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 PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT, APPROVAL OF THE FORM AND MANNER OF NOTICE TO THE CLASS, AND SCHEDULE FOR A FAIRNESS HEARING

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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 Preliminary Approval of Proposed Settlement, Approval of the Form and Manner of Notice to the Class, and Schedule for a Fairness Hearing.

After extensive litigation over the past seven 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 to the accompanying Declaration of Sharon K. Robertson dated March 4, 2026 ("Robertson Decl."). The Settlement provides for a cash settlement fund totaling $65,000,000.00. Robertson Decl., Ex. 1 ¶ 2.1. 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.

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 approval under Federal Rule of Civil Procedure 23(e). Accordingly, Plaintiff respectfully requests that the Court enter the Proposed Preliminary Approval Order: (i) preliminarily approving the Settlement; (ii) preliminarily approving the proposed Plan of Allocation and Distribution; (iii) approving the Notice Plan and proposed Notices to the Class; (iv) approving the proposed Claim Form; (v) appointing A.B. Data, Ltd. ("A.B. Data") to serve as the Notice and Claims Administrator; (vi) appointing Huntington National Bank to serve as the Escrow Agent; (vii) setting a schedule for a

Fairness Hearing and Final Approval of the proposed Settlement; and (viii) granting such other and further relief as the Court may deem just and appropriate. Co-Lead Counsel are available at the Court's convenience for a hearing on this motion should the Court deem a hearing necessary.

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. 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 it used the pretext of the FDA's Risk Evaluation and Mitigation Strategy ("REMS") program to block competitor access to samples of Tracleer and thus effectively blocked competitors from bringing a competing 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 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 No. 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. These documents resulted from dozens of separate document productions exchanged between the parties. Thousands of documents 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. *See Gov't Employees Health Ass'n v. Actelion Pharms. Ltd., et al.*, No. 2:22-mc-0037 (S.D. Ohio); *Actelion Pharms et al. v. Miller*, No. 9:23-mc-81522 (S.D. Fla.). Written discovery requests were also served—interrogatories and requests for admission—to which the parties responded. The parties conducted sixteen separate depositions of Defendants, non-party fact witnesses, and class representative witnesses. *See* ECF No. 196.

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 seven experts and Defendants retained five rebuttal experts. Plaintiff's experts served opening and reply reports and sat for depositions. 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. ECF No. 267. The parties also moved to exclude certain expert testimony upon which each side relied in connection with their class-certification briefing. ECF Nos. 234, 235, 237. The parties then fully briefed the motion for class certification and the motions to exclude the class-certification related experts. ECF Nos. 238, 260, 234, 235, 237, 246, 267, 275. On September 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, except granting in part Plaintiff's motion to exclude Defendants' class-certification 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 Members properly requested exclusion.[1]

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 No. 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 issues 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. *See* ECF Nos. 366, 406.

In the months leading up to the settlement, the parties disclosed thousands of documents designated as potential trial exhibits and provided written objections to the other side's designated exhibits. The parties created and disclosed anticipated Federal Rule of Evidence 1006 Exhibits. The parties also exchanged many thousands of deposition designations, along with written objections to each, rebuttal designations, objections to the rebuttal designations, reply designations

[1] 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).

to the rebuttal designations, and objections to the reply designations. The parties also prepared and exchanged trial witness lists and negotiated a lengthy stipulation regarding trial procedures.

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. ECF No. 404.

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. ECF No. 375, 376. In addition, Plaintiff was drafting proposed jury instructions, which were set to be filed with the Court on January 19, 2026. *See* ECF No. 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. Throughout those negotiations, the parties were assisted by Magistrate Judge Timothy Sullivan. The parties executed a binding Settlement on February 18, 2026. *See* Robertson Decl., Ex. 1.

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.

Under the terms of the proposed Settlement, Defendants will deposit $65,000,000 into an escrow account on behalf of the same Class that this Court previously certified. Robertson Decl., Ex. 1 ¶ 2.1. 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 territories[2] at any time during the period from December 29, 2015, through September 6, 2024.[3]

The settlement monies in the escrow account, together with any interest thereon, will be used to pay: (i) any Court-approved attorneys' fees and expenses as well as Court-approved incentive awards to the named Class Representative Plaintiff, (ii) notice and administration expenses for the litigation, (iii) taxes and tax expenses, and (iv) any other Court-approved deductions. *Id.* ¶ 5.2. The remainder of the Settlement Fund will be distributed to eligible members of the Class according to a Court-approved Plan of Allocation. *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.

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[2] 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.

[3] The following are excluded from the Class: (1) Defendants and their subsidiaries and affiliates; and (2) Federal and state governmental entities.

III. ARGUMENT

A. The Class Has Already Been Certified

This Court certified the following Class on September 6, 2024. ECF Nos. 349, 350.

> 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 territories[4] at any time during the period from December 29, 2015, through September 6, 2024.[5]
>
> The following are excluded from the Class: (1) Defendants and their subsidiaries and affiliates; and (2) Federal and state governmental entities.

To establish that preliminary approval of a class settlement is appropriate under Rule 23(e), Plaintiffs must show that "the court will likely be able to . . . certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B)(ii). When "the court has already certified a class, the only information ordinarily necessary [to assess the proposed settlement] is whether the proposed settlement calls for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted." *See* Fed. R. Civ. P. 23(e)(1) advisory committee's notes to 2018 amendment; *see also Robinson v. Nationstar Mortg. LLC*, 2020 WL 13119703, at *3 (D. Md. Aug. 19, 2020) (only conducting analysis of proposed settlement under Rule 23(e)(1)(B)(i) and not Rule 23(e)(1)(B)(ii) because "[a] class was previously certified in this

[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] On November 14, 2024, the Court granted Plaintiff's Unopposed Motion to Approve the Form and Manner of Notice and Appoint a Notice Administrator, which altered the certified class definition slightly by setting September 6, 2024 as the end date for the Class Period. *See* ECF No. 369, 367-1 at 1 n.4.

case"). Accordingly, the Proposed Settlement satisfies Rule 23(e)(1)(B)(ii). *See, e.g., Robinson*, 2020 WL 13119703, at *3.

B. The Court Should Preliminarily Approve the Settlement

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) ("[T]he 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. Sept. 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).

Preliminary approval of a proposed class action settlement under Federal Rule of Civil Procedure 23(e) is the first step in the two-step approval process. *See* Manual for Complex Litigation § 21.63 (4th ed. 2004) ("MCL"); *see also* William B. Rubenstein, *Newberg on Class Actions* § 13:10 (6th ed. 2025). At this first step, "[p]reliminary approval should be granted when a proposed settlement is 'within the range of possible approval' . . . ." *Shaver v. Gills Eldersburg, Inc.*, 2016 WL 1625835, at *2 (D. Md. Apr. 25, 2016) (quoting *Benway v. Res. Real Est. Servs.,*

LLC, 2011 WL 1045597, at *4 (D. Md. Mar. 16, 2011)). If the Court preliminarily approves the proposed settlement, the second step is a "fairness hearing to determine whether the settlement is 'fair, reasonable, and adequate' for all class members and thus should receive final approval." *Starr*, 2021 WL 2141542, at *5 (quoting MCL § 21.634); *see also Albert v. Glob. Tel*Link Corp.*, 2024 WL 4644631, at *5 (D. Md. Oct. 31, 2024).

To assess whether the proposed settlement is fair, reasonable, and adequate at the preliminary approval stage under Rule 23(e)(2), the Court considers:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
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> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
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> > (ii) the effectiveness of any proposed method of distributing relief to the Class, including the method of processing class-member claims;
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> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
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> > (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.

Further, "[i]n some cases, this initial evaluation can be made on the basis of information already known, supplemented as necessary by briefs, motions, or informal presentations by parties," such that a hearing is not necessary. MCL, *supra*, § 21.632.

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

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

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.

Id. 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, Plaintiffs address the *Jiffy Lube* factors below followed by assessment of the remaining Rule 23(e) factors that pertain to allocation and distribution. The proposed Settlement between Plaintiff and Defendants clearly meets the requirements under the Federal Rules and Fourth Circuit precedent. Therefore, Plaintiff respectfully submits that the proposed Settlement should be approved and that the Court should grant the request for Preliminary Approval for the reasons further set forth below.

[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).

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 more than seven years. As discussed above, in litigating the case, the parties: (i) reviewed over 350,000 documents, consisting of over 1.5 million document pages; (ii) served and responded to written discovery, including requests for production, interrogatories and requests for admission; (iii) conducted 16 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 "clarifie[s] plaintiffs' previous understanding of the strength and weaknesses of their claims and afford[s] 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 Plaintiffs 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 1.5 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 non-parties. 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. It resulted from good-faith negotiations between Co-Lead Counsel and counsel for Defendants, with assistance from Chief Magistrate Judge Timothy Sullivan, who conducted multiple settlement conferences before the settlement could be reached. "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.

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, 350. 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. Sept. 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. "[T]he 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. 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. By the time the parties reached the Settlement, the litigation had already been pending for approximately seven years, and the parties had spent significant sums preparing for trial, including for costs associated with expert witnesses on issues such as the market power, causation, generic entry, and damages. 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 1.5 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, and thus this factor is neutral. *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."). 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 and thus do not believe this risk is relevant.

iv. Opposition to the proposed Settlement is unlikely.

Members of the Class have previously been 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. Co-Lead Counsel respectfully submit that this suggests that Class Members will approve of the proposed Settlement. Moreover, because the prior Notice to the Class provided an opt-out period that closed on December 23, 2024, there is no need for an additional opt-out period pursuant to Fed. R. Civ. P. 23(e)(4).[8]

[8] *See Notice of Certified Litigation Class Action*, 1 (Nov. 22, 2024), https://tracleerlitigation.com/media/wa5prxfm/notice-of-certified-litigation-class-action.pdf.

Further, while this factor is relevant to a fairness analysis, it is premature to assess this factor at this stage, as notice of the Settlement terms to members of the Class has not yet been provided. *See, e.g.*, *In re M3 Power Razor Sys. Mktg. & Sales Prac. Litig.*, 270 F.R.D. 45, 62–63 (D. Mass. 2010). If the Court preliminarily approves the Settlement and authorizes Notice to be sent to the Class, Co-Lead Counsel will address any objection to the proposed Settlement in the Final Approval papers in advance of, as well as during, the Fairness Hearing.

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 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, which is attached to the Robertson Declaration as Exhibit 2, readily satisfy this standard. Robertson Decl., Ex. 2. Accordingly, Co-Lead Counsel respectfully requests the Court preliminarily approve the Proposed Plan of Allocation and Distribution and accompanying Claim Form, which is attached as Exhibit F to the accompanying Declaration and Notice Plan of Mr. Eric Miller dated March 4, 2026, *see* Robertson Decl., Ex. 3 ("Miller Decl."), Ex. F.

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 will be able to easily complete and submit a claim form by mail or online. Robertson Decl., Exs. 2–3; *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)). The Net Settlement Award will then be distributed to Class Members that submit valid and timely claims. *Id.* Co-lead Class 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 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; *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

[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 (Sept. 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).

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. Requested attorneys' fees will be fair and reasonable.

While the Court need not decide the amount of fees and expenses to be awarded to Class Counsel at this stage, the structure of the settlement ensures that the future fee request poses no obstacle to preliminary approval. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii). The proposed Notice apprises Class Members of the maximum amount Class Counsel would seek in attorneys' fees, expenses, and as an incentive award. In addition, the Settlement contemplates that Plaintiff will submit an application for an award of attorneys' fees and expenses, including named Plaintiff's request for a service award in connection with its representation of the Class. Robertson Decl., Ex. 1. Any fees and expenses awarded to Class Counsel by the Court will be deducted from the settlement fund. *Id.* ¶ 6.4. The Settlement is not contingent on the award of any amount of fees or expenses. *Id.* ¶ 6. In their motion for an award of fees and expenses, which will be heard only after Settlement Class Members have had an opportunity to object, Class Counsel will seek an award of attorneys' fees of an amount not to exceed 33 1/3 percent of the Settlement Fund, plus interest, litigation expenses of up to $4.5 million and a service award payment for the named Plaintiff of $40,000. *Id.* ¶ 8. 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%

[10] *See supra* note 9.

of the Gross Settlement Fund [is] reasonable and aligns with other class actions where Maryland courts have awarded attorneys' fees.").

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

C. The Proposed Form and Manner of Notice Are Appropriate

Members of the Class are entitled to reasonable notice of the Settlement Agreement before the Court decides whether to grant Final Approval, including notice of the Fairness Hearing. *See* Manual Complex Lit. §§ 21.312, 21.633 (4th ed. 2025). Rule 23(e)(1) instructs the Court to "direct notice in a reasonable manner to all members of the Class who would be bound by the proposal." 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)).

Plaintiff's proposed Notice Plan is detailed in the accompanying Declaration and Notice Plan of Mr. Eric Miller and proposed Notices are attached to the Miller Declaration as Exhibits B and C. The Notice Plan mirrors that which this Court previously approved in connection with providing notice of the class certification decision. Because members of the Class have already been given notice of their right to request exclusion, the Notice Plan will provide those remaining members of the Class with an explanation of their right to object to any aspect of the Settlement, the request for attorneys' fees, reimbursement of expenses, incentive awards, and the procedures to follow to do so. Like the past dissemination of Notice concerning certification of the Class, the proposed form of Notice regarding the proposed Settlement is 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* Miller Decl., Exs. B–C. The Short-Form Notice includes 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 the Class Members' rights and options; and (vi) the time and date of the Final Approval Hearing. *See* Miller Decl., Ex. C. The Short-Form Notice also includes 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 will be available on the dedicated case website and will include more detailed information, including an in-depth explanation of the Class Members' rights and options, as well as relevant documents, such as the motion for final approval and the motion for attorneys' fees, expenses, and an incentive award. *See* Miller Decl., Exs. B–C.

The Notice Plan also provides for a banner advertisement to be displayed to members of the Class and for a press release announcing the fact of settlement and other pertinent information. *See* Miller Decl., Ex. E. The elements of the proposed robust Notice Plan are substantially similar, in both form and substance, to the notice this Court previously approved in connection with class certification, as well as the notices used in other similar generic drug ("pay-for-delay") cases and satisfies the notice requirements of Rule 23(e) and the due process requirements that must be met to bind each member of the Class.

The proposed manner of Notice is 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 Miller Declaration, and the Notice Plan will ensure that a large portion of the members of the Class receive direct Notice. The Short-Form Postcard Notice will be sent via First-Class Mail directly to each Class member identified in A.B. Data's database.[11] *See In re NeuStar, Inc. Sec. Litig.*, 2015 WL 5674798, at *12 (E.D. Va. Sep. 23, 2015) (approving notice by first-class mail). In addition, A.B. Data will send emails to potential Class Members to the extent that addresses are available. Included within the email notices will be a link allowing recipients to view the full, detailed notice package. In addition to direct notice to Plaintiffs and as referenced above, a banner campaign will be purchased on ThinkAdvisor.com/life-health and BenefitNews.com. Miller Decl., Ex. E. All banner ads will include an embedded link to the case-specific website. A news release will also be disseminated via PR Newswire's US1 Newsline distribution list. Miller Decl., Ex. B ¶ 8. This news release will be distributed via PR Newswire to the news desks of approximately 10,000 newsrooms, including those of print, broadcast, and digital websites across the United

[11] 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 provides 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.* ¶ 8.

D. The Court Should Approve A.B. Data, Ltd. as Settlement Administrator

A.B. Data was previously appointed by the Court as the Notice Administrator with respect to the class certification. Co-Lead Counsel respectfully request that the Court now appoint A.B. Data as the Notice Administrator and as the Claims Administrator in connection with the proposed Settlement. In so doing, A.B. Data will be tasked with: (i) providing direct mail and email notice to each class member; (ii) disseminating and effectuating notice in accordance with the Notice Plan; (iii) providing each member of the Class with a Claim Form should the Court grant Final Approval of the proposed Settlement Agreement; (iv) determining the proper share of the Settlement to be paid to each member of the Class; and (v) effectuating distribution of the net Settlement Fund after approval by the Court. *Id.* ¶ 13.

Appointment of A.B. Data will be cost-effective and promote efficiency in the dissemination of Notice, as A.B. Data previously served as the administrator for purposes of effectuating notice of this Court's class certification decision. Retaining A.B. Data for further notice and the administration of claims in this case will also promote efficiency given its involvement in these types of cases over the past two decades. A.B. Data is highly regarded and frequently handles claims administration for settlements of large, complex pharmaceutical antitrust cases. Co-Lead Counsel have worked closely with A.B. Data where it has been appointed and served as Claims Administrator in similar cases. A.B. Data will manage and effectuate administration of the Settlement, including dissemination of the Notice, processing of claims, and

distribution of the net Settlement Fund to eligible members of the Class. A.B. Data was recently appointed to serve as the Claims Administrator in similar pharmaceutical antitrust cases by Judge Colleen McMahon of the Southern District of New York in *In re Namenda Antitrust Litigation*, 462 F. Supp. 3d 307 (S.D.N.Y. 2020); Judge Nina Gershon in the Eastern District of New York in the *Restasis* litigation, No. 1:17-cv-06684-NG-LB (E.D.N.Y. Mar. 15, 2021), ECF No. 147; Judge Stephan Underhill of the District of Connecticut in the *Aggrenox* litigation, No. 14-md-2516-SRU (D. Conn. Mar. 6, 2018), ECF No. 766; Judge Denise Casper of the District of Massachusetts in the *Solodyn* litigation, No. 14-md-2504-DJC (D. Mass. Apr. 5, 2018), ECF No. 1145; and Chief Judge Smith of the District of Rhode Island in the *Loestrin* litigation, 2020 WL 4035125 (D.R.I. July 17, 2020).

E. The Court Should Appoint Huntington National Bank as Escrow Agent

Co-Lead Counsel respectfully request that the Court approve Huntington National Bank to serve as Escrow Agent for the settlement funds. Huntington National Bank has been approved as the Escrow Agent in numerous complex antitrust and pharmaceutical cases similar to this case. *See, e.g.*, *In re: Seroquel XR (Extended Release Quetiapine Fumarate) Antitrust Litig.*, No. 1:20-cv-1076 (D. Del. Dec. 9, 2024), ECF No. 817 ¶ 19; *In re Lipitor Antitrust Litig.*, No. 3:12-cv-2389 (D.N.J. June 3, 2024), ECF No. 1412 ¶ 20. Co-Lead Counsel have previously used the services of Huntington National Bank as escrow agent in multiple class action settlements securely and successfully.

F. Proposed Schedule

Should this Court grant Preliminary Approval of the proposed Settlement, Co-Lead Counsel have jointly submitted a proposed Preliminary Approval Order. The proposed Preliminary Approval Order details a proposed schedule. This proposed schedule is fair to Class Members and

provides each member of the Class an opportunity to review the Preliminary and Final Approval papers, the proposed Settlement, and the amount of attorneys' fees, reimbursement of expenses, and an incentive award requested before an objection is due.

IV. CONCLUSION

For the above-stated reasons, Plaintiff respectfully requests that the Court enter an Order: (i) preliminarily approving the proposed Settlement; (ii) preliminarily approving the proposed Plan of Allocation and Distribution; (iii) approving the proposed Notice Plan and Notices to the Class; (iv) approving the proposed Claim Form; (v) appointing A.B. Data to serve as Notice and Claims Administrator; (vi) appointing Huntington National Bank to serve as the Escrow Agent; (vii) setting a schedule for Final Approval of the proposed Settlement; and (viii) granting such other and further relief as the Court may deem just and proper.

Dated: March 4, 2026

Respectfully submitted,

/s/ Sharon K. Robertson

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