

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: GENERIC PHARMACEUTICALS  
PRICING ANTITRUST LITIGATION

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THIS DOCUMENT RELATES TO:

*ALL ACTIONS*

MDL NO. 2724

16-MD-2724

HON. CYNTHIA M. RUFÉ

**SETTLEMENT AGREEMENT**

This Settlement Agreement is made and entered into on January 2, 2024 by and between plaintiffs César Castillo, LLC, FWK Holdings, LLC, Rochester Drug Cooperative, Inc. and KPH Healthcare Services, Inc. (“Settling Direct Purchaser Plaintiffs” or “Settling Plaintiffs”), individually and on behalf of the Settlement Class as defined in Paragraph 1 below (“Settlement Class”), by and through Dianne M. Nast, NastLaw LLC, in her capacity as Lead and Liaison Counsel (“Lead Counsel”) for Direct Purchaser Plaintiffs in *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, MDL No. 2724 (Rufe, J.) (the “Action”), and defendant Breckenridge Pharmaceutical, Inc. (“Settling Defendant”) (collectively with Settling Plaintiffs, the “Settling Parties”), by and through its counsel Heather Lamberg, Freshfields Bruckhaus Deringer LLP and Jeffrey Kessler, Winston & Strawn LLP. This Settlement Agreement is intended to, and upon occurrence of the Effective Date will fully, finally, and forever resolve, compromise, discharge, and settle the claims of the Settlement Class in the Action as to Releasees (as defined in Paragraph 12), subject to the terms and conditions set forth herein. The Settlement Agreement resolves claims against Releasees only, and does not resolve, compromise, discharge, or settle any of the claims of the Settling Plaintiffs or the Settlement Class against any other defendant in the Action.

## RECITATIONS

WHEREAS, Settling Plaintiffs allege for themselves and on behalf of a class of direct purchasers of generic pharmaceutical products from Settling Defendant and other generic pharmaceutical product manufacturers, that Settling Defendant and others engaged in a scheme or schemes to fix, maintain, and stabilize prices, rig bids, and engage in market and customer allocations of certain generic drugs, imposing overcharges on Settling Direct Purchaser Plaintiffs, in violation of the federal antitrust laws;

WHEREAS, Settling Defendant has not conceded or admitted any liability in the Action, and has asserted a number of defenses to the claims of Settling Direct Purchaser Plaintiffs and the Settlement Class;

WHEREAS, in consideration for its entry into the Settlement Agreement, Settling Defendant has committed to provide Lead Counsel, along with additional counsel for Settling Direct Purchaser Plaintiffs and the Settlement Class (“Settlement Class Counsel”), with substantial cooperation in their continued prosecution of the Action against other defendants;

WHEREAS, after substantial discovery of the facts, including the claims asserted in Settling Plaintiffs’ complaints in the Action, and the legal and factual defenses thereto asserted by Settling Defendant, and in light of ongoing litigation against and joint and several liability of other defendants in the Action and Settling Defendant’s commitment to provide substantial assistance in Settling Direct Purchaser Plaintiffs’ ongoing prosecution of the Action, Settling Direct Purchaser Plaintiffs, in consultation with Lead Counsel and Settlement Class Counsel, believe that it would be in the best interests of Settling Direct Purchaser Plaintiffs and the Settlement Class to enter into this Settlement Agreement with Settling Defendant to eliminate the need for Settling Direct Purchaser Plaintiffs to devote resources to the prosecution of their claims against Settling Defendant, further the prosecution of claims against other defendants in the

Action aided by the substantial assistance of Settling Defendant, and assure a benefit to the Settlement Class;

WHEREAS, Settling Plaintiffs and Settling Defendant agree that this Settlement Agreement and the settlement it embodies (the “Settlement”) and any actions taken in furtherance of either the Settlement Agreement or the Settlement shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, or regulation, or of any liability or wrongdoing by Settling Defendant or of the truth of Settling Plaintiffs’ claims or allegations for purposes other than the Settlement;

WHEREAS, Lead Counsel and Settlement Class Counsel, on behalf of Settling Plaintiffs and the Settlement Class, and counsel for Settling Defendant, all of whom are highly experienced in pharmaceutical antitrust litigation and settlement, engaged in arm’s-length settlement negotiations and have reached this Settlement Agreement, subject to Court approval;

WHEREAS, Settlement Class Counsel recognize the benefit of Settling Defendant’s cooperation and recognize that, because of joint and several liability, the Settlement Agreement with Settling Defendant does not impair Settling Plaintiffs’ ability to collect the full amount of damages to which they and the Settlement Class may be entitled to from any other defendants in the Action;

WHEREAS, Settling Defendant has agreed to cooperate with Settling Plaintiffs as set forth in **Exhibit A** to this Agreement and therefore will reduce Settling Plaintiffs’ burden and expense associated with prosecuting the Action;

WHEREAS, Settlement Class Counsel have concluded that the Settlement is fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23 and is in the best interests of the Settlement Class;

WHEREAS, Settling Defendant has concluded, despite its belief that it is not liable for claims asserted and that it has good defenses thereto, that it would be in its best interests to enter into this Settlement Agreement solely to avoid additional costs of further litigation and to resolve all claims asserted on behalf of the Settlement Class in the Action;

WHEREAS, the Settlement resolves claims against Releasees only, and does not resolve, compromise, discharge, or settle any of the claims of Settling Plaintiffs or the Settlement Class against any other defendant in the Action.

NOW THEREFORE, in consideration of the foregoing and the representations, warranties, and covenants contained herein, and intending to be legally bound hereby, it is agreed by the undersigned, on behalf of Settling Plaintiffs and the Settlement Class, and Settling Defendant, that the Action and all claims of the Settling Plaintiffs and the Settlement Class be settled, compromised, and dismissed with prejudice as to Releasees, with each party bearing its own costs (other than as provided for in this Settlement Agreement), subject to the approval of the Court, on the following terms and conditions:

1. **Direct Purchaser Settlement Class.** The Plaintiffs have proposed a definition, subject to Court approval of the following Settlement Class:

All persons or entities, and their successors and assigns, that directly purchased one or more of the Named Generic Drugs from one or more Current or Former Defendants in the United States and its territories and possessions, at any time during the period from May 1, 2009 until December 31, 2019.

Excluded from the Settlement Class are Current and Former Defendants and their present and former officers, directors, management, employees, subsidiaries, or affiliates, judicial officers and their personnel, and all governmental entities.

The Named Generic Drugs are set forth in **Exhibit B** (“Named Generic Drugs”). The Current and Former Defendants are set forth in **Exhibit C**.

2. **Appointment of Class Representatives.** Settling Plaintiffs shall move for certification of the Settlement Class and shall move for appointment of the Settling Plaintiffs as class representatives. Settling Defendant shall not object to such motion and shall not seek or support any appeal of any order certifying the Settlement Class, for purposes of the Settlement only.

3. **Reasonable Best Efforts to Effectuate this Settlement.** Settling Plaintiffs, Lead Counsel and Settlement Class Counsel, and Settling Defendant agree to recommend approval of this Settlement to the Court and to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, to carry out the terms of this Settlement Agreement, and to secure the prompt, complete, and final dismissal with prejudice of claims in the Action against Releasees. This includes Settling Defendant serving notice of this Settlement on the appropriate federal and state officials under the Class Action Fairness Act, 28 U.S.C. § 1715.

4. **Motion for Preliminary Approval of the Settlement.** The parties may disclose the fact that they have entered a settlement agreement as is reasonably necessary, however, the parties agree not to disclose to any other person or entity, including but not limited to any other plaintiff or defendant in the Action, the terms of this Settlement until the Settlement Agreement is submitted to the Court for preliminary approval, unless required by law or regulation or agreed to in writing by the Settling Parties. As soon as is possible and in no event later than 30 business days after the date of this Settlement Agreement, Lead Counsel and Settlement Class Counsel shall submit to the Court, and Settling Defendant shall assent to and will assist as necessary, a motion requesting preliminary approval of the Settlement, and authorizing dissemination of Notice to the Settlement Class, and seeking entry of an Order Preliminarily Approving Class

Settlement. Settling Defendant shall have the opportunity to review and approve the preliminary approval motion and exhibits before the motion is filed. The motion shall:

- a. Request preliminary approval of the Settlement set forth in this Settlement Agreement as fair, reasonable, and adequate, and in the best interests of the Settlement Class, pursuant to Fed. R. Civ. P. Rule 23;
- b. Request a stay of all proceedings in the Action on behalf of Settling Direct Purchaser Plaintiffs and the Settlement Class against Settling Defendant only, except those proceedings provided for or required by this Settlement Agreement. *Provided, however*, that counsel for the Settling Plaintiffs may continue to participate in discovery including depositions relating to the Settling Defendant pursued by other plaintiffs in the Action, but Settlement Class Counsel shall not act as lead examiner in any such depositions.
- c. Request approval of the notice plan, providing for direct mail notice to all members of the Settlement Class who can reasonably be determined, and a publication notice, as needed; and
- d. Seek a schedule for a hearing by the Court after the notice period has expired to finally approve the Settlement and Settlement Class Counsel's application for an award of attorney fees, reimbursement of expenses, and service award to the Settling Plaintiffs.

**5. Motion for Final Approval and Entry of Final Judgment.** If the Court preliminarily approves this Settlement (the "Preliminary Approval Order"), Settling Plaintiffs and the Settlement Class shall submit, and Settling Defendant shall assent to and assist as necessary, a motion requesting final approval of this Settlement by the Court (the "Final Approval Motion"), after Notice has been disseminated to the Settlement Class pursuant to the Preliminary Approval Order. The Final Approval Motion shall seek entry of an order and final

judgment (“Final Approval Order”), which Settling Defendant shall have the opportunity to review and approve before it is submitted to the Court:

a. Finding this Settlement Agreement and its terms to be a fair, reasonable, and adequate settlement as to Settling Plaintiffs and the Settlement Class within the meaning of Fed. R. Civ. P. 23 and directing its consummation pursuant to its terms;

b. Finding that Notice given constitutes due, adequate, and sufficient notice and meets the requirements of due process and the Federal Rules of Civil Procedure;

c. Finding that all members of the Settlement Class who have not executed timely and valid or otherwise Court-approved requests for exclusion shall be bound by this Settlement Agreement, including the release provisions and covenant not to sue set forth in this Settlement Agreement;

d. Incorporating the releases set forth in Paragraphs 12 and 13, below, and forever barring the Releasors (as defined in Paragraph 12) from asserting any Released Claims (as defined in Paragraph 12) against any of the Releasees as defined below;

e. Retaining exclusive jurisdiction over the Settlement and this Settlement Agreement, including the administration and consummation of this Settlement;

f. Directing that all claims by and on behalf of the Settling Plaintiffs and the Settlement Class be dismissed with prejudice as to Releasees only and, except as provided for herein, with prejudice and without costs or attorney’s fees recoverable under 15 U.S.C. § 15(a); and

g. Determining pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the Final Approval Order in the Action as to Releasees shall be final and immediately appealable.

6. **Finality of Settlement.** This Settlement Agreement and the Settlement shall become final upon the occurrence of all of the following (the “Effective Date”):

a. The Settlement and this Settlement Agreement are approved by the Court as required by Fed. R. Civ. P. 23(e);

b. The Court enters an order finally approving the Settlement substantially in the form of the Settling Parties’ agreed proposed Final Approval Order, entering a final judgment of dismissal with prejudice as to Releasees only against Settling Plaintiffs and the Settlement Class;

c. The time for appeal from the Court’s entry of the Final Approval Order has expired or, if the Final Approval Order is appealed, it has been resolved by agreement and withdrawn by the appealing party, or it has been affirmed by the court of last resort to which an appeal of such Final Approval Order may be taken; and

d. The Settlement is not terminated pursuant to Paragraph 17, below.

7. **Settlement Payment.** Within 20 business days following entry of the Preliminary Approval Order of the Settlement without material change from the order submitted to the Court and receipt of wiring instructions, Settling Defendant shall pay \$5,000,000 (the “Settlement Payment”) to the designated account (the “Settlement Fund”). If the Settlement Payment is subject to adjustment pursuant to Paragraph 9, any reduction of the Settlement Amount will be refunded to the Settling Defendant as set forth in Paragraph 9. The Settlement Fund shall be held in escrow (the “Escrow Account”), subject to the terms and conditions of an escrow agreement and in accordance with the provisions of Paragraph 8 below, pending finality of this Settlement Agreement pursuant to Paragraph 6, above.



**8. The Settlement Fund.**

a. Before the Court issues the Final Approval Order, disbursements for reasonable expenses, including expenses associated with providing notice of the Settlement to the Settlement Class, expenses associated with administering the Settlement, and expenses associated with developing a plan of allocation of the Settlement Fund to those who submit valid and timely claims, and any payments and expenses incurred in connection with taxation matters relating to the Settlement and this Settlement Agreement (collectively, “Administration Expenses”) may be made from the Settlement Fund. Disbursements for Administration Expenses prior to or after the Effective Date may be made without court order up to a total of \$150,000; all Administration Expenses incurred or owed by Settlement Class Counsel in excess of this amount whether before or after the Effective Date, shall be borne by Settlement Class Counsel, who may be repaid from the Settlement Fund, or may seek to have outstanding invoices paid from the Settlement Fund, after the Effective Date upon Court approval. In the event the Settlement Agreement is disapproved, terminated, or otherwise fails to become effective, the Settlement Fund shall be refunded to Settling Defendant plus interest earned (net of any taxes paid on such interest), minus Administration Expenses not to exceed \$150,000. Court approval shall not be required for disbursements for Administration Expenses for amounts (in the aggregate) of less than \$150,000. Otherwise, no disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court.

b. At all times prior to the Effective Date, the Settlement Fund shall be invested as set forth in the Escrow Agreement, in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account insured by the Federal

Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit. After the Effective Date, the Settlement Fund shall be invested as directed in writing by Lead Counsel or her designee. All interest and dividends earned on the Settlement Fund shall become and remain part of the Settlement Fund. Any losses on the Settlement Fund shall be borne by the Settlement Fund and shall not be recoverable from Settling Defendant. Settling Defendant shall have no liability, obligation, or responsibility of any kind in connection with the investment, disbursement, or other oversight of the Settlement Fund.

c. After the Effective Date, the Settlement Fund shall be distributed in accordance with the Court-approved plan for such distribution. After making the Settlement Payment, Settling Defendant shall have no responsibility whatsoever for the allocation or distribution of the Settlement Fund and shall not be responsible for disputes relating to the amount, allocation, or distribution of any fees or expenses, including attorneys’ fees. Settling Defendant shall provide reasonable cooperation, as needed, in connection with claims administration, including providing data and answers to data questions.

d. Settling Defendant shall have no right of reimbursement or repayment from the Settlement Fund except pursuant to Paragraph 9 or if the Settlement Agreement is terminated as set forth in Paragraph 17 below.

e. Settling Plaintiffs, Lead Counsel and Settlement Class Counsel may be reimbursed solely out of the Settlement Fund for all expenses. Settling Defendant shall not be liable for any costs, attorneys’ fees, other fees, or expenses of any of Settling Plaintiffs’ or the Settlement Class’s respective attorneys, experts, advisors, agents, or representatives, but any such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

f. To the extent that there is any ambiguity or inconsistency concerning disbursements when this Settlement Agreement and the Escrow Agreement are read together, the terms of this Settlement Agreement shall control.

9. **Exclusions.** Within 10 business days after the deadline for Settlement Class Members to request exclusion from the Settlement Class (as defined in Paragraph 1 above), Settlement Class Counsel will cause copies of requests for exclusion from members of the Settlement Class to be provided to counsel for Settling Defendant. The parties will then compare the list of requests for exclusion to confidential **Exhibit D**, which will reflect the share of purchases of Named Generic Drugs from Settling Defendant by all direct purchasers during the periods set forth in Exhibit D. All calculations set forth in this paragraph concerning the aggregate dollar amount of purchases by the Settlement Class Members who have filed timely and valid or otherwise Court-approved requests for exclusion (“Opt-outs”) or who have entered into a written agreement with Settling Defendant to opt-out; relative to the aggregate dollar amount of purchases by the defined Settlement Class (as defined by Paragraph 1) and all calculations in Paragraph 11 shall be based on the figures set forth in the Adjusted Share of Total Net Sales Column of the Settling Defendant Net Sales of Exhibit D. If, as reflected in Exhibit D, the aggregate dollar amount of purchases by Opt-outs represents an amount equal to or greater than 20 percent of the aggregate dollar amount of purchases by the defined Settlement Class from Settling Defendant, Settling Defendant will be entitled to a reduction of \$645,000 from the Settlement Payment set forth in Paragraph 7 above. If, as reflected in Exhibit D, the aggregate dollar amount of purchases by Opt-outs represents an amount less than 20 percent of the aggregate purchases by the defined Settlement Class from Settling Defendant, Settling Defendant will be entitled to a pro rata reduction of the Settlement Payment set forth in Paragraph 7 above,

up to \$645,000 (*i.e.*, each one percent of aggregate purchases by Settlement Class members who filed timely and valid or otherwise Court-approved requests for exclusion shall reduce the settlement amount by \$32,250, up to a maximum of 20 percent of aggregate purchases and a maximum reduction of \$645,000). All reductions pursuant to this Paragraph 9 shall be refunded to the Settling Defendant from the Escrow Account within 30 calendar days after Settlement Class Counsel causes copies of requests for exclusion to be provided to counsel for Settling Defendant. As set forth in a separate letter agreement to be filed with the Court if so requested by the Court, to be filed in camera with Court permission, Settling Defendant shall have the right, but not the obligation, at its sole discretion, to rescind this Settlement Agreement at any time within 45 calendar days after Settlement Class Counsel provides copies of all timely and valid requests or otherwise Court-approved requests for exclusion from the Settlement Class to counsel for Settling Defendant. Any exclusion requests filed after the deadline to request exclusion that are nonetheless approved by the Court, shall count toward the aggregate dollar amount of purchases by Opt-outs. If either of the Settling Parties disputes any of the calculations under this paragraph and the parties cannot agree on a resolution, they shall submit the dispute to arbitration for final resolution pursuant to Paragraph 22.

**10. Cooperation.** Settling Defendant agrees to provide substantial cooperation to Settling Plaintiffs and Lead Counsel and Settlement Class Counsel in connection with the prosecution of the Action against other defendants as set further in the Cooperation Agreement between Settling Defendant and Settling Plaintiffs annexed hereto as Exhibit A, the terms of which are material to this Settlement Agreement and expressly incorporated herein. As of the execution date of this Settlement Agreement, the parties shall each suspend all discovery and motions practice between (i) Settling Plaintiffs and the Settlement Class and (ii) Settling

Defendant. Neither Settling Plaintiffs and the Settlement Class nor Settling Defendant shall be required to respond to formal discovery from the other, and neither Settling Plaintiffs nor Settling Defendant shall file motions against the other during the pendency of the Settlement Agreement. However, Settling Plaintiffs shall have the right, after consultation with counsel for Settling Defendant, to notice and take a deposition of any person whose interview or deposition is subject to the Cooperation Agreement refuses to provide reasonable cooperation to Settling Plaintiffs; in such event, Settlement Class Counsel shall have the discretion to institute process to obtain testimony from such person. For the purposes of this Paragraph 10 and Paragraph 12, invoking the Constitutional right against self-incrimination shall not be deemed a failure to provide reasonable cooperation. Counsel for Settling Plaintiffs also shall have the right, both before and after the Effective Date, to participate in discovery including attend depositions relating to the Settling Defendant pursued by other plaintiffs in the Action.

**11. Most Favored Nation.** If within 18 months following the date that the Court grants Preliminary Approval of this Settlement Agreement, Settling Defendant enters into any settlement agreement or binding term sheet with any Opt-out (as defined in Paragraph 9) (collectively, “Other Direct Purchaser Settlement”), then Settling Defendant shall provide notice of the Other Direct Purchaser Settlement to Settlement Class Counsel within 10 calendar days of signing of such Other Direct Purchaser Settlement. This paragraph applies to any Other Direct Purchaser Settlement signed within 18 months following the date that this Court grants Preliminary Approval of this Settlement Agreement even if such Other Direct Purchaser Settlement is signed before the formal notice and opt-out period has begun or expired but is signed with an entity that otherwise would have been a member of the Settlement Class. Settlement Class Counsel shall maintain the confidentiality of any information regarding Other

Direct Purchaser Settlement Agreements provided by Settling Defendant pursuant to this Paragraph, including the fact and terms of the settlement. The Notice to Settlement Class Counsel shall indicate whether the financial terms of the Other Direct Purchaser Settlement Agreement are more favorable than the terms of this Settlement Agreement. Specifically, if the financial payment made by Settling Defendant to such Opt-out in any Other Direct Purchaser Settlement (including the financial value of any non-cash terms such as discounts on product within or in consideration for such Other Direct Purchaser Settlement), when compared as a ratio to the purchases by such Opt-out of Named Generic Drugs from Settling Defendant as reflected in Exhibit D, are more favorable on a proportionate basis than the financial payment provided to the Settlement Class (as defined in Paragraph 1) after any reduction under Paragraph 9, when compared as a ratio to the purchases of Named Generic Drugs from Settling Defendant as reflected in Exhibit D, then this Settlement Agreement shall be automatically amended without any further action of the Settling Plaintiffs in an economically equivalent manner such that the Settlement Class shall receive the benefit of the more favorable financial terms as set forth in such Other Direct Purchaser Settlement; *provided, however*, that notwithstanding anything in the foregoing to the contrary:

a. The operation of this Paragraph shall apply to an individual settlement agreement with a direct purchaser, and/or assignee of a direct purchaser, that would otherwise be a member of the Settlement Class and whose individual direct purchases and assigned purchases of Named Generic Drugs from Settling Defendant represent an amount equal to or greater than two percent (2%) of Settling Defendant's aggregate direct sales, as reflected in Exhibit D. This Paragraph shall not apply to any settlement agreement with any other putative class or collective claim in the Action, nor shall it apply to any settlement with a government entity or any party

representing the claims of a government entity, even if such purchases constitute direct purchases.

b. To the extent that such a purchaser has made both direct purchases (including assigned purchases from the direct purchaser) and indirect purchases not subject to any assignment from a direct purchaser, only the financial terms of such settlement applicable to the direct purchases and assigned direct purchases, as reflected in Exhibit D, made by such purchaser shall be considered in determining the applicability of this Paragraph. Settling Defendant shall provide to Settlement Class Counsel a reasonable, good faith estimate of the percentage of the settling party's purchases from Settling Defendant that are attributable to direct purchases and assigned direct purchases. Upon good cause shown, Settlement Class Counsel shall have the right to request the underlying bases for this estimate. Settling Defendant represents and warrants that it will not artificially allocate settlement dollars or value to indirect purchases in order to avoid application of this paragraph, but that any allocation to indirect purchases will be done in good faith.

c. In no event shall any amendments to the terms of this Settlement Agreement made pursuant to this Paragraph cause the Settlement Payment to exceed \$6,176,470.59. All payments made pursuant to this Paragraph shall become part of the Settlement Fund.

d. If either of the Settling Parties disputes any of the calculations pursuant to this paragraph and after good faith discussions about the dispute, the parties cannot agree to a resolution, they shall submit the dispute to arbitration for final resolution pursuant to Paragraph 22.

**12. Releases.** In addition to the effect of any final judgment entered in accordance with this Settlement Agreement, upon this Settlement Agreement becoming final as set forth in Paragraph 6 of this Settlement Agreement, and in consideration of payment of the Settlement Payment into the Settlement Fund, as specified in Paragraph 7 of this Settlement Agreement, and for other valuable consideration, the Settling Plaintiffs and all members of the Settlement Class (on behalf of themselves and their respective past and present parents, subsidiaries, and affiliates, as well as their past and present general and limited partners, officers, directors, employees, agents, attorneys, servants, predecessors, successors, heirs, executors, administrators, and representatives) (“Releasers”) will agree to dismiss with prejudice Settling Defendant (and its past and present parents, subsidiaries, divisions, affiliates, stockholders, and general or limited partners, as well as its past and present respective officers, directors, employees, trustees, insurers, agents, attorneys, and any other representatives thereof) (the “Releasees”), except that this release shall not apply to any present or former officer, director, employee, trustee, insurer, agent, attorney, or other representative of the Settling Defendant who does not substantially cooperate with Settling Plaintiffs pursuant to the Cooperation Agreement and Paragraph 10 above. In the event Settling Plaintiffs have a good faith belief that Releasees have failed to substantially cooperate pursuant to the Cooperation Agreement and Paragraph 10 above, Settling Plaintiffs shall provide notice to Settling Defendant identifying the specific deficiencies and an opportunity for Settling Defendant to cure such alleged deficiencies. And as further provided under Settlement Class Counsel’s reservation of rights in Paragraph 14, this Settlement Agreement does not release any non-settling defendant’s liability in the Action, nor does it absolve Settling Defendant’s present or former officers, directors, employees, trustees, insurers, agents, attorneys, or other representatives from their duty to cooperate in discovery in their



capacity as a current or former officer, director, employee, trustee, insurer, agent, attorney, or other representative for other, non-settling defendants. Subject to these exceptions and reservation of rights, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any Settlement Class member has objected to the Settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) that Settling Plaintiffs and the Settlement Class, or each of them, ever had, now has, or hereafter can, shall, or may have on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual, contingent, or joint and several, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of, or relating in any way to, any of the claims in the Action, whether actual or alleged, from the beginning of the world up to the date of execution of this Settlement Agreement, including any conduct alleged, and causes of action asserted or that could have been alleged or asserted, based upon the allegations in the Action, relating to the Named Generic Drugs or other generic drugs that could have been named based on the facts alleged in the Action, including but not limited to those arising under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice law, or any claims under foreign antitrust laws covering sales in the United States (the “Released Claims”). The release of Released Claims shall not preclude Settling Plaintiffs from pursuing any and all claims against other defendants for the sale of the Named Generic Drugs or other generic drugs sold by those defendants or their alleged co-conspirators. Nothing herein, and nothing in Paragraph 13, shall release any claims (a) arising in the ordinary course of business between Releasors and the Releasees arising 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; (b) for the indirect purchase of any of the Named Generic Drugs or any other generic drugs; (c) for negligence, breach of contract, bailment, failure to deliver, lost goods, damaged or delayed goods, breach of warranty, or product liability claims between any of the Releasees and any of the Releasers relating to any of the Named Generic Drugs or any other generic drugs, other than claims based in whole or in part on any of the Released Claims; (d) as to any generic drug, including any of the Named Generic Drugs, that is currently the subject of any unrelated pending litigation against Settling Defendant that is not part of the Action; (e) as to any generic drug, including any of the Named Generic Drugs, that is, after the date of this Settlement Agreement, the subject of any unrelated litigation brought against Settling Defendant under federal or state antitrust laws or under RICO where the allegation is that generic competition was delayed (*e.g.*, reverse payment, sham litigation, sham citizen petition, or “*Walker Process*” fraud cases) or otherwise reduced or impaired by alleged conduct other than that pled or based on the facts alleged in the Settling Plaintiffs’ complaints in the Action; (f) for any claims of any type relating to any drugs other than the Named Generic Drugs, other than those pled or based on the facts alleged in the Settling Plaintiffs’ complaints in the Action. Settling Plaintiffs and the Settlement Class shall not, after the Effective Date of this Settlement Agreement, seek to establish liability against any Releasee based, in whole or in part, upon any of the Released Claims or conduct at issue in the Released Claims.

13. **Additional Release.** In addition, upon the Effective Date, Settling Plaintiffs and each member of the Settlement Class hereby expressly waives and releases any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code, which reads:

**SECTION 1542. GENERAL RELEASE—CLAIMS EXTINGUISHED. 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.**

Upon the Effective Date, Settling Plaintiffs and each member of the Settlement Class also hereby expressly waives and releases any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Settling Plaintiffs and each member of the Settlement Class may hereafter discover facts other than or different from those that it knows or believes to be true with respect to the claims that are the subject of this Paragraph, but Settling Plaintiffs and each member of the Settlement Class hereby agrees that as of the Effective Date, it expressly waives and fully, finally, and forever settles and releases as to the Releasees all known or unknown, suspected or unsuspected, accrued or unaccrued, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. For the avoidance of doubt, Settling Plaintiffs and each member of the Settlement Class also hereby agrees that as of the Effective Date, it expressly waives and fully, finally, and forever settles and releases any and all claims that would otherwise fall within the definition of Released Claims it may have against any of the Releasees 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.

**14. Reservation of Settlement Class Members' Rights Against Other Defendants.**

No party other than the Releasees is intended to be, or is, included within the scope of the release contained herein. For the avoidance of doubt, neither any other defendant in the Action other than Releasees, nor any other defendant's parent(s) or successor(s) in interest is intended to be, or is, included within the scope of this release. For avoidance of doubt, if any other defendant in the Action becomes, after the date of signing of the Settlement Agreement, affiliated in any way with a Settling Defendant, including but not limited to by becoming a subsidiary or parent of any Settling Defendant, such affiliation shall have no effect on the liability of said other defendant. This Settlement is as to Releasees only and is not intended to release any claims other than those against Releasees as specified in herein. The sales of Named Generic Drugs and all other generic drugs by Settling Defendant shall, to the extent permitted or authorized by law, remain in the Action against the other current or future defendants in the Action as a potential basis for damage claims and shall be part of any joint and several liability claims against other current or future defendants in the Action or other persons or entities other than the Releasees.

**15. Full Satisfaction; Limitation of Interest and Liability.** Members of the Settlement Class shall look solely to the Settlement Fund for settlement and satisfaction against Releasees of all claims that are released hereunder against Releasees. 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. Settling Plaintiffs and Settlement Class Counsel or any other counsel acting on Settling Plaintiffs' behalf will be paid solely out of the Settlement Fund for any costs and expenses relating to the Action.

**16. Attorneys' Fees and Costs.**

a. Settlement Class Counsel intend to seek, solely from the Settlement Fund, attorneys' fees of up to one-third of the Settlement Fund (including interest accrued thereon and including any additional amount that is paid under Paragraph 11, but net of any reasonable costs and expenses incurred prior to Settlement), reimbursement of reasonable litigation expenses incurred in the prosecution of the Action, service awards to Settling Plaintiffs, and payment for Administration Expenses (and subsequent to the Effective Date, for expenses associated with distributing money from the Settlement Fund to qualified claimants who submit timely and approved claims). Settlement Class Counsel shall file a motion requesting approval of the Fee and Expense Award ("Motion for Fee and Expense Award") after the Court has granted preliminary approval to the Settlement but sufficiently before the expiration of the deadline for Settlement Class members to opt out or object and before the Court's final fairness hearing on the Settlement; *provided, however*, that Settlement Class Counsel may defer the final determination of any Fee and Expense Award until later in the proceedings so long as Settlement Class Counsel seek, within the timing set forth in this paragraph, a provisional set aside for a Fee and Expense Award. Settling Defendant agrees to take no position with respect to the Motion for Fee and Expense Award, or on any other application by Settlement Class Counsel for fees or expenses to be paid only from the Settlement Fund. Settlement Class Counsel shall be paid solely out of the Settlement Fund for all such fees and expenses. Settling Plaintiffs, Settlement Class Members, and their respective counsel, shall not seek payment of any attorneys' fees or costs from Releasees in the Action, or in any other action related to the Released Claims set forth above, from any source other than the Settlement Fund. Releasees shall not have any

responsibility for or liability with respect to any payment to Settlement Class Counsel of any Fee and Expense Award in the Action.

b. The procedures for and the allowance or disallowance by the Court of the application by Settlement Class Counsel for attorneys' fees, costs, and expenses to be paid out of the Settlement Fund are not part of this Settlement Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to the fee and expense application, or any appeal from any such order, shall not operate to terminate or cancel this Settlement Agreement, or provide a basis to terminate or cancel this Settlement Agreement, affect or delay the finality of the Final Approval Order, or affect or delay the payment of the Fee and Expense Award.

c. After approval of any Fee and Expense Award by the Court, Settlement Class Counsel shall be entitled to have any award paid from the Settlement Fund but, if the Court's award of such fees and expenses is vacated, reversed, or reduced subsequent to the disbursement of any Fee and Expense Award, Settlement Class Counsel shall within 10 business days after receiving written notice from the Court or Settling Defendant of such vacatur, reversal, or reduction, make a refund to the Escrow Account in the amount of such vacatur, reversal, or reduction with interest; and further, if the Settlement Agreement is terminated pursuant to Paragraph 17 below, Settlement Class Counsel shall within 10 business days after giving notice to or receiving notice from Settling Defendant of such termination, make a refund to the Escrow Account in the amount of any such Fee and Expense Award with interest. The interest rate applicable to any refund made to the Escrow Account pursuant to this Paragraph shall be the same interest rate earned by the Settlement Fund during the period between the disbursement of any Fee and Expense Award and any refund required by this Paragraph.

**17. Termination.** Settling Defendant and Settling Plaintiffs shall each have the option to terminate the Settlement Agreement and have the Settlement Payment refunded to Settling Defendant if the Court declines to grant final approval to the Settlement Agreement without material alteration of its terms, or if such approval is set aside on appeal. Settling Defendant shall have the unilateral option to terminate the Settlement Agreement and have the Settlement Payment refunded to Settling Defendant under certain circumstances set forth in a separate letter agreement among the Settling Parties to be provided to the Court if the Court so requires, and if so required, to be filed in camera with Court permission. If the Settlement Agreement does not become final, then: (i) this Settlement Agreement shall be of no force or effect; (ii) all funds paid by Settling Defendant into the Settlement Fund, plus interest (net of any taxes paid on such interest), less any amounts paid pursuant to Paragraph 8.a above that were expended or are owed to pay Administration Expenses up to \$150,000, shall be returned to Settling Defendant within 30 calendar days after the Escrow Agent receives notice of termination; (iii) any release pursuant to Paragraphs 12 and 13 above shall be of no force or effect; and (iv) litigation of the Action will resume in a reasonable manner and on a reasonable timetable to be approved by the Court. Written notice of the exercise of the right to terminate the Settlement Agreement shall be made according to the terms of Paragraph 29 below.

**18. Taxes Paid by Settlement Fund.**

a. The parties intend that any taxes due as a result of income earned by the Settlement Fund will be paid from the Settlement Fund. Lead and Settlement Class Counsel shall be solely responsible for directing the Claims Administrator to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Fund. Further, Lead Counsel shall be solely responsible for directing the Claims Administrator to

make any tax payments, including interest and penalties due, on income earned by the Settlement Fund. Lead and Settlement Class Counsel shall be entitled to direct the Escrow Agent to pay from the Escrow Account customary and reasonable tax expenses, including professional fees and expenses incurred in connection with carrying out the Escrow Agent's or tax preparer's responsibilities. Settling Defendant shall have no responsibility to make any tax filings related to the Settlement, this Settlement Agreement, or the Settlement Fund, and shall have no responsibility to pay taxes on any income earned by the Settlement Fund, or to pay taxes with respect thereto unless the Settlement is not consummated and the Settlement Fund or the net Settlement Fund is returned to Settling Defendant. Other than as specifically set forth herein, Settling Defendant shall have no responsibility for the payment of taxes or tax-related expenses. If, for any reason, for any period of time, Settling Defendant is required to pay taxes on income earned by the Settlement Fund, the Escrow Agent shall, upon written instructions from Settling Defendant with notice to Lead and Settlement Class Counsel, timely pay to Settling Defendant sufficient monies from the Settlement Fund to enable it to pay all taxes (state, federal, or other) on income earned by the Settlement Fund.

b. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "Administrator" of the Escrow Account shall be the Claims Administrator, who shall timely and properly file or cause to be filed on a timely basis, all tax returns necessary or advisable with respect to the Escrow Account (including without limitation all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B 2(1)).

c. The Settling Parties to this Settlement Agreement and their counsel shall treat, and shall cause the Escrow Agent to treat, the Settlement Fund as being at all times a



“qualified settlement fund” within the meaning of Treas. Reg. § 1.468B 1. The Settling Parties, their counsel, and the Escrow Agent agree that they will not ask the Court to take any action inconsistent with the treatment of the Escrow Accounts in this manner. In addition, the Escrow Agent and, as required, the Settling Parties 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 l(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 the Escrow Agent 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 Escrow Accounts being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B.

**19. Binding Effect.** This Settlement Agreement shall be binding upon the Settling Parties hereto and inure to the benefit of the Settling Parties hereto and Releasees. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Settling Plaintiffs, Lead Counsel and Settlement Class Counsel shall be binding upon all Settlement Class Members.

**20. Entire Agreement.** This Settlement Agreement, together with exhibits hereto and the confidential letter of understanding that, if requested, Settling Defendant and Settling Plaintiffs will submit to the Court in camera (with Court permission), reflects the entirety of the agreement by and among the Settling Parties hereto with respect to the transactions contemplated by this Settlement Agreement, and supersedes all prior agreements or understandings, whether written or oral, between or among any of the Settling Parties hereto with respect to the subject

matter hereof. The Settling Parties agree there are and have been no express or implied promises, inducements or agreements made by any Settling Party to the other except as specifically and expressly set forth within this Settlement Agreement, the exhibits hereto and the confidential letter of understanding that the Settling Parties will submit to the Court in camera with permission.

**21. Independent Settlement.** This Settlement is not conditioned on approval by any other member of the Settlement Class or settlement of any other case.

**22. Arbitration.** Any controversy, claim or dispute arising out of or relating to or in connection with the matters specifically designated to be submitted to arbitration under the Settlement Agreement shall be finally determined in arbitration in Philadelphia before Eric D. Green of Resolutions, LLC, or if he is not available, such arbitrator upon whom the parties shall mutually agree. Subject to the award of the arbitrator the parties participating in the arbitration shall pay an equal share of the arbitrator's fees. The arbitrator may award recovery of all costs (including administrative fees, arbitrator's fees and court costs, but excluding attorneys' fees) to the prevailing party. Judgment upon any award rendered may be entered in the United States District Court for the Eastern District of Pennsylvania.

**23. Headings.** The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

**24. No Party is the Drafter.** None of the Settling 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.

**25. Intended Beneficiaries.** No provision of this Settlement Agreement will provide any rights to, or be enforceable by, any person or entity that is not a Settling Plaintiff or member of the Settlement Class, Lead Counsel or Settlement Class Counsel, or a Releasee. No other person shall have any rights under this Settlement Agreement and cannot enforce its terms. Neither Settling Plaintiffs nor Lead Counsel nor Settlement Class Counsel may assign or otherwise convey any right to enforce or dispute any provision of this Settlement Agreement.

**26. Choice of Law.** All terms of this Settlement Agreement shall be governed by federal common law as construed in the United States District Court for the Eastern District of Pennsylvania.

**27. Consent to Jurisdiction.** Other than as set forth in Paragraph 22, Settling Defendant and each Settlement Class member hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Eastern District of Pennsylvania for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein. Nothing in this Paragraph shall prohibit (a) the assertion in any forum in which a claim is brought that any release herein is a defense, in whole or in part, to such claim or (b) in the event that such a defense is asserted in such forum, the determination of its merits in that forum.

**28. Representations and Warranties.** The signatories hereto represent and warrant that they each have the requisite authority (or in the case of natural persons, the legal capacity) to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby. Settling Defendant represents and warrants that it has not assumed any contractual obligation that would, in fact or at law, in the event Settling Plaintiffs prevailed

against any other defendant on the claims made in the Action, obligate Settling Defendant to indemnify, pay contribution to, be liable over to, or share in a judgment entered in favor of any Settling Plaintiff against any other defendant. Settling Defendant agrees that Settling Plaintiffs justifiably rely upon this representation and warranty and that it is material to Settling Plaintiffs' decision to enter into this Settlement Agreement with Settling Defendant.

**29. No Admission.** Nothing in this Settlement Agreement, nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement, shall be construed as an admission or concession in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body, or any other body or authority, present or future, by Settling Defendant. In the event that the Court does not approve of the Settlement or the Court's approval is set aside on appeal, Releasees reserve all legal rights and defenses, including, but not limited to, any defenses relating to class certification and whether any member or excluded member of the Settlement Class is a direct purchaser of any Named Generic Drug or has standing to bring any claim.

**30. Notice.** Notice to Settling Defendant pursuant to this Settlement Agreement shall be sent by registered United States mail, return receipt requested, and electronic mail to:

Heather Lamberg  
Freshfields Bruckhaus Deringer LLP  
700 13th Street, NW  
10th Floor  
Washington, DC 20005  
Heather.Lamberg@freshfields.com

Jeffrey Kessler  
Winston & Strawn LLP  
200 Park Avenue  
New York, NY 10166  
JKessler@winston.com

Notice to Settling Plaintiffs or Settlement Class Counsel pursuant to this Settlement

Agreement shall be sent by United States mail and electronic mail to Lead Counsel:

Dianne M. Nast  
Joseph N. Roda  
NastLaw LLC  
1101 Market Street  
Suite 2801  
Philadelphia, PA 19107  
dnast@nastlaw.com  
jnroda@nastlaw.com

**31. Execution in Counterparts.** This Settlement Agreement may be executed in counterparts. Signatures transmitted by electronic means shall be considered valid signatures as of the date signed.

IN WITNESS WHEREOF, the Settling Parties hereto through their fully authorized representatives have agreed to this Settlement Agreement as of the date first herein above written.



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Dianne M. Nast  
NastLaw LLC  
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(215) 923-9300  
dnast@nastlaw.com

*Attorney for Plaintiffs César Castillo, LLC,  
FWK Holdings, LLC, Rochester Drug  
Cooperative, and KPH Healthcare Services,  
Inc. and Lead Counsel  
for the Direct Purchaser Class*

Dated: January 2, 2024



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*Attorneys for Breckenridge Pharmaceutical,  
Inc.*

Dated: January 2, 2024