO THE CLASS ARE APPROPRIATE.....	22
A. THE COURT SHOULD PRELIMINARILY APPROVE THE PROPOSED NOTICE OF SETTLEMENT.	22
B. AN ADDITIONAL SETTLEMENT OPT-OUT IS NEITHER REQUIRED BY DUE PROCESS NOR WARRANTED UNDER RULE 23(E).....	23
C. APPOINTMENT OF A.B. DATA TO SERVE AS THE SETTLEMENT ADMINISTRATOR IS PROPER.....	28
D. APPOINTMENT OF HUNTINGTON BANK AS ESCROW AGENT IS PROPER.	29
E. PROPOSED SCHEDULE OF SETTLEMENT EVENTS.....	29
VI. THE COURT SHOULD STAY PROCEEDINGS IN THE ACTION.....	29
VII. CONCLUSION	30

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Albrecht v. Oasis Power, LLC</i> , No. 1:18-cv-1061, 2019 U.S. Dist. LEXIS 162876 (N.D. Ill. Sep. 24, 2019)	30
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<i>Chavez Rodriguez v. Hermes Landscaping, Inc.</i> , No. 17-2142-JWB-KGG, 2020 WL 3288059 (D. Kan. June 18, 2020).....	<i>passim</i>
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<i>Dare v. Knox Cnty.</i> , 457 F. Supp. 2d 52 (D. Me. 2006).....	27
<i>Davis v. Abercrombie</i> , No. 11-00144 LEK-BMK, 2017 WL 2234175 (D. Haw. May 22, 2017).....	27
<i>Denney v. Deutsche Bank AG</i> , 443 F.3d 253 (2d Cir. 2006).....	25, 27
<i>Denney v. Jenkins & Gilchrist</i> , 230 F.R.D. 317 (S.D.N.Y. 2005).....	27
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<i>Hapka v. CareCentrix, Inc.</i> , No. 2:16-cv-02372-KGG, 2018 WL 1871449 (D. Kan. Feb. 15, 2018).....	22
<i>Harris v. Chevron U.S.A., Inc.</i> , No. 6:19-cv-00355-SPS, 2020 WL 8187464 (E.D. Okla. Feb. 27, 2020)	13
<i>In re (Epinephrine Injection, USP) EpiPen Mktg., Sales Pracs. & Antitrust Litig.</i> , 336 F. Supp. 3d 1256 (D. Kan. 2018)	4
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In re Crocs, Inc. Sec. Litig.,
 306 F.R.D. 672 (D. Colo. 2014)..... 18, 22

In re King Res. Co. Sec. Litig.,
 420 F. Supp. 610 (D. Colo. Aug. 10, 1976) 18

In re Linerboard Antitrust Litig.,
 No. CIV. 98-5055, 2004 WL 1221350 (E.D. Pa. June 2, 2004) 15

In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices and Prods. Liab. Litig.,
 952 F.3d 471 (4th Cir. 2020)..... 20

In re MetLife Demutualization Litig.,
 689 F. Supp. 2d 297 (E.D.N.Y. 2010)..... 26, 27

In re Motor Fuel Temperature Sales Pract. Litig.,
 258 F.R.D. 671 (D. Kan. 2009)..... 10, 15

In re Motor Fuel Temperature Sales Pract. Litig.,
 271 F.R.D. 221 (D. Kan. 2010)..... 12

In re NASDAQ Market-Makers Antitrust Litig.,
 187 F.R.D. 465 (S.D.N.Y. 1998)..... 20

In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.,
 No. 4:14-md-2541-CW, 2017 WL 6040065 (N.D. Cal. Dec. 6, 2017)..... 13

In re Nissan Motor Corp. Antitrust Litig.,
 552 F.2d 1088 (5th Cir. 1977)..... 26

In re Qwest Commc’ns Int’l, Inc. Sec. Litig.,
 625 F. Supp. 2d 1133 (D. Colo. 2009) 16

In re SandRidge Energy, Inc. Sec. Litig.,
 No. CIV-12-1341-G, 2019 WL 4752268 (W.D. Okla. Sept. 30, 2019)..... 13

In re Sony PS3 “Other OS” Litig.,
 No. 10-cv-01811-YGR, 2017 WL 5598726 (N.D. Cal. Nov. 21, 2017)..... 30

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 No. 14-md-2591-JWL, 2018 WL 1726345 (D. Kan. Apr. 10, 2018) *passim*

In re Syngenta AG MIR 162 Corn Litig.,
 No. 14-md-2591-JWL, 2021 WL 102819 (D. Kan. Jan. 12, 2021) 20

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912 F. Supp. 2d 1178 (D.N.M. 2012) 17

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No. 2:08-md-1919 MJP, 2015 WL 12803633 (W.D. Wash. June 22, 2015)..... 27

In re Whirlpool Corp. Front-loading Washer Prods. Liab. Litig.,
No. 1:08-WP-65000, 2016 WL 5338012 (N.D. Ohio Sept. 23, 2016) 20

In re WorldCom, Inc. ERISA Litig.,
No. 02 Civ. 4816(DLC), 2004 WL 2338151 (S.D.N.Y. 2004)..... 13

Kjessler v. Zaappaaz, Inc.,
No. 4:18-cv-430, 2018 WL 8755737 (S.D. Tex. Aug. 31, 2018) 14

Low v. Trump Univ., LLC,
246 F. Supp. 3d 1295 (S.D. Cal. 2017) 25, 27

Low v. Trump Univ., LLC,
881 F.3d 1111 (9th Cir. 2018)..... 24, 25, 27

Lowery v. City of Albuquerque,
No. CIV 09–0457 JB/WDS, 2013 WL 1010384 (D.N.M. February 27, 2013) 25, 26, 27

Lucas v. Kmart Corp.,
234 F.R.D. 688 (D. Colo. 2006)..... 10, 16, 18, 23

Marcus v. Kansas Dep’t of Revenue,
206 F.R.D. 509 (D. Kan. 2002)..... 30

Marcus v. Kansas Dep’t of Revenue,
209 F. Supp. 2d 1179 (D. Kan. 2002) 14, 22

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No. CIV-07-933-M, 2008 WL 4816510 (W.D. Okla. Oct. 27, 2008) 15, 16, 18

Moulton v. U.S. Steel Corp.,
581 F.3d 344 (6th Cir. 2009)..... 25

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339 U.S. 306 (1950) 23, 25

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No. 14-cv-02787-KLM-NYW, 2019 WL 4279123 (D. Colo. Sept. 9, 2019)..... 22

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688 F.2d 615 (9th Cir. 1982)..... 25, 27

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655 F. App’x 352 (6th Cir. 2016)..... 20

Phillips Petroleum Co. v. Shutts,
472 U.S. 797 (1985)..... 24

Reynolds v. Beneficial Nat’l Bank,
288 F.3d 277 (7th Cir. 2002)..... 17

Sears v. Atchison, Topeka & Santa Fe Ry., Co.,
749 F.2d 1451 (10th Cir. 1984)..... 9

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567 F. Supp. 2d 201 (D. Me. 2008)..... 27

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785 F.3d 422 (10th Cir. 2015)..... 11, 16, 23

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No. 09-cv-00938-JLK-KMT, 2014 WL 5394624 (D. Colo. Oct. 15, 2014)..... 18

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396 F.3d 96 (2d Cir. 2005)..... 26, 27

Rules

Fed. R. Civ. P. 23(e)..... 9, 24, 27

Fed. R. Civ. P. 23(e)(2)(B)..... 10, 14

Fed. R. Civ. P. 23(e)(2)(C)(iii)..... 19

Fed. R. Civ. P. 54(b)..... 6

Rule 23..... 16, 20, 23, 24

Rule 23(b)(3)..... 22, 25, 27

Rule 23(c)(2)..... 26

Rule 23(c)(2)(B)..... 22, 23, 24

Rule 23(e)(1) of the Federal Rules of Civil Procedure..... 10

Rule 23(e)(2)(A).....	12
Rule 23(e)(2)(C)(i)	15
Rule 23(e)(2)(C)(iv)	21
Rule 23(e)(2)(D).....	21
Rule 23(e)(2); and (ii).....	10, 11, 12
Rule 23(e)(3).....	11
Rule 23(e)(4).....	26, 27
Rule 23(f); (vii).....	13

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4 William B. Rubenstein, <i>Newberg on Class Actions</i> , §13.10 (5th ed. 2021).....	10

I. INTRODUCTION

More than fifteen EpiPen-related lawsuits were filed in late 2016 and 2017 against Mylan;¹ these cases were then centralized or transferred into an MDL before this Court. After nearly five years of vigorous, often contentious litigation in this Action,² and shortly before trial was scheduled to commence on February 22, 2022, Class Plaintiffs³ and the Mylan Defendants (together, the “Settling Parties”) have reached a Settlement that resolves the Class Plaintiffs’ claims in the Action and Other Actions⁴ against the Mylan Defendants and creates an additional non-reversionary common fund of \$264 million for the certified Class. Combined with the prior \$345 million Pfizer Settlement, the Mylan Settlement brings the total recovery to \$609 million—an extraordinary

¹ “Mylan” refers collectively to Mylan N.V., Mylan Specialty L.P., Mylan Pharmaceuticals Inc., and Heather Bresch. “Mylan Defendants” refers collectively to Mylan and Viatris Inc.

² All capitalized terms not otherwise defined herein shall have the meaning given to them in the February 27, 2022, Stipulation of Class Action Settlement (“Settlement Agreement”), a copy of which is attached hereto as Exhibit 1. All emphasis is added, and citations are omitted, unless otherwise noted.

³ “Class Plaintiffs” or “Plaintiffs” refers collectively to the appointed representatives of the certified Class: Shannon Clements; Lesley Huston; Rosetta Serrano; Kenneth Evans; Elizabeth Williamson; Vishal Aggarwal; Teia Amell; Todd Beaulieu; Carly Bowerstock; Raymond Butcha III; Laura Chapin; Heather Destefano; Donna Anne Dvorak; Michael Gill; Suzanne Harwood; Elizabeth Huelsman; Landon Ipson; Anastasia Johnston; Mark Kovarik; Meredith Krimmel; Nikitia Marshall; Angie Nordstrum; Sonya North; Christopher Rippy; Lee Seltzer; Joy Shepard; Kenneth Steinhauser; April Sumner; Annette Sutorik; Stacey Svites; Linda Wagner; Jennifer Walton; Donna Wemple; Lorraine Wright; and Local 282 Welfare Trust Fund.

⁴ As defined in the Settlement Agreement, the “Other Actions” include additional actions pending before this Court, entitled *Ipson v. Viatris Inc.*, No. 2:21-cv-02556-DDC-TJJ (D. Kan.); *Gill v. Viatris Inc.*, No. 2:21-cv-02534-DDC-TJJ (D. Kan.); *Dvorak v. Viatris Inc.*, No. 2:21-cv-02561-DDC-TJJ (D. Kan.); and *Sumner v. Viatris Inc.*, No. 2:21-cv-02555-DDC-TJJ (D. Kan.). Although settlement of the Other Actions is not subject to court approval, the Settling Parties have agreed that Plaintiffs will dismiss the Other Actions with prejudice as a condition of the Settlement.

success for the Class. And, as the Court is aware, the work and persistence of Class Plaintiffs and their counsel achieved these results.

The Mylan Settlement is substantially similar to the court-approved Pfizer Settlement. In many respects, the arguments supporting preliminary approval here echo those in Plaintiffs' papers seeking approval of the Pfizer Settlement. The Mylan Settlement satisfies the standards for preliminary approval under Rule 23 for the same reasons as with the Pfizer Settlement.

The Mylan Settlement is the result of well-informed, arm's-length negotiations between highly-experienced counsel possessing a thorough understanding of the strengths and weaknesses of the claims at issue due to extensive investigation, significant discovery, numerous rulings from the Court, and expert analysis. Considering the value of the proposed Settlement, in light of the costs and risks of further litigation, trial, and appeal, the Settlement provides an immediate and equitable result for the certified Class. The Settlement is fair, reasonable, and adequate under Rule 23(e)(2) and Tenth Circuit precedent. Class Counsel's proposed form and method of providing notice of the Settlement to certified Class Members builds on the success of the notice program the Court approved in the Pfizer Settlement, with additional information clarifying that any Class Member who already submitted a claim pursuant to the Pfizer Settlement will automatically be eligible to receive a payment from the Mylan Settlement without the need to file an additional claim form. Here, too, the notice program satisfies the requirements of due process, as well as the conditions set forth in Rules 23(c) and (e). And just as in the Pfizer Settlement, because Class Counsel's initial class certification notice program surpassed the requirements of due process and Rule 23(c) in adequacy of class notice, sufficiency and clarity of exclusion language and opportunity, and overall reasonableness (ECF No. 2240), no additional exclusion opportunity is required by due process, nor warranted under Rule 23(e).

Accordingly, Plaintiffs respectfully request that the Court enter the Settling Parties' agreed-upon Preliminary Approval Order, submitted to chambers in Word format pursuant to the Local Rules and attached as Exhibit A to the Settlement Agreement (Exhibit 1 hereto). That Order will:

1. Preliminarily approve the terms of the Settlement as set forth in the Settlement Agreement;
2. Approve the form and content of the Notice of Proposed Settlement of Class Action ("Notice"), Proof of Claim Forms, and Summary Notice (also known as Short-Form Notice) attached as Exhibits B-D to the Settlement Agreement, as well as the appointment of A.B. Data Ltd. as Settlement Administrator;
3. Find that the procedures for distribution and publication of the Notice and Summary Notice in the manner and form set forth in the Declaration of Eric Schachter of A.B. Data, Ltd. in Support of Class Plaintiffs' Motion for Preliminary Approval of Settlement with the Mylan Defendants ("Schachter Decl."), attached as Exhibit 2 hereto, constitute the best practicable notice under the circumstances and comply with the notice requirements of due process and Rule 23;
4. Set a Hearing on Final Approval of Settlement, Plan of Allocation, Attorneys' Fees, Expenses, and Service Awards ("Final Fairness Hearing") and associated deadlines in anticipation of that hearing; and
5. Provide such other related relief as is necessary to carry out the Settlement, as set forth in the Preliminary Approval Order, including a stay of proceedings pending a final determination as to whether the Settlement should be approved.

II. SUMMARY OF THE ACTION

In 2016, various putative class action lawsuits were filed against both Mylan and Pfizer⁵ “involv[ing] allegations of anticompetitive conduct or unfair methods of competition” with respect to the EpiPen, an epinephrine auto-injector used in the emergency treatment of anaphylaxis. ECF No. 1 at 1. These cases were transferred and/or centralized by the Judicial Panel on Multidistrict Litigation into MDL No. 2785, *In re EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices and Antitrust Litigation*, No. 17-md-2785, and transferred to the United States District Court in the District of Kansas before the Honorable Daniel D. Crabtree (referred to herein as the “Litigation”) on August 4, 2017. ECF No. 1.

On September 12, 2017, the Court appointed Co-Lead Counsel and approved Plaintiffs’ proposed organizational structure, including Liaison Counsel and a Steering Committee. ECF No. 40. The Court has since substituted a member of the Steering Committee (ECF No. 2111) and added an additional Co-Lead Counsel (ECF No. 2018).

On October 17, 2017, Plaintiffs filed a Consolidated Class Action Complaint (“Complaint”) stating claims for violations of the federal Racketeer Influenced and Corrupt Organizations (“RICO”) Act, certain federal and state antitrust laws, and other causes of action. Complaint (ECF No. 60) & Pretrial Order (ECF No. 2169). These claims arose from allegedly supracompetitive pricing of the EpiPen and related conduct. *See In re (Epinephrine Injection, USP) EpiPen Mktg., Sales Pracs. & Antitrust Litig.*, 336 F. Supp. 3d 1256, 1282 (D. Kan. 2018) (explaining that the Complaint alleged “a pricing scheme” that centered on EpiPen price increases).

⁵ Pfizer, Inc., Meridian Medical Technologies, Inc., and King Pharmaceuticals, Inc. (n/k/a King Pharmaceuticals LLC) (collectively, “Pfizer” or the “Pfizer Defendants” and together with Mylan, the “Defendants”).

Subsequently, Defendants filed Motions to Dismiss the Complaint, which the Court granted in part and denied in part on August 20, 2018. ECF No. 896. Defendants answered the Complaint, denying all remaining allegations. Plaintiffs then moved for class certification under Rule 23(b)(3). On February 27, 2020, the Court granted in part and denied in part Plaintiffs' motion for class certification and certified a nationwide RICO Class and a State Antitrust Class under Rule 23(b)(3). ECF No. 2018. The Court also appointed Warren T. Burns, Paul J. Geller, Elizabeth Pritzker, Lynn Lincoln Sarko, and Rex A. Sharp as Co-Lead Counsel for the certified Class. Defendants then filed a Rule 23(f) petition for review of that decision with the Tenth Circuit on March 12, 2020, and the Tenth Circuit denied Rule 23(f) review on May 26, 2020. ECF Nos. 2035, 2071. On October 13, 2020, the Court approved the appointment of A.B. Data, Ltd. to provide notice to the certified Class and approved the form and manner of that notice, which commenced on November 1, 2020, and ended on January 15, 2021.

During the pendency of the Action, Plaintiffs engaged in substantial discovery that involved the Defendants, Plaintiffs, and numerous third parties. This discovery resulted in the production of over 1.75 million documents (totaling over 11 million pages) and 158 depositions, including those of Defendants, Plaintiffs, third parties, and experts. Plaintiffs also engaged in substantial expert discovery, including consulting with and preparing expert witnesses, preparing class certification and merits expert reports, and vigorously defending many *Daubert* motions that challenged their experts at both the class certification and merits stages. From October 2019 to February 2020, the parties served over one dozen expert reports on the merits of their respective claims and defenses in the Action.

On July 15, 2020, Defendants moved for summary judgment and filed *Daubert* motions to strike Plaintiffs' experts in whole or in part. ECF Nos. 2133, 2134, 2135, 2136, 2141, 2148, 2151, 2156. On June 10, 2021, while Defendants' motions for summary judgment were pending, Plaintiffs

and the Pfizer Defendants agreed to settle the claims against Pfizer in the Action (the “Pfizer Settlement”). On November 17, 2021, the Court granted final approval of the Pfizer Settlement and entered a Final Judgment and Order of Dismissal with Prejudice Under Fed. R. Civ. P. 54(b) for the Pfizer Defendants Only (ECF No. 2507).

On June 23, 2021, the Court entered Memoranda and Orders resolving the motions for summary judgment and *Daubert* motions as to Mylan. The Court denied Mylan’s motion for summary judgment as to the Plaintiffs’ generic delay state antitrust claims, but granted Mylan’s motion for summary judgment as to Plaintiffs’ branded exclusion antitrust claims and RICO claims. The Court also granted in part and denied in part Mylan’s *Daubert* motions. ECF Nos. 2380, 2381. The summary judgment order dismissed the claims of plaintiffs Landon Ipson, Michael Gill, Donna Dvorak, and April Sumner, who then subsequently sued the Mylan Defendants in the Other Actions for violations of certain state antitrust laws and other federal and state laws, as delineated in their respective complaints, which were centralized into *In re EpiPen* MDL. See ECF Nos. 2504, 2505.

Trial in this Action was rescheduled multiple times due to COVID-19-related and other concerns. Most recently, trial was set to commence on February 22, 2022, based on the Pretrial Order dated July 17, 2020 (ECF No. 2169), later modified with a Trial Order entered on January 12, 2022 (ECF No. 2562).

As the trial date approached, Plaintiffs and the Mylan Defendants engaged in settlement negotiations. Plaintiffs subsequently agreed to settle all claims brought in or related to the Action and Other Actions against the Mylan Defendants under the terms memorialized in the Settlement Agreement.

III. TERMS OF THE SETTLEMENT

The Settlement Agreement, attached as Exhibit 1 hereto, provides that the Mylan Defendants will deposit \$5 million of the Settlement Amount into an Escrow Account within five

business days from the District Court's order granting preliminary approval. Settlement Agreement, ¶ 2.1. The remainder of the Settlement Amount will be deposited by the later of July 1, 2022 or five calendar days before the date of the Fairness Hearing. *Id.* The cost of settlement administration, including the costs of notice to the Class, taxes, and tax expenses, will be funded by the Settlement Fund (*id.*, ¶¶ 2.7, 2.8), which consists of the Settlement Amount, plus all interest and accretions thereto. *Id.*, ¶ 1.38. The Settlement Agreement also provides for a Settlement Administrator. *Id.*, ¶ 1.36. Class Counsel propose that the Court appoint A.B. Data, Ltd. to serve as the Settlement Administrator. The Court previously approved A.B. Data to provide notice to the Class following class certification and appointed it as the settlement administrator for the Pfizer Settlement. A.B. Data has fulfilled its responsibilities to date, has the requisite expertise, experience and capabilities, and is fully familiar with the facts of this case and the notice program that will be required here to comport with Rule 23 and due process. The proposed notice plan is discussed below and in the accompanying Schachter Declaration. *See* Exhibit 2.

In summary, Plaintiffs and A.B. Data propose a notice program that is substantially similar to the Court-approved notice programs used successfully to provide notice of pendency of the Action and the Pfizer Settlement to the certified Class. Consistent with the Court's previous findings (ECF Nos. 2240, 2401, 2506), the proposed notice program also satisfies the requirements of Rule 23 and due process. It includes: (i) individual notice by email or mail to all Class Members who can reasonably be located; (ii) publication notice in a national publication likely to be read by Class Members; (iii) digital media advertisements posted on websites likely to be viewed by Class Members; (iv) a press release to be widely disseminated; (v) a settlement website that will contain information about the Litigation and the Settlement, as well as all important Settlement documents; and (vi) a toll-free phone number and call center to field inquiries. The Settlement website will allow Class Members to file their claims electronically. *See* Schachter Declaration, *passim*.

The Notice (Settlement Agreement, Exhibit B) explains the terms of the Settlement, including that the Net Settlement Fund will be distributed to eligible Class Members who submit valid and timely Proofs of Claim and pursuant to the proposed Plan of Allocation. The Notice explains that any Class Member who already submitted a claim pursuant to the Pfizer Settlement will automatically be eligible to receive a payment from the Mylan Settlement without the need to file an additional claim form. The Notice also advises Class Members of: (i) Class Counsel's application for an award of attorneys' fees and expenses, as well as Plaintiffs' application for a service award in connection with their representation of the certified Class; (ii) the procedures for objecting to the Settlement, the Plan of Allocation, Class Counsel's request for attorneys' fees and expenses, and/or Plaintiffs' application for a service award; and (iii) the date and time for the Fairness Hearing. Notice (Settlement Agreement, Exhibit B) at 4, 5, 12-13, 15-16.

The Plan of Allocation, attached as Exhibit 3 hereto, and that is substantially similar to the Plan of Allocation the Court approved in the Pfizer Settlement, will create two pools of funds from the Net Settlement Fund, one for individual consumers and one for third-party payors. The allocation of funds as between the two pools is based on the work done by Plaintiffs' experts and tracks, as a percentage, the relative damages allegedly suffered by individual consumers and third-party payors as calculated in the Rebuttal Merits Expert Report of Professor Meredith Rosenthal (ECF No. 2216-2). Within each pool, funds will be distributed on a *pro rata* basis to all eligible Class Members who file a timely and valid Proof of Claim. Funds remaining in one pool will spill-over to the other pool in certain circumstances. Plaintiffs anticipate that all funds will be distributed to Class Members pursuant to the Plan of Allocation.⁶ There is no right of reversion under the

⁶ Class Counsel anticipate that, under the Plan of Allocation's distribution terms, there will be no remaining funds for *cy pres* distribution. If there is any remaining balance in the Net Settlement Fund after the initial distribution—*e.g.* due to uncashed checks—the Settlement

Settlement and under no circumstances will any portion of the Settlement Amount be returned to the Mylan Defendants once the Settlement becomes final.

Under the terms of the Settlement, the Mylan Defendants expressly disclaim and deny any wrongdoing or liability whatsoever. In exchange for the benefits provided under the Settlement Agreement, Class Members will release the Mylan Defendants as provided for in Paragraphs 1.28, 4.1 & 4.2 of the Settlement Agreement. The Settling Parties have also agreed that, in the event that the Court permits a second opportunity to opt out of the Class, the Parties will meet and confer to determine mutually-agreeable terms to govern the second opt out. Settlement Agreement ¶ 8.1; *see also id.* ¶ 2.10(c).

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Court Should Grant Preliminary Approval of the Proposed Settlement.

Settlement is strongly favored as a method for resolving disputes. *See Sears v. Atchison, Topeka & Santa Fe Ry., Co.*, 749 F.2d 1451, 1455 (10th Cir. 1984); *see also Trujillo v. State of Colo.*, 649 F.2d 823, 826 (10th Cir. 1981) (citing “important public policy concerns that support voluntary settlements”); *Amoco Prod. Co. v. Fed. Power Comm’n*, 465 F.2d 1350, 1354 (10th Cir. 1972). This is particularly true in large, complex class actions such as the current case. *See Big O Tires, Inc. v. Bigfoot 4x4, Inc.*, 167 F. Supp. 2d 1216, 1229 (D. Colo. 2001).

Under Rule 23(e), the trial court must approve a class action settlement. Fed. R. Civ. P. 23(e) (“The claims . . . of a certified class – or a class proposed to be certified for purposes of settlement – may be settled . . . only with the court’s approval.”). The procedure for review of a

Administrator will reallocate such balance among Class Members pursuant to the terms of the Plan of Allocation. Any funds remaining for *cy pres* distribution should therefore be *de minimis*, existing only if a Class Member does not cash their check or otherwise deposit or accept their distribution after submitting a claim, *and* after additional distributions to qualifying claimants.

proposed class action settlement is a well-established two-step process. *In re Motor Fuel Temperature Sales Pracs. Litig.*, 258 F.R.D. 671, 675 (D. Kan. 2009); see *Manual for Complex Litigation* (“*Manual*”), §13.14 (4th ed. 2004). First, the court conducts a preliminary approval analysis to determine if there is any reason not to notify the class or proceed with the proposed settlement. *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006). Second, after the court preliminarily approves the settlement, the class is notified and provided an opportunity to be heard at a final fairness hearing where the court considers the merits of the settlement to determine if it should be finally approved. See *In re Motor Fuel*, 258 F.R.D. at 675; accord, 4 William B. Rubenstein, *Newberg on Class Actions* (“*Newberg*”), §13.10 (5th ed. 2021).

Through this Preliminary Approval Motion, Plaintiffs request the Court take the first step in this two-step process: granting preliminary approval. Preliminary approval should be granted if “the proposed settlement was ‘neither illegal nor collusive and is within the range of possible approval.’” *Newberg*, §13.10; *In re Syngenta AG MIR 162 Corn Litig.*, No. 14-md-2591-JWL, 2018 WL 1726345, at *2 (D. Kan. Apr. 10, 2018) (Lungstrum, J.) (same). Although “[t]he standards for preliminary approval are not as stringent as those applied for final approval,” courts frequently refer to the final approval factors to determine whether a proposed settlement should be *preliminarily* approved. *In re Motor Fuel*, 258 F.R.D. at 675-76, 680 (“While the Court will consider these factors in depth at the final approval hearing, they are a useful guide at the preliminary approval stage as well.”).

B. Standards for Preliminary Approval of a Proposed Settlement.

Under Rule 23(e)(1) of the Federal Rules of Civil Procedure the inquiry at preliminary approval is whether the Court “will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(2)(B). Rule 23(e)(2) provides that a class action settlement may be approved by the court “only after a

hearing and only on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). In deciding whether to approve a class action settlement, courts should consider whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Also, in deciding whether a settlement is “fair, reasonable, and adequate,” courts in the Tenth Circuit traditionally consider whether:

- (1) the settlement was fairly and honestly negotiated, (2) serious legal and factual questions placed the litigation’s outcome in doubt, (3) the immediate recovery was more valuable than the mere possibility of a more favorable outcome after further litigation, and (4) the parties believed the settlement was fair and reasonable.

In re (Epinephrine Injection, USP) EpiPen Mktg., Sales Pracs. & Antitrust Litig., No. 17-MD-2785-DDC, 2021 WL 5369798, at *1 (D. Kan. Nov. 17, 2021); *Syngenta*, 2018 WL 1726345, at *2 (citing *Tennille v. W. Union Co.*, 785 F.3d 422, 434 (10th Cir. 2015)). Because the Tenth Circuit’s additional factors “largely overlap” with the Rule 23(e)(2) factors, “with only the fourth factor not being subsumed” into it, courts in this District now “consider[] the Rule 23(e)(2) factors as the main tool in evaluating the propriety of [a] settlement,” while still addressing the Tenth Circuit’s factors.

Chavez Rodriguez v. Hermes Landscaping, Inc., No. 17-2142-JWB-KGG, 2020 WL 3288059, at *2 (D. Kan. June 18, 2020).

As discussed below, the proposed Settlement for \$264 million in cash easily satisfies each of the Rule 23(e)(2) and Tenth Circuit factors. Accordingly, Plaintiffs request that the Court grant preliminary approval of the Settlement.

C. The Settlement Satisfies the Rule 23(e)(2) Factors.

1. Plaintiffs and Co-Lead Counsel Have Adequately Represented the Class.

The adequacy of representation requirement is met when the representative plaintiffs' "interests do not conflict with those of the class members" and the representatives and their counsel "prosecute the action vigorously." *In re Motor Fuel Temperature Sales Pracs. Litig.*, 271 F.R.D. 221, 231 (D. Kan. 2010) (citations omitted). As the Court found in its order granting final approval of the Pfizer Settlement, Class Plaintiffs share the same interests and types of alleged injuries as the absent Class Members. *In re EpiPen*, 2021 WL 5369798 at *2. Class Plaintiffs have participated in extensive discovery and adequately represented and protected the interests of the Class. *Id.*

Co-Lead Counsel also have adequately represented the certified Class as required by Rule 23(e)(2)(A). Prior to reaching the Settlement, Co-Lead Counsel conducted extensive investigation and research into the claims asserted, reviewed extensive data, and consulted with numerous experts. Co-Lead Counsel vigorously prosecuted the Action by, among other activities: (i) investigating the relevant factual events; (ii) drafting the detailed, 400-page Complaint; (iii) successfully in part opposing Defendants' motions to dismiss; (iv) engaging in extensive document and written discovery, through both coordinated and non-coordinated phases, including reviewing over 11 million pages of documents produced by Defendants and third parties; (v) successfully in part moving for class certification supported by four expert reports; (vi) successfully

opposing Defendants’ petition to appeal the same pursuant to Rule 23(f); (vii) vigorously opposing summary judgment and *Daubert* motions, and achieving partial victories; (vii) preparing for a month-long trial; and (viii) at the same time, engaging in settlement negotiations with the Mylan Defendants’ counsel. As a result of these extensive efforts, spanning thousands of hours of work and several years, Co-Lead Counsel have achieved a significant all-cash Settlement of \$264 million with the Mylan Defendants, which will provide immediate relief to the certified Class.

Each of the Co-Lead Counsel (Elizabeth C. Pritzker of Pritzker Levine LLP, Paul J. Geller of Robbins Geller Rudman & Dowd LLP, Rex A. Sharp of Sharp Law LLP, Warren T. Burns of Burns Charest LLP, and Lynn Lincoln Sarko of Keller Rohrback L.L.P.) has significant experience prosecuting complex antitrust and RICO class actions. This Court, *see In re EpiPen*, 2021 WL 5369798 at *5, and courts around the country have recognized the expertise and ability of Co-Lead Counsel to litigate effectively complex class actions.⁷

⁷ *See, e.g., Harris v. Chevron U.S.A., Inc.*, No. 6:19-cv-00355-SPS, 2020 WL 8187464, at *4 (E.D. Okla. Feb. 27, 2020) (noting that Sharp Law LLP is among the “[f]ew law firms [who] are willing to litigate cases requiring review of tens of thousands of pages of detailed contracts and accounting records, advance payment of hundreds of thousands of dollars in consultants and expert witness fees, and investment of substantial time, effort, and other expenses throughout an unknown number of years to prosecute a case with high risk, both at the trial and appellate levels”); *In re SandRidge Energy, Inc. Sec. Litig.*, No. CIV-12-1341-G, 2019 WL 4752268, at *9 (W.D. Okla. Sept. 30, 2019) (“the attorneys of Robbins Geller are experienced class-action litigators and are sufficiently committed to this litigation”); *In re WorldCom, Inc. ERISA Litig.*, No. Civ. 02-4816 (DLC), 2004 WL 2338151 at *10 (S.D.N.Y. 2004) (regarding Lynn Sarko’s work as lead counsel, Judge Cote stated, “Lead Counsel has performed an important public service in this action and has done so efficiently and with integrity [Keller Rohrback] has also worked creatively and diligently to obtain a settlement from WorldCom in the context of complex and difficult legal questions”); The Hon. H. Russel Holland, D. Alaska, Presentation to Alaska Chapter of the Federal Bar Association, Nov. 12, 2015 (regarding Lynn Sarko’s administration of two court-supervised \$1.128 billion *Exxon* settlement funds, Judge Holland observed: “[T]he money . . . went into the Exxon Qualified Settlement Fund that was administered by Lynn Sarko and his law firm in Seattle. Those guys did a superb job. And it was a huge effort to notify all potential claimants, to get the claims documented, to evaluate the documentation, and then to apply the sharing concepts to the individual losses. . . . I can’t imagine that they could possibly have done a better job.”); *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-md-2541-CW, 2017

To support a finding of adequate representation, the parties must “[b]alanc[e] the entirety of the case with the ultimate resolution.” *Chavez Rodriguez v. Hermes Landscaping, Inc.*, 2020 WL 3288059, at *3 (D. Kan. June 18, 2020). Here, the collective tenacity and sophistication of Plaintiffs and Class Counsel were instrumental in achieving the substantial \$264 million Settlement, which will provide significant and immediate relief to the certified Class.

2. The Proposed Settlement Was Negotiated at Arm’s Length.

The second factor under Rule 23(e)(2)(B) overlaps with the first factor considered by courts in the Tenth Circuit and assesses whether “the settlement was fairly and honestly negotiated.” *Syngenta*, 2018 WL 1726345, at *2. A settlement is considered to be fairly and honestly negotiated when reached after arm’s-length negotiations by experienced counsel. *See In re Urethane Antitrust Litig.*, No. 04-1616-JWL, ECF No. 3274, at 2 (D. Kan. July 29, 2016) (settlement is “fairly and honestly negotiated” when it results from “negotiations which were undertaken in good faith by counsel with significant experience litigating antitrust class actions”); *Marcus v. Kansas Dep’t of Revenue*, 209 F. Supp. 2d 1179, 1182 (D. Kan. 2002) (finding this factor satisfied where the settlement was reached “by experienced counsel for the class”).

Here, the Settlement is the product of vigorous negotiations between the Settling Parties, advised by their sophisticated counsel, who possessed more than sufficient evidence and knowledge to allow them to make informed decisions about the strengths and weaknesses of their respective

WL 6040065, at *10 (N.D. Cal. Dec. 6, 2017), *aff’d*, 768 F. App’x 651 (9th Cir. 2019) (noting that Pritzker Levine, as one of three firms representing the certified student-athlete class, is “among the most well-respected class action litigation firms in the country, as this Court has witnessed in numerous cases. And the efficiency with which plaintiffs’ counsel achieved such exceptional results is laudable because it benefits the classes.”) (footnote omitted); *Kjessler v. Zaappaaz, Inc.*, No. 4:18-cv-430, 2018 WL 8755737, at *5–6 (S.D. Tex. Aug. 31, 2018) (appointing Burns Charest as sole interim lead class counsel based on the firm’s “significant experience” in class action litigation).

cases. Counsel participated in numerous meetings and phone calls where they exchanged their respective, opposing views regarding the merits of Plaintiffs' claims, issues for appeal, and the terms of the Settlement. The relevant legal and factual issues were fully developed and ready for trial. Additionally, Plaintiffs had previously worked with a mediator to settle similar claims with the Pfizer Defendants, which provided valuable insight into the value of the claims as well as the strengths and weaknesses of their case. As a result, the Settling Parties were well prepared for the serious negotiations that led to the Settlement and were well-informed of the respective parties' arguments. *See In re Motor Fuel*, 258 F.R.D. at 675-76. And the \$264 million settlement amount (\$609 million total when combined with the \$345 million Pfizer Settlement), by any measure, is an outstanding result. Antitrust class action settlements reached prior to trial typically settle for a fraction of the alleged damages. *See, e.g., In re Linerboard Antitrust Litig.*, No. CIV. 98-5055, 2004 WL 1221350, at *4 (E.D. Pa. June 2, 2004) (collecting cases in which courts have approved settlements of 5.35% to 28% of potential damages).

In sum, the parties' negotiations and the Settlement's terms demonstrate that the Settlement was fairly and honestly negotiated.

3. The Proposed Settlement Is Adequate in Light of the Costs, Risks, and Delay of Trial and Appeal.

In assessing the Settlement, the Court should also balance the benefits afforded to the certified Class, including the immediacy and certainty of a recovery, against the significant costs, risks, and delay of proceeding with the Action. *See* Rule 23(e)(2)(C)(i). This third factor is based on the premise that the Class "is better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted." *See McNeely v. Nat'l Mobile Health Care, LLC*, No. CIV-07-933-M, 2008 WL 4816510, at *13 (W.D. Okla. Oct. 27, 2008). This consideration largely overlaps with the second

(“whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt”) and third factors (“whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation”) traditionally considered by courts in the Tenth Circuit. *Chavez Rodriguez*, 2020 WL 3288059, at *2-*3. Thus, courts consider these factors to be “subsumed under Rule 23’s requirement.” *Id.*

4. Serious Legal and Factual Questions Placed the Litigation’s Outcome in Doubt.

The presence of serious legal and factual questions concerning the outcome of the Litigation weighs heavily in favor of settlement, “because settlement creates a certainty of some recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation.” *In re Qwest Commc’ns Int’l, Inc. Sec. Litig.*, 625 F. Supp. 2d 1133, 1138 (D. Colo. 2009). “Although it is not the role of the Court at this stage of the litigation to evaluate the merits, it is clear that the parties could reasonably conclude that there are serious questions of law and fact that exist such that they could significantly impact the case if it were litigated.” *Lucas*, 234 F.R.D. at 693-94. The presence of questions of law and fact “tips the balance in favor of settlement because settlement creates a certainty of some recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation.” *McNeely, LLC*, 2008 WL 4816510, at *13; *see also Tennille*, 785 F.3d at 435 (affirming final approval of settlement where “serious disputed legal issues” rendered “the outcome of th[e] litigation . . . uncertain and further litigation would have been costly”).

The current proposed Settlement notwithstanding, there remain numerous factual and legal issues on which the Settling Parties still intensely disagree. The Mylan Defendants deny that they have engaged in any wrongdoing as alleged by Plaintiffs, deny any liability whatsoever for any of the claims alleged by Plaintiffs, and deny that Plaintiffs have suffered any injuries or damages.

Conversely, Plaintiffs have advanced numerous complex legal and factual issues under federal and state antitrust laws, federal RICO statutes, and other causes of action, with certain state antitrust claims proceeding to trial and the other claims preserved for appeal. The issues on which the Settling Parties disagree are many, but include: (1) whether any of the Mylan Defendants engaged in conduct that would give rise to any liability to Plaintiffs under the RICO statute or certain state antitrust laws; (2) whether the Mylan Defendants have valid defenses to any such claims of liability; (3) whether any conduct by the Mylan Defendants caused Plaintiffs any injuries; (4) the amount of damages, if any, that Plaintiffs suffered by reason of the Mylan Defendants' alleged wrongdoing, as well as the methodology for estimating any such damages; and (5) whether the Court properly certified the Class. Had the parties not settled this Action and the Other Actions, the Court and/or a jury would ultimately be required to decide these issues, placing the ultimate outcome in doubt. While Plaintiffs believe their claims would be borne out by the evidence presented at trial, they recognize that there are significant hurdles to proving liability and damages in trial and prevailing in any appeals.

5. Immediate Recovery Is More Valuable than the Mere Possibility of a More Favorable Outcome After Further Litigation.

Considering the risks associated with continued litigation, as discussed above, the immediate, substantial relief offered by the Settlement outweighs the “mere possibility of a more favorable outcome after protracted and expensive litigation over many years in the future.” *Syngenta*, 2018 WL 1726345, at *2; *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1244 (D.N.M. 2012) (“[t]o most people, a dollar today is worth a great deal more than a dollar ten years from now”) (quoting *Reynolds v. Beneficial Nat’l Bank*, 288 F.3d 277, 284 (7th Cir. 2002)).

Further, this Action has already been pending for nearly five years in this Court, and the Settling Parties and the Court would expend significant additional time, resources, and costs to

proceed to trial, and the inevitable appeals likely extending years into the future. *Chavez Rodriguez*, 2020 WL 3288059, at *3 (observing that “the costs and time of moving forward in litigation would be substantial”); *Lucas*, 234 F.R.D. at 694 (“If this case were to be litigated, in all probability it would be many years before it was resolved.”). Considering the complex legal and factual issues associated with continued litigation, there is an undeniable and substantial risk that, after years of continued litigation, Plaintiffs could receive an amount significantly less than the Settlement Amount, or nothing at all, for their claims against Mylan.

“By contrast, the proposed settlement agreement provides the class with substantial, guaranteed relief” now. *Lucas*, 234 F.R.D. at 694; *see also McNeely*, 2008 WL 4816510, at *13 (“The class . . . is better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted.”). “[The] immediate recovery in this case outweighs the time and costs inherent in complex securities litigation, especially when the prospect is some recovery versus no recovery.” *In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 691 (D. Colo. 2014); *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 625 (D. Colo. Aug. 10, 1976) (“In this respect, ‘[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush.’”); *accord Tennille v. W. Union Co.*, No. 09-cv-00938-JLK-KMT, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014), *appeal dismissed*, 809 F.3d 555 (10th Cir. 2015). Thus, the \$264 million immediate recovery, particularly when viewed in the context of the risks, costs, delay, and the uncertainties of further proceedings, weighs in favor of preliminary approval of the Settlement.

6. The Proposed Method for Distributing Relief Is Effective.

As demonstrated below, the proposed notice program and claims administration process are effective and were previously approved by the Court for the Pfizer Settlement. The settlement notice plan involves individual notice by email or First-Class Mail to all Class Members who can be

identified with reasonable effort, supplemented by various forms of internet and publication notice, targeted to reach likely EpiPen purchasers. *See* Schachter Declaration, ¶¶ 7-18 & Exhibit B thereto (Notice Plan). In addition, a case-designated website has been created where settlement-related and other key documents will be posted, including the Settlement Agreement, Notices, Proofs of Claim (Claim Forms), and Preliminary Approval Order. *Id.* ¶¶ 7, 19. The Settlement website will allow for Proof of Claim forms to be filed electronically. The claims process will be streamlined even further because Class Members who already submitted claims pursuant to the Pfizer Settlement will automatically be eligible to receive payments from the Mylan Settlement without the need to file an additional claim form.

Plaintiffs propose a fair and orderly claims administration process in which Class Members who wish to participate in the Settlement will complete and submit Proofs of Claim in accordance with the instructions contained therein. *See id.* ¶¶ 20-21; Plan of Allocation (Exhibit 3). The Settlement Administrator will distribute the Net Settlement Fund to Authorized Claimants on a *pro rata* basis under a Court-approved Plan of Allocation. *See* Plan of Allocation (Exhibit 3). The Plan of Allocation proposed here was prepared with information provided by Plaintiffs' experts and in consultation with A.B. Data.

7. Attorneys' Fees and Expenses.

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). The Notice provides that Class Counsel will apply to the Court for an award of attorneys' fees in an amount up to one-third of the Settlement Amount, plus payment of Plaintiffs' counsel's expenses incurred in connection with this Litigation, plus interest earned on these amounts at the same rate as earned by the Settlement Fund.

Class Counsel's anticipated fee request is the same percentage as the fee the Court approved in the Pfizer Settlement and well within the range that other courts in this District have approved in

complex class actions. *See In re EpiPen*, 2021 WL 5369798, at *4; ECF No. 2435-6, Table 1 (listing nine fee awards of one third or greater within the District of Kansas for class recoveries ranging from \$16.9 million to \$1.51 billion).

With respect to the timing of payment, the Settlement Agreement provides that any Plaintiffs' attorneys' fees and expenses, as awarded by the Court, shall be paid to Class Counsel within ten (10) days of the Court executing the Judgment and an order awarding such fees and expenses, subject to Class Counsel's several obligations to make appropriate refunds or repayments to the Settlement Fund plus interest thereon if, and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or expense award is lowered or the Settlement is disapproved by a final order not subject to final review. Settlement Agreement, ¶¶ 6.1-6.3; *see Syngenta*, 2021 WL 102819, at *4 (D. Kan. Jan. 12, 2021) (approving immediate payment of plaintiff counsel attorneys' fees and costs) (citing *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices and Prods. Liab. Litig.*, 952 F.3d 471, 487 (4th Cir. 2020)) (finding immediate payment provisions have generally been approved by federal courts); *see also In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 479-80 (S.D.N.Y. 1998); *Pelzer v. Vassalle*, 655 F. App'x 352, 365 (6th Cir. 2016) ("The quick-pay provision does not harm the class members in any discernible way, as the size of the settlement fund available to the class will be the same regardless of when the attorneys get paid."); *In re Whirlpool Corp. Front-loading Washer Prods. Liab. Litig.*, No. 1:08-WP-6500, 2016 WL 5338012, at *21 (N.D. Ohio Sept. 23, 2016) ("[q]uick-pay clauses substantially reduce the leverage a professional objector can wield"); Bolch Jud. Inst., Guidelines and Best Practices: Implementing 2018 Amendments to Rule

23 Class Action Settlement Provisions 21 (2018), (suggesting that the parties' efforts to discourage bad-faith objectors "include a 'quick-pay clause'").⁸

8. The Settling Parties Have No Additional Agreement.

Rule 23(e)(2)(C)(iv) requires the disclosure of any other agreements. The Settling Parties have no additional agreements.

9. Class Members Are Treated Equitably.

The final factor, Rule 23(e)(2)(D), looks at whether certified Class Members are treated equitably. The proposed Plan of Allocation (Exhibit 3) is substantively the same as the one approved by the Court in the Pfizer Settlement. As the Court found, this Plan of Allocation treats Class Members equitably. *In re EpiPen*, 2021 WL 5369798, at *10-11. The Net Settlement Fund will be allocated based on estimated damages as alleged and calculated in the Rebuttal Merits Expert Report of Professor Meredith Rosenthal (ECF No. 2216-2) and then distributed on a *pro rata* basis to Class Members based on total amounts paid for EpiPens during the Class Period. Two separate pools are established for TPPs and individual consumers because of their differing claim rates. The Plan of Allocation provides for a spill-over from one pool to the other if one pool exhausts but the other does not. Therefore, all Class Members are treated alike in receiving their *pro rata* share of the Settlement.

D. The Settlement Satisfies the Remaining Factor Considered by Courts in the Tenth Circuit.

The final, additional factor courts in the Tenth Circuit consider is "the judgment of the parties that the settlement is fair and reasonable." *Chavez Rodriguez*, 2020 WL 3288059, at *2. In analyzing this factor, courts recognize that "the recommendation of a settlement by experienced plaintiff[s'] counsel is entitled to great weight." *O'Dowd v. Anthem, Inc.*, No. 14-cv-02787-KLM-

⁸ Available at: <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1003&context=bolch>.

NYW, 2019 WL 4279123, at *14 (D. Colo. Sept. 9, 2019); *Hapka v. CareCentrix, Inc.*, No. 2:16-cv-02372-KGG, 2018 WL 1871449, at *5 (D. Kan. Feb. 15, 2018); *Marcus v. Kansas Dep't of Revenue*, 209 F. Supp. 2d 1179, 1183 (D. Kan. 2002) (“Counsels’ judgment as to the fairness of the agreement is entitled to considerable weight.”); *see also Crocs*, 306 F.R.D. at 690 (finding that, even without formal discovery, the parties were able to give adequate consideration to the strengths and weaknesses of their respective claims).

Class Counsel—all senior attorneys at law firms with considerable experience in complex antitrust and civil RICO class actions—only agreed to settle this Litigation after extensive investigation, written discovery, motion practice, deposition testimony, data analyses, substantial trial preparation, and rigorous arm’s-length negotiations. Additionally, as noted above, Plaintiffs and their Counsel have compared the recovery the certified Class will receive from the Settlement against the risks, delays, and uncertainties of continued litigation and appeals. Plaintiffs and their Counsel believe the Settlement is fair, adequate, and reasonable and should be approved. The Mylan Defendants likewise believe the Settlement should be approved. Because the above factors weigh in favor of the Settlement, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement.

V. THE PROPOSED FORM AND METHOD OF PROVIDING NOTICE TO THE CLASS ARE APPROPRIATE

A. The Court Should Preliminarily Approve the Proposed Notice of Settlement.

Rule 23(c)(2)(B) requires that notice in a Rule 23(b)(3) class action constitute “the best notice . . . practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). In terms of content, a settlement notice need only be “reasonably calculated, under all of the circumstances, to apprise [the] interested parties of the pendency of the [settlement proposed] and [to] afford them an

opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950); *see also*, *Fager*, 854 F.3d 1167, 1170 (10th Cir. 2016) (same); *Tennille*, 785 F.3d at 436 (same). “The hallmark of the notice inquiry . . . is reasonableness.” *Lucas*, 234 F.R.D. at 696.

Plaintiffs have submitted to the Court for approval the Notice and Summary Notice that will be provided to the certified Class and are substantially similar to those the Court approved in the Pfizer Settlement. In accordance with Rule 23(c)(2)(B), the proposed Notice will fully inform Class Members about the Action, the proposed Settlement, and the facts they need to make informed decisions about their rights and options in connection with the Settlement. Specifically, the Notice clearly describes: (i) the nature of the (proposed) Settlement and the (proposed) Plan of Allocation; (ii) the nature and extent of the release of claims; (iii) Class Counsel’s intent to request attorneys’ fees and expenses; (iv) the method for submitting a Proof of Claim; (v) the procedure and timing for objecting to the Settlement; (vi) the date, time, and place of the Final Fairness Hearing; and (vii) ways to receive additional information about this Litigation and the proposed Settlement. The Notices also provide Class Members with a toll-free telephone number, email address, and a Settlement website where Class Members may obtain additional information. Thus, the Notices are reasonably calculated to apprise the interested parties of the pendency of the Settlement and afford them a fair opportunity to object. As such, the form and manner of the proposed Notice meets the requirements of both Rule 23 and due process. As in the Pfizer Settlement, the Court should approve the Notices and the manner through which they will be delivered and communicated to the certified Class.

B. An Additional Settlement Opt-Out Is Neither Required By Due Process Nor Warranted Under Rule 23(e).

The initial class notice in this Litigation met and surpassed the constitutional standards for due process and all the requirements of Rule 23, and there has been no change in information

available to the certified Class since the first notice that warrants an additional, discretionary opt-out at settlement. *See* ECF No. 2240 (order approving notice). From start to finish of the class certification notice process, Class Counsel and A.B. Data administered a comprehensive notice program that included: acquiring expert input, using best practices recommended by the Federal Judicial Center, and, at every stage, coordinating the notice program with the United States District Court for the District of Kansas.

As required by due process and Rule 23(c)(2)(B), the initial class notice was “the best practicable [notice], ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Class Counsel made every reasonable effort to identify and deliver direct, individual notice to all Class Members. *See* Fed. R. Civ. P. 23(c)(2)(B). And to the greatest extent practicable under the circumstances, Class Counsel apprised all interested parties who could be contacted with reasonable effort of the impending Litigation, their rights to participate in or be excluded from the Action, and the legal effect(s) of either choice.

Not only did the exclusion language within the notice sufficiently inform Class Members of their right to be excluded from the Class (and the method and deadline for doing so in clear, concise, conspicuous, and plainly written language, so as to be easily understood by the average class member) – it did so repeatedly throughout the notice. *See Low v. Trump Univ., LLC*, 881 F.3d 1111, 1120 (9th Cir. 2018) (reviewing the sufficiency of previous class notice to satisfy due process related to class settlement); *see also Mullane*, 339 U.S. at 315 (holding that the measure for sufficiency of notice is reasonableness). The explicit exclusion language clearly informed Class Members of the legal consequences of either remaining in or opting out of the Action and expressly stated the possible outcomes of the Action included trial or settlement. *See* ECF No. 2209 (at 2209-

2 (Short Form Notice) & 2209-3 (Notice)) & ECF No. 2240 (order approving notices). Class Members were given reasonable opportunity to opt-out within seventy-five days of issuance of the notice, from November 1, 2020, until January 15, 2021. *Manual*, §21.321 (“Courts usually establish a period of thirty to sixty days (or longer if appropriate) following mailing or publication of the notice for class members to opt out.”). Therefore, as part of the Settlement Agreement, the Settling Parties have expressly agreed not to provide a second opt-out opportunity.

Allowing an unnecessary second opt-out opportunity could disrupt the Settlement Agreement the parties have carefully negotiated, putting at risk the \$264 million recovery for the Class. Courts consistently find that fair settlements do not require a second opt-out provision. *See Officers for Just. v. Civ. Serv. Comm’n of City & Cnty. of S.F.*, 688 F.2d 615, 634-35 (9th Cir. 1982); *Low*, 881 F.3d at 1121-22; *Low v. Trump Univ., LLC*, 246 F. Supp. 3d 1295, 1306 (S.D. Cal. 2017) (concluding that the initial notice and exclusion opportunity “undoubtedly” met the due process requirements); *Lowery v. City of Albuquerque*, No. CIV 09-0457 JB/WDS, 2013 WL 1010384, at *32 (D.N.M. February 27, 2013) (noting “the rule defers to the district court’s discretion and does not proscribe that a fair settlement must allow class members the opportunity to opt out”) (citing *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 354 (6th Cir. 2009)). “Requiring a second opt-out period as a blanket rule would disrupt settlement proceedings because no certification would be final until after the final settlement terms had been reached.” *Denney v. Deutsche Bank AG*, 443 F.3d 253, 271 (2d Cir. 2006); *see also, e.g., Low*, 881 F.3d at 1121 (“[There is] no authority of any kind suggesting that due process requires that members of a Rule 23(b)(3) class be given a second chance to opt out. . . . [Plaintiff’s] rights are protected by the mechanism provided in the rule: approval by the district court after notice to the class and a fairness hearing at which dissenters can voice their objections, and the availability of review on appeal.”).

Additionally, there are no factors warranting a discretionary opt-out at settlement under Rule 23(e)(4). The initial notice expressly conveyed to Class Members that possible outcomes of the Litigation included trial or settlement. The only relevant change in information available to Class Members since prior notice is that Plaintiffs and the Mylan Defendants have now agreed to a \$264 million settlement, which, as noted, provides immediate and valuable relief to the Class. “Courts have rejected the suggestion that a second opt-out should be granted as a matter of course, even if the terms of the settlement change after the expiration of the initial opt-out period.” 2 *McLaughlin on Class Actions* §6:21 (17th ed. 2020); *accord Lowery*, 2013 WL 1010384, at *42 (concluding that the change in circumstances of a more “significant recovery” at settlement than previously anticipated by the class weighed against providing an additional opt-out opportunity).

In rejecting the provision of a second opt-out period, multiple federal courts have noted that the Rule 23(c)(2) procedures for class certification provide absentee class members in a 23(b)(3) action with a choice: exclude themselves from the case or remain a party and be bound by the final judgment. This procedure “requires each absentee member to take affirmative action at the outset of the suit if he or she wishes to be excluded from the class.” *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1104 (5th Cir. 1977); *accord In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 325, 345-46 (E.D.N.Y. 2010) (concluding that “[i]f any class members wished to control the prosecution or settlement of their own claims, they could have opted out or sought to intervene after notice of pendency was given”) (citing *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114-115 (2d Cir. 2005)). These courts almost uniformly note the high cost to the settlement process at little benefit to objectors because the class members have had previous opportunities to opt-out. This was the court’s reasoning in *In re MetLife Demutualization Litig.* when it declined to offer a second exclusion opportunity at settlement:

Where, as here, a class action has been certified and class members have had a previous opportunity to request exclusion by opting out of the class, the court may afford individual class members a new opportunity to request exclusion, but it is not required to do so. In the present cases there shall not be provided a second opportunity for exclusion. The administration of any new exclusion procedures would be expensive. The number of policyholders who would opt out now, after failing to exclude themselves previously, is likely to be minimal to the vanishing point.

689 F. Supp. 2d at 325; *accord In re Washington Mutual, Inc.*, No. 2:08-md-1919 MJP, 2015 WL 12803633, at *1 (W.D. Wash. June 22, 2015) (concluding that a second opt-out opportunity need not be provided “in light of the extensive notice program undertaken in connection with the earlier settlements, the ample opportunity provided to Class Members to request exclusion from the Class at that time, and the fact that there would be no potential benefit to any Class Member who opts out”). As the Second Circuit noted, the costs are potentially high for allowing objectors to demand additional opt-out periods after settlement agreements whenever there is a change of information from the last notice and opportunity for exclusion: “Requiring a second opt-out period as a blanket rule [on any changed information] would disrupt settlement proceedings because no certification would be final until after the final settlement terms had been reached.” *Denney*, 443 F.3d at 271.

Where, as here and in the Pfizer Settlement, the prior class notice was adequate, the explicit exclusion language therein was sufficient and reasonable, and the costs of providing an additional opt-out outweigh any potential benefits, courts have overwhelmingly approved settlement agreements that do not provide for an additional opt-out opportunity.⁹ Plaintiffs and the Mylan

⁹ See, e.g., *Low*, 881 F.3d at 1120-22 (weighing the benefit and fairness of the settlement as a whole and determining district court acted well within its discretion by approving the settlement without a second opt-out period); *Denney*, 443 F.3d at 271 (“Neither due process nor Rule 23(e)[(4)] requires... a second opt-out period whenever the final terms [of a settlement] change after the initial opt-out period.”); *Wal-Mart*, 396 F.3d at 114 (holding that a single opt-out at certification of a settlement class was sufficient to protect a party’s interest in the proceedings and right to be excluded); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1289-90 (9th Cir. 1992) (holding that because class members were given an opportunity to opt out, notice of the proposed settlement, and

Defendants respectfully submit that no additional opt-out opportunity should be provided during notice to the Class for settlement purposes.

C. Appointment of A.B. Data to Serve as the Settlement Administrator Is Proper.

As with the Pfizer Settlement, Plaintiffs request that the Court appoint A.B. Data to serve as the Settlement Administrator with respect to the Settlement, which includes providing notice of the Settlement and administering the claims process and distribution of the Net Settlement Fund. A.B. Data is a highly experienced and well-qualified notice administrator (*see* Schachter Declaration at Exhibit A), and was appointed by the Court and successfully administered the class certification-stage notice, the Pfizer Settlement notice, and is currently administering the Pfizer Settlement. Class Counsel have worked favorably with A.B. Data and are confident in the firm's ability to continue the successful administration of notice and this Settlement, as well as the Pfizer Settlement.

the opportunity to object, no additional opt-out would be provided); *Officers for Just.*, 688 F.2d at 635 (finding “no authority of any kind suggesting that due process requires members of a Rule 23(b)(3) be given a second chance to opt out”); *Davis v. Abercrombie*, No. 11-00144 LEK-BMK, 2017 WL 2234175, at *9 (D. Haw. May 22, 2017) (rejecting plaintiff’s argument that a second opt-out period is necessary to protect class members’ due process rights or warranted under its discretionary powers); *Low*, 246 F. Supp. 3d at 1306 (concluding that the initial notice and exclusion opportunity “undoubtedly” met the due process requirements); *Lowery*, 2013 WL 1010384, at *42 (concluding that the parties arriving at more favorable terms in the final settlement than previously known or anticipated by class members *weighed against* the need for a late opt-out); *Denney v. Jenkins & Gilchrist*, 230 F.R.D. 317, 344 (S.D.N.Y. 2005) *aff’d in part, vacated in part on other grounds, remanded to Denney*, 443 F.3d 253 (finding no further opt out opportunity was required when prior notice was “more than adequate, both procedurally and with respect to its content”). District courts have very rarely refused to approve a settlement agreement for lack of a second opt-out provision. Indeed, our research has only identified two such cases in the same federal district: the District of Maine. That court did so twice and for similar reasons of fairness, due process, and the efficient administration of justice within the context of conditions affecting class members at settlement that were significantly different than those anticipated at the initial opt-out opportunity. *See Dare v. Knox Cnty.*, 457 F. Supp. 2d 52 (D. Me. 2006); *see also Tardiff v. Knox Cnty.*, 567 F. Supp. 2d 201, 204, 206, 209-10 (D. Me. 2008) (applying the *Dare* Court’s interpretation of liberal judicial discretion under Rule 23(e)(4)).

D. Appointment of Huntington Bank as Escrow Agent Is Proper.

Plaintiffs request the Court appoint Huntington Bank (“Huntington”) as Escrow Agent. Huntington is a well-known and highly-respected global bank providing consumers, corporations, governments and institutions with a broad range of financial services. Class Counsel in this case have worked favorably with Huntington for the Pfizer Settlement and in the past. Based on Huntington’s experience and familiarity with performing the services of an escrow agent, Class Counsel are confident Huntington will properly perform the duties of Escrow Agent as ordered by the Court.

E. Proposed Schedule of Settlement Events

If the Court grants preliminary approval of the proposed Settlement, the Settling Parties respectfully submit the following proposed procedural schedule:

DATE	EVENT
March 10, 2022	Mylan provides Class Action Fairness Act Notice
March 11, 2022 at 9:30 am	Hearing on Preliminary Approval of Settlement
Five business days after entry of Preliminary Approval Order	Settlement Notice Program Begins
May 20, 2022	Plaintiffs file Motion for Final Approval of Settlement, Attorneys’ Fees, Expenses, and Service Awards
June 8, 2022	Deadline to file Comments/Objections
June 27, 2022	Plaintiffs file Response to Objections for Final Approval of Settlement, Attorneys’ Fees, Expenses, and Service Awards
July 6, 2022 at 9:30 am	Hearing on Final Approval of Settlement, Attorneys’ Fees, Expenses, and Service Awards

VI. THE COURT SHOULD STAY PROCEEDINGS IN THE ACTION

The Settling Parties further request that the Court stay all proceedings in the Action and Other Actions pending a final determination as to whether the Settlement should be approved, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Courts routinely stay proceedings pending final approval of settlement agreements in circumstances such as these. *See, e.g.,* Memorandum and Order at 19 (Lungstrum, J.), *Syngenta,*

No. 14-md-2591-JWL (D. Kan. April 10, 2018), ECF No. 3531; Order Preliminarily Approving Settlement at 6 (Lungstrum, J.), *In re Urethane Antitrust Litig.*, No. 04-md-1616-JWL (D. Kan. June 13, 2006), ECF No. 380; *Marcus v. Kansas Dep't of Revenue*, 206 F.R.D. 509, 514 (D. Kan. 2002) (“All further litigation of this proceeding is hereby stayed pending final determination of the acceptance of the settlement agreement at the fairness hearing.”); *Albrecht v. Oasis Power, LLC*, No. 1:18-cv-1061, 2019 U.S. Dist. LEXIS 162876, at *19 (N.D. Ill. Sep. 24, 2019) (“Pending final determination of whether the Settlement should be approved, all discovery and all proceedings in the Litigation unrelated to the approval of the Settlement are stayed.”); *In re Sony PS3 “Other OS” Litig.*, No. 10-cv-01811-YGR, 2017 WL 5598726, at *6 (N.D. Cal. Nov. 21, 2017) (same).

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant Plaintiffs’ motion for preliminary approval and enter the agreed proposed Preliminary Approval Order, attached as Exhibit A to the Settlement Agreement and submitted in Word format herewith.

Respectfully submitted,

DATED: February 28, 2022

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By: /s/ Rex A. Sharp

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Exhibit 8

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE SOLODYN (MINOCYCLINE
HYDROCHLORIDE) ANTITRUST
LITIGATION

MDL No. 2503
1:14-md-2503-DJC

THIS DOCUMENT RELATES TO:
ALL END-PAYOR ACTIONS

**[PROPOSED] ORDER PRELIMINARILY APPROVING END-PAYOR CLASS
PLAINTIFFS' SETTLEMENTS WITH IMPAX LABORATORIES, INC.**

WHEREAS, on March 28, 2018, Plaintiffs, United Food and Commercial Workers Local 1776 & Participating Employers Health and Welfare Fund; City of Providence, Rhode Island; Fraternal Order of Police, Fort Lauderdale Lodge 31 Insurance Trust Fund; International Union of Operating Engineers Local 132 Health and Welfare Fund; International Union of Operating Engineers Stationary Engineers Local 39 Health & Welfare Trust Fund; Painters District Council No. 30 Health and Welfare Fund; Plumbers & Pipefitters Local 178 Health & Welfare Trust Fund; Heather Morgan; Man-U Service Contract Trust Fund; Sheet Metal Workers Local No. 25 Health & Welfare Fund; Local 274 Health & Welfare Fund; and Allied Services Welfare Fund (collectively, "End-Payor Class Plaintiffs"), on behalf of themselves and the certified End-Payor Class, entered into a settlement agreement ("Impax Settlement"), which sets forth the terms and conditions of the parties' proposed settlement and the release and dismissal with prejudice of the End-Payor Class' claims against Impax Laboratories, Inc. ("Impax");

WHEREAS, on April 4, 2014, End-Payor Class Plaintiffs filed a Motion for Preliminary Approval of Proposed Class Action Settlement with Impax ("End-Payor Class Plaintiffs' Motion"), requesting the entry of an Order: (i) preliminarily approving the Impax Settlement; (ii)

approving the plan of allocation; (iii) approving the proposed notice to the Class; (iv) appointing A.B. Data, Ltd. (“A.B. Data”) to serve as claims administrator; (v) appointing The Huntington National Bank to serve as Escrow Agent; (vi) setting a schedule for final approval of the Impax Settlement; and (vii) staying End-Payor Class Plaintiffs’ litigation against Impax;

WHEREAS, Impax does not oppose End-Payor Class Plaintiffs’ Motion;

WHEREAS, the Court is familiar with and has reviewed the record in this case and has reviewed the Settlement Agreement, including the attached exhibits, and has found good cause for entering the following Order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

JURISDICTION

1. This Court has jurisdiction to enter this Order. The Court has jurisdiction over the subject matter of this action and over all parties to the action, including all members of the End-Payor Class.

PREVIOUSLY CERTIFIED CLASS

2. In light of this Court’s previous order dated October 16, 2017 [ECF No. 682] certifying the End-Payor Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3), and the now proposed settlement in the above-captioned action (the “Action”) with Impax, for purposes of this Settlement the Class is defined as follows:

All persons or entities in the United States and its territories and possessions, including the Commonwealth of Puerto Rico, who indirectly purchased, paid and/or provided reimbursement for some or all of the purchase price for Solodyn 45mg, 55mg, 65mg, 80mg, 90mg, 105mg, 115mg and/or 135mg tablets and/or generic versions of one or more of these dosages in Alabama, Alaska, Arizona, Arkansas, California, Florida,

Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, the District of Columbia and Puerto Rico, for consumption by themselves, their families, or their members, employees, insureds, participants, or beneficiaries, other than for resale, at any time from July 23, 2009 to February 25, 2018.

The following persons or entities are excluded from the End-Payor Class:

Defendant and their counsel, officers, directors, management, employees, subsidiaries, or affiliates;

All federal or state governmental entities, excluding cities, towns, or municipalities with self-funded prescription drug plans;

All persons or entities who purchased Solodyn or its generic equivalents for purposes of resale or directly from the Defendant or its affiliates;

Fully insured health plans (plans that purchased insurance from another third-party payor covering 100% of the plan's reimbursement obligations to its members);

Pharmacy Benefits Managers;

Flat co-payers (consumers who paid the same co-payment amount for brand and generic drugs); and

The judges in this case and any members of their immediate families.

PRELIMINARY APPROVAL OF SETTLEMENT

3. The terms of the Impax Settlement Agreement, dated March 28, 2018, including all exhibits thereto, are hereby preliminarily approved. This Order incorporates the Settlement

Agreement, and terms used in this Order that are defined in the Settlement Agreement have the same meanings. The Settlement Agreement was entered into after full fact and expert discovery, class certification and summary judgment/*Daubert* motions decided after extensive briefing and argument, and ten days of trial. The Settlement Agreement was concluded after arm's-length negotiations by experienced counsel on behalf of the certified End-Payor Class. Because the parties reached the settlement as a result of good-faith negotiations and after sufficient discovery, a presumption of fairness attaches to the settlement. See *In re Pharm. Indus. Avg. Wholesale Price Litig.*, 588 F.3d 24, 32-33 (1st Cir. 2009). Accordingly, the Court preliminarily finds that the Settlement is fair, reasonable and adequate, and in the best interests of the End-Payor Class, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and that preliminary approval is warranted.

4. Huntington Bank is hereby appointed as Escrow Agent pursuant to the Settlement Agreement.

5. A.B. Data is hereby appointed as claims administrator.

6. Pending further Order of the Court, all litigation activity against Impax on behalf of End-Payor Class Plaintiffs is hereby stayed, and all hearings, deadlines, and other proceedings related to End-Payor Class Plaintiffs' claims against Impax, other than those incident to the settlement process, are hereby taken off calendar. The stay shall remain in effect until such time that: (i) the Impax or End-Payor Class Plaintiffs exercise their right to terminate the Impax Settlement Agreement pursuant to its terms; (ii) the Settlement Agreement is terminated pursuant to its terms; or (iii) the Court renders a final decision regarding approval of the Impax Settlement, and, if it approves the Impax Settlement, enters final judgment and dismisses End-Payor Class Plaintiffs' claims against Impax with prejudice. Impax shall not be a party to the

ongoing proceedings in this case, and Impax is neither bound nor estopped by any findings made hereafter.

7. In the event that the Impax Settlement Agreement fails to become effective in accordance with its terms, or if an Order granting final approval to the Impax Settlement Agreement and dismissing End-Payor Class Plaintiffs' claims against Impax with prejudice is not entered or is reversed, vacated, or materially modified on appeal, this Order shall be null and void.

8. In the event the Impax Settlement Agreement is terminated, not approved by the Court, or the Impax Settlement does not become final pursuant to the terms of the Impax Settlement Agreement, litigation against Impax shall resume in a reasonable manner as approved by the Court upon joint application of End-Payor Class Plaintiffs and Impax.

APPROVAL OF SCHEDULE

9. A.B. Data and End-Payor Class Plaintiffs shall adhere to the following schedule:

- a. Within 5 days of the date of this Order, A.B. Data shall update the Class Website (www.solodyncase.com) to announce the Settlement.
- b. Within 5 days of the date of this Order, A.B. Data shall begin the process of providing notice to the Class of this Settlement, in accordance with the Plan of Notice.
- c. A.B. Data shall complete publication of Notice of the Settlement by June 11, 2018.
- d. Members of the End-Payor Class may object to the Impax Settlement not later than June 18, 2018.
- e. Class members who wish to object to the proposed Settlement and/or appear in person at the hearing on final approval of the settlement ("Fairness Hearing") must first

send an objection and, if intending to appear, a notice of intention to appear, along with a summary statement outlining the position(s) to be asserted and the grounds therefore, together with copies of any supporting papers or briefs, via first class mail, postage prepaid, to the Clerk of the U.S. District Court for the District of Massachusetts, United States Courthouse, 1 Courthouse Way, Boston, MA 02210, with copies to the following counsel:

Counsel for the End-Payor Class:

Steve D. Shadowen
Hilliard & Shadowen LLP
2407 S. Congress Ave., Ste. E 122
Austin, TX 78704
Tel: (855) 344-3298
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Email: mbuchman@motleyrice.com

Counsel for Impax:

Lisa Jose Fales
J. Douglas Baldrige
Danielle R. Foley
Venable LLP
600 Massachusetts Ave NW
Washington, DC 20001
Tel: (202) 344-4000

The objection and/or notice of intention to appear shall state that they relate to *In re: Solodyn (Minocycline Hydrochloride) Antitrust Litigation*, MDL No. 2503 (D. Mass.). To be valid, any such objection to the Settlement and/or notice of intention to appear must be postmarked no later than June 18, 2018, and it must include the class member's name, address, telephone number, and signature. Except as herein provided, no person or entity shall be entitled to contest the terms of the proposed Settlement. All persons and entities who fail to file a notice of intention to

appear or a letter stating reasons for objecting as provided above shall be deemed to have waived any objections by appeal, collateral attack, or otherwise and will not be heard at the Fairness Hearing.

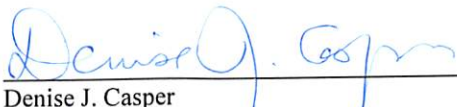
f. All briefs and materials in support of final approval of the settlements and entry of the final judgment proposed by the parties to the Settlement Agreement shall be filed with the Court no later than 30 days before the date of the Fairness Hearing.

g. A hearing on final approval of the settlement or Fairness Hearing shall be held before this Court on July 18, 2018, at 3 p.m. Eastern Time, in Courtroom 11 of the United States District Court for the District of Massachusetts, United States Courthouse, 1 Courthouse Way, Boston, MA 02210.

10. Neither this Order nor the Settlement Agreement nor any other Settlement-related document or anything contained herein or therein or contemplated hereby or thereby nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein or in any other Settlement-related document shall constitute, be construed as or be deemed to be evidence of or an admission or concession by Impax as to the validity of any claim that has been or could have been asserted against Impax or as to any liability of Impax or as to any matter set forth in this Order.

SO ORDERED:

Dated: April 5, 2018



Denise J. Casper
United States District Court Judge
U.S. District Court for the District of Massachusetts