

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

IN RE: GENERIC PHARMACEUTICALS  
PRICING ANTITRUST LITIGATION

MDL No. 2724  
Case No. 2:16-MD-2724

THIS DOCUMENT RELATES TO:  
  
*Direct Purchaser Plaintiffs' Actions*

HON. CYNTHIA M. RUFE

**DIRECT PURCHASER PLAINTIFFS' MOTION FOR FINAL APPROVAL OF  
(1) DIRECT PURCHASER PLAINTIFFS' SANDOZ SETTLEMENT AND  
(2) THE PLAN OF ALLOCATION**

Pursuant to Federal Rule of Civil Procedure 23 and this Court's Order Regarding DPPs' Sandoz Settlement dated June 26, 2024 [MDL Doc No. 3021], Direct Purchaser Plaintiffs César Castillo, LLC, FWK Holdings, LLC, Rochester Drug Cooperative, Inc., and KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. respectfully move for entry of the proposed Order submitted herewith which provides for Final Approval of (1) Direct Purchaser Plaintiffs' Sandoz Settlement and (2) the Plan of Allocation.

In support of this motion, Direct Purchaser Plaintiffs rely upon the accompanying memorandum thereto. Settling Defendants Sandoz Inc. and Fougera Pharmaceuticals Inc. do not oppose this Motion.

Dated: November 22, 2024

Respectfully submitted,



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**I. INTRODUCTION**

On June 26, 2024, the Court granted preliminary approval of the Direct Purchaser Plaintiffs' ("DPPs") settlement with Settling Defendants Sandoz Inc. and Fougera Pharmaceutical Inc. ("Sandoz" or "Settling Defendants"). MDL Doc. No. 3021. That Order (the "Sandoz Preliminary Approval Order") certified a Settlement Class, appointed Settlement Class Counsel, appointed a Claims Administrator, preliminarily approved the Plan of Allocation, and approved the form and manner of Notice to the Settlement Class.<sup>1</sup>

Settlement Class Counsel have carried out the extensive Notice program authorized by the Court including a mailing to Settlement Class members and publication of the Notice for 30 days in *The Pink Sheet*, and publication on PR Newswire, and in *The Wall Street Journal*. *See* October 29, 2024 Declaration of Eric J. Miller [MDL Doc. No. 3150-1]. The Notice was also posted on a dedicated website.<sup>2</sup> *See id.* DPPs understand that Sandoz has complied with its notification obligations under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715. *See* Exhibit 1, Declaration of Matthew D. Kent Regarding Notice of Proposed Settlement Pursuant to 28 U.S.C. § 1715.

As set forth above, the deadline to object or opt out of this settlement was October 8, 2024. Settlement Class Counsel are unaware of any objections to this settlement. Settlement Class Counsel have received nine timely letters requesting exclusion (*i.e.*, letters post-marked on or before October 8, 2024). *See id.* All but one of the letters requesting exclusion pertains to

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<sup>1</sup> Unless otherwise noted, the capitalized terms used in this Memorandum of Law have the same meanings as defined in the Settlement Agreement. *See* MDL Doc. No. 3010-3, Ex. A thereto.

<sup>2</sup> [www.GenericDrugsDirectPurchaserSettlement.com](http://www.GenericDrugsDirectPurchaserSettlement.com).

entities or the affiliates of entities that have previously filed their own complaints and have been litigating as Direct Action Plaintiffs (“DAPs”).<sup>3</sup>

The Settlement was reached after extended, arm’s length negotiations between experienced counsel for DPPs and for Settling Defendant. The Settlement consists of: (1) a \$265,000,000 monetary payment, which has been reduced to \$233,200,000 to account for timely opt-outs, but may be increased to as much as \$295,551,850 under the most favored nation (“MFN”) clause, (2) an agreement that Sandoz’s sales remain in the MDL for purposes of joint and several liability as to non-settling Defendants to the extent permitted or authorized by law, and (3) cooperation from Sandoz, both in terms of effectuating the Settlement and providing information to help in the continued litigation against the non-settling Defendants. *See* MDL Doc. No. 3010-3 at Ex. A.

Experienced Settlement Class Counsel submit that the Settlement is fair, reasonable, and adequate. The Settlement ensures that the Settlement Class will receive substantial benefits, while avoiding the risks and delays of continued litigation against Sandoz. Settlement Class Counsel also submit that the proposed Plan of Allocation [MDL Doc. No. 3010-7], is fair, reasonable, and efficient.

Accordingly, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(3), 23(e), and 54(b), DPPs respectfully request granting final approval to this settlement, entry of Judgment in the form submitted herewith and granting of final approval to the Plan of Allocation. Settling Defendants assent to this Motion.

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<sup>3</sup> The entities requesting exclusion, including all known affiliated entities, are listed in Exhibits E to the October 29, 2024 Declaration of Eric J. Miller, MDL Doc. No. 3150-1.

## II. BACKGROUND

Since 2016, DPPs have litigated claims along with other private plaintiffs and the States, alleging that Sandoz (a manufacturer of generic drugs) conspired with the non-settling Defendants (other manufacturers of generic drugs) in violation of the Sherman Act to artificially inflate and maintain the prices that DPPs paid for certain of the Named Generic Drugs (“NGDs”). *See* MDL Doc No. 3010-3 (list of NGDs attached as Exhibit B to the Settlement Agreement). DPPs contend that the alleged anticompetitive conduct of Settling Defendants and other generic drug manufacturers resulted in supracompetitive prices causing DPPs and the Settlement Class to pay illegal overcharges. Settling Defendants have denied liability as to DPPs’ claims and have mounted a tenacious defense in all phases of the MDL.

DPPs have filed 18 individual drug complaints and two multi-drug complaints.<sup>4</sup> In October 2018, the Court denied Defendants’ motions to dismiss six of the DPPs’ individual drug complaints.<sup>5</sup> In August 2019, the Court denied Defendants’ motions to dismiss the DPPs’ first multi-drug complaint that alleged an “overarching” conspiracy.<sup>6</sup> Following the Court’s decisions on the motions to dismiss, the parties have engaged in substantial discovery including propounding hundreds of document requests, interrogatories, and requests for admissions;

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<sup>4</sup> No. 20-cv-721 (ECF No. 62), No. 18-cv-2641 (ECF No. 12), No. 16-AL-27241 (ECF No. 46), No. 16-AM-27241 (ECF No. 54), No. 16-BC-27241 (ECF No. 59), No. 16-BZ-27241 (ECF No. 53), No. 16-CB-27241 (ECF No. 74), No. 16-CM-27241 (ECF No. 61), No. 16-DS-27241 (ECF No. 71), No. 16-DG-27241 (ECF No. 74), No. 16-DV-27241 (ECF No. 71), No. 16-DX-27241 (ECF No. 83), No. 16-EC-27241 (ECF No. 66), No. 16-FL-27241 (ECF No. 66), No. 16-GL-27241 (ECF No. 50), No. 16-LV-27241 (ECF No. 62), No. 16-LD-27241 (ECF No. 56), No. 16-PV-27241 (ECF No. 68), No. 16-PP-27241 (ECF Nos. 62, 65), No. 16-UR-27241 (ECF No. 54).

<sup>5</sup> *In re Generic Pharm. Pricing Antitrust Litig.*, 338 F. Supp. 3d 404 (E.D. Pa. 2018).

<sup>6</sup> *In re Generic Pharm. Pricing Antitrust Litig.*, 394 F. Supp. 3d 509 (E.D. Pa. 2019).

producing and reviewing millions of documents, taking numerous depositions; and engaging in briefing and numerous hearings before the Court and the multiple Special Masters.

On July 13, 2020, following substantial briefing and conferences with Special Master David H. Marion, the Court entered its Opinion and Pretrial Order (“PTO”) No. 132 selecting bellwether cases. MDL Doc. Nos. 1442 & 1443. On May 7, 2021, following additional briefing and conferences with Special Master Marion, the Court entered PTO No. 171 revising the selection of bellwether cases, retaining clobetasol and clomipramine as the Class Bellwethers for the DPPs and End-Payor Class Plaintiffs (“EPPs”). MDL Doc. No. 1769. On December 9, 2021, after additional briefing and conferences with Special Master Marion, the Court entered PTO No. 188 setting a schedule for further proceedings in the bellwether cases. MDL Doc. No. 1901. On October 13, 2022, by stipulation of the parties, the Court entered PTO No. 217 extending the proceedings for the bellwether cases. On May 9, 2023, by stipulation of the parties, the Court entered PTO No. 234 extending the proceedings for the bellwether cases. Under that schedule, bellwether fact discovery closed on October 2, 2023. MDL Doc No. 2243. Bellwether class certification motions, *Daubert* motions, and summary judgment motions are fully briefed.

Settlement negotiations between Class Counsel and attorneys for Settling Defendants were hard fought, at arm’s length, and spanned several months, as described in more detail in the Declaration of Dianne Nast [MDL Doc. No. 3010-3]. The parties executed the Settlement Agreement on February 28, 2024 and the First Amendment to the Settlement Agreement on June 12, 2024.

### **III. MATERIAL TERMS OF THE SETTLEMENT**

The Settlement provides for substantial monetary relief, and other valuable terms, which will assist DPPs in the continued prosecution of the litigation against the non-settling

Defendants. In exchange for this monetary relief and cooperation, DPPs and members of the Settlement Class that have not excluded themselves will be precluded from suing Settling Defendants and Released Parties for the Released Claims.

**A. Monetary Relief**

The monetary component of the Settlement is \$265,000,000.<sup>7</sup> Settling Defendants have paid this amount into the Settlement Fund and it has been accruing interest. Settlement Agreement ¶ 7. The Settlement Fund has been reduced by \$31,800,000 based upon provisions in the Settlement Agreement concerning opt-outs.<sup>8</sup> At any time on or before August 28, 2025, the Settlement Fund also may be increased to a maximum of \$295,551,850 under the MFN clause described in further detail below. The monetary component of the Settlement, net of Court-approved attorneys' fees, service awards for the DPP class representatives, expenses and costs of litigation, Notice and administration of the Settlement ("Net Settlement Fund"), will be distributed to the Settlement Class pursuant to the Plan of Allocation (upon Court approval after the filing of a motion for distribution).

**B. Joint and Several Liability of Non-Settling Defendants**

The Settlement provides that the non-settling Defendants remain jointly and severally liable for Settling Defendant's sales to the extent permitted or authorized by law. Paragraph 14 of the Settlement Agreement reserves, for the purposes of joint and several liability against non-

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<sup>7</sup> Sandoz has paid \$265,000,000 into the Settlement Fund. Settlement Agreement ¶ 7. Based upon the timely opt-out notices received, the settlement amount will be reduced to \$232,200,000. As noted above, the settlement fund could be increased to as much as \$295,551,850 under the MFN clause.

<sup>8</sup> Pursuant to separate letter agreement, Settling Defendants may have the right until December 9, 2024 to rescind the Settlement Agreement if the aggregate amount of purchases represented by opt-outs reached or exceeded a certain percentage of total purchases by Direct Purchasers. *Id.* DPPs will file this letter agreement with the Court if the Court desires, and in that event, would request that they be filed *in camera*.

settling Defendants, DPPs' ability to rely on Settling Defendant's sales of NGDs to the Settlement Class to seek the full amount of damages to which they may be entitled from any other Defendant in the MDL. This term is valuable to DPPs and the DPP Settlement Class, as it maintains DPPs' right to seek alleged damages associated with Settling Defendant's sales from Settling Defendant's alleged co-conspirators. The non-settling Defendants will only be entitled to a credit for any judgment against them for the value of the settlement proceeds paid by Settling Defendant<sup>9</sup> after the judgment is trebled. This settlement will not reduce in any way the single damages to which the Settlement Class is entitled.

### C. MFN Clause

The Settlement also contains a Most Favored Nation ("MFN") clause in Paragraph 11 of the Settlement. The clause provides that, in the event Settling Defendants enter a separate, more favorable settlement or binding term sheet within 18 months following the execution of Settling Defendants' agreement with DPPs (*i.e.*, at any time on or before August 28, 2025) with any Opt-outs (as defined in Paragraph 9 of the Settlement Agreement), Settling Defendants will be obligated to inform DPPs and the Settlement Class may be entitled to additional financial compensation. Specifically, if the financial payment made by Settling Defendants to such Opt-out in any Other Direct Purchaser Settlement is more favorable on a proportionate basis than the terms of this settlement, this Settlement shall be automatically amended so that DPPs shall receive the benefit of the more favorable financial terms of the Other Direct Purchaser

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<sup>9</sup> See, e.g., *In re Packaged Ice Antitrust Litig.*, 2011 WL 717519, at \*17 (E.D. Mich. Feb. 22, 2011) (granting final approval of a settlement where the settlement agreement provides that settling defendants' sales "remain in th[e] action and shall be part of any joint and several liability against any non-settling Defendant"); *In re Auto. Parts Antitrust Litig.*, 2017 WL 3499291, at \*2 (E.D. Mich. July 10, 2017) (similar).

Settlement. If the terms of Paragraph 11 are triggered, Settling Defendants could pay up to an additional \$62,351,850 into the Settlement Fund for the benefit of the Settlement Class.

**D. Cooperation by Settling Defendant**

In addition to the monetary relief and other valuable terms highlighted above, the Settlement Agreement [MDL Doc. No. 3010-3, Ex. A] also delivers benefits to the Settlement Class through the cooperation that Settling Defendants have agreed to provide to DPPs. *See* Settlement Agreement ¶ 10; Cooperation Agreements attached as Exhibit A to the Settlement Agreement. Settling Defendant's cooperation will include: (1) responses to data inquiries, *id.* ¶ 4; (2) authentication and admission of documents, *id.* ¶ 5; and (3) production of any additional documents, data, or materials produced in the Action as the result of a discovery request, agreement, or Court Order, *id.* ¶ 6. Such cooperation benefits the Settlement Class. Such cooperation will facilitate the administration of the Settlement and aid DPPs' continued litigation against the non-settling Defendants.

**E. Settlement Class Releases**

In exchange for the benefits provided under the Settlement Agreement, DPPs have agreed to releases as set forth in Paragraphs 13 and 14 of the Settlement Agreement. The Settlement releases Settling Defendants and Releasees for claims DPPs or the Settlement Class asserted or could have asserted, based upon the allegations in the MDL, relating to the NGDs or other generic drugs that could have been named based on the facts alleged in the MDL including, but not limited to, those arising under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, or trade practice law. Settlement Agreement ¶ 13. The Settlement releases all rights, and benefits conferred by § 1542 of the California Civil Code or any similar, comparable, or equivalent law. Settlement Agreement, ¶ 14.

The Settlement, however, does not resolve, compromise, discharge, or settle any of the claims of DPPs or the Settlement Class against any other Defendant in this MDL. Settlement Agreement, ¶ 13. Additionally, the Settlement does not release any claims arising under Article 2 of the Uniform Commercial Code in the ordinary course of business between Settling Defendants and the Settlement Class, except those claims based in whole or in part on the released claims. *Id.* Likewise, the Settlement does not release any claims for indirect purchases of any generic drugs, any claims for negligence, breach of contract, bailment, failure to deliver, lost goods, damaged or delayed goods, breach of warranty or product liability claims except those claims based in whole or in part on any of the released claims, or any claims which are currently the subject of any unrelated pending litigation against Settling Defendants that is not part of this MDL. *Id.* The Settlement does not release any claims as to any generic drug that, after February 28, 2024, is the subject of any unrelated litigation brought against Settling Defendants under federal or state antitrust laws or under the Racketeering Influenced and Corrupt Organizations Act (“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 DPPs’ complaints in the action. *Id.* Finally, the Settlement does not release any claims of any type relating to any drugs other than the NGDs, other than those pled or based on the facts alleged in the DPPs’ complaints in the MDL. *Id.*

**F. Expenses, Attorneys’ Fees, and Service Awards**

The Settlement Agreement provides that up to \$250,000 may be used to pay for reasonable expenses in connection with administering the Settlement, such as those expenses associated with providing Notice of the Settlement to the Settlement Class, expenses associated



with administering and distributing the Settlement, expenses associated with developing a Plan of Allocation, and any expenses incurred in connection with taxation matters relating to the Settlement. Settlement Agreement, ¶ 8.a. Thus, up to \$250,000 could be withdrawn after the Court granted Preliminary Approval. Administration expenses incurred above this amount shall be borne, in the first instance, by Settlement Class Counsel, who may be repaid from the Settlement Fund (or have outstanding invoices paid from the Settlement Fund) after the “Effective Date” with Court approval. The “Effective Date” is the date of final approval, and the expiration of any time to appeal or if appealed, the date the appeal has been resolved. Settlement Agreement, ¶ 6. In addition, the Settlement Agreement provides that Settlement Class Counsel may request attorneys’ fees up to one-third of the settlement amount, reimbursement of expenses or charges in connection with prosecuting the MDL, and class representative service awards. Settlement Agreement, ¶ 17. These provisions were included in the Class Notice so that class members would be informed about them.

The Class Notice informed class members that by August 23, 2024, DPPs would seek reimbursement for up to \$2,000,000 in expenses, service awards of up to \$20,000 for each named plaintiff (a total of \$80,000), and attorneys’ fees of up to one-third of the net Settlement Fund. It also informed class members to assume, for the purposes of the October 8, 2024 opt-out deadline, that DPPs would seek the full one-third in fees. On August 9, 2024, the Court approved DPPs’ unopposed motion to extend the deadline to file such a motion until September 23, 2024. MDL Doc. No. 3077. Thereafter, DPPs promptly posted notice of the amended deadline on the settlement website.

On September 23, 2024, DPPs filed Direct Purchaser Plaintiffs’ Motion for an Order Granting (1) An Award of Attorneys’ Fees; (2) Reimbursement of Expenses; and (3) Payment of

Service Awards [MDL Doc No. 3102]. From this settlement, that motion seeks reimbursement of \$2,000,000 in out-of-pocket expenses incurred through August 31, 2024 and service awards for DPPs' four class representatives of \$20,000 each (a total of \$80,000). The motion also requests an award of attorneys' fees from this settlement in the amount of twenty-nine percent (29%) of the Net Settlement Fund, inclusive of accrued interest but net of any reimbursed expenses or service awards. That percentage is lower than the one-third described in the Class Notice. DPPs promptly posted notice of this motion on the settlement website. No objections have been received to these requests (nor to any aspect of the Settlement or Plan of Allocation).

#### **IV. THE PROPOSED SETTLEMENT MEETS THE STANDARD FOR FINAL APPROVAL**

The Proposed Settlement is fair, reasonable, and adequate pursuant to Rule 32(e)(2). Rule 23(e)(2), amended in 2018, codified the factors a court must consider when determining the fairness of a class action settlement at final approval.<sup>10</sup> Fed. R. Civ. P. 23(e)(2) directs courts to 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.

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<sup>10</sup> 4 Newberg on Class Actions § 13:14 (5th ed.) ("Rule 23(e)(2) in turn authorizes final approval only upon a showing that the settlement is 'fair, reasonable, and adequate,' made after a consideration of four factors."); *id.* at § 13:15 ("Congress adopted this standard for the first time at the end of 2018. Prior to that, Rule 23 did not embody a specific preliminary settlement approval process or standard"); *Myers v. Jani-King of Phila., Inc.*, 2019 WL 4034736, at \*7 n.4 (E.D. Pa. Aug. 26, 2019) ("Effective December 1, 2018, Rule 23(e) was amended to list factors to guide a district court's determination of whether a proposed settlement is 'fair, reasonable, and adequate.'").

Fed. R. Civ. P. 23(e)(2).<sup>11</sup>

**A. Settlement Class Counsel and the Class Representatives Have Adequately Represented the Settlement Class**

In evaluating a proposed settlement, this factor focuses on “the actual performance of counsel acting on behalf of the class.” Fed. R. Civ. P. 23(e)(2) Advisory Committee Note on 2018 Amendments.<sup>12</sup> As addressed above, Settlement Class Counsel engaged in extensive discovery and discovery-related motion practice prior to entering this settlement and were fully aware of the strengths and weakness of the case. *See supra*, Section II. In reaching this settlement, Settlement Class Counsel engaged in lengthy, hard-fought, arm’s length negotiations on behalf of the class. *See supra, id. See also* Nast Declaration, MDL Doc No. 3010-3, ¶¶ 13-15. This factor has been satisfied and thus weighs in favor of approving the Settlement.

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<sup>11</sup> While the Rule 23(e) factors were not intended to replace the factors previously developed by the Third Circuit in evaluating the fairness of a class settlement, they were intended to codify prior practice. Fed. R. Civ. P. 23(e)(2) Advisory Committee Note on 2018 Amendments (“The goal of [the Rule 23(e)(2)] amendment is not to displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.”); 4 Newberg on Class Actions § 13:14 (5th ed.) (similar). Indeed, the 23(e) factors largely overlap with the factors set forth in *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995), the factors set forth in *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975), and other factors courts in the Third Circuit previously relied on to evaluate the fairness of a settlement at the preliminary and final approval stages. *See Hall v. Accolade, Inc.*, 2019 WL 3996621, at \*2, n. 1 (E.D. Pa. Aug. 23, 2019) (“The *Girsh* factors predate the recent revisions to Rule 23, which now explicitly identifies the factors that courts should apply in scrutinizing proposed class settlements, and the discussion in *Girsh* substantially overlaps with the factors identified in Rule 23.”).

<sup>12</sup> *See also Caddick v. Tasty Baking Co.*, 2021 WL 1374607, at \*6 (E.D. Pa. Apr. 12, 2021) (finding adequate representation under Rule 23(e)(2)(a) where “class counsel expanded considerable time and effort on this case, engaged in extensive discovery, including reviewing and analyzing a substantial volume of documents.”); *Hall*, 2019 WL 3996621, at \*4 (finding adequate representation under Rule 23(e)(2)(a) where class counsel logged hundreds of attorney hours on the litigation, took depositions, requested and reviewed written and electronic discovery, constructed a damages model, and interviewed class members).

## B. The Proposed Settlement Was Reached After Arm’s Length Negotiations

As a general matter, settlements that result from arm’s length negotiations between experienced counsel are given deference by courts.<sup>13</sup> As shown in the Nast Declaration, this settlement is the result of lengthy, hard-fought, arm’s length negotiations between Settlement Class Counsel and Settling Defendant’s counsel, all of whom are capable attorneys with decades of experience in complex class actions and antitrust matters. *See supra*, Section II; Nast Declaration, MDL Doc. No. 3010-3, ¶¶ 13-15. Settlement Class Counsel have vigorously advocated for the Settlement Class. Settlement Class Counsel were prepared to continue with litigation if no settlement had been reached, along with the ongoing litigation that continues against the other non-settling Defendants.

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<sup>13</sup> *See Whiteley v. Zynerba Pharms. Inc.*, 2021 WL 4206696, at \*4 (E.D. Pa. Sept. 16, 2021) (“[C]ourts generally recognize that a proposed class settlement is presumptively valid where . . . the parties engaged in arm’s length negotiations after meaningful discovery”) (internal quotation marks omitted); *In re Automotive Refinishing Paint Antitrust Litig.*, 2003 WL 23316645, at \*2 (E.D. Pa. Sept. 5, 2003) (“Though the ultimate determination of the fairness of a partial settlement is left to the court, it is appropriate to give substantial weight to the recommendations of experienced attorneys, who have engaged in arms-length settlement negotiations, in making this determination.”); *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 640 (E.D. Pa. 2003) (holding that “[a] presumption of correctness is said to attach to a class settlement reached in arms-length negotiations between experienced, capable counsel”); *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 176 F.R.D. 158, 184 (E.D. Pa. 1997) (concluding that the settlement was the product of “good faith, arms’ length negotiations[,]” which eliminated “the risk that a collusive settlement agreement may [have been] reached”). Further, “when evaluating a settlement, a court should be ‘hesitant to undo an agreement that has resolved a hard-fought, multi-year litigation.’” *In re Comcast Corp. Set Top Cable Television Box Antitrust Litig.*, 333 F.R.D. 364, 378 (E.D. Pa. 2019) (quoting *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 175 (3d Cir. 2013)). And “[w]here this negotiation process follows meaningful discovery, the maturity and correctness of the settlement become all the more apparent.” *In re Philips/Magnavox TV Litig.*, 2012 WL 1677244, at \*11 (D.N.J. May 14, 2012).

**C. The Relief Provided for the Settlement Class is Fair, Reasonable and Adequate**

This Settlement represents a substantial recovery to the Settlement Class – in both dollar value and cooperation, and after an extensive notice program, no Settlement Class Member has objected to the settlement. The \$265,000,000 in monetary relief, which, as noted above, has been adjusted down to \$232,200,000 based on timely opt-outs, may be adjusted up via the MFN clause. The Settlement Agreement protects the Settlement Class’s rights to seek the full value of their damages from other, non-settling Defendants to the extent permitted or authorized by law. *See* Settlement Agreement, ¶ 15 (Non-settling Defendants remain jointly and severally liable for Settling Defendant’s sales and DPPs’ rights to rely on Settling Defendant’s sales of NGDs to the Settlement Class for this purpose are preserved). Further, the cooperation required by the Settlement Agreement will assist DPPs in the continued prosecution of this MDL on behalf of the Settlement Class.<sup>14</sup>

In approving class action settlements, Courts in the Third Circuit have long deferred to the judgment of experienced counsel who have conducted arm’s length settlement negotiations.<sup>15</sup> Here, Settlement Class Counsel have extensive experience litigating antitrust claims; they have demonstrated throughout this litigation that they are well-versed in this area of law and

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<sup>14</sup> *See In re Processed Egg Prods. Antitrust Litig.*, 284 F.R.D. 278, 255 (E.D. Pa. 2012) (approving settlement where one defendant agreed to cooperate in prosecution of case against other defendants by providing documents and expert witnesses); *Linerboard*, 292 F. Supp. 2d at 643 (noting settlement provision of cooperation provided substantial benefit to the classes and supported settlement approval); *In re Ikon Office Solutions Inc. Sec. Litig.*, 194 F.R.D. 166, 177 (E.D. Pa. 2000) (noting that cooperation agreements are valuable in settling a complex case).

<sup>15</sup> *See, e.g., Ebner v. Merchants & Med. Credit Corp.*, 2017 WL 1079966, at \*5 (E.D. Pa. Mar. 22, 2017) (approving class settlement and noting that, “*experienced* class counsel endorses this settlement,” and “[s]uch an opinion is entitled to significant weight.”) (emphasis in original) (internal citation omitted); *Fisher Bros. v. Phelps Dodge Indus., Inc.*, 604 F. Supp. 446, 452 (E.D. Pa. 1985) (“[T]he professional judgment of counsel involved in the litigation is entitled to significant weight.”).

committed to vigorously prosecuting this case to achieve the best result for the class.<sup>16</sup>

Settlement Class Counsel endorse this settlement and submit that the combination of monetary recovery and cooperation provided for in the Settlement Agreement is a fair, reasonable and adequate result for the Settlement Class. Their experienced opinion should be given great weight.

**1. The Settlement Accounts for the Costs, Risks, and Delays of Trial and Appeal**

As a result of the substantial discovery and motion practice that has occurred to date, Settlement Class Counsel possess the information necessary to evaluate the settlement, considering the costs, risks, and delays associated with litigating the case through trial. The Settlement Class Counsel submit that claims against Settling Defendants have significant merit and will continue to vigorously prosecute their claims against the non-settling defendants. Nevertheless, the Settlement Class would face a number of risks, expenses, and difficult challenges, were the litigation to continue against Settling Defendant.

The complex nature of this case, requiring discovery of approximately three dozen Defendant families and analysis of one hundred fifty-nine (159) drugs, unavoidably involves significant expenditures on e-discovery and expert fees. Settlement Class Counsel has already expended more than \$14,000,000 in out-of-pocket expenses. MDL Doc. No. 3102-3. Expenses will continue to grow as DPPs' cases proceed.

The Settlement Class would also face a number of legal challenges and delays if the case against Settling Defendants continued through trial, including discovery disputes; preparation for trials; preparing and defending fact and expert depositions; preparing and defending expert reports; and preparing and defending *Daubert* motions, class certification (and a potential Rule

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<sup>16</sup> See *supra*, Section II.

23(f) petition), summary judgment, and motions *in limine*. Antitrust class actions “are notoriously complex, protracted, and bitterly fought.”<sup>17</sup> DPPs’ cases are no different. The initial complaints in this litigation were filed over eight years ago. Defendants’ motions to dismiss have been the subject of extensive briefing and argument. Bellwether class certification motions, *Daubert* motions, and summary judgment motions have been subject to extensive briefing and have or will also likely feature oral arguments. Each stage of this litigation is likely to be just as vigorously fought as these earlier proceedings. There can be no doubt that this case would be expensive to continue and complex to try.

For these reasons, “[t]he law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.”<sup>18</sup> The settlement will ensure an immediate monetary distribution to the Settlement Class and the accompanying cooperation will strengthen DPPs’ claims and expedite discovery of litigating Defendants. This factor weighs in favor of approving the Settlement.

## **2. The Settlement Provides an Effective Method to Distribute Relief to the Settlement Class**

Under Rule 23(e)(2)(C)(ii), the Court “scrutinize[s] the method of claims processing to ensure that it facilitates filing legitimate claims” and “should be alert to whether the claims process is unduly demanding.” Fed. R. Civ. P. 23 Advisory Committee Notes on 2018

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<sup>17</sup> *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 661 (S.D.N.Y. 2015) (citation and internal quotation marks omitted).

<sup>18</sup> *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d at 784 (internal citations omitted). See also *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) (“there is an overriding public interest in settling class action litigation, and it should therefore be encouraged”); *In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 216 (E.D. Pa. 2014) (“[I]f the parties were to continue to litigate this case, further proceedings would be complex, expensive and lengthy, with contested issues of law and fact . . . . That a settlement would eliminate delay and expenses and provide immediate benefit to the class militates in favor of approval.”).

Amendments. This settlement provides a straightforward process for Settlement Class Members to submit claims and receive their *pro rata* share of the settlement distribution. *See* proposed Plan of Allocation, MDL Doc. No. 3010-7. The *pro rata* shares will be calculated by Dr. Leitzinger using Defendants' transaction data. Declaration of Jeffrey J. Leitzinger, Ph.D. Related to Proposed Allocation Plan (MDL Doc. No. 2010-9, "Leitzinger Allocation Decl.") ¶ 14. The Plan of Allocation was described in the Notice disseminated to the Settlement Class and there have been no objections. It is also materially identical to the Plan of Allocation that the Court previously adopted for the Sun/Taro settlements.

Defendants' data has been analyzed to make it useful for calculating *pro rata* shares, allowing claim forms to be distributed after final approval of the Settlement. Dr. Leitzinger will rely on Defendants' sales data to calculate claims, individual claimants will not have to submit purchase data on the 159 NGDs at issue (and for the most part, will not be permitted to). As Dr. Leitzinger has explained, in addition to the work required to analyze Defendants' transaction sales data, if a claimant could submit its own data, processing and analyzing individual purchase data from claimants for 159 NGDs over the 10-year Settlement Class period would be time consuming and expensive (costs that would reduce the Settlement Fund available to all claimants). *Id.* ¶¶ 10-13. Also, the various data sets submitted would require further efforts and time to evaluate differences between their data and data produced by Defendants, potentially requiring rounds of inquiry to both claimants and Defendants. *Id.* Defendants' sales data, by contrast, are considered reliable and will be the basis of damage calculations going forward.<sup>19</sup>

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<sup>19</sup> Courts have repeatedly certified classes of Direct Purchasers of pharmaceuticals, finding predominance met where Direct Purchasers' damages were calculated utilizing the defendants' data. *See, e.g., In re Suboxone (Buprenorphine Hydrochloride and Nalaxone) Antitrust Litig.*, 967 F.3d 264, 272 n.13 (3d Cir. 2020); *In re Wellbutrin XL Antitrust Litig.*, 2011 WL 3563385, at \*13-14 (E.D. Pa. Aug. 11. 2011).



There may be some claimants whose claims cannot be calculated from Defendants' sales data because the data produced is not completely co-extensive with the Settlement Class period. Some Defendants produced data through the end of 2018, some produced through the end of 2017, and some Defendants' data begins later than May 2009. If there are claimants who are not in Defendants' sales data, they will be given the opportunity to participate in the settlement if they can demonstrate that they purchased NGDs directly from Defendants at some point during the period from May 1, 2009, through December 31, 2019, and if they submit their own purchase data showing the amount(s) of NGDs they purchased directly from Defendants during this period.<sup>20</sup>

### **3. The Proposed Terms for Attorneys' Fees are Reasonable**

The terms of the Settlement Agreement allow Settlement Class Counsel to request attorneys' fees up to one-third of the net settlement amount, including reimbursement of expenses incurred in prosecuting this litigation, and class representative service awards. Settlement Agreement ¶17.

The Notice, which was mailed on July 10, 2024, also informed Settlement Class members about the maximum amount Class Counsel may request in attorneys' fees and expenses. The Notice allowed Settlement Class Members to decide whether to opt out or object to the settlement. This type of Notice has been repeatedly found to satisfy due process.<sup>21</sup>

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<sup>20</sup> Claimants who are not identified as Direct Purchasers in the data produced by Defendants will have to provide documentation sufficient to show that they purchased at least one NGD directly from at least one Defendant, as explained in Section V, *infra*.

<sup>21</sup> *In re Nat'l Football Players Concussion Injury Litig.*, 821 F.3d 410, 444–47 (3d Cir. 2016) (Affirming final approval of a settlement where the District Court intended to consider attorneys' fees after final approval and settlement class members were informed that attorneys may seek fees of up to \$112.5 million. "Even if the class members were missing certain information—for example, the number of hours class counsel worked and the terms of any contingency fee

Before the opt-out deadline, DPPs’ also filed their September 23, 2024 motion and subsequently posted it on the settlement website. DPPs’ September 23, 2024 Motion requested attorneys’ fees of twenty-nine percent (29%) of the Net Settlement Fund, inclusive of accrued interest but net of any reimbursed expenses or service awards. *See* MDL Doc. No. 3102-1. Accordingly, the amount DPPs have requested is less than the one-third percentage that DPPs initially informed the Class to assume that they might request. No objections have been lodged to the requests for payment of expenses or service awards at this time, nor to the requested attorneys’ fees. After an extensive notice program, no Settlement Class Member has objected to the reimbursement of expenses, the service award payments, or the request for attorneys’ fees.

**D. The Proposal Treats Settlement Class Members Equitably**

“A district court’s principal obligation in approving a plan of allocation is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund.” *Wawa*, 2021 WL 3276148, at \*13 (quoting *Sullivan v. D.B. Invs., Inc.*, 667 F.3d 274, 326 (3d Cir.2011)) (internal quotation marks and citations omitted). As discussed further in Section V below, the Settlement treats all Settlement Class Members equitably. In accordance with the Plan of Allocation, Settlement Class Members will receive equitable compensation based on their *pro rata* share of overall NGDs purchased directly from Defendants. *See* Section V, *infra*. This factor weighs in favor of final approval.

**V. THE PLAN OF ALLOCATION WARRANTS FINAL APPROVAL**

DPPs’ proposed Plan of Allocation would allocate settlement funds on a *pro rata* basis based on Settlement Class members’ unit direct purchases of the NGDs from Defendants during

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arrangements class counsel have with particular retired players—they still had enough information to make an informed decision about whether to object to or opt out from the settlement.”).

the Settlement Class period. MDL Doc. No. 3010-7. The proposed Plan of Allocation is fair, reasonable, and efficient and materially identical to the plan of allocation that this Court adopted for the Sun/Taro, Apotex, Breckenridge, and Heritage settlements. “Approval of a plan of allocation for a settlement fund in a class action is governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable and adequate.”<sup>22</sup> “Courts generally consider plans of allocation that reimburse class members based on the type and extent of their injuries to be reasonable.”<sup>23</sup>

Plans of allocation that distribute settlement funds based on a *pro rata* share of purchases are routinely approved.<sup>24</sup> Settlements in antitrust cases are commonly distributed to direct

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<sup>22</sup> *Ikon*, 194 F.R.D. at 184 (internal quotation marks omitted). *See also Sullivan*, 667 F.3d at 326 (“A district court’s ‘principal obligation’ in approving a plan of allocation ‘is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund.’”) (quoting *Walsh v. Great Atl. & Pac. Tea Co., Inc.*, 726 F.2d 956, 964 (3d Cir. 1983)).

<sup>23</sup> *Sullivan*, 667 F.3d at 328 (quoting *In re Corel Corp. Inc., Sec. Litig.*, 293 F. Supp. 2d 484, 493 (E.D. Pa. 2003) (internal quotation marks omitted)). *See also Ikon*, 194 F.R.D. at 184 (same, approving a plan of allocation that reimbursed stock-holders at progressive percentages for their defined losses based on the timing of their stock purchases and defendant’s disclosures) (citation omitted); *Meijer*, 2006 WL 2382718, at \*17 (same, approving a plan of allocation distributing funds to Direct Purchasers proportionate to the volume and amount of their purchases); *Vista Healthplan, Inc. v. Cephalon, Inc.*, 2020 WL 1922902, at \*25 (E.D. Pa. Apr. 21, 2020) (same, approving a plan of allocation distributing funds to indirect purchaser claimants proportionately based on the amounts they paid for the affected drugs); *In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 345 (E.D. Pa. 2007) (same, approving a plan of allocation distributing funds on a *pro rata* basis based upon the amount of each claimant’s eligible purchases).

<sup>24</sup> 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions*, § 12.35, at 350 (4th ed. 2002) (noting that *pro-rata* allocation of a settlement fund “is the most common type of apportionment of lump sum settlement proceeds for a class of purchasers” and “has been accepted and used in allocating and distributing settlement proceeds in many antitrust class actions”); *Beneli v. BCA Fin. Servs., Inc.*, 324 F.R.D. 89, 105–06 (D.N.J. 2018) (“In particular, *pro rata* distributions are consistently upheld, and there is no requirement that a plan of allocation differentiat[e] within a class based on the strength or weakness of the theories of recovery.”) (citation and internal quotation marks omitted); *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at \*15 (E.D. Mich. Dec. 13, 2011) (“Typically, a class recovery in antitrust or securities suits will divide the common fund on a *pro rata* basis among all who timely file

purchaser classes based on a purchaser's *pro rata* share as well.<sup>25</sup>

The proposed Plan of Allocation meets this standard. As set forth in the proposed Plan of Allocation and in the Leitzinger Allocation Declaration, the Net Settlement Fund will be distributed to Settlement Class members based on each claimant's volume of purchases across all NGDs from all Defendants during the period from May 1, 2009 through December 31, 2019. *See* Plan of Allocation § 2.1; Leitzinger Allocation Decl. ¶ 14.<sup>26</sup> Claimants' purchase volumes will be calculated using data produced by Defendants. Claimants will only need to submit their own

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eligible claims, thus leaving no unclaimed funds.”) (quoting 3 Newberg on Class Actions, § 8:45 (4th ed. 2011)); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 335 (E.D. Pa. 2007) (approving as reasonable a distribution plan that allocated settlement funds to class members based upon their *pro rata* share of the class's total transparent tape purchases during the damage period, net of invoice adjustments and rebates paid as of the date of the settlement); *Sullivan*, 667 F.3d at 328 (upholding a district court's approval of a plan of allocation based on a *pro rata* share of diamond purchases). A plan of allocation “need not be, and cannot be, perfect.” *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235, 272 (D.N.J. 2000), *aff'd*, 264 F.3d 201 (3d Cir. 2001), *cert. denied*, 535 U.S. 929 (2002).

<sup>25</sup> *See, e.g., In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at \*11 (D.N.J. Nov. 9, 2005) (“Plaintiffs propose to allocate the Settlement funds, net of Court approved attorneys' fees, incentive award, and expenses ... in proportion to the overcharge damages incurred by each Class member due to Defendants' alleged conduct in restraint of trade. Such a method of allocating the Net Settlement Fund is inherently reasonable.”); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 752 (E.D. Pa. 2013) (approving plan of allocation as fair, reasonable, and adequate where each class member receives their *pro rata* share of the net settlement fund based on their share of qualifying purchases of the at issue drug); *In re Namenda Direct Purchaser Antitrust Litig.*, 462 F. Supp. 3d 307, 309 (S.D.N.Y. 2020) (same); Order Granting Final Approval of Pls.' Proposed Plan of Allocation, *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 14-md-2503, ECF No. 1179 (D. Mass. July 18, 2018) (same); Order Granting Direct Purchaser Plaintiffs' Unopposed Motion for Final Approval of Settlement, *In re Loestrin 24 FE Antitrust Litig.*, No. 1:13-md-02472, ECF No. 1462 (D.R.I. Sept. 1, 2020) (same); *In re Lidoderm Antitrust Litig.*, No. 14-md-2521, ECF Nos. 1004-5, 1004-6, 1054 (N.D. Cal.) (same); *In re Aggrenox Antitrust Litig.*, No. 14-md-2516, ECF Nos. 733-1, 739 (D. Conn.) (same); *Mylan Pharms., Inc. v. Warner Chilcott Public Ltd.*, No. 12-cv-3824, ECF Nos. 452-3, 665 (E.D. Pa.) (same); *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-cv-340, ECF Nos. 536-1, 543 (D. Del.) (same).

<sup>26</sup> Depending on drug formulation of each NGD, a unit may be pill (tablet or capsule); milligram or milliliter as appropriate for drugs sold in a cream, solution, jelly/gel, ointment, pastes, inhalation, infusion, etc.; a suppository for drugs sold in that form; a patch for drugs sold in that form; and a syringe for those drugs sold in syringes. Plan of Allocation at 3.

data, in limited circumstances. As Dr. Leitzinger explains: (a) generic manufacturer data, like Defendants' data that will be used here, is "highly reliable;" (b) in Dr. Leitzinger's experience "where there has been data submissions from Class members in connection with settlement distribution, those submissions have not materially affected the outcomes;" and (c) review of Class member data submissions could be expensive and time-consuming, causing the Settlement Class to incur additional expense and delay distribution. Leitzinger Allocation Decl. [MDL Doc. No. 2010-9] ¶¶ 10-13.

Purchases of NGDs will be weighted so that purchases of NGDs with higher price points will be given greater weight in the allocation process (consistent with Dr. Leitzinger's expectation that those NGD formulations likely carried bigger overcharges). *Id.* ¶¶ 15-16. Specifically, Claimant purchase volumes of each NGD formulation will be multiplied by the average price reported for it by IQVIA (formerly, IMS Health) over the period from May 2009 to December 2019. *Id.* ¶ 15.

The data set that will be used for these calculations is enormous. Unlike most pharmaceutical or antitrust cases that involve a few defendants and a sole product, this case covers approximately three dozen Defendant families and 159 drugs (with various formulations and strengths). The Plan of Allocation will utilize all of the sales data Defendants produced for all 159 drugs that Dr. Leitzinger can use to calculate Class members' unit purchases. *Id.* ¶ 11. Nevertheless, while this data captures the vast majority of sales, there may be some Settlement Class Members whose purchases are not contained within this data set, such as purchasers that bought NGDs in 2009 (since not all Defendants produced data back to 2009), or past 2017 or 2018, the end dates of Defendants' data. *See id.* ¶ 21 n.13. Claimants who do not appear in Defendants' sales data will need to show they purchased NGDs directly from Defendants during

the period from May 1, 2009, through December 31, 2019, and will need to submit their purchase data showing these direct purchases. Plan of Allocation at § 2.2.

In addition, the Plan of Allocation provides that claimants who file based on an assignment of rights from a Class member shall have to reach agreement about the volume of unit purchases covered by any such assignments.<sup>27</sup> Finally, consistent with the Sun/Taro, Apotex,

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<sup>27</sup> Specifically, Section 2.3 of the Plan of Allocation provides:

*Claimants that file on the basis of an assignment from a Class member.*  
Allocations to Claimants who file a claim based on an assignment from a Class member would be determined either (a) by agreement between the assignor Class member and its respective assignee claimant, or (b) if the assignor Class member and its assignee claimant cannot reach an agreement, then the assignee claimant shall receive no allocation based on its assignment from the assignor Class member and the assignor Class member's allocation shall not be reduced to account for the assignment to the assignee claimant. There are only two types of agreements between an assignor Class member and its respective assignee claimant that shall be acceptable for purposes of an assignee claimant receiving an allocation based on an assignment from a Class member: (i) the assignor Class member and its respective assignee claimant can agree that the assignee claimant shall be allocated a share that is a fixed percentage of the assignor Class member's share (say 5% of the Class member's share) and that the assignor Class member's allocation shall be reduced by the same amount; or (ii) the assignor Class member and its respective assignee claimant can submit agreed upon figures for the purchase volumes covered by the assignment for each NGD sold by Defendants, and then this information can be used by Econ One to calculate the assignee's allocation in accordance with this Plan of Allocation (and the assignor Class member's share shall be reduced by the same amount). Neither an assignee (nor any other Claimant) other than as stated herein shall be allowed to submit its own purchase data. Reviewing assignee claimants' purchase data would likely be expensive and time consuming, and will delay disbursement. If the assignor Class member and assignee claimant cannot reach agreement, they can attempt to resolve any dispute outside of this allocation process. The assignor and assignee shall be given no more than 90 days from the deadline for claims submission to reach agreement, and, if they cannot reach agreement by that time, the assignor's and assignee's share shall not be distributed, and shall remain in the escrow account until such time as they either reach agreement or obtain a court order providing for the amounts to be distributed to the assignor and assignee. As the Claim Form will make clear, any claim (including all related documentation or materials submitted therewith) submitted by a Claimant who files a Claim Form based on an assignment may be shared with the Claimant's assignor Class member during the claims administration process.

Breckenridge, and Heritage settlements, the Plan of Allocation also provides for each Settlement Class Member to receive reasonable compensation such that any class member who would have been eligible to receive less than \$25 under a *pro rata* distribution will instead receive a distribution of \$25. Leitzinger Allocation Decl. ¶¶ 3.3.

In Dr. Leitzinger’s opinion, the proposed plan of allocation is fair, reasonable, and reflects the type and approximate extent of the injury incurred by Settlement Class members. Leitzinger Allocation Decl. ¶¶ 7, 22. “By relying upon Defendants’ data, the basis for the allocation is reliable and the process is efficient, thereby preserving net settlement amounts by avoiding undue costs. In addition, as noted above, this allocation method employs allocation approaches similar to those approved by courts in other cases involving generic drug overcharges.” *Id.* ¶ 22.<sup>28</sup>

In addition, “[w]hen evaluating the fairness of a Plan of Allocation, courts give weight to the opinion of qualified counsel.”<sup>29</sup> This Plan of Allocation was developed in conjunction with Settlement Class Counsel and is recommended by Settlement Class Counsel, which further supports approval.

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<sup>28</sup> The Plan of Allocation also provides that claimants who have given partial assignments to entities that opt out of the Class (such as Direct Action Plaintiffs (“DAPs”)) shall have their combined net totals reduced to account for those assignments. Plan of Allocation § 2.1.d. This shall be done using the chargeback data produced by the Defendants that Dr. Leitzinger can use to estimate the percentage of units purchased by the Class members which were then resold to the DAPs or other assignees. *Id.* This calculation is described in detail in paragraph 20 of Dr. Leitzinger’s Allocation Declaration.

<sup>29</sup> *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 180 (S.D.N.Y. 2014); *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 462 (S.D.N.Y. 2004). *See also In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005) (“An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.”) (quoting *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y.2002) (citation omitted)); *In re Auto. Parts Antitrust Litig.*, 2019 WL 7877812, at \*1 (E.D. Mich. Dec. 20, 2019) (same); *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, 2007 WL 2230177, at \*11 (S.D.N.Y. July 27, 2007) (same).

**VI. CONCLUSION**

For the reasons set forth above, it is respectfully requested that the Court grant final approval to the Sandoz settlement and to the Plan of Allocation.

Dated: November 22, 2024

Respectfully submitted,



---

Dianne M. Nast  
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1101 Market Street, Suite 2801  
Philadelphia, Pennsylvania 19107  
(215) 923-9300  
dnast@nastlaw.com

*Lead and Liaison Counsel  
for Direct Purchaser Plaintiffs*

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Dallas, Texas 75201  
(501) 821-5575  
mikeroberts@robertslawfirm.us

*Direct Purchaser Plaintiffs' Steering Committee*



# Exhibit 1

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

**IN RE: GENERIC PHARMACEUTICALS  
PRICING ANTITRUST LITIGATION**

**MDL No. 2724  
Case No. 2:16-MD-2724**

**THIS DOCUMENT RELATES TO:**  
  
*Direct Purchaser Plaintiffs' Actions*

**HON. CYNTHIA M. RUFÉ**

**DECLARATION OF MATTHEW D. KENT REGARDING  
NOTICE OF PROPOSED SETTLEMENT PURSUANT TO 28 U.S.C. § 1715**

I, Matthew D. Kent, declare and state as follows:

1. I have personal knowledge of the matters stated herein, and if called to testify as a witness, I could and would testify competently to the following facts.
2. I am a partner with the law firm of Alston & Bird LLP, which serves as settlement counsel for Sandoz Inc. and Fougera Pharmaceuticals Inc. (collectively, “Sandoz”) in the above-captioned action.
3. I submit this declaration upon personal knowledge detailing Sandoz’s compliance with the notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.* (“CAFA”).
4. On March 12, 2024, Plaintiffs filed their Motion for Preliminary Approval of the Settlement with Sandoz. (Dkt. No. 2865).
5. On March 22, 2024, pursuant to 28 U.S.C. § 1715(a) & (b), Alston & Bird staff, acting under my direction, served a cover letter and certain accompanying documents outlined in the letter (the “CAFA Notice”), upon the U.S. Attorney General and the appropriate government officials for all fifty states, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

6. As required by 28 U.S.C. § 1715(b), the CAFA Notice included copies of: (i) the operative complaints as well as all prior complaints filed in this matter; and (ii) the Settling Direct Purchaser Plaintiffs' Motion for an Order (1) Certifying a Settlement Class, (2) Granting Preliminary Approval of Settlement Agreement, (3) Appointing Settlement Class Counsel, (4) Appointing a Claims Administrator and Escrow Agent, (5) Approving the Form and Manner of Notice to the Settlement Class, (6) Preliminarily Approving the Plan of Allocation, and (7) Scheduling a Fairness Hearing ("DPP Motion for Preliminary Approval"); the Memorandum in Support of DPP Motion for Preliminary Approval; a Proposed Order Granting the DPP Motion for Preliminary Approval; Exhibit 1, the Declaration of Dianne M. Nast in Support of the DPP Motion for Preliminary Approval (attaching as Exhibit A, the Settlement Agreement); Exhibit 2, the Declaration of Eric J. Miller Regarding Proposed Notice Plan; Exhibit 3, Proposed Mail Notice; Exhibit 4, Proposed Publication Notice; and Exhibit 5, Direct Purchaser Plaintiffs' Proposed Plan of Allocation for the Settlement Class. The CAFA Notice also (i) disclosed the existence of the confidential side letter referenced in the Settlement Agreement that addresses the opt-out percentage that would trigger Sandoz's right to terminate the settlement; and (ii) provided the estimated number of class members and their geographic dispersal.

7. Attached hereto as Exhibit A is a true and correct copy of the letter described in Paragraph 6, which attaches the list of names and addresses of the government officials upon whom CAFA Notice was served.

8. On May 22, 2024, Madeline Harvey (Division Assistant, Consumer Protection Division for the Office of the Attorney General for the State of Florida) called and emailed Alston & Bird to request that we assist her in locating the Settlement Agreement in the materials provided. Alston & Bird responded to Ms. Harvey's request on May 22, 2024, emailing a copy of the

Settlement Agreement and directing her to the location of this file on the CD-ROM provided with the CAFA Notice. Alston & Bird did not receive any other communications from the recipients of the CAFA Notice.

9. On June 12, 2024, shortly after the parties had executed an Amendment to their Settlement Agreement and were preparing to withdraw the initial Preliminary Approval Motion, the Court denied the DPP Motion for Preliminary Approval (Dkt. No. 2997), and on June 21, 2024, Plaintiffs filed their Motion for Preliminary Approval of the Amended Settlement with Sandoz. (Dkt. No. 3010).

10. On July 1, 2024, pursuant to 28 U.S.C. § 1715(a) & (b), Alston & Bird staff, acting under my direction, served a cover letter and certain accompanying documents outlined in the letter (the “Second CAFA Notice”), upon the U.S. Attorney General and the appropriate government officials for all fifty states, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

11. As required by 28 U.S.C. § 1715(b), the Second CAFA Notice included copies of: (i) the operative complaints as well as all prior complaints filed in this matter; and (ii) the Settling Direct Purchaser Plaintiffs’ Motion for an Order (1) Certifying a Settlement Class, (2) Granting Preliminary Approval of Settlement Agreement, (3) Appointing Settlement Class Counsel, (4) Appointing a Claims Administrator and Escrow Agent, (5) Approving the Form and Manner of Notice to the Settlement Class, (6) Preliminarily Approving the Plan of Allocation, and (7) Scheduling a Fairness Hearing (“DPP Motion for Preliminary Approval of Amended Settlement”); the Memorandum in Support of Second DPP Motion for Preliminary Approval of Amended Settlement; a Proposed Order Granting the DPP Motion for Preliminary Approval of Amended Settlement; Exhibit 1, the Declaration of Dianne M. Nast in Support of the DPP Motion for

Preliminary Approval of Amended Settlement (attaching as Exhibit A, the Settlement Agreement, as amended); Exhibit 2, the Declaration of Eric J. Miller Regarding Proposed Notice Plan; Exhibit 3, Proposed Mail Notice; Exhibit 4, Proposed Publication Notice; and Exhibit 5, Direct Purchaser Plaintiffs' Proposed Plan of Allocation for the Settlement Class; (iii) the order denying the DPP Motion for Preliminary Approval; and (iv) the order granting the DPP Motion for Preliminary Approval of Amended Settlement. The Second CAFA Notice also (i) informed recipients of the scheduled final approval hearing; (ii) disclosed the existence of the confidential side letter referenced in the Settlement Agreement that addresses the opt-out percentage that would trigger Sandoz's right to terminate the settlement; and (ii) provided the estimated number of class members and their geographic dispersal.

12. Attached hereto as Exhibit B is a true and correct copy of the letter described in Paragraph 11, which attaches the list of names and addresses of the government officials upon whom Second CAFA Notice was served.

13. Alston & Bird has not received any communications from the recipients of the Second CAFA Notice.

14. To the best of my knowledge, Sandoz has fully complied with CAFA and has satisfied all obligations thereunder.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22<sup>nd</sup> day of November, 2024 in Atlanta, GA.



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## **Exhibit A**

# ALSTON & BIRD

One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309-3424  
404-881-7000 | Fax: 404-881-7777

March 22, 2024

**VIA USPS CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Honorable Merrick B. Garland  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

The State Attorneys General  
(Identified on Attached Exhibit 1)

**Re: Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715 in *In re: Generic Pharmaceuticals Pricing Antitrust Litigation*, No. 2:16-md-02724-CMR**

Dear Federal and State Officials:

We write on behalf of Defendants Sandoz Inc. and Fougera Pharmaceuticals Inc. (“Sandoz”) pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1711 *et seq.*, to notify you of a proposed class action settlement in *In re: Generic Pharmaceuticals Pricing Antitrust Litigation*, No. 2:16-md-02724-CMR (E.D. Pa.) (“MDL 2724”) between Sandoz and a class of Direct Purchaser Plaintiffs (“DPPs”). The settlement agreement between Sandoz and the DPPs (the “Settlement”) was filed with the Court on March 12, 2024.

Sandoz denies that, had this case proceeded through summary judgment or trial, it would have been found liable to DPPs, but has decided to settle this action solely in order to eliminate the burden, expense, and uncertainties of further litigation.

In accordance with the requirements of 28 U.S.C. § 1715(b), the following documents referenced below are included on the CD-ROM that is enclosed with this letter:

Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

March 22, 2024

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1. **28 U.S.C. § 1715(b)(1) – Complaint and Any Amended Complaints:** The following complaints and amended complaints filed by the DPPs and naming Sandoz as a defendant are enclosed:<sup>1</sup>

Case Name (description)	Court	Case No.	Date Filed
<i>Ahold USA, Inc., et al. v. Actavis Holdco U.S., Inc., et al.</i>  ( <i>In re: Generic Pharmaceuticals Pricing Antitrust Litigation: DPPs' first multi-drug complaint</i> )	E.D. Pa.	2:18-CV-02641-CMR	6/22/18 (original complaint)  12/21/19 (amended complaint)
<i>Cesar Castillo, Inc., et al. v. Actavis Holdco U.S., Inc., et al.</i>  ( <i>In re: Generic Pharmaceuticals Pricing Antitrust Litigation: DPPs' second multi-drug complaint</i> )	E.D. Pa.	2:20-CV-00721-CMR	2/7/20 (original complaint)  10/21/20 (amended complaint)
<i>Ahold USA, Inc., et al. v. Mylan Inc., et al.</i>  ( <i>In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Amitriptyline Cases: DPPs' Amitriptyline complaint</i> )	E.D. Pa.	2:16-AM-27241-CMR	8/15/17
<i>Ahold USA, Inc., et al. v. Mylan Inc., et al.</i>  ( <i>In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Benazepril HCTZ Cases: DPPs' Benazepril HCTZ complaint</i> )	E.D. Pa.	2:16-BZ-27241-CMR	8/15/17
<i>Ahold USA, Inc., et al. v. Actavis Holdco U.S., Inc., et al.</i>  ( <i>In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Clobetasol Cases: DPPs' Clobetasol complaint</i> )	E.D. Pa.	2:16-CB-27241-CMR	8/15/17

<sup>1</sup> Please note that certain of these complaints are subject to protective orders entered by the Court and, accordingly, were filed under seal. Sandoz is providing the public, redacted versions of these pleadings where necessary to avoid potentially violating these protective orders.



Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

March 22, 2024

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<i>Ahold USA, Inc., et al. v. Mylan Inc., et al.</i>  ( <i>In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Clomipramine Cases: DPPs' Clomipramine complaint</i> )	E.D. Pa.	2:16-CM-27241-CMR	8/15/17
<i>Ahold USA, Inc., et al. v. Actavis Holdco U.S., Inc., et al.</i>  ( <i>In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Desonide Cases: DPPs' Desonide complaint</i> )	E.D. Pa.	2:16-DS-27241-CMR	8/15/17
<i>Ahold USA, Inc., et al. v. Lannett Company, Inc., et al.</i>  ( <i>In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Levothyroxine Cases: DPPs' Levothyroxine complaint</i> )	E.D. Pa.	2:16-LV-27241-CMR	8/15/17
<i>Ahold USA, Inc., et al. v. Akorn, Inc., et al.</i>  ( <i>In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Lidocaine-Prilocaine Cases: DPPs' Lidocaine-Prilocaine complaint</i> )	E.D. Pa.	2:16-LD-27241-CMR	8/15/17
<i>Ahold USA, Inc., et al. v. Apotex Corp., et al.</i>  ( <i>In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Pravastatin Cases: DPPs' Pravastatin Complaint</i> )	E.D. Pa.	2:16-PV-27241-CMR	8/15/17

2. **28 U.S.C. § 1715(b)(2) – Notice of Any Scheduled Judicial Hearing:** The Court has not scheduled a preliminary approval hearing or a final approval hearing or any other judicial hearing concerning the Settlement at this time.
3. **28 U.S.C. § 1715(b)(3) – Notification to Class Members:** The proposed Class Notice has been submitted for the Court's approval with the DPP's Motion for Preliminary Approval. ECF No. 2865-5 (Proposed Direct Mail Notice); ECF No. 2865-6 (Proposed Publication Notice). Additionally, if the Court preliminarily approves the Settlement and the Proposed Notice Plan, the settlement website ([www.GenericDrugsDirectPurchaserSettlement.com](http://www.GenericDrugsDirectPurchaserSettlement.com)) will be updated with

Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

March 22, 2024

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information that will notify the settlement class members about the details of the Settlement. ECF No. 2865-4 (Miller Declaration regarding Proposed Notice Plan).

4. **28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:** The following documents are included:
  - Settlement Agreement (attached as Exhibit A to the Declaration of Dianne M. Nast, ECF No. 2865-3);
  - DPPs’ Motion for an Order with respect to the Sandoz Settlement: (1) Certifying a Settlement Class; (2) Granting Preliminary Approval of the Settlement Agreement; (3) Appointing Settlement Class Counsel; Appointing a Claims Administrator and Escrow Agent; (5) Approving the Form and Manner of Notice to the Settlement Class; (6) Granting Preliminary Approval of the Plan of Allocation; and (7) Scheduling a Fairness Hearing, ECF No. 2865 (the “Preliminary Approval Motion”);
  - Memorandum in Support of Preliminary Approval Motion, ECF No. 2865-1;
  - Proposed Order Regarding DPPs’ Sandoz Settlement, ECF No. 2865-2;
  - Declaration of Dianne M. Nast in Support of Preliminary Approval Motion (Ex. 1 to Preliminary Approval Motion), ECF No. 2865-3;
  - Declaration of Eric J. Miller of A.B. Data, Ltd. regarding Proposed Notice Plan (Ex. 2 to Preliminary Approval Motion), ECF No. 2865-4;
  - Proposed Mail Notice (Ex. 3 to Preliminary Approval Motion), ECF No. 2865-5;
  - Proposed Publication Notice (Ex. 4 to Preliminary Approval Motion), ECF No. 2865-6; and
  - DPPs’ Plan of Allocation for the Settlement Class (Ex. 5 to Preliminary Approval Motion), ECF No. 2865-7.
5. **28 U.S.C. § 1715(b)(5) – Any Settlement or Other Agreement Between Class Counsel and Counsel for Defendants:** As of the date of this correspondence, no other settlement or agreement has been contemporaneously entered into by the parties to the Settlement with Sandoz, with the exception of a confidential side letter referenced in the Settlement Agreement and available to the Court for *in camera* inspection. The side letter addresses the opt-out percentage that would trigger Sandoz’s right to terminate the settlement.
6. **28 U.S.C. § 1715(b)(6) – Final Judgment:** To date, the Court has not issued a final order, judgment, or dismissal as to Sandoz in the DPP case.

Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

March 22, 2024

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7. **28 U.S.C. § 1715(b)(7)(A)-(B) – Names of Class Members/Estimate of Class Members’ Shares:** The Settlement Class includes all entities that directly purchased any of the Named Generic Drugs (as identified in Exhibit B to the Settlement) from one or more of the Current or Former Defendants (as identified in Exhibit C to the Settlement). Because class membership is not limited to entities that purchased directly from Sandoz, it is not feasible for Sandoz identify the class members who reside in each state or the estimated proportionate share of the claims of such members to the entire settlement. Sandoz’s best estimate is that there are more than 700 Settlement Class members geographically dispersed around the United States. See Preliminary Approval Motion (ECF No. 2865-1) at 26. The funds from the Settlement will be distributed pro rata to eligible class members as set forth in the Plan of Allocation attached to DPPs’ Motion for Preliminary Approval (ECF No. 2865-7).
  
8. **28 U.S.C. § 1715(b)(8) – Judicial Opinions Related to the Settlement:** To date, the Court has not issued an order preliminarily or finally approving the Settlement or a final order or judgment regarding Sandoz. The Court has previously granted final approval of similar settlements reached between DPPs and two other defendants (see ECF No. 2386), and granted preliminary approval of similar settlements reached between DPPs and three other defendants (see ECF Nos. 2841; 2842; 2843).

Additional filings in this case are available on the federal court’s PACER system (a log-in and password are required). Once the Court preliminarily approves the Settlement and Proposed Notice Plan, additional information related to the Settlement will be available at [www.GenericDrugsDirectPurchaserSettlement.com](http://www.GenericDrugsDirectPurchaserSettlement.com).

If for any reason you believe the enclosed information does not fully comply with 28 U.S.C. § 1715, please contact the undersigned immediately so that Sandoz can address any concerns or questions you may have.

Sincerely,



Matthew D. Kent

MDK:kfk

Enclosures

**EXHIBIT 1****CAFA Notice State Officials Service List – USPS Certified Mail, Return Receipt Requested**

<b>Company</b>	<b>Full Name</b>	<b>Address1</b>	<b>Address2</b>	<b>City</b>	<b>State</b>	<b>Zip</b>
Office of the Attorney General	Treg Taylor	1031 W 4th Ave	Suite 200	Anchorage	AK	99501
Office of the Attorney General	Steve Marshall	501 Washington Ave		Montgomery	AL	36104
Office of the Attorney General	Tim Griffin	323 Center St	Suite 200	Little Rock	AR	72201
Office of the Attorney General	Kris Mayes	2005 N Central Ave		Phoenix	AZ	85004
Office of the Attorney General	CAFA Coordinator	Consumer Protection Section	455 Golden Gate Ave Suite 11000	San Francisco	CA	94102
Office of the Attorney General	Phil Weiser	Ralph L Carr Colorado Judicial Center	1300 Broadway Fl 10	Denver	CO	80203
Office of the Attorney General	William Tong	165 Capitol Ave		Hartford	CT	06106
Office of the Attorney General	Brian Schwalb	400 6th St NW		Washington	DC	20001
Office of the Attorney General	Kathy Jennings	Carvel State Bldg	820 N French St	Wilmington	DE	19801
Office of the Attorney General	Ashley Moody	State of Florida	The Capitol PL-01	Tallahassee	FL	32399
Office of the Attorney General	Chris Carr	40 Capitol Square SW		Atlanta	GA	30334
Department of the Attorney General	Anne E Lopez	425 Queen St		Honolulu	HI	96813
Iowa Attorney General	Brenna Bird	Hoover State Office Building	1305 E Walnut St	Des Moines	IA	50319
Office of the Attorney General	Raul Labrador	700 W Jefferson St Ste 210	PO Box 83720	Boise	ID	83720
Office of the Attorney General	Kwame Raoul	100 W Randolph St		Chicago	IL	60601
Office of the Indiana Attorney General	Todd Rokita	Indiana Government Center South	302 W Washington St Rm 5	Indianapolis	IN	46204
Office of the Attorney General	Kris Kobach	120 SW 10th Ave 2nd Fl		Topeka	KS	66612
Office of the Attorney General	Russell Coleman	700 Capitol Ave Suite 118		Frankfort	KY	40601

Company	Full Name	Address1	Address2	City	State	Zip
Office of the Attorney General	Liz Murrill	PO Box 94005		Baton Rouge	LA	70804
Office of the Attorney General	Andrea Campbell	1 Ashburton Pl 20th Fl		Boston	MA	02108
Office of the Attorney General	Anthony G Brown	200 St Paul Pl		Baltimore	MD	21202
Office of the Attorney General	Aaron Frey	6 State House Station		Augusta	ME	04333
Department of Attorney General	Dana Nessel	PO BOX 30212		Lansing	MI	48909
Office of the Attorney General	Keith Ellison	445 Minnesota St Ste 1400		St Paul	MN	55101
Missouri Attorney General's Office	Andrew Bailey	207 West High Street	PO Box 899	Jefferson City	MO	65102
Mississippi Attorney General	Lynn Fitch	PO Box 220		Jackson	MS	39205
Office of the Attorney General	Austin Knudsen	215 N Sanders 3rd Fl	PO Box 201401	Helena	MT	59620
Attorney General's Office	Josh Stein	9001 Mail Service Ctr		Raleigh	NC	27699
Office of the Attorney General	Drew H Wrigley	600 E Boulevard Ave Dept 125		Bismarck	ND	58505
Nebraska Attorney General	Mike Hilgers	2115 State Capitol	PO Box 98920	Lincoln	NE	68509
Office of the Attorney General	John Formella	NH Department of Justice	33 Capitol St	Concord	NH	03301
Office of the Attorney General	Matthew J Platkin	25 Market Street	PO Box 080	Trenton	NJ	08625
Office of the Attorney General	Raul Torrez	408 Galisteo St	Villagra Bldg	Santa Fe	NM	87501
Office of the Attorney General	CAFA Coordinator	28 Liberty Street 15th Floor		New York	NY	10005
Office of the Attorney General	Dave Yost	30 E Broad St Fl 14		Columbus	OH	43215
Office of the Attorney General	Gentner Drummond	313 NE 21st St		Oklahoma City	OK	73105
Office of the Attorney General	Ellen F Rosenblum	Oregon Department of Justice	1162 Court St NE	Salem	OR	97301
Office of the Attorney General	Michelle A. Henry	16th Fl Strawberry Square		Harrisburg	PA	17120
Office of the Attorney General	Peter F Neronha	150 S Main St		Providence	RI	02903

Company	Full Name	Address1	Address2	City	State	Zip
Office of the Attorney General	Alan Wilson	PO Box 11549		Columbia	SC	29211
Office of the Attorney General	Marty Jackley	1302 E Hwy 14 Ste 1		Pierre	SD	57501
Office of the Attorney General	Jonathan Skrmetti	PO Box 20207		Nashville	TN	37202
Office of the Attorney General	Ken Paxton	PO Box 12548		Austin	TX	78711
Office of the Attorney General	Sean D Reyes	PO Box 142320		Salt Lake City	UT	84114
Office of the Attorney General	Jason S Miyares	202 N 9th St		Richmond	VA	23219
Office of the Attorney General	Charity R Clark	109 State St		Montpelier	VT	05609
Office of the Attorney General	Bob Ferguson	800 5th Ave Ste 2000		Seattle	WA	98104
Office of the Attorney General	Josh Kaul	PO Box 7857		Madison	WI	53707
Office of the Attorney General	Patrick Morrisey	State Capitol Complex Bldg 1 Room E 26	1900 Kanawha Blvd E	Charleston	WV	25305
Office of the Attorney General	Bridget Hill	109 State Capital		Cheyenne	WY	82002
Department of Legal Affairs	Fainu'ulei Falefatu Ala'ilima-Utu	American Samoa Gov't Exec Ofc Bldg Utulei	Territory of American Samoa	Pago Pago	AS	96799
Attorney General Office of Guam	Douglas Moylan	Administrative Division	590 S Marine Corps Dr Ste 901	Tamuning	GU	96913
Office of the Attorney General	Edward Manibusan	Administration Bldg	PO Box 10007	Saipan	MP	96950
PR Department of Justice	Domingo Emanuelli Hernández	PO Box 9020192		San Juan	PR	00902
Department of Justice	Attorney General of the United States Virgin Islands	3438 Kronprindsens Gade Ste 2	GERS BLDG	St Thomas	VI	00802

#### CAFA Notice State Officials Service List – Email

Company	Contact	State
Office of the Attorney General for Nevada	All documents sent to NV AG at their dedicated CAFA email inbox: <a href="mailto:NVAGCAFAnotices@ag.nv.gov">NVAGCAFAnotices@ag.nv.gov</a>	NV

## **Exhibit B**

# ALSTON & BIRD

One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309-3424  
404-881-7000 | Fax: 404-881-7777

July 1, 2024

**VIA USPS CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Honorable Merrick B. Garland  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

The State Attorneys General  
(Identified on Attached Exhibit 1)

**Re: Notice of Proposed Amended Class Action Settlement Pursuant to 28 U.S.C. § 1715 in  
*In re: Generic Pharmaceuticals Pricing Antitrust Litigation*, No. 2:16-md-02724-CMR**

Dear Federal and State Officials:

We write on behalf of Defendants Sandoz Inc. and Fougera Pharmaceuticals Inc. (“Sandoz”) pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1711 *et seq.*, to notify you of a proposed amended class action settlement in *In re: Generic Pharmaceuticals Pricing Antitrust Litigation*, No. 2:16-md-02724-CMR (E.D. Pa.) (“MDL 2724”) between Sandoz and a class of Direct Purchaser Plaintiffs (“DPPs”). The settlement agreement between Sandoz and the DPPs (the “Settlement”) was originally filed with the Court on March 12, 2024, and CAFA notice was provided to you on March 22, 2024. Thereafter, Sandoz and the DPPs executed an amendment to Settlement.<sup>1</sup> The Settlement, as amended, was filed with the Court on June 21, 2024.

Sandoz denies that, had this case proceeded through summary judgment or trial, it would have been found liable to DPPs, but has decided to settle this action solely in order to eliminate the burden, expense, and uncertainties of further litigation.

---

<sup>1</sup> The amendment removed Paragraph 12 of the Settlement, which contained a most-favored-nation provision (“MFN”) pursuant to which the amounts due to the DPPs would have increased if Sandoz were to settle with other classes of plaintiffs on more favorable terms. Other than the removal of Paragraph 12, the Settlement is unchanged.



Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

July 1, 2024

Page 2

In accordance with the requirements of 28 U.S.C. § 1715(b), the following documents referenced below are included on the CD-ROM that is enclosed with this letter:

1. **28 U.S.C. § 1715(b)(1) – Complaint and Any Amended Complaints:** The following complaints and amended complaints filed by the DPPs and naming Sandoz as a defendant are enclosed:<sup>2</sup>

Case Name (description)	Court	Case No.	Date Filed
<i>Ahold USA, Inc., et al. v. Actavis Holdco U.S., Inc., et al.</i>  ( <i>In re: Generic Pharmaceuticals Pricing Antitrust Litigation: DPPs' first multi-drug complaint</i> )	E.D. Pa.	2:18-CV-02641-CMR	6/22/18 (original complaint)  12/21/19 (amended complaint)
<i>Cesar Castillo, Inc., et al. v. Actavis Holdco U.S., Inc., et al.</i>  ( <i>In re: Generic Pharmaceuticals Pricing Antitrust Litigation: DPPs' second multi-drug complaint</i> )	E.D. Pa.	2:20-CV-00721-CMR	2/7/20 (original complaint)  10/21/20 (amended complaint)
<i>Ahold USA, Inc., et al. v. Mylan Inc., et al.</i>  ( <i>In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Amitriptyline Cases: DPPs' Amitriptyline complaint</i> )	E.D. Pa.	2:16-AM-27241-CMR	8/15/17
<i>Ahold USA, Inc., et al. v. Mylan Inc., et al.</i>  ( <i>In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Benazepril HCTZ Cases: DPPs' Benazepril HCTZ complaint</i> )	E.D. Pa.	2:16-BZ-27241-CMR	8/15/17
<i>Ahold USA, Inc., et al. v. Actavis Holdco U.S., Inc., et al.</i>	E.D. Pa.	2:16-CB-27241-CMR	8/15/17

<sup>2</sup> Please note that certain of these complaints are subject to protective orders entered by the Court and, accordingly, were filed under seal. Sandoz is providing the public, redacted versions of these pleadings where necessary to avoid potentially violating these protective orders.

Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

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<i>(In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Clobetasol Cases: DPPs' Clobetasol complaint)</i>			
<i>Ahold USA, Inc., et al. v. Mylan Inc., et al.</i>  <i>(In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Clomipramine Cases: DPPs' Clomipramine complaint)</i>	E.D. Pa.	2:16-CM-27241-CMR	8/15/17
<i>Ahold USA, Inc., et al. v. Actavis Holdco U.S., Inc., et al.</i>  <i>(In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Desonide Cases: DPPs' Desonide complaint)</i>	E.D. Pa.	2:16-DS-27241-CMR	8/15/17
<i>Ahold USA, Inc., et al. v. Lannett Company, Inc., et al.</i>  <i>(In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Levothyroxine Cases: DPPs' Levothyroxine complaint)</i>	E.D. Pa.	2:16-LV-27241-CMR	8/15/17
<i>Ahold USA, Inc., et al. v. Akorn, Inc., et al.</i>  <i>(In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Lidocaine-Prilocaine Cases: DPPs' Lidocaine-Prilocaine complaint)</i>	E.D. Pa.	2:16-LD-27241-CMR	8/15/17
<i>Ahold USA, Inc., et al. v. Apotex Corp., et al.</i>  <i>(In re: Generic Pharmaceuticals Pricing Antitrust Litigation: In re: Pravastatin Cases: DPPs' Pravastatin Complaint)</i>	E.D. Pa.	2:16-PV-27241-CMR	8/15/17

2. **28 U.S.C. § 1715(b)(2) – Notice of Any Scheduled Judicial Hearing:** The Court has scheduled a final approval hearing for March 17, 2025, at 10:30 a.m., in Courtroom 12-A of the James A. Byrne United States Courthouse, 601 Market Street, Philadelphia, PA 19106 (ECF No. 3021 at 8).
3. **28 U.S.C. § 1715(b)(3) – Notification to Class Members:** The proposed Class Notice was submitted for the Court's approval with the DPP's Motion for

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Preliminary Approval (ECF No. 3010-5 (Proposed Direct Mail Notice); ECF No. 3010-6 (Proposed Publication Notice)). On June 26, 2024, if the Court preliminarily approved the Settlement, as amended, and the Proposed Notice Plan, including the proposed mail notice and publication notice submitted by DPPs (ECF No. 3021 (Preliminary Approval Order)). The Court directed Class Counsel, through the claims administrator, to send out mail notice and to publish notice on the settlement website ([www.GenericDrugsDirectPurchaserSettlement.com](http://www.GenericDrugsDirectPurchaserSettlement.com)), within fourteen days of the Court's preliminary approval order, *i.e.*, by July 10, 2024 (*Id.*; *see also* ECF No. 3010-4 (Miller Declaration regarding Proposed Notice Plan)).

4. **28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:** The following documents are included:

- Settlement Agreement, as amended (attached as Exhibit A to the Declaration of Dianne M. Nast, ECF No. 3010-3);
- DPPs' Motion for an Order with respect to the Sandoz Settlement: (1) Certifying a Settlement Class; (2) Granting Preliminary Approval of the Settlement Agreement; (3) Appointing Settlement Class Counsel; (4) Appointing a Claims Administrator and Escrow Agent; (5) Approving the Form and Manner of Notice to the Settlement Class; (6) Granting Preliminary Approval of the Plan of Allocation; and (7) Scheduling a Fairness Hearing, ECF No. 3010 (the "Preliminary Approval Motion");
- Memorandum in Support of Preliminary Approval Motion, ECF No. 3010-1;
- Proposed Order Regarding DPPs' Sandoz Settlement, ECF No. 3010-2;
- Declaration of Dianne M. Nast in Support of Preliminary Approval Motion (Ex. 1 to Preliminary Approval Motion), ECF No. 3010-3;
- Declaration of Eric J. Miller of A.B. Data, Ltd. regarding Proposed Notice Plan (Ex. 2 to Preliminary Approval Motion), ECF No. 3010-4;
- Proposed Mail Notice (Ex. 3 to Preliminary Approval Motion), ECF No. 3010-5;
- Proposed Publication Notice (Ex. 4 to Preliminary Approval Motion), ECF No. 3010-6; and
- DPPs' Plan of Allocation for the Settlement Class (Ex. 5 to Preliminary Approval Motion), ECF No. 3010-7.

5. **28 U.S.C. § 1715(b)(5) – Any Settlement or Other Agreement Between Class Counsel and Counsel for Defendants:** As of the date of this correspondence,

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other than the original Settlement, for which notice was provided to you on March 22, 2024, no other settlement or agreement has been contemporaneously entered into by the parties to the Settlement with Sandoz, with the exception of a confidential side letter referenced in the Settlement Agreement and available to the Court for *in camera* inspection. The side letter addresses the opt-out percentage that would trigger Sandoz's right to terminate the settlement.

6. **28 U.S.C. § 1715(b)(6) – Final Judgment:** To date, the Court has not issued a final order, judgment, or dismissal as to Sandoz in the DPP case.
7. **28 U.S.C. § 1715(b)(7)(A)-(B) – Names of Class Members/Estimate of Class Members' Shares:** The Settlement Class includes all entities that directly purchased any of the Named Generic Drugs (as identified in Exhibit B to the Settlement) from one or more of the Current or Former Defendants (as identified in Exhibit C to the Settlement). Because class membership is not limited to entities that purchased directly from Sandoz, it is not feasible for Sandoz identify the class members who reside in each state or the estimated proportionate share of the claims of such members to the entire settlement. Sandoz's best estimate is that there are more than 700 Settlement Class members geographically dispersed around the United States. See Preliminary Approval Motion (ECF No. 3010-1) at 25. The funds from the Settlement will be distributed pro rata to eligible class members as set forth in the Plan of Allocation attached to DPPs' Motion for Preliminary Approval (ECF No. 3010-7).
8. **28 U.S.C. § 1715(b)(8) – Judicial Opinions Related to the Settlement:** On the same day that Sandoz and the DPPs executed the amended Settlement, but before the parties had filed the amended Settlement with the Court, the Court entered an order denying preliminary approval of the original settlement (ECF No. 2997). The Court's concerns with the Settlement related to the MFN provision contained in Paragraph 12. As noted above, the amendment to the Settlement strikes Paragraph 12, thereby addressing the issues noted by the Court. On June 26, 2024, the Court entered an order preliminarily approving the Settlement, as amended (ECF No. 3021). Copies of these two orders are included. To date, the Court has not issued an order finally approving the Settlement, as amended, or a final order or judgment regarding Sandoz. The Court has previously granted final approval of similar settlements reached between DPPs and two other defendants (see ECF No. 2386).

Additional filings in this case are available on the federal court's PACER system (a log-in and password are required). Once the Court preliminarily approves the amended Settlement and Proposed Notice Plan, additional information related to the Settlement will be available at [www.GenericDrugsDirectPurchaserSettlement.com](http://www.GenericDrugsDirectPurchaserSettlement.com).

If for any reason you believe the enclosed information does not fully comply with 28 U.S.C. § 1715, please contact the undersigned immediately so that Sandoz can address any concerns or questions you may have.

Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

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Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew D. Kent". The signature is stylized with a large, looping initial "M" and "K".

Matthew D. Kent

MDK:kfk

Enclosures

**EXHIBIT 1****CAFA Notice State Officials Service List – USPS Certified Mail, Return Receipt Requested**

<b>Company</b>	<b>Full Name</b>	<b>Address1</b>	<b>Address2</b>	<b>City</b>	<b>State</b>	<b>Zip</b>
Office of the Attorney General	Treg Taylor	1031 W 4th Ave	Suite 200	Anchorage	AK	99501
Office of the Attorney General	Steve Marshall	501 Washington Ave		Montgomery	AL	36104
Office of the Attorney General	Tim Griffin	323 Center St	Suite 200	Little Rock	AR	72201
Office of the Attorney General	Kris Mayes	2005 N Central Ave		Phoenix	AZ	85004
Office of the Attorney General	CAFA Coordinator	Consumer Protection Section	455 Golden Gate Ave Suite 11000	San Francisco	CA	94102
Office of the Attorney General	Phil Weiser	Ralph L Carr Colorado Judicial Center	1300 Broadway Fl 10	Denver	CO	80203
Office of the Attorney General	William Tong	165 Capitol Ave		Hartford	CT	06106
Office of the Attorney General	Brian Schwalb	400 6th St NW		Washington	DC	20001
Office of the Attorney General	Kathy Jennings	Carvel State Bldg	820 N French St	Wilmington	DE	19801
Office of the Attorney General	Ashley Moody	State of Florida	The Capitol PL-01	Tallahassee	FL	32399
Office of the Attorney General	Chris Carr	40 Capitol Square SW		Atlanta	GA	30334
Department of the Attorney General	Anne E Lopez	425 Queen St		Honolulu	HI	96813
Iowa Attorney General	Brenna Bird	Hoover State Office Building	1305 E Walnut St	Des Moines	IA	50319
Office of the Attorney General	Raul Labrador	PO Box 83720		Boise	ID	83720
Office of the Attorney General	Kwame Raoul	100 W Randolph St		Chicago	IL	60601
Office of the Indiana Attorney General	Todd Rokita	Indiana Government Center South	302 W Washington St Rm 5	Indianapolis	IN	46204
Office of the Attorney General	Kris Kobach	120 SW 10th Ave 2nd Fl		Topeka	KS	66612
Office of the Attorney General	Russell Coleman	700 Capitol Ave Suite 118		Frankfort	KY	40601

Company	Full Name	Address1	Address2	City	State	Zip
Office of the Attorney General	Liz Murrill	PO Box 94005		Baton Rouge	LA	70804
Office of the Attorney General	Andrea Campbell	1 Ashburton Pl 20th Fl		Boston	MA	02108
Office of the Attorney General	Anthony G Brown	200 St Paul Pl		Baltimore	MD	21202
Office of the Attorney General	Aaron Frey	6 State House Station		Augusta	ME	04333
Department of Attorney General	Dana Nessel	PO BOX 30212		Lansing	MI	48909
Office of the Attorney General	Keith Ellison	445 Minnesota St Ste 1400		St Paul	MN	55101
Missouri Attorney General's Office	Andrew Bailey	PO Box 899		Jefferson City	MO	65102
Mississippi Attorney General	Lynn Fitch	PO Box 220		Jackson	MS	39205
Office of the Attorney General	Austin Knudsen	PO Box 201401		Helena	MT	59620
Attorney General's Office	Josh Stein	9001 Mail Service Ctr		Raleigh	NC	27699
Office of the Attorney General	Drew H. Wrigley	600 E Boulevard Ave Dept 125		Bismarck	ND	58505
Nebraska Attorney General	Mike Hilgers	PO Box 98920		Lincoln	NE	68509
Office of the Attorney General	John Formella	NH Department of Justice	33 Capitol St	Concord	NH	03301
Office of the Attorney General	Matthew J. Platkin	PO Box 080		Trenton	NJ	08625
Office of the Attorney General	Raul Torrez	408 Galisteo St	Villagra Bldg	Santa Fe	NM	87501
Office of the Attorney General	CAFA Coordinator	28 Liberty Street 15th Floor		New York	NY	10005
Office of the Attorney General	Dave Yost	30 E Broad St Fl 14		Columbus	OH	43215
Office of the Attorney General	Gentner Drummond	313 NE 21st St		Oklahoma City	OK	73105
Office of the Attorney General	Ellen F. Rosenblum	Oregon Department of Justice	1162 Court St NE	Salem	OR	97301
Office of the Attorney General	Michelle A. Henry	16th Fl Strawberry Square		Harrisburg	PA	17120
Office of the Attorney General	Peter F. Neronha	150 S Main St		Providence	RI	02903

Company	Full Name	Address1	Address2	City	State	Zip
Office of the Attorney General	Alan Wilson	PO Box 11549		Columbia	SC	29211
Office of the Attorney General	Marty Jackley	1302 E Hwy 14 Ste 1		Pierre	SD	57501
Office of the Attorney General	Jonathan Skrmetti	PO Box 20207		Nashville	TN	37202
Office of the Attorney General	Ken Paxton	PO Box 12548		Austin	TX	78711
Office of the Attorney General	Sean D. Reyes	PO Box 142320		Salt Lake City	UT	84114
Office of the Attorney General	Jason S. Miyares	202 N 9th St		Richmond	VA	23219
Office of the Attorney General	Charity R. Clark	109 State St		Montpelier	VT	05609
Office of the Attorney General	Bob Ferguson	800 5 <sup>th</sup> Ave Ste 2000		Seattle	WA	98104
Office of the Attorney General	Josh Kaul	PO Box 7857		Madison	WI	53707
Office of the Attorney General	Patrick Morrisey	State Capitol Complex Bldg 1 Room E 26	1900 Kanawha Blvd E	Charleston	WV	25305
Office of the Attorney General	Bridget Hill	109 State Capital		Cheyenne	WY	82002
Department of Legal Affairs	Fainu'ulei Falefatu Ala'ilima-Utu	American Samoa Gov't Exec Ofc Bldg Utulei	Territory of American Samoa	Pago Pago	AS	96799
Attorney General Office of Guam	Douglas Moylan	Administrative Division	590 S Marine Corps Dr Ste 901	Tamuning	GU	96913
Office of the Attorney General	Edward Manibusan	PO Box 10007		Saipan	MP	96950
PR Department of Justice	Domingo Emanuelli Hernández	PO Box 9020192		San Juan	PR	00902
Department of Justice	Gordon C. Rhea, Nominee Attorney General of the United States Virgin Islands	3438 Kronprindsens Gade Ste 2	GERS BLDG	St Thomas	VI	00802

#### CAFA Notice State Officials Service List – Email

Company	Contact	State
Office of the Attorney General for Nevada	All documents sent to NV AG at their dedicated CAFA email inbox: <a href="mailto:NVAGCAFAnotices@ag.nv.gov">NVAGCAFAnotices@ag.nv.gov</a>	NV



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

IN RE: GENERIC PHARMACEUTICALS  
PRICING ANTITRUST LITIGATION

MDL No. 2724  
Case No. 2:16-MD-2724

THIS DOCUMENT RELATES TO:  
*Direct Purchaser Plaintiffs' Actions*

HON. CYNTHIA M. RUFE

[PROPOSED]  
FINAL ORDER AND JUDGMENT REGARDING  
DPPS' SANDOZ SETTLEMENT

AND NOW, this \_\_\_ day of \_\_\_\_\_ 202\_\_, upon consideration of Direct Purchaser Plaintiffs' Motion for Final Approval of (1) Direct Purchaser Plaintiffs' Sandoz Settlement and (2) the Plan of Allocation [MDL Doc. No. \_\_\_], and Direct Purchaser Plaintiffs César Castillo, LLC, FWK Holdings, LLC, Rochester Drug Cooperative, Inc., and KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. ("DPPs") and Defendants Sandoz Inc. and Fougera Pharmaceuticals Inc. ("Settling Defendants") having entered into a Settlement Agreement to fully and finally resolve the Settlement Class's claims against Settling Defendants,<sup>1</sup> and the Court's having held a hearing in open court on March 17, 2025, it is hereby **ORDERED, ADJUDGED and DECREED** that the Motion is **GRANTED** and:

1. The Preliminary Approval Order dated June 26, 2024 [MDL Doc. No. 3021] certified the following Settlement Class pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3):

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<sup>1</sup> Unless otherwise noted, the capitalized terms used in this Memorandum of Law have the same meanings as defined in the Settlement Agreement. See MDL Doc. No. 3010-3, Ex. A thereto.

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.

2. Pursuant to Federal Rule of Civil Procedure 23, the Court finds that the Settlement Agreement between DPPs and Settling Defendants is fair, reasonable and adequate and approves the Settlement Agreement in its entirety.

3. The Court finds that the dissemination of the Notice via first-class mail, publication, and the establishment and maintenance of a dedicated website were implemented in accordance with the Order granting preliminary approval [MDL Doc No. 3021], and satisfies the requirements of Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e), the United States Constitution and other applicable laws and rules, and constituted the best notice practicable under the circumstances.

4. The persons and entities identified in Exhibit A, which is attached hereto and incorporated by reference herein, have timely and validly requested exclusion from the Settlement Class, or have otherwise been permitted to seek exclusion by this Court, and are hereby excluded from the Settlement Class, are not bound by this Final Judgment, and may not make any claim or receive any benefit from the Settlement, whether monetary or otherwise. Said excluded persons and entities may not pursue any claims released under the Settlement Agreement on behalf of those who are bound by this Final Judgment. Each Settlement Class Member not appearing in Exhibit A is bound by this Final Judgment and will remain forever bound.

5. DPPs' claims against Settling Defendants are dismissed, with prejudice and in their entirety, and except as provided for in the Settlement Agreement, without costs, as to Settling Defendants. This dismissal shall not affect, in any way, the rights of DPPs or members of the Settlement Class to pursue claims not released by the Settlement Agreement.

6. DPPs 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") agree to dismiss Settling Defendants (and its past and present parents (including Novartis AG and its subsidiaries), subsidiaries, divisions, affiliates, stockholders, and general or limited partners, as well as their 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 Defendants who does not cooperate with DPPs pursuant to the Cooperation Agreement and Paragraph 10 of the Settlement Agreement. And as further provided under Settlement Class Counsel's reservation of rights in Paragraph 14 of the Settlement Agreement, this Final Order and Judgment does not release any non-settling defendant's liability in the Action, nor does it absolve Settling Defendants' 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 DPPs 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 the 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, or trade practice law (the “Released Claims”). The release of Released Claims shall not preclude DPPs 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 of the Settlement Agreement, 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 Defendants 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 the Settlement Agreement, the subject of any unrelated litigation brought against Settling Defendants 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 DPPs’ 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 DPPs’ complaints in the Action. DPPs and the Settlement Class shall not 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.

7. DPPs 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.**

DPPs 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. DPPs 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 DPPs and each member of the Settlement Class have agreed that as of the February 28, 2024, they expressly waive and fully, finally, and forever settle and release 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, DPPs and each member of the Settlement Class also hereby agrees that, 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 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.

8. This Final Judgment does not settle or compromise any claims by DPPs or the Settlement Class against any person or entities other than the Released Parties, and all rights against any other Defendant or other person or entity are specifically reserved.

9. Without affecting the finality of this Final Judgment, the Court retains exclusive jurisdiction over the Action and the Settlement Agreement, including the administration, interpretation, consummation, and enforcement of the Settlement Agreement.

10. Pursuant to Federal Rule of Civil Procedure 54(b), the Court finds that there is no just reason for delay and hereby direct the entry of this Final Judgment of dismissal forthwith as to the Released Parties.

**BY THE COURT:**

\_\_\_\_\_  
**CYNTHIA M. RUFÉ, J.**

**EXHIBIT A**



**ENTITIES EXCLUDED FROM THE SETTLEMENT**

1. Accredo Health Group, Inc.
2. Acme Markets
3. Advanced PCS
4. AdvanceRx Com Inc
5. Albany Area Primary Health Care, Inc.
6. Albertsons
7. Albertsons Companies LLC
8. Albertsons Companies, Inc.
9. Albertsons LLC
10. Albertsons Market
11. Albertson's, Inc.
12. Alliance
13. Alliance BMP
14. Alliance Boots
15. Alliance Healthcare
16. Alliance RX Walgreens Prime Pharmacy
17. Alliance Sante
18. Alliance UniChem
19. Allina Health System
20. American Drug Stores
21. American Stores Company
22. Andronico's
23. Andronico's Community Markets
24. Armstrong County Memorial Hospital, d/b/a ACMH Hospital
25. Astera Health, f/k/a Tri-County Health Care
26. Augusta Health Care, Inc., d/b/a Augusta Health
27. Avera Health
28. Baker's
29. Balducci's Food Lover's Markets
30. Baptist Health
31. Bartell Drug Company
32. Baxter County Hospital, Inc.; d/b/a Baxter Regional Medical Center
33. Baystate Health, Inc.
34. Beaufort Jasper Hampton Comprehensive Health Services, Inc.
35. Berkshire Health Systems, Inc.
36. Billings Clinic
37. Bi-Lo
38. Bi-Lo Holding Finance LLC
39. Bi-Lo Holding LLC
40. Bi-Lo LLC
41. Bi-Lo, LLC
42. Bowen Development
43. Bravo Health Mid-Atlantic Inc.
44. Bravo Health Pennsylvania Inc.

45. Broad Top Area Medical Centers, Inc.
46. Bruno's Supermarkets Incorporated
47. Burlington Drug
48. Burlington Drug Company
49. Burrells
50. Burrells Limited
51. Cape Cod Healthcare, Inc.
52. Care New England Health System, d/b/a Care New England
53. CaroMont Health System
54. Carr-Gottstein Foods Co.
55. CenterWell Pharmacy, Inc.
56. CentraCare Health System
57. Central Market
58. Central Texas Community Health Centers, d/b/a CommUnityCare
59. Cigna Corporation
60. Cigna Health and Life Insurance Company
61. Cigna HealthCare of Arizona, Inc.
62. Cigna HealthCare of California, Inc.
63. Cigna HealthCare of Colorado, Inc.
64. Cigna HealthCare of Connecticut, Inc.
65. Cigna HealthCare of Florida, Inc.
66. Cigna HealthCare of Georgia, Inc.
67. Cigna HealthCare of Illinois, Inc.
68. Cigna HealthCare of Indiana, Inc.
69. Cigna HealthCare of Maine, Inc.
70. Cigna HealthCare of Massachusetts, Inc.
71. Cigna HealthCare of Mid-Atlantic, Inc.
72. Cigna HealthCare of New Hampshire, Inc.
73. Cigna HealthCare of New Jersey, Inc.
74. Cigna HealthCare of North Carolina, Inc.
75. Cigna HealthCare of Pennsylvania, Inc.
76. Cigna HealthCare of South Carolina, Inc.
77. Cigna HealthCare of St. Louis, Inc.
78. Cigna HealthCare of Tennessee, Inc.
79. Cigna HealthCare of Texas, Inc.
80. Cigna HealthCare of Utah, Inc.
81. City Market
82. Collier Health Services, Inc., d/b/a Healthcare Network
83. Community Health Center of Snohomish
84. Company Amigos United
85. Confluence Health
86. Conway Regional Health System
87. Cook County Hospital District, d/b/a North Shore Health
88. Cook Hospital
89. Copps Food Center
90. Crusaders Central Clinic Association

91. CuraScript, Inc.
92. CVS Health Corp.
93. CVS Pharmacy, Inc.
94. Cystic Fibrosis Services
95. Cystic Fibrosis Services Inc.
96. Cystic Fibrosis Services LLC
97. Dallas County Medical Center
98. Delta Memorial Hospital
99. Dillon
100. Dillon Companies, Inc.
101. Dominick's
102. Dominick's Finer Foods, LLC
103. Douglas County Hospital, d/b/a Alomere Health
104. Drew Memorial Hospital, Inc., d/b/a Drew Memorial Health System
105. Duane Reade
106. Duane Reade, Inc.
107. Duval's Pharmacy, Inc.
108. East Boston Neighborhood Health Center Corporation
109. Eckerd
110. Ely-Bloomenson Community Hospital
111. Erie Family Health Center, Inc.
112. ESI Mail Pharmacy Service, Inc.
113. Essentia Health
114. Evangelical Community Health
115. Express Scripts Holding Company
116. Express Scripts Pharmaceutical Procurement LLC
117. Express Scripts Pharmacy, Inc.
118. Express Scripts, Inc.
119. Extreme Value
120. Extreme Value Centers
121. Fairview Health Services
122. FMJ, Inc.
123. Food 4 Less
124. Food 4 Less Holdings, Inc.
125. Foods Pavilion
126. Fred Meyer
127. Fred Meyer Jewelers, Inc.
128. Fred Meyer Stores, Inc.
129. Fred Meyer, Inc.
130. Fresco Y Mas
131. Fry's
132. Fulton county Medical Center
133. Genuardi's
134. Genuardi's Family Markets LP
135. Gerbes
136. Gillette Children's Specialty Healthcare

137. Glacial Ridge Health System
138. Globe Stores
139. Granby Pharmacy, Inc., d/b/a Center Pharmacy
140. Great Lakes Bay Health Centers
141. Great Salt Plains Health Center, Inc.
142. Greater Lawrence Family Health Center
143. Green Hills Insurance
144. H.E. Butt Grocery Company
145. H.E. Butt Grocery Company L.P.
146. Haggen
147. Haggen Food & Pharmacy
148. Happy Harry's
149. Happy Harry's Discount Drug Stores, Inc.
150. Happy Harry's Inc.
151. Harris Teeter
152. Harris Teeter, Inc.
153. Harris Teeter, LLC
154. Harveys
155. Health Partners of Western Ohio
156. HealthPoint
157. HealthSpring Life & Health Insurance Company, Inc.
158. HealthSpring of Florida, Inc.
159. HealthSpring Pharmacy of Tennessee, LLC
160. HealthSpring Pharmacy Services, LLC
161. Healthy Options, Inc.
162. H-E-B
163. Hennepin Healthcare System, Inc.
164. Home Chef
165. Humana Inc.
166. Humana Pharmacy, Inc.
167. Independence Health System
168. Infinity Infusion
169. Innoviant Pharmacy Inc.
170. Intermountain Health Care, Inc.
171. International Community Health Services
172. J M Smith
173. J M Smith Corporation
174. J.H. Harvey Co., LLC
175. Jackson-Madison County General Hospital District, d/b/a West Tennessee Healthcare
176. Jay C Food Stores
177. Jerseymaid Milk Products
178. Jewel Food Stores
179. Jewel Foods
180. Jewel Foods, Inc.
181. Jewel-Osco Pharmacy

182. Junior Food Stores of West Florida, Inc.
183. Kerr Drug
184. Kessel
185. Kessel Food Markets, Inc.
186. King Soopers
187. Kings Food Markets
188. Kiosk Medicine Kentucky, LLC
189. Kittson Healthcare
190. Knight Health Holdings LLC, d/b/a ScionHealth
191. Kootenai Hospital District
192. KRGP Inc.
193. Kroger
194. Kroger Limited Partnership I
195. Kroger Limited Partnership II
196. Kroger Texas L.P.
197. Lake Region Healthcare Corporation
198. Lakewood Health System
199. Lawrence Brothers
200. Lawrence Brothers Co.
201. Lawrence Brothers Pharmacy
202. Lehigh Valley Health Network, Inc.
203. LifeCare Medical Center
204. Lifepoint Corporate Services, General Partnership
205. Lifespan Corporation
206. Logan Health
207. Longview Wellness Center, Inc., d/b/a Wellness Pointe
208. Lucerne Foods, Inc.
209. Lucky Stores (Utah locations)
210. Lutheran Charity Association, d/b/a Jamestown Regional Medical Center
211. Lynnfield Compounding Center, Inc.
212. Lynnfield Drug, Inc.
213. Madelia Health
214. Madison Health, f/k/a Madison Memorial Hospital
215. Madison Healthcare Services, d/b/a Madison Hospital
216. Main Line Health, Inc.
217. Marana Health Center, Inc.
218. Mariano's Fresh Market
219. Market Street
220. Mary Ruan Hospital d/b/a Mary Ruan Health
221. Mass General Brigham Incorporated
222. Matthews Property 1, LLC
223. Mayo Clinic
224. May's Drug Stores
225. May's Drug Stores, Inc.
226. Medco Containment Insurance Company of NY

- 227. Medco Containment Life Insurance Company
- 228. MedCura Health, Inc.
- 229. Medicenter
- 230. Med-X
- 231. Med-X Corporation
- 232. Meeker Memorial Hospital and Clinics
- 233. Memorial Hospital of Laramie County, d/b/a Cheyenne Regional Medical Center
- 234. Memorial Hospital of Sweetwater County
- 235. Memorial Sloan Kettering Cancer Center
- 236. Metro Market
- 237. Middlesex Health System, Inc., d/b/a Middlesex Health
- 238. Millcreek Community Hospital
- 239. Mille Lacs Health System
- 240. Montefiore Medical Center
- 241. Mount Nittany Health System
- 242. Mount Sinai Hospitals Group, Inc.
- 243. Murray County Medical Center
- 244. MVMEDSHOP, Inc., d/b/a Vineyard Scripts
- 245. Nationwide Children's Hospital
- 246. New Albertson's Inc.
- 247. New Albertsons L.P.
- 248. North Big Horn Hospital District
- 249. North Canyon Medical Center
- 250. North Memorial Health Care, d/b/a North Memorial Health
- 251. North Olympic Healthcare Network
- 252. Northern Itasca Hospital District, d/b/a Bigfork Valley
- 253. Northfield Hospitals + Clinics
- 254. Novant Health, Inc.
- 255. Nuvance Health
- 256. NYU Langone Hospitals
- 257. Ochsner Clinic Foundation
- 258. Olmsted Medical Center
- 259. Omnicare
- 260. OptumRx Group Holdings, Inc.
- 261. OptumRx Holdings, LLC
- 262. OptumRx, Inc.
- 263. Ortonville Area Health Services
- 264. Osco Drugs
- 265. Overlake Hospital Medical Center
- 266. Owen's
- 267. Owen's Supermarket
- 268. Pak 'N Sav
- 269. Paul's Market
- 270. Pavilions Place Randall's
- 271. Pay Less Super Markets

- 272. PeaceHealth
- 273. Peak Vista Community Health Centers
- 274. Penn Highlands Healthcare
- 275. Perham Hospital District, d/b/a Perham Health
- 276. Peyton's
- 277. Peyton's Fountain
- 278. Peyton's Mid-South Company
- 279. Peyton's Northern
- 280. Peyton's Pheonix
- 281. Peyton's-Southeastern, Inc.
- 282. Pick 'n Save
- 283. Pikeville Medical Center, Inc.
- 284. Postal Prescription Services
- 285. Prime Therapeutics Specialty Pharmacy
- 286. Prime Therapeutics Specialty Pharmacy LLC
- 287. Priority Healthcare Corporation
- 288. Priority Healthcare Distribution, Inc.
- 289. Providence St. Joseph Health
- 290. Pueblo Community Health Center, Inc.
- 291. QFC
- 292. Raley's of New Mexico
- 293. Ralphs
- 294. Ralphs Grocery Company
- 295. Randall's Food & Drugs LP
- 296. Regional Health Services, d/b/a Glencoe Regional Health
- 297. Ridgeview Medical Center, Inc., d/b/a Ridgeview
- 298. Rite Aid Corporation
- 299. Rite Aid Hdqtrs. Corp.
- 300. River's Edge Hospital
- 301. Riverview Healthcare Association
- 302. Riviera Brands
- 303. Roanoke Chowan Community Health Center
- 304. Roundy's Inc.
- 305. Ruler Foods
- 306. Rutherford County Primary Care Clinics, Inc., d/b/a Primary Care & Hope Clinic
- 307. RWJ Barnabas Health, Inc.
- 308. S & W Pharmacy, Inc.
- 309. S&W Pharmacy
- 310. Safeway
- 311. Safeway Food & Drug
- 312. Safeway Inc.
- 313. Salem Community Hospital, d/b/a Salem Regional Medical Center
- 314. Sam's Club
- 315. Samson Merger Sub, LLC
- 316. Sanford

- 317. Save-Rite
- 318. Sav-On Drug
- 319. Scott's Foods
- 320. Scott's Pharmacy
- 321. Select Medical Corporation
- 322. SGOH Acquisition, Inc., d/b/a Ozarks Community Hospital
- 323. Shands Jacksonville Medical Center, Inc.
- 324. Shands Teaching Hospital and Clinics, Inc.
- 325. Shasta Community Health Center
- 326. Shawnee Health Service and Development Corporation
- 327. Shaw's Supermarkets, Inc.
- 328. Shop-Rite, LLC
- 329. Simon David
- 330. Sleepy Eye Medical Center
- 331. Smith Drug
- 332. Smith Drug Company
- 333. Smith's
- 334. Smith's Food & Drug Centers, Inc.
- 335. Southeastern Grocers Inc.
- 336. Southeastern Grocers LLC
- 337. Specialty Products Acquisitions, LLC
- 338. St. Clair Health Corp., d/b/a St. Clair Health
- 339. St. Luke's Health Network, Inc., d/b/a St. Luke's University Health Network
- 340. St. Luke's Health System, Ltd.
- 341. St. Luke's Hospital of Duluth
- 342. St. Thomas Community Health Center
- 343. Stamford Health, Inc.
- 344. Star Market
- 345. Stigler Health & Wellness Center, Inc.
- 346. Sunrise R&D Holdings, LLC
- 347. Sunrise Technology LLC
- 348. Super D. Drugs Acquisition Co.
- 349. Super Saver Foods
- 350. Superbrand
- 351. Superior
- 352. Superior Acquisitions Limited
- 353. Superior Holdings Limited
- 354. Sweet Bay
- 355. Syringa Hospital Districts, d/b/a Syringa Hospital & Clinics
- 356. Tel-Drug of Pennsylvania, LLC
- 357. Tel-Drug, Inc.
- 358. The Chautauqua Center, Inc.
- 359. The Children's Hospital Corporation, d/b/a Boston Children's Hospital
- 360. The Children's Hospital of Philadelphia



- 361. The Cigna Group
- 362. The DCH Health Care Authority, d/b/a DCH Health System
- 363. The Guthrie Clinic
- 364. The Kroger Co
- 365. The Kroger Co. of Michigan
- 366. The New York and Presbyterian Hospital
- 367. The Regents of the University of Michigan on behalf of University of Michigan Health
- 368. The Vons Companies, Inc.
- 369. Thomas Jefferson University, d/b/a Jefferson Health
- 370. TLC Corporate Services LLC
- 371. Tom Thumb Food & Drugs
- 372. Tri-Area Community Health
- 373. Trinity Home Care
- 374. UC Health, LLC, d/b/a UC Health
- 375. UHS of Delaware, Inc.
- 376. UMass Memorial Care, Inc.
- 377. United Express
- 378. United HealthCare Services, Inc.
- 379. United Hospital District
- 380. United Supermarkets
- 381. United Supermarkets, LLC
- 382. University Health Systems of Eastern Carolina, d/b/a ECU Health
- 383. Upham's Corner Health Committee, Inc., d/b/a Upham's Corner Health Center
- 384. UPMC
- 385. USA Drug
- 386. USA/Super D Franchising
- 387. Valley Health System
- 388. Valor Health
- 389. Vons
- 390. Vons Grocery Company
- 391. WakeMed d/b/a WakeMed Health & Hospitals
- 392. Walgreen
- 393. Walgreen Co.
- 394. Walgreen Company
- 395. Walgreens
- 396. Walmart Inc.
- 397. Welia Health
- 398. Wellpath LLC
- 399. White River Health System, Inc., d/b/a White River Medical Center
- 400. Winn-Dixie Corporation
- 401. Winn-Dixie Logistics, Inc.
- 402. Winn-Dixie Procurement, Inc.
- 403. Winn-Dixie Stores, Inc.
- 404. Winona Health Services