

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

GOVERNMENT EMPLOYEES HEALTH
ASSOCIATION, on behalf of itself and all
others similarly situated,

Plaintiffs,

v.

ACTELION PHARMACEUTICALS LTD.,
et al.,

Defendants.

Case No. 1:18-cv-3560-GLR

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION
FOR FINAL APPROVAL OF PROPOSED SETTLEMENT, APPROVAL OF THE PLAN
OF ALLOCATION AND DISTRIBUTION, AND ENTRY OF FINAL JUDGMENT**

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I. INTRODUCTION

Plaintiff Government Employees Health Association (“GEHA” or “Plaintiff”), on behalf of itself and the certified class of Third Party Payors (“the Class”), respectfully submits this Memorandum of Law in Support of its Unopposed Motion for Final Approval of Proposed Settlement, Approval of the Plan of Allocation and Distribution, and Entry of Final Judgment pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and the Court’s March 13, 2026 Order (ECF No. 423).

After extensive and hard-fought litigation over the past seven-plus years, Plaintiff has entered into a Settlement Agreement (“Settlement”) with Defendants Actelion Pharmaceuticals Ltd., Actelion Pharmaceuticals U.S., Inc., and Janssen Research & Development, LLC (collectively, “Defendants”), a copy of which is attached as Exhibit 1 (ECF No. 421-3) to the March 4, 2026 Declaration of Sharon K. Robertson in Support of Plaintiff’s Unopposed Motion for Preliminary Approval. ECF No. 421-2 (“Robertson Decl.”). The Settlement provides for a cash settlement fund totaling \$65,000,000.00. Robertson Decl., Ex. 1 ¶ 2.1, ECF No. 421-3. In exchange, Plaintiff has agreed to release and dismiss with prejudice the Class claims against Defendants if the Settlement receives Final Approval from the Court. *Id.* ¶ 4.1.

On March 4, 2026, Plaintiff moved for preliminary approval of the Settlement. ECF No. 421. The Court granted preliminary approval of the Settlement on March 13, 2026, directed notice of the Settlement to the Class, and scheduled a Fairness Hearing for July 1, 2026. ECF No. 423. The deadline for Class Members to file objections to the Settlement, Plan of Allocation and Distribution, or request for attorneys’ fees and expenses was June 2. As of the time of this filing, no Class Members have filed objections. The parties agreed to the proposed Settlement after extensive discovery, motion practice, trial preparation, and good faith arm’s-length negotiations among experienced counsel with assistance from Chief Magistrate Judge Timothy J. Sullivan.

Given the relevant considerations, the Settlement is in the best interests of the Class and meets the criteria for final approval under Federal Rule of Civil Procedure 23(e) and Fourth Circuit law. Plaintiff respectfully requests that the Court grant final approval of the Settlement, approve the Plan of Allocation and Distribution, and enter final judgment for the case.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Complaint

On January 25, 2019, Plaintiff filed its Consolidated Class Action Complaint (“CCAC”) against Defendants alleging violations of forty-six federal and state antitrust and consumer protection laws.¹ ECF No. 34. Plaintiff alleged that Defendants unlawfully delayed generic competition for their blockbuster branded drug, Tracleer, which resulted in artificially inflated prices for branded Tracleer and its generic equivalent (bosentan). *See id.* ¶¶ 1–12. The CCAC alleges that Defendants engaged in an anticompetitive scheme, in which they used the pretext of the Food and Drug Administration’s (“FDA”) Risk Evaluation and Mitigation Strategy (“REMS”) program to block competitor access to samples of Tracleer and thus effectively blocked competitors from bringing a less expensive generic product to market for a period of time. *Id.* Plaintiff alleges that members of the Class paid more for Tracleer and its generic equivalents than they would have paid absent Defendants’ unlawful conduct. *Id.* ¶ 267.

On February 25, 2019, Defendants filed a Rule 12(b)(6) motion to dismiss, arguing that the Complaint was filed outside the statute of limitations, challenging Plaintiff’s ability to bring a class action on behalf of entities whose purchases were in states where Plaintiff did not make purchases, and raising numerous challenges to the particular state laws under which Plaintiff

¹ A summary of the work Co-Lead and Class Counsel performed throughout this litigation is provided in the Joint Declaration of Sharon K. Robertson and Thomas M. Sobol (“Joint Decl.”), appended to this Motion.

brought its claims. ECF No. 39. The parties fully briefed the motion. ECF Nos. 44, 45. On September 30, 2019, the Court granted Defendants' motion to dismiss. ECF Nos. 50, 51. Plaintiff timely appealed the Court's order. ECF No. 52. The parties fully briefed the appeal before the United States Court of Appeals for the Fourth Circuit. On April 13, 2021, the Fourth Circuit issued an Opinion and subsequent Order vacating this Court's September 30, 2019 order and remanding the case to this Court for discovery. ECF No. 55.

B. Fact and Expert Discovery

After returning from the Fourth Circuit, this case entered an extensive period of discovery. Discovery in this case spanned 19 months, (ECF Nos. 61, 196), and included the production and review of over 375,000 documents comprising over 1.6 million pages. Joint Decl. ¶ 6. These documents resulted from dozens of separate document productions exchanged between the parties. *Id.* ¶¶ 7, 10. Thousands of documents and substantial deposition testimony also were produced in response to numerous Rule 45 subpoenas that the parties issued to the many relevant non-parties, including as a result of subpoena enforcement proceedings that the parties initiated in the local court of compliance pursuant to Rule 45. *Id.* ¶ 15; *see also* Mot. to Compel, *Gov't Emps. Health Ass'n v. Actelion Pharms. Ltd., et al.*, No. 2:22-mc-0037 (S.D. Ohio Oct. 3, 2022), ECF No. 1. Written discovery requests were also served—interrogatories and requests for admission—to which the parties responded. Joint Decl. ¶¶ 8, 11. The parties conducted seventeen separate depositions of Defendants, non-party fact witnesses, and class representative witnesses. *Id.* ¶ 12.

In the course of discovery, Plaintiff moved for spoliation-related sanctions against Defendants. Plaintiff filed its motion for sanctions on November 21, 2022; the motion was supported by a memorandum and 28 exhibits. ECF No 194. Defendants filed an opposition and Plaintiff replied. ECF Nos. 200, 203. Magistrate Judge Coulson then heard oral argument on the

motion on January 17, 2023. ECF No. 215. On January 19, 2023, Magistrate Judge Coulson issued an opinion and order granting the motion in part and recommending that Judge Russell issue a jury instruction at trial regarding spoliation. ECF Nos. 216, 217. Plaintiff appealed that order to the limited extent that Plaintiff sought confirmation that the precise language of the jury instruction would be determined by Judge Russell in the usual course. ECF Nos. 220, 221, 224. The Court subsequently granted Plaintiff's limited appeal and otherwise affirmed Magistrate Judge Coulson's rulings. ECF No. 343.

The parties also conducted extensive expert discovery: Plaintiff retained six experts,² and Defendants retained five rebuttal experts. Joint Decl. ¶ 17. Plaintiff's experts served opening and reply reports, and the experts collectively sat for eleven initial depositions. *Id.* ¶¶ 19, 21. The parties also litigated the issue of whether certain experts should be permitted to submit additional reports beyond those called for by the original schedule and sit for subsequent depositions. As a result of that briefing, further expert reports were submitted and Plaintiff took an additional deposition of one of Defendants' experts. *See* ECF Nos. 229, 244, 255.

C. Class Certification

On September 26, 2023, Plaintiff moved to certify a class of third-party payors. ECF No. 232. On December 7, 2023, Defendants filed an extensive memorandum opposing certification on multiple grounds. ECF No. 267. The parties also moved to exclude certain expert testimony upon which each side relied in connection with briefing class certification. ECF Nos. 234, 237, 238. The parties then fully briefed the motion for class certification and the motions to exclude the class-certification related experts. ECF Nos. 260, 262, 263, 265, 267, 275, 277, 279, 281. On September

² In addition, Plaintiff submitted a declaration from Mr. Eric Miller regarding claims administration in support of its motion to certify the Class. Mr. Miller also sat for a deposition.

6, 2024, this Court certified the Class, appointed GEHA to serve as Class Representative, and appointed Co-Lead Class Counsel. ECF Nos. 349, 350. The Court denied the class certification-related *Daubert* motions, with the exception of granting in part Plaintiff's motion to exclude Defendants' expert James Hughes. *Id.* Plaintiff then implemented and effectuated the Court-approved Notice Plan concerning class certification, (ECF No. 369), giving members of the Class the ability to exclude themselves. No Class Member properly requested exclusion.³

D. Summary Judgment and *Daubert*

On February 6, 2024, Defendants moved for summary judgment on all claims; Plaintiff opposed and Defendants filed a reply, with the summary judgment record totaling over 100 exhibits. *See* ECF Nos. 291, 303, 325. On March 28, 2024, a group of amici law professors filed a motion for leave to file a brief in support of Plaintiff, which the Court subsequently granted. ECF Nos. 314, 352.

The parties also filed *Daubert* motions regarding merits expert opinions on February 6, 2024, (ECF Nos. 287, 289, 293), which the Court denied on January 12, 2026. ECF No. 405.

On September 6, 2024, the Court denied Defendants' Motion for Summary Judgment, paving the way for the case to proceed to trial. *See* ECF Nos. 351, 352.

E. Trial Preparation

After the denial of summary judgment, the Court set the case for trial. The parties were preparing for a 25-day jury trial set to begin on March 3, 2026 when settlement negotiations began in earnest. Joint Decl. ¶ 33; ECF Nos. 366, 406.

³ An attorney for two class members submitted an opt-out request, but never submitted the required documentation to actually opt the class members out of the class. The Court ultimately denied the unsupported opt-out request. ECF No. 388.

In the months leading up to the Settlement, the parties designated thousands of documents as potential trial exhibits and provided written objections to the other side's designated exhibits. Joint Decl. ¶ 34. The parties created and disclosed anticipated Federal Rule of Evidence 1006 Exhibits. *Id.* The parties also exchanged many thousands of deposition designations, along with written objections to each, rebuttal designations, objections to the rebuttal designations, reply designations to the rebuttal designations, and objections to the reply designations. *Id.* The parties also prepared and exchanged trial witness lists and negotiated a lengthy stipulation regarding trial procedures. *Id.*

On November 24, 2025, Plaintiff filed a pretrial motion to allocate time at trial, (ECF No. 394), which the Court denied during a hearing on January 12, 2026 (during which it also denied the reasserted *Daubert* motions regarding certain merits experts' opinions). ECF Nos. 404, 405.

The parties filed the Proposed Pretrial Order on January 12, 2026 which included the parties' stipulated facts, exhibit lists, witness lists, and deposition designations and counter designations. ECF No. 407. The parties' preparation also included drafting joint voir dire which was set to be filed with the Court on January 19, 2026, as well as drafting motions *in limine*, which were set to be filed on January 27, 2026. Joint Decl. ¶ 36; ECF Nos. 375, 376. In addition, Plaintiff was drafting proposed jury instructions, which were set to be filed with the Court on January 19, 2026. Joint Decl. ¶ 36; ECF Nos. 375, 376. Both sides were fully prepared to proceed with the proposed five-week trial. Plaintiff was thus well-versed in the strengths and weaknesses of its case against Defendants and was in a position to assess and balance the risks and benefits of continuing to pursue the litigation to verdict.

F. Settlement

Beginning in December of 2025, Plaintiff and Defendants began negotiating a potential resolution of this case. Joint Decl. ¶ 39. Throughout those negotiations, the parties were assisted by Chief Magistrate Judge Timothy J. Sullivan. *Id.* The parties executed a binding Settlement on February 18, 2026. *See* Robertson Decl., Ex. 1, ECF No. 421-3.

The proposed Settlement is the result of hard-fought and adversarial litigation, as the Court knows given its ongoing oversight of this litigation. During discovery, the parties produced and reviewed hundreds of thousands of documents, served and responded to written discovery, took numerous depositions of fact and expert witnesses and briefed various disputes. Plaintiff successfully appealed the dismissal of the case, secured class certification, defeated Defendants' summary judgment motion, and prepared extensively for trial. Plaintiff was thus well-versed in the strengths and weaknesses of its case and well-positioned to assess and balance the risks of continuing to litigate the case through trial versus settling.

In accordance with the terms of the proposed Settlement, Defendants deposited \$65,000,000 into an escrow account on behalf of the same Class that this Court previously certified. *See* Robertson Decl., Ex. 1 ¶ 2.1, ECF No. 421-3. Specifically, the Class is defined as:

All entities that, for consumption by their members, employees, insureds, participants or beneficiaries, purchased, paid and/or provided reimbursement for some or all of the purchase price of Tracleer or bosentan, other than for resale, in the Class States and territories⁴ at any time during the period from December 29, 2015, through September 6, 2024.⁵

⁴ The Class States and territories are: Arizona, California, Florida, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, the District of Columbia, and Puerto Rico.

⁵ The following are excluded from the Class: (1) Defendants and their subsidiaries and affiliates; and (2) federal and state governmental entities.

See ECF No. 423 ¶ 3. The settlement monies in the escrow account, together with any interest thereon, will be used to pay: (i) all notice and administration expenses, (ii) taxes and tax expense, and (iii) attorneys' fees and expenses, including a service award to Plaintiff, to the extent allowed by the Court. Robertson Decl., Ex. 1 ¶ 5.2, ECF No. 421-3. The remainder of the Settlement Fund will be distributed to eligible members of the Class according to a Court-approved Plan of Allocation and Distribution. *Id.*

The parties have agreed to mutual releases, according to the terms of the Settlement. *Id.* ¶¶ 4.1–4.4. Upon the Settlement becoming final in accordance with its terms, Plaintiff's claims against Defendants in the above-captioned action should be dismissed with prejudice. *Id.* ¶ 4.8.

G. Preliminary Approval and Notice to the Class

On March 4, 2026, Plaintiff moved for preliminary approval of the Settlement, approval of the form and manner of notice, and to schedule a fairness hearing. ECF No. 421. The Court granted preliminary approval of the Settlement on March 13, 2026, directed notice to the Class, and scheduled a Fairness Hearing for July 1, 2026. ECF No. 423. Co-Lead Counsel then worked with A.B. Data to finalize the notice documents and implement the Notice Plan per the Court's order. Per the Court-ordered deadlines, notice of the Settlement was provided to the Class on April 3, 2026. Notice of the Settlement was provided by direct notice (email and postcard) to potential Class members who appeared on A.B. Data's proprietary database, and by widespread publication notice on relevant websites and print media, resulting in approximately 77,771 impressions. ECF No. 424 ¶ 3; Supplemental Declaration of Eric Miller ("Supp. Miller Decl.") ¶ 6. Class Counsel filed a declaration affirming compliance with the Notice Plan on April 13, 2026. ECF No. 424.

All notices directed Class Members to a website dedicated to this matter and included a toll-free telephone number to use to obtain information concerning the Settlement. ECF No. 424

¶¶ 9–10. The website includes general information regarding this Action and the Settlement, including the objection and claim filing deadlines, and the date, time and location of the Court’s Fairness Hearing. *Id.* A copy of the notices, Claim Form, the Complaint, the Settlement Agreement, Plan of Allocation and Distribution, the Preliminary Approval Order and other relevant documents are posted on the website and are available for downloading. *Id.* The papers filed in connection with Class Counsel’s motion for final approval and motion for attorneys’ fees and expenses will be posted on June 18, 2026.

The deadline for Class Members to file objections to the Settlement, Plan of Allocation and Distribution, or request for attorneys’ fees and expenses was June 2. As of the time of this filing, no Class members have objected to the Settlement, Plan of Allocation and Distribution, or requests for attorneys’ fees and expenses. Joint Decl. ¶ 40; Supp. Miller Decl. ¶ 10.

H. Plan of Allocation and Distribution

If the Court approves the motion to grant final approval of the Settlement and motion for attorneys’ fees, reimbursement of expenses and service award, the Settlement Amount will be distributed as follows: (i) one-third of the settlement fund will be for the payment of attorneys’ fees in the amount of \$21,666,666.67, plus any accrued interest thereon; (ii) litigation expenses in the amount of \$3,875,181.16 will be reimbursed; (iii) Class Representative GEHA will receive a service award totaling \$40,000, and (iv) any remaining expenses associated with the administration of the settlement will be paid. Robertson Decl., Ex. 2, ECF No. 421-4; Robertson Decl. Ex. 1, ECF No. 421-3; Joint Decl. ¶ 49 The remaining net amount will be distributed *pro rata* to eligible members of the Class according to their purchases of branded and/or generic Tracleer, according to the Plan of Allocation and Distribution. Robertson Decl., Ex. 2, ECF No. 421-4.

The settlement administrator, A.B. Data, has been managing and effectuating administration of the Settlement, including the processing of claims and will handle distribution of the net Settlement Fund to eligible members of the Class. To determine each eligible claimant's *pro rata* share of the Settlement, A.B. Data shall multiply the total value of the applicable allocation pool by a fraction, for which: (a) the numerator is the applicable expenditure associated with the qualifying claim for that eligible claimant; and (b) the denominator is the sum total of all expenditures for all applicable qualifying claims by all eligible claimants for the applicable allocation pool. Robertson Decl., Ex. 2, ECF No. 421-4.

III. ARGUMENT

A. The Settlement is Fair, Reasonable, and Adequate

1. Legal Standard

To approve a class action settlement, a court must determine whether the settlement agreement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); *see also In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 952 F.3d 471, 484 (4th Cir. 2020) (“The court may approve the proposed settlement only after a hearing and only on finding that the proposed settlement is fair, reasonable, and adequate.” (citation modified)). “This standard includes an assessment of both the procedural fairness of the settlement negotiations and the substantive adequacy of the settlement itself.” *In re NeuStar, Inc. Sec. Litig.*, 2015 WL 5674798, at *9 (E.D. Va. Sep. 23, 2015); *see also Solomon v. Am. Web Loan, Inc.*, 2020 WL 3490606, at *4 (E.D. Va. June 26, 2020). While there is “a strong initial presumption that [a class action] compromise is fair and reasonable,” *In re Zetia (Ezetimibe) Antitrust Litig.*, 2019 WL 6122038, at *3 (E.D. Va. Oct. 1, 2019) (quoting *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 663 (E.D. Va. 2001)), ultimate approval of a proposed class action settlement is “left within the sound discretion of the Court.” *Solomon*, 2020 WL 3490606, at *4 (citation modified).

To assess whether the proposed settlement is fair, reasonable, and adequate under Rule 23(e)(2), the Court considers 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);⁶ and
- (D) the proposal treats class members equitably relative to each other.

The Fourth Circuit established a standard to guide courts in their analysis of the fairness and adequacy of a proposed settlement. The *Jiffy Lube* decision instructs district courts to consider the following when evaluating the fairness of a class action settlement: “(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of [] class action litigation.” *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158–59 (4th Cir. 1991). When determining the adequacy of the settlement, courts should examine:

- (1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.

⁶ There are no other agreements required to be identified under Rule 23(e)(3).

Id. at 159. The factors contained in Fed. R. Civ. P. 23(e)(2) largely overlap with the factors established by the Fourth Circuit in *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991), except for the Rule 23(e) factors pertaining to the proposed method of allocation and distribution.⁷ Accordingly, Plaintiff addresses the *Jiffy Lube* factors below followed by assessment of the remaining Rule 23(e) factors that pertain to allocation and distribution. The proposed Settlement and Plan of Allocation and Distribution clearly meet the requirements under the Federal Rules and Fourth Circuit precedent. Therefore, Plaintiff respectfully submits that the proposed Settlement and Plan of Allocation and Distribution should be approved.

2. The Settlement Satisfies the *Jiffy Lube* Test for Fairness

i. The case had progressed significantly at the time of settlement.

The first *Jiffy Lube* factor directs the Court to consider “the posture of the case at the time settlement was proposed.” *Jiffy Lube*, 927 F.2d at 159. “Considering the posture of the case at the time of settlement allows the Court to determine whether the case has progressed far enough to dispel any wariness of ‘possible collusion among the settling parties.’” *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 571 (E.D. Va. 2016) (quoting *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 254 (E.D. Va. 2009)). Here, the proposed Settlement was reached less than two weeks before the trial was set to commence, at which point the parties had aggressively litigated the case for

⁷ Rule 23(e)(2)(A) and the *Jiffy Lube* factor (4) concern the adequacy of representation. Rule 23(e)(2)(B) and *Jiffy Lube* factor (3) concern whether the settlement negotiations were conducted at arm’s length. Rule 23(e)(2)(C)(i) and *Jiffy Lube* factors (1), (2), and (3) direct the Court to assess whether the relief provided is adequate, considering the relative strengths and weaknesses of the case as well as costs of continued litigation. The only way in which Rule 23(e) and the *Jiffy Lube* factors differ is with respect to Rule 23(e)(2)(C)(ii)-(iv) and Rule 23(e)(2)(D). Plaintiff addresses those separately, and otherwise addresses the overlapping factors together in the sections that follow. See *Birks v. Small Cmty. Specialists, L.L.C.*, 2024 WL 5344437, at *6 (D. Md. Dec. 10, 2024) (assessing Rule 23(e) and *Jiffy Lube* factors).

more than seven years. As discussed above, in litigating the case, the parties: (i) reviewed over 350,000 documents, consisting of over 1.6 million document pages; (ii) served and responded to written discovery, including requests for production, interrogatories and requests for admission; (iii) conducted over 20 depositions of fact and expert witnesses; (iv) briefed *Daubert*, class certification, and summary judgment motions; and (v) completed extensive trial preparation.

In sum, the parties were fully prepared for the scheduled five-week trial. As a result, Co-Lead Counsel had a well-developed record and understanding of the risks and benefits of continued litigation against Defendants when agreeing to the terms of the Settlement. *See Mills Corp.*, 265 F.R.D. at 254–55 (finding that nearly reaching the conclusion of all fact discovery “clarifies plaintiffs’ previous understanding of the strength and weaknesses of their claims and affords plaintiffs the ability to confirm the fairness, reasonableness, and adequacy of the proposed partial settlement” (citation modified)).

ii. Significant discovery had been conducted at the time of settlement.

The second *Jiffy Lube* factor, the extent of discovery in this case, also establishes that the case was “well-enough developed for [Co-Lead Counsel] and Lead Plaintiff[] alike to appreciate the full landscape of their case when agreeing to enter into this Settlement.” *Mills Corp.*, 265 F.R.D. at 254. Here, there can be little question that the parties had amassed a deep understanding of this case. By the time the proposed Settlement was reached, fact and expert discovery (which included the production and review of over 1.6 million pages of documents) had been completed. Co-Lead Counsel had taken and/or defended over 20 fact and expert-witness depositions, fully briefed numerous motions, obtained certification of the Class after extensive briefing, exchanged expert reports regarding class and merits issues, and subpoenaed and obtained discovery from many nonparties. The Joint Proposed Pretrial Order had been filed, which crystallized the parties’ differing views of the evidence which culminated from the years of hard-fought litigation and

confirmed that the parties would be presenting staunchly opposing views at trial, each supported by evidence the parties had adduced over the seven years this case has been litigated. With settlement occurring less than two weeks before trial was set to begin, the parties intimately understood the landscape of this case, as well as the risks and rewards of continuing with the litigation.

iii. The Settlement is the result of arm’s-length negotiations.

The third *Jiffy Lube* fairness factor is “the circumstances surrounding the negotiations.” *Jiffy Lube*, 927 F.2d at 159; *see also* Fed. R. Civ. P. 23(e)(2)(B) (directing the Court to consider whether “the proposal was negotiated at arm’s length”). The proposed Settlement readily meets these standards because it is the product of serious, informed, and non-collusive arm’s-length negotiations. Joint Decl. ¶ 39. It resulted from good-faith negotiations between Co-Lead Counsel and counsel for Defendants, with assistance from Chief Magistrate Judge Timothy J. Sullivan, who conducted multiple settlement conferences before the settlement could be reached. *Id.* “In the absence of any evidence to the contrary, it is presumed that no fraud or collusion occurred” in reaching the proposed Settlement. *Gagliastre v. Capt. George’s Seafood Rest., LP*, 2019 WL 2288441, at *3 (E.D. Va. May 29, 2019). Like all aspects of this seven-year litigation, the negotiations were contentious and extremely hard-fought. The parties discussed the strengths and weaknesses of Plaintiff’s claims and the defenses asserted by Defendants, and Co-Lead Counsel were well-positioned to evaluate the risks and rewards of proceeding to trial. Joint Decl. ¶ 39.

iv. The Class is represented by experienced counsel.

The fourth *Jiffy Lube* fairness factor is “the experience of counsel in the area of [] class action litigation.” *Jiffy Lube*, 927 F.2d at 159. Similarly, Fed. R. Civ. P. 23(e)(2)(A) directs the Court to consider whether “the class representatives and class counsel have adequately represented the class.” The Class is represented by counsel with extensive antitrust and complex litigation

experience, particularly in antitrust class actions involving pharmaceutical products. Indeed, this Court appointed Hagens Berman Sobol Shapiro LLP and Cohen Milstein Sellers & Toll PLLC as Co-Lead Counsel on behalf of the Class, finding the firms qualified to serve in this position because of their “extensive experience with and expertise in pharmaceutical class actions and their work to date in developing the claims in the consolidated cases.” *See* ECF Nos. 33 ¶ 5, 349 at 42. In addition, this Court already found that GEHA “is well qualified and is an adequate representative for the absent class members” and appointed GEHA as Class Representative. ECF Nos. 349 at 27, 350.

In deciding whether a proposed class action settlement is reasonable, courts often give significant weight to the judgment of experienced counsel. *See, e.g., Mills Corp.*, 265 F.R.D. at 255 (“[I]t is entirely warranted for this Court to pay heed to [Class Counsel’s] judgment in approving, negotiating, and entering into a putative settlement.”). Here, Co-Lead Counsel based their judgment upon their extensive experience with similar generic drug antitrust class actions. *See* ECF Nos. 247-39, 247-40. Co-Lead Counsel, relying on their years of experience in similar cases and their efforts in this litigation, had the ability to assess the merits of continued litigation and the benefits achieved for the Class, and respectfully recommends approval of the Settlement.

3. The Settlement Satisfies the *Jiffy Lube* Test for Adequacy

i. Risks of continued litigation weigh in favor of settlement.

The first two *Jiffy Lube* factors with respect to adequacy require a court “to examine how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult case.” *Mills Corp.*, 265 F.R.D. at 256; *see also* Fed. R. Civ. P. 23(e)(2)(C)(i) (directing Court to consider “the costs, risks, and delay of trial and appeal”). Consideration of both factors confirms that the proposed Settlement provides adequate relief to the Class.

While Co-Lead Counsel have always been confident in the Plaintiff's claims, proceeding through trial presented several risks. First, proving liability in this case would require the jury to synthesize, digest, and deliberate a complex body of economic and regulatory evidence. Much of this evidence would have been presented via videotape depositions. Second, Defendants were represented throughout this litigation by some of the best law firms in the country, which have vigorously represented their clients and continuously maintained that Defendants' actions were lawful. Third, Defendants planned to contest liability and Plaintiff's damages at trial, including whether its conduct was anticompetitive and whether the alleged conduct resulted in damages to the Class. Thus, notwithstanding Co-Lead Counsel's confidence, there is no guarantee that they would succeed in establishing liability through trial and appeal. *See, e.g., Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *8 (S.D.N.Y. Sep. 9, 2015) ("While Plaintiffs and Class Counsel believe that they would prevail in their claims asserted against Defendants, they also recognize the risks and uncertainties inherent in pursuing the action through class certification, summary judgment, trial and appeals."). Even if Plaintiff prevailed on the issue of liability, Defendants would have vigorously challenged damages, including through the testimony of their damages expert, Cornell University Professor Dr. Sean Nicholson. "The damages issue would have become a battle of experts at trial, with no guarantee of the outcome in the eyes of the jury." *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 667 (E.D. Va. 2001) (citation modified).

In conducting settlement negotiations, Co-Lead Counsel were cognizant of the numerous and multi-layered risks and complexities that continued litigation presented to the Class. Joint Decl. ¶ 39. Absent the proposed Settlement, these risks and complexities could have resulted in the Class receiving no recovery at all. In contrast, the proposed Settlement serves the best interests of the Class by securing a substantial cash recovery of \$65,000,000 while avoiding delays, risks,

and uncertainties, including the vagaries of juries tasked with rendering a verdict in a case as highly complex as this one and the potential appeal of any favorable verdict the Class might have been awarded. Compared to proceeding through trial, the certain receipt of the settlement funds works to the benefit of the Class.

ii. Anticipated costs of continued litigation weigh in favor of settlement.

The Fourth Circuit also instructs district courts to examine “the anticipated duration and expense of additional litigation.” *Jiffy Lube*, 927 F.2d at 159; *see also* Fed. R. Civ. P. 23(e)(2)(C)(i) (directing Court to consider “the costs, risks, and delay of trial and appeal”). Here, the probable costs of continued litigation with respect to both time and expense were high and militate in favor of approval of the proposed Settlement. The additional litigation expenses associated with preparing for and completing the five-week trial would include thousands of attorney and support-staff hours, document-hosting platform fees for the over 1.6 million pages of documents, expert fees, daily transcript fees, witness and expert travel expenses, and housing expenses for counsel, witnesses, and experts. Avoiding these substantial costs weighs in favor of the Settlement.

iii. Solvency of Defendants is a non-issue.

Another Fourth Circuit factor for consideration involves the solvency of Defendants. This is not an issue in this case. *See, e.g., Sims v. BB&T Corp.*, 2019 WL 1995314, at *5 (M.D.N.C. May 6, 2019) (“Class Counsel have not expressed any concerns as to the solvency of the defendants or their ability to recover if they were to proceed to trial.”); *Solomon*, 2020 WL 3490606, at *5 (Without “any clear evidence of Defendants risk of insolvency, this factor is largely considered ‘beside the point given the other factors weighing in favor of preliminary approval.’” (quoting *Henley v. FMC Corp.*, 207 F. Supp. 2d 489, 494 (S.D.W. Va. 2002))).

Defendants would likely have been able to pay a significant judgment had the case proceeded to trial and a verdict been returned in favor of the Class. As such, Plaintiff does not contend that the Settlement is fair because Defendants could not withstand a greater judgment.

iv. Lack of opposition to the proposed Settlement supports approval.

Plaintiff effectuated notice of the Settlement to the Class on April 3, 2026. *See* ECF No. 424. As part of the notice program, A.B. Data sent direct notice of the Settlement to 44,666 potential Class members. *Id.* at ¶¶ 4, 5. The deadline for Class members to object to the Settlement, Plan of Allocation and Distribution, and request for attorneys’ fees and expenses was June 2. No members of the Class have objected. Supp. Miller Decl. ¶ 10; Joint Decl. ¶ 40. Further, members of the Class were previously given notice of the pendency of the litigation and the opportunity to exclude themselves from the Class. *See* ECF No. 369. No Class Members are excluded from the Class.⁸ The lack of objection to the Settlement and lack of any proper opt-outs strongly supports a finding of adequacy. *Microstrategy*, 148 F. Supp. 2d at 668 (“Such a lack of opposition to the [] settlement strongly supports a finding of adequacy, for ‘[t]he attitude of the members of the Class, as expressed directly or by failure to object, after notice to the settlement is a proper consideration for the trial court.’” (quoting *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975))); *In re Celebrex (Celecoxib) Antitrust Litig.*, 2018 WL 2382091, *3 (E.D. Va. Apr. 18, 2018).

4. The Plan of Allocation and Distribution Satisfies the Additional Rule 23(e)(2) Factors

In addition to the factors noted above, Rule 23(e)(2) also directs courts to consider (1) “the effectiveness of any proposed method of distributing relief to the class including the method of

⁸ Because the prior Notice to the Class provided an opt-out period that closed on December 23, 2024, there was no need for an additional opt-out period pursuant to Fed. R. Civ. P. 23(e)(4). *See Notice of Certified Litigation Class Action*, 1 (Nov. 22, 2024), <https://tracleerlitigation.com/media/wa5prxfm/notice-of-certified-litigation-class-action.pdf>.

processing class-member claims;” (2) whether “the proposal treats class members equitably relative to each other”; and (3) “the terms of any proposed award of attorney’s fees, including timing of payment.” Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iii) & (D). The Settlement and the Proposed Plan of Allocation and Distribution readily satisfy this standard. Robertson Decl., Exs. 1, 2, ECF Nos. 421-3, 421-4. Accordingly, Co-Lead Counsel respectfully requests the Court approve the Proposed Plan of Allocation and Distribution.

i. The proposed method of distribution is effective.

The Proposed Plan of Allocation and Distribution provides for an effective method of distribution. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii). Courts have approved similar methodologies in numerous other pharmaceutical antitrust class actions.⁹ Class members have been able to easily complete and submit their claim forms by mail or online. Robertson Decl., Exs. 2–3, ECF Nos. 421-4, 421-5; *see also In re ConAgra Foods, Inc.*, 2022 WL 17243625, at *8 (C.D. Cal. Nov. 14, 2022) (noting similar distribution plan was “straightforward” and thus satisfied Rule 23(e)). August 23, 2026 is the claims deadline. Once the timeframe for submitting claims is complete, the Net Settlement Award will then be distributed to Class Members that submitted valid and timely claims. Robertson Decl., Ex. 2, ECF No. 421-4. Co-lead Counsel has extensive experience overseeing similar distribution plans in antitrust class actions that distribute funds to purchasers of pharmaceutical products and have found these methods of distribution to be effective and not

⁹ *See, e.g., In re Zetia (Ezetimibe) Antitrust Litig.*, No. 2:18-md-02836 (E.D. Va. Oct. 18, 2023), ECF No. 2168 at 14–15; *Vista Healthplan, Inc. v. Warner Holdings Co. III, Ltd.*, 246 F.R.D. 349 (D.D.C. 2007); *Nichols v. SmithKline Beecham Corp.*, 2005 WL 950616, at *16–19 (E.D. Pa. Apr. 22, 2005); *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 258–60 (D. Del. 2002), *aff’d*, 391 F.3d 516 (3d Cir. 2004); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 380–82 (D.D.C. 2002); *In re Loestrin 24 FE Antitrust Litig.*, 2020 WL 4035125 (D.R.I. July 17, 2020), *report and recommendation adopted*, 2020 WL 5203323 (Sep. 1, 2020); *In re Lidoderm Antitrust Litig.*, 2018 WL 11293766 (N.D. Cal. May 3, 2018); *In re Aggrenox Antitrust Litig.*, 2018 WL 1183734 (D. Conn. Mar. 6, 2018).

unduly demanding. *See also Boger v. Citrix Sys., Inc.*, 2023 WL 1415625, at *8 (D. Md. Jan. 31, 2023) (deferring to class counsel’s experience regarding method for distributing relief).

ii. The Plan of Allocation treats Class Members equitably.

The proposed Plan of Allocation and Distribution treats Class Members equitably. *See* Fed. R. Civ. P. 23(e)(2)(D). The proposed Plan of Allocation proposes that the Net Settlement Fund should be distributed *pro rata* based on each Class Member’s purchases. Robertson Decl., Ex. 2, ECF No. 421-4; *see also Birks*, 2024 WL 5344437, at *5 (“Settlement Class Members are treated fairly as to one another because they are compensated according to the amount . . . they were charged.”). The Net Settlement Fund will be distributed in substantially the same manner as plans that have been approved by courts in analogous cases and will be implemented fairly and efficiently.¹⁰

iii. The requested attorneys’ fees are fair and reasonable.

As detailed in Co-Lead Counsel’s concurrently filed motion for attorneys’ fees, expenses, and service award, the requested attorneys’ fees are fair and reasonable. Class Counsel seeks an award of attorneys’ fees of \$21,666,666.67, plus interest, litigation expenses of \$3,875,181.16 and a service award payment for the named Plaintiff of \$40,000. Joint Decl. ¶ 49. The fees and expenses sought are reasonable and align with fees awarded by this District, and by courts in similar pharmaceutical antitrust cases. *See, e.g., Zetia*, ECF No. 2168 at 14–15 (“District courts in the Fourth Circuit have frequently found that a percentage award of one-third of the Settlement Fund is within the range of reasonable percentage of recovery, and one-third of the fund is a common award in antitrust class actions.”); *Birks*, 2024 WL 5344437, at *6 (“39.35% of the Gross Settlement Fund [is] reasonable and aligns with other class actions where Maryland courts have

¹⁰ *See supra* note 9.

awarded attorneys' fees."); *see also* Appendix A to Counsel's Mem. of Law in Supp. of Mot. for an Award of Attorneys' Fees (chart detailing fee awards in generic pharmaceutical antitrust class actions). Any fees and expenses awarded to Class Counsel by the Court will be deducted from the settlement fund. Robertson Decl., Ex. 1 ¶ 6.4, ECF No. 421-3. The Settlement is not contingent on the award of any amount of fees or expenses. *Id.* ¶ 6.

The notice provided to Class Members apprised Class Members of the maximum amount Class Counsel would seek in attorneys' fees, expenses, and service award, and provided Class Members an opportunity to object to the request for attorneys' fees and expenses.¹¹ The deadline to file objections to the request for attorneys' fees and expenses was June 2, 2026, and no Class Members have objected at this time.¹² Supp. Miller Decl. ¶ 10.

For these reasons, Co-Lead Counsel respectfully submit that the Court should approve the Plan of Allocation and Distribution.

B. The Court-Approved Notice Plan Satisfies Due Process and Adequately Provided Notice to Class Members

Rule 23 requires that prior to final approval, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23 (e)(1)(B). To meet the Rule 23(e) and due process requirements, "all that the notice must do is fairly apprise the prospective members of the class of the terms of the proposed settlement so that class members may come to their own conclusions about whether the settlement serves their interests." *In re Outer Banks Power Outage Litig.*, 2018 WL 2050141, at *6 (E.D.N.C. May 2, 2018) (quoting *Int'l Union, UAW v. Gen. Motors Corp.*, 497 F.3d 615, 630 (6th Cir. 2007)).

¹¹ *Did You Purchase, Pay for, or Provide Reimbursement for Tracleer or Bosentan?* (Long Form Notice), 6–7 (Apr. 3, 2026), <https://tracleerlitigation.com/media/wp0141am/long-form-notice.pdf>.

¹² Class Counsel will ensure that any objections that it or A.B. Data receives will be filed on the docket.

A.B. Data has carried out a thorough notice plan. The proposed Notice Plan was detailed in Plaintiff's Motion for Preliminary Approval (ECF No. 421) and approved by the Court on March 13, 2026 (ECF No. 423). Mr. Eric Miller of A.B. Data submitted a declaration of compliance with notice requirements on April 13, 2026 (ECF No. 424), confirming that notice had been effectuated pursuant to the Court-ordered Notice Plan.

Notice provided Class Members with an explanation of their right to object to any aspect of the Settlement, the request for attorneys' fees, reimbursement of expenses, service award, and the procedures to follow to do so.¹³ The form of Notice regarding the proposed Settlement was designed to alert members of the Class to the Settlement Agreement with a bold headline and plain language providing essential information regarding the salient terms. *See* Robertson Decl., Ex. 3 at 27, 37. The Short-Form Notice included summary information concerning the Action, including: (i) that this is a class action; (ii) the definition of the Class in plain and engaging language; (iii) that the Class alleges antitrust and consumer protection claims; (iv) that a Class Member may object to the proposed Settlement or appear through an attorney if the Class Member desires (at their own expense); (v) a summary of Class Members' rights and options; and (vi) the time and date of the Final Approval Hearing. *See* Robertson Decl., Ex. 3 at 37. The Short-Form Notice also included the case website address and toll-free telephone number by which Class Members can obtain additional details about the case and background information about the Action. *See id.* The Short-Form Notice is designed to encourage readership and understanding in a well-organized and reader-friendly format. *See id.* The Short-Form and Long-Form Notices are available on the dedicated case website and include more detailed information, including an in-depth explanation of Class Members' rights and options, and will include relevant documents, such as the motion for

¹³ *Did You Purchase*, *supra* note 11.

final approval and the motion for attorneys' fees, expenses, and a service award. *See* Robertson Decl., Ex. 3 at 27, 37.

The proposed manner of Notice was likewise reasonable. Rule 23(c)(2)(B) requires “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” The details of the manner of Notice are set forth in the Supplemental Miller Declaration. The Notice Plan ensured a large portion of Class Members received direct notice. Supp. Miller Decl. ¶¶ 5–8. The Short-Form Postcard Notice was sent via First-Class Mail directly to each Class member identified in A.B. Data’s database.¹⁴ *Id.* ¶ 5. In addition, A.B. Data sent emails to potential Class Members to the extent that addresses were available. *Id.* Included within the email notices was a link allowing recipients to view the full, detailed notice package. *Id.* ¶ 9. In addition to direct notice, a banner campaign was purchased on ThinkAdvisor.com/life-health. *Id.* ¶ 6. All banner ads included a link to the case-specific website. *Id.* ¶ 9. A news release was also disseminated via PR Newswire’s US1 Newswire distribution list. *Id.* ¶ 7. This news release was distributed via PR Newswire to the news desks of approximately 10,000 newsrooms, including those of print, broadcast, and digital websites across the United

¹⁴ A.B. Data maintains, and updates regularly, a proprietary database of approximately 42,000 entities that include: (i) insurance companies; (ii) health maintenance organizations; (iii) self-insured entities such as certain large corporations, labor unions, and employee benefit and pension plans; and (iv) certain record keepers, such as PBMs and third-party administrators (“TPAs”). This database was previously approved to provide notice of the certified litigation class action in this Action. It has also been approved as the basis for notice to Plaintiffs in many other class actions, such as *In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, No. 1:17-cv-06684-NG-LB, (E.D.N.Y. Mar. 15, 2021), ECF No. 147, at 8; *In re EpiPen (Epinephrine Injection USP) Mktg., Sales Pracs. & Antitrust Litig.*, No. 17-md-2785 (D. Kan. Oct. 13, 2020), ECF No. 2240; *In re Loestrin 24 FE Antitrust Litig.*, No. 13-md-2472 (D.R.I. Sep. 27, 2019), ECF No. 1245; *In re Aggrenox Antitrust Litig.*, No. 14-md-2516 (D. Conn. Mar. 6, 2018), ECF No. 766; *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, 14-md-2503 (D. Mass. Apr. 14, 2017), ECF No. 555; *Vista Healthplan, Inc. v. Cephalon, Inc. (Provigil)*, No. 06-CV-01833 (E.D. Pa. Aug. 8, 2019), ECF No. 592.

States. *Id.* In sum, this robust Notice Plan provided at least 80% reach and frequency similar to those that other courts have approved and that are recommended by the Federal Judicial Center's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide (2010). *Id.* ¶ 12.

As there is no alternative method of notice that would be practicable here or would be more likely to notify Class Members, the Notice Plan constitutes the best practicable notice to Class Members and complies with the requirements of due process.

IV. CONCLUSION

For the above-stated reasons, Plaintiff respectfully requests that the Court enter an Order: (i) granting final approval of the proposed Settlement; (ii) approving the proposed Plan of Allocation and Distribution; (iii) finding that the Notice Plan satisfies due process to all members of the Class; and (iv) entering final judgment dismissing Plaintiff's claims with prejudice in accordance with the Settlement Agreement.

Dated: June 17, 2026

Respectfully submitted,

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