IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re: Seroquel XR (Extended Release Quetiapine Fumarate) Antitrust Litig.	Master Dkt. No. 20-1076-CFC
This Document Relates To: All End-Payor Class Actions	

MEMORANDUM OF LAW IN SUPPORT OF END-PAYOR PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS AND OTHER RELIEF

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I. INTRODUCTION

End-Payor Plaintiffs ("EPPs")[1] on behalf of themselves and the proposed end-payor settlement class ("Settlement Class") they seek to represent, submit this Memorandum in Support of their Unopposed Motion for Preliminary Approval of Class Action Settlement and Other Relief (the "Motion").[2] EPPs seek, *inter alia*, certification of the Settlement Class for settlement purposes, preliminary approval of the proposed settlement, approval of the proposed form and manner of notice, appointment of Class Counsel, appointment of Epiq Class Action & Claims Solutions, Inc. ("Epiq") as the Claims Administrator, appointment of The Huntington National Bank ("Huntington Bank") as the Escrow Agent, a date for an opt-out hearing, if necessary, and a date for a fairness hearing.

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[1] EPPs include Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund; Law Enforcement Health Benefits, Inc.; The Mayor and City Council of Baltimore; Welfare Plan of the International Union of Operating Engineers Locals 137, 137A, 137B, 137C, and 137R; and The Uniformed Firefighters' Association of Greater New York Security Benefit Fund and The Retired Firefighters' Security Benefit Fund of the Uniformed Firefighters' Association (collectively, the "Named EPPs" or "EPPs" or "End-Payor Plaintiffs").

[2] Defendants include AstraZeneca Pharmaceuticals LP and AstraZeneca UK Limited (collectively, "AstraZeneca") and Handa Pharmaceuticals, LLC ("Handa" and together with AstraZeneca "Defendants"). Neither AstraZeneca nor Handa oppose the motion. Although Par Pharmaceutical Inc. ("Par") had previously been included as a Defendant in this case, on August 17, 2022, Par filed a suggestion of bankruptcy. (D.I. 187).

EPPs have litigated this class action individually and on behalf of a class of third-party payors ("TPPs") who, 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 Seroquel XR or the generic version (quetiapine fumarate ER) 50 mg, 150 mg, 200 mg, and/or 300 mg tablets, in the Class States,[3] other than for resale, at any time from September 5, 2015, through the date the Court orders preliminary approval of the Settlements.[4] Now, after five years of hard-fought litigation, EPPs have reached separate settlements with AstraZeneca and Handa (the "Settlements") that, if approved, would resolve the litigation between them. The Settlements provide that Defendants will pay a combined five million and four hundred and seventy-five thousand dollars ($5,475,000) into an escrow account in exchange for dismissal of the litigation between EPPs and Defendants with prejudice and certain releases. The terms of the two Settlements are set forth in the respective Settlement Agreements appended as Exhibits 1 and 2 to the Declaration of Robert G. Eisler in Support of End-Payor

[3] The Class States include: Arizona, Arkansas, California, the District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Vermont, West Virginia and Wisconsin.

[4] Excluded from the class are: (a) Defendant and their subsidiaries and affiliates; and (b) federal and state governmental entities.

Plaintiffs' Motion for Preliminary Approval of Settlement and Other Relief ("Eisler Decl.").

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

The claims in this action are asserted by end-payors of Seroquel XR that allege that AstraZeneca, the brand manufacturer of Seroquel XR, made a reverse payment to would-be competitors Handa/Par to delay launching their generic versions of the drug, causing purchasers to pay more for Seroquel for longer than they should have.

Beginning in September 2019, the first end-payor cases were filed in the Southern District of New York, including most of the Named EPPs.[5]

On October 2, 2019, then-Chief Judge Colleen McMahon of the United States District Court for the Southern District of New York entered an order consolidating the EPP cases. *See* 19-cv-08296 (S.D.N.Y.), D.I. 45. On August 12, 2020, Chief Judge McMahon entered an Order granting Defendants' Motion to Dismiss for Lack of Jurisdiction and likewise granting Defendants' motion to transfer this action to the United States District Court for the District of Delaware. *Id.* at 128.

In 2020, EPPs filed their Second Consolidated Amended Class Action Complaint ("SAC"), alleging that Defendants perpetrated a scheme to delay entry of generic Seroquel XR (quetiapine fumarate ER), forcing EPPs to pay overcharges

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[5] NECA-IBEM, Pipe Trades Fund, and Sergeants Benevolent Association voluntarily dismissed their claims against the Defendants over the course of the litigation.

resulting from AstraZeneca's unlawfully extended monopoly on the market for brand Seroquel XR. EPPs also alleged that, in exchange for AstraZeneca's promise not to compete with Handa's generic during Handa's 180-day exclusivity period, Handa agreed to delay the launch of its generic. *See* SAC, D.I. 136 ¶¶ 156-58, 172-74. EPPs also allege that Handa subsequently assigned this unlawful agreement to Par, which performed the agreement, sold generic Seroquel XR at supracompetitive prices, and shared its illegal gains with Handa. *Id.* ¶ 159. In short, EPPs alleged that Defendants entered into an unlawful "reverse payment" agreement to delay the entry of generic competition to Seroquel XR. *See F.T.C. v. Actavis, Inc.*, 570 U.S. 136 (2013).

After EPPs largely defeated Defendants' motion to dismiss, D.I. 177, the case proceeded through extensive fact and expert discovery, which consisted of producing and reviewing millions of pages of party and third-party documents, including the subpoenaing and reviewing of extensive, detailed data received from pharmacy benefit managers documenting sales of Seroquel XR and quetiapine fumarate ER to end payors. Eisler Decl. ¶ 8. EPPs also prepared for, conducted, and/or defended more than 10 fact and expert depositions. Eisler Decl. ¶ 9. These included taking the deposition of Defendant's expert, Dr. Richard Mortimer, defending the depositions of their own experts, Dr. Meredith Rosenthal (who was deposed twice) and Ms. Laura Craft, and defending the depositions of the five named EPPs. Eisler Decl. ¶ 9.

The Parties also have engaged in and completed substantial post-discovery briefing. On February 1, 2024, the Parties concluded class certification briefing with the filing of EPPs' reply brief and, two months later, submitted supplemental briefing limited to Dr. Rosenthal's rebuttal report. The Parties also filed and opposed summary judgment and *Daubert* motions in June and August 2024. Amid the Parties' substantial preparations related to the class certification evidentiary hearing and summary judgment and *Daubert* reply briefs, which were to be due in October, the Parties reached the Settlements.

III. SUMMARY OF THE SETTLEMENTS

A. The Settlement Fund

AstraZeneca has agreed to pay $5 million to settle all EPPs' individual and class claims in this Action. Eisler Decl., Ex. 1 (AstraZeneca Settlement Agreement) ¶ 23. AstraZeneca will deposit that settlement amount into the Escrow Account held and administered by the Escrow Agent, Huntington Bank, for the benefit of all members of the Settlement Class within twenty (20) business days after this Court grants preliminary approval to the Settlement. *Id.* ¶¶ 7, 39.

Handa has agreed to pay $475,000 to settle all EPPs' individual and class claims in this Action.[6] Eisler Decl., Ex. 2 (Handa Settlement Agreement) ¶ 22. Handa will deposit that settlement amount into the Escrow Account held and administered by Huntington Bank for the benefit of all members of the Settlement Class within twenty (20) business days after this Court grants preliminary approval to the Settlement. *Id*. ¶¶ 7, 38.

Subject to the Court's approval, the Settlement Amount will be used to reimburse Class Counsel for the costs, fees, and expenses related to the administration of the Settlements, reimburse the costs and expenses incurred in litigating the case, pay Class Counsel's attorneys' fees of up to 33 1/3% of the Settlement Fund, and pay service awards of up to $10,000 to each named EPP representative ("Fund Expenses"). Eisler Decl., Ex. 1 ¶¶ 40, 44-45; *id.*, Ex. 2 ¶¶ 39, 43-44.[7] After subtracting Fund Expenses, the balance of the Total Settlement Amount shall be distributed to the Class *pro rata*, pursuant to EPPs' proposed

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[6] The total settlement amount from both defendants is $5,475,000 ("Total Settlement Amount").

[7] EPPs and AstraZeneca, and separately EPPs and Handa, also have entered into Confidential Supplemental Agreements relating to the percentage of opt-outs necessary to trigger each Defendant's right to terminate the Settlement. Eisler Decl., Ex. 10 ¶¶ 48-54; *id.*, Ex. 11, ¶¶ 47-48. These Confidential Supplemental Agreements have been filed under seal to the Court. The Settlement Agreements and the Confidential Supplemental Agreements are the only agreements governing the proposed Settlements.

allocation method (described in more detail below), which also is subject to the Court's approval. *See* Eisler Decl., Ex. 9.

B. The Claim Releases

Upon the Settlement Agreements becoming final, and in consideration for the Settlements, EPPs, on behalf of themselves and the Settlement Class, have agreed to release AstraZeneca, Handa, and their related entities, as to claims alleged, or which reasonably could have been alleged, in this action (a) concerning the alleged anticompetitive scheme to prevent or delay market entry of AB-rated generic equivalents of Seroquel XR; or (b) concerning end-payor purchases of Seroquel XR and/or its AB-rated generic equivalents in the Class States and arising under the Sherman Act, 15 U.S.C. §§ 1 & 2, or any other federal or state statute or common-law doctrine relating to antitrust or consumer protection. Eisler Decl., Ex. 1 ¶ 36; *id.*, Ex. 2 ¶ 35. EPPs, on behalf of themselves and the Settlement Class, also agreed to waive and release their rights under Section 1542 of the California Civil Code, respecting unknown claims, and similar state or federal laws. *Id.*, Ex. 1 ¶ 38; *id.*, Ex. 2 ¶ 37. The Settlements do not release claims arising in the ordinary course of business that are unrelated to the allegations in the case, including claims for products liability, breach of warranty, breach of contract, violation of the Uniform Commercial Code, or personal or bodily injury.[8] *Id.*, Ex. 1 ¶ 36; *id.*, Ex. 2 ¶ 35.

IV. ARGUMENT

Under the Federal Rules of Civil Procedure, a court must approve a class-action settlement. Fed. R. Civ. P. 23(e). A class should be certified where the requirements of Rule 23(a) and one of the subparts of Rule 23(b) are satisfied. *See Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 296 (3d Cir. 2011). When making its determination, the Court "may take the proposed settlement into consideration," *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 341 (3d Cir. 2010) (internal quotation omitted), and should consider the merits of the action only if they pertain to the requirements of Rule 23. *See In re Cmty. Bank of N. Va.*, 622 F.3d 275, 294 (3d Cir. 2010).

Here, EPPs seek certification under Rule 23(b)(3), which requires that common issues predominate over individual ones and that a class action be superior to other available methods of adjudication. *See* Fed. R. Civ. P. 23(b); *Sullivan*, 667 F.3d at 296. While the Third Circuit stressed in *In re Hydrogen Peroxide Antitrust Litigation*, 552 F.3d 305, 316 (3d Cir. 2008), that limited consideration of the merits

[8] The releases are narrowly tailored to the claims related to this action and thus cover the claims at issue (or that could have been asserted based on the alleged facts), making them appropriate. *See In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 261 F.3d 355, 366 (3d Cir. 2001).

may be relevant in considering a motion for class certification, it also made clear that the reason for this is not to predict which party will win. *Id.* at 317 n.17. Merits are relevant only if they pertain to the requirements of Rule 23. *See In re Cmty. Bank of N. Va.*, 622 F.3d at 294. The touchstone of the class-certification inquiry thus remains whether the Rule 23 requirements have been satisfied. *Id.* at 294-95.

A. The Court Should Certify the Proposed Class for Settlement Purposes.

EPPs seek certification of a Settlement Class under the antitrust and consumer protection laws of the Class States:

> 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 Seroquel XR or quetiapine fumarate ER 50 mg, 150 mg, 200 mg, and/or 300 mg tables, other than for resale, in the Class States, at any time from September 5, 2015, through and until the date the Court grants preliminary approval of the Settlements.
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> Excluded from the Class are (1) Defendants and their subsidiaries and affiliates; and (2) federal and state governmental entities.

As set forth below, preliminary certification of the Class for settlement purposes is appropriate under Rule 23(a) and 23(b)(3).

B. The Elements of Rule 23(A) Are Satisfied

i. The Numerosity Requirement Is Met

First, the numerosity requirement, Fed. R. Civ. P. 23(a)(1), generally is satisfied when the "potential number of plaintiffs exceeds 40." *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001). Numerosity is satisfied here, given the data show there have been millions of individual transactions of Seroquel XR and generic quetiapine fumarate ER spread over thousands of EPPs. *See* Declaration of Jason M. Avellino in Support of End-Payor Plaintiffs' Motion for Class Certification ("Avellino Decl."), D.I. 531, Ex. 1. (Craft Report) ¶ 44; *see also* Eisler Decl., Ex. 4 (Epiq Decl.) ¶¶ 21-22.

ii. There Are Questions of Law and Fact Common to All Class Members Under Rule 23(a)(2)

Second, commonality requires that there be at least one "question[] of law or fact common to the class." Fed. R. Civ. P. 23(a)(2); *see Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (holding a common question is "capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of [class members'] claims in one stroke"). Commonality is satisfied because there are numerous common questions presented in this action—including whether AstraZeneca had monopoly power in a relevant antitrust market, whether AstraZeneca and Handa entered into an anticompetitive agreement that delayed generic entry, and whether that conduct led to overcharges for Seroquel XR and generic quetiapine fumarate ER—all of which are answerable with common evidence. *See* D.I. 136 ¶ 230; *see* Avellino Decl., D.I. 531, Ex. 2. (Rosenthal Rep.) ¶¶ 42-49.

iii. End-Payor Plaintiffs' Claims Are Typical of Those of the Class

Third, typicality requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). This requirement is satisfied because the Named EPPs' claims, like the absent Class Members' claims, arise from Defendants' alleged unlawful conduct—a "pay-for-delay" agreement—under state antitrust and consumer protection laws. *See Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 183-84 (3d Cir. 2001) (noting typicality is established "[i]f the claims of the named plaintiffs and putative class members involve the same conduct by the defendant"); *Teva Pharms. USA, Inc. v. Abbott Lab'ys*, 252 F.R.D. 213, 226 (D. Del. 2008).

iv. The Class is Adequately Represented

Fourth, the Named EPPs and Class Counsel must "fairly and adequately protect the interests of the class," Fed. R. Civ. P. 23(a)(4), which requires that: "(a) the plaintiff's attorney must be qualified, experienced, and generally able to conduct the proposed litigation, and (b) the plaintiff must not have interests antagonistic to those of the class," *New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 313 (3d Cir. 2007).

Both prongs are satisfied. *First*, EPPs are represented by experienced counsel who have demonstrated throughout this litigation their commitment to fairly and adequately representing the Class, briefing and arguing motions, engaging in extensive fact and expert discovery, and otherwise advocating vigorously on behalf of the interests of Class members. *See* Eisler Decl. ¶¶ 5, 8-10. *Second*, the Named EPPs have the same incentives as absent Class Members and have vigorously prosecuted their claims on behalf of the Class to recover overcharge damages. There is no "conflict of interests among the class members." *In re Suboxone (Buprenorphine Hydrochloride and Nalaxone) Antitrust Litig.*, 421 F. Supp. 3d 12, 67-68 (E.D. Pa 2019); *see In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 107-08 (D.N.J. 2012).

C. The Settlement Class Is Ascertainable

Under the Third Circuit Circuit's ascertainability requirement, EPPs also must establish that "(1) the class is defined with reference to objective criteria; and (2) there is a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition." *Byrd v Aaron's Inc.*, 784 F.3d 154, 163 (3d Cir. 2015) (internal quotation omitted); *see id.* at 165 ("[A]scertainability only requires the plaintiff to show that class members can be identified." (internal quotation omitted)). The Settlement Class must satisfy both requirements. *See In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 308 (1998) (recognizing that this prerequisite must be met regardless of whether a litigation or settlement class is sought).

i. The Class Is Defined by Reference to Objective Criteria

The Class is precisely defined and relies on objective criteria to determine class membership. *See City Select Auto Sales Inc. v. BMW Bank of N. Am. Inc.*, 867 F.3d 434, 439 n.3 (3d Cir. 2017). Namely, the Class includes all entities, with two defined exceptions, that (i) purchased or paid for some or all of the purchase price of certain dosages of Seroquel XR or generic quetiapine fumarate ER (ii) other than for resale (iii) beginning from September 5, 2015, (iv) in at least one of the Class States. *See supra* Section IV.A.

ii. There Is a Reliable and Administratively Feasible Mechanism for Determining Class Membership

EPPs have demonstrated a reliable and administratively feasible method for determining Class membership: using available data in conjunction with affidavits to identify Class members, and if requested, using documents to corroborate the data and affidavits. *See Kelly v. RealPage Inc.*, 47 F.4th 202, 224 (3d Cir. 2022) ("We held that affidavits in combination with [various record sources] sufficed to ascertain a class . . . despite gaps in the records and the work required to synthesize 'several distinct data sets.'" (quoting *Hargrove v. Sleepy's LLC*, 974 F.3d 467, 470, 480 (3d Cir. 2020))). Such a method permits Class members to be identified and does not require "extensive and individualized fact-finding or 'mini-trials.'" *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 593 (3d Cir. 2012); *see also Kelly*, 47 F.4th at 224 (noting "ascertainability does not mean that no level of inquiry as to the identity of class members can ever be undertaken" (internal quotation omitted)).

EPPs' expert, Laura Craft, explains that data available to EPPs, along with affidavits, can be used to confirm class membership and apply exclusions. Ms. Craft explains that the creation and retention of pharmaceutical transaction data in a standardized format is mandated by federal law. *See* Avellino Decl., D.I. 531, Ex. 1 (Craft Rep.) ¶¶ 13, 17-75. Such data is exchanged in real-time at the point of sale and is retained by multiple entities, including the pharmacies that dispense drugs and the PBMs that adjudicate claims. *See id.* ¶¶ 25-41, Fig. 1, Tbl. 2; *see* Avellino Decl., D.I. 531, Ex. 3 (Miller Decl.) ¶ 18; Avellino Decl., D.I. 531, Exs. 4-8 (PBM Declarations). The named EPPs and five of the six largest PBMs in the United States have produced detailed transaction-level data in this matter, demonstrating that data from other PBMs and pharmacies can easily be obtained by Class Members, whether individually or through their representatives, such as ASOs and TPAs. *See* Avellino Decl., D.I. 531, Ex .1 (Craft Rep.) ¶¶ 13, 58-69; Avellino Decl., D.I. 531, Ex. 3 (Miller Decl.) ¶¶ 8 & n.1, 12; Avellino Decl., D.I. 531, Exs. 9-16 (PBM and named EPP data); *see In re Namenda Indirect Purchaser Antitrust Litig.*, 338 F.R.D. 527, 548-49 (S.D.N.Y. 2021) ("[T]he few number of PBMs that process the vast majority of insurance claims in the U.S. provide a centralized source to obtain the information necessary to ascertain the class.").

This standardized data provides the objective information necessary to confirm Class membership, namely the who, what, when, where, and how much (cost-wise and prescription-wise) of each transaction. *See* Avellino Decl., D.I. 531, Ex. 1 (Craft Rep.) ¶¶ 42-68, Figs. 3-8, Tbls. 9-13. Together with affidavits requiring claimants to verify, under penalty of perjury, that they satisfy the requirements of Class membership and that no exclusions apply, this data provides a reasonable and administratively feasible methodology for identifying Class members and applying the Class exclusions. *See* Avellino Decl., D.I. 531, Ex. 1 (Craft Rep.) ¶¶ 76-83, Figs. 15-19; *see also id.* ¶¶ 70-75, 77 (explaining that Defendants and their subsidiaries and affiliates can be excluded by cross-referencing a provided list of names against the data submitted, and that federal and state government entities can be excluded by (i) having PBMs identify or exclude federal and state government entity transactions; (ii) cross-checking a list of federal and state government entities against the names in the data submitted and/or the affidavits; and (iii) requiring all claimants to verify via affidavit that they are not a state or federal government payor). This type of methodology—combining available data with affidavits—satisfies the ascertainability standard. *See Byrd*, 784 F.3d at 170-71; *City Select*, 867 F.3d at 441; *Kelly*, 47 F.4th at 224.

D. Certification Is Appropriate Under Rule 23(B)(3)

Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The proposed Settlement Class satisfies both requirements.

1. Common Issues Predominate Across EPPs' Antitrust Claims

Predominance requires that "questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). Each element need not be susceptible to class-wide proof, *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 469 (2013), and the mere existence of individual issues will not defeat class certification so long as they do not predominate over common ones, *see Teva Pharms.*, 252 F.R.D. at 227.

This requirement is "readily met" in cases like this alleging "violations of the antitrust laws." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). "Under both federal and state law, the essential elements of a private antitrust action are the same: proof of a violation by the defendant, a demonstration of injury to the plaintiff, and an approximation of the plaintiff's damages." *In re Relafen Antitrust Litig.*, 221 F.R.D. 260, 275 (D. Mass. 2004). Predominance is established here because these three essential elements of EPPs' antitrust claims are "capable of proof at trial through evidence that is common to the class rather than individual to its members." *In re Hydrogen Peroxide Antitrust Litig.*, 552 at 311-12.

(a) Proving Liability Involves Predominantly Common Issues

EPPs would use common evidence to provide the common legal elements of their antitrust and consumer protection claims against Defendants. Thus, "common issues . . . predominate here because the [liability] inquiry necessarily focuses on defendants conduct, that is, what defendants did rather than what plaintiffs did." *In re Linerboard Antitrust Litig.*, 305 F.3d 145, 163 (3d Cir. 2002) (internal quotations omitted); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 528-29 (3d Cir. 2004).

To prove liability, EPPs would demonstrate using common evidence, including economic evidence developed through fact discovery and EPPs' expert analysis, that (1) the challenged agreement was in fact a large reverse payment from AstraZeneca to Handa and (2) under a rule-of-reason analysis, the agreement's anticompetitive effects, namely inflated prices caused by delayed generic competition, outweighed any procompetitive justifications proffered by Defendants. *See In re Flonase Antitrust Litig.*, 284 F.R.D. 207, 219-20 (E.D. Pa 2012); *In re Neurontin Antitrust Litig.*, 2011 WL 286118, at *6 (D.N.J. Jan. 25, 2011) ("[C]ommon liability issues such [as] . . . monopolization [and unlawful restraint of trade] have, almost invariably, been held to predominate over individual issues." (quoting 6 Newberg on Class Actions § 18.25 (4th ed. 2002))).

There are no variations among the state laws under which EPPs bring their claims that cause individual questions to predominate over the numerous common questions. The applicable state statutes in this case are "virtually identical in their required elements." *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 700 n.45 (S.D. Fla. 2004); *see In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 14-md-2503, 2017 WL 4621777, at *19-20 (D. Mass. Oct. 16, 2017); *In re Nexium (Esomeprazole) Antitrust Litig.*, 297 F.R.D. 168, 176 (D. Mass. 2013). Indeed, the state antitrust statues asserted in this case mirror and/or have been interpreted in harmony with federal law. *See* Avellino Decl., D.I. 531, Ex. 25 (State Law Chart). And the consumer protection statutes relied upon have been interpreted to permit recovery for anticompetitive, unfair, or unconscionable conduct, including the conduct upon which EPPs' antitrust claims are premised. *See id.* Because the substantive elements of these claims substantially overlap, any minor variations among them do not preclude class certification here. *See, e.g.*, *In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, 335 F.R.D. 1, 39-40 (E.D.N.Y. 2020) (certifying class with claims under the laws of 32 jurisdictions); *In re Solodyn*, 2017 WL 4621777, at *11, 22 (40 jurisdictions); *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 338 F.R.D. 294, 306-07 (D. Mass. 2021) (21 antitrust jurisdictions and 11 consumer protection jurisdictions); *In re Zetia (Ezetimibe) Antitrust Litig.*, No. 18-md-2836, 2020 WL 5778756, at *2, *29 (E.D. Va. Aug. 14, 2020) (30 jurisdictions).

(b) Proving Antitrust Injury Involves Predominantly Common Issues

At class certification, EPPs' burden "is not to prove the element of antitrust impact," but to demonstrate that it "is capable of proof at trial through evidence that is common to the class rather than individual to its members." *In re Hydrogen Peroxide*, 552 F.3d at 311-12. Proof of antitrust impact requires showing that Class Members were "injured to some extent" by Defendants' alleged unlawful conduct. *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 395 U.S. 100, 114 & n.9 (1969); *see also Castro v. Sanofi Pasteur Inc.*, 134 F. Supp. 3d 820, 847 (D.N.J. 2015) (noting EPPs may establish injury by showing they suffered "an overcharge on at least one transaction").

EPPs would rely on common evidence to demonstrate that they suffered antitrust injury. *See Castro*, 134 F. Supp. 3d at 847-48 (endorsing "two-step method" for proving antitrust injury by (1) showing that defendants' unlawful conduct caused "artificially inflated prices" that (2) were paid by "substantially all class members"). Relying on several types of evidence common to the Class, including industry-standard data, discovery materials produced by Defendants and non-parties, academic literature, and government reports, EPPs' expert, Dr. Meredith Rosenthal, explains that delaying generic entry reduces price competition and thereby harmed the named EPPs and other Class Members. *See* Avellino Decl., D.I. 531, Ex. 2. (Rosenthal Rep.) ¶¶ 29-49. Based on this, Dr. Rosenthal concludes that all or virtually all TPPs that paid for Seroquel XR and/or quetiapine fumarate ER during the Class period would have paid less if the launch of generic quetiapine fumarate ER had not been delayed. *See id.*

(c) Proving Damages Involves Predominantly Common Issues

Using evidence common to the Class and consistent with EPPs' liability theory, Dr. Rosenthal calculates aggregate overcharge damages caused by the alleged anticompetitive conduct through a "yardstick" model that compares actual and but-for prices and quantities to estimate "Brand-Generic" and "Generic-Generic" overcharge damages. *See* Avellino Decl., D.I. 531, Ex. 2. (Rosenthal Rep.) ¶¶ 2, 50-73. Numerous courts previously have accepted such aggregate damages models. *See, e.g.*, *In re Ranbaxy*, 338 F.R.D. at 305-06; *In re Zetia*, 2020 WL 5778756, at *24; *In re Restasis*, 335 F.R.D. at 12, 30-32; *In re Loestrin 24 FE Antitrust Litig.*, 410 F. Supp. 3d 352, 391 (D.R.I. 2019).

2. A Class Action is Superior to Other Available Methods of Adjudication

Superiority ensures that a class action "achieve[s] economies of time, effort, and expense, and promote[s] . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem*, 521 U.S. at 615; *see In re Cmty. Bank of N. Va. Mortg. Lending Pracs. Litig.*, 795 F.3d 380, 409 (3d Cir. 2015) (requiring the court "to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative methods of adjudication"). Here, where Defendants' alleged misconduct resulted in class-wide injury but individual losses are small, the class-action mechanism clearly is superior to other methods of adjudication.

E. Counsel Meet the Requirements of Rule 23(g) and Should Be Appointed Co-Lead Counsel

When certifying a class, the Court must appoint class counsel, considering: "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). The Court also must ensure that class counsel will "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(4).

Proposed Class Counsel satisfy these criteria and should be appointed Co-Lead Counsel. *See* Order Appointing Interim Class Counsel, *In re: Seroquel XR (Extended Release Quetiapine Furmate) Litigation All End-Payor Class Actions*, No. 20-01090-CFC (D. Del. Nov. 13, 2020), D.I. 156 (Order Appointing Proposed

Class Counsel as Interim Co-Lead Counsel). Proposed Class Counsel are qualified, experienced, and intimately familiar with antitrust class actions, including pharmaceutical antitrust class actions, *see* Eisler Decl., Ex. 5 (Firm Resumes). And, having been previously appointed as Interim Co-Lead Counsel, Proposed Class Counsel have spent considerable capital and human resources litigating this matter, including through settlement conferences, hearings, fact and expert discovery, and substantive briefing.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENTS.

The Third Circuit has reiterated the long-standing principle that there is an "especially strong" presumption in favor of class-action settlements. *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010); *In re General Motors Corp. Pick–Up Truck Fuel Tank Prods. Liability Litig*., 55 F.3d 768, 784 (3d Cir. 1995) (noting settlements are especially favored in "class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation"). Judicial review of class-action settlements is a two-step process under Rule 23(e) of the Federal Rules of Civil Procedure. *Easterday v. USPack Logistics LLC*, No. 15-cv-07559, 2023 WL 4398491, at *5 (D.N.J. July 6, 2023). *First*, a courts conducts a preliminary fairness evaluation, directing notice be given to all class members who would be bound thereby if the proposed settlement is preliminarily acceptable. *Id. Second*, courts hold a fairness hearing to evaluate any objections from class members and to consider the fairness, reasonableness, and adequacy of the proposed settlement. *Id*.

At the preliminary approval stage, a court evaluates whether the proposed settlement is within the range of possible approval and free of obvious deficiencies or reasons to doubt its fairness. *See id.*; *Du ex rel. Enteromedics, Inc. v. Blackford*, No. 17-cv-00194, 2018 WL 4691046, at *6 (D. Del. Sept. 28, 2018). In short, there must be "a conceivable basis for presuming that the standard applied for final approval—fairness, adequacy, and reasonableness—will be satisfied." *Easterday*, 2023 WL 4398491, at *5.[9]

Courts consider on preliminary approval: (i) whether the parties' settlement negotiations occurred at arm's length, (ii) whether there was sufficient discovery to inform the settlement decision, and (iii) the settlement proponents' experience in similar litigation. *See id*. ("A settlement is presumed fair when it results from arm's-length negotiations between experienced, capable counsel after meaningful

[9] Rule 23(e)(2) sets forth the factors a court must consider in granting final approval: (A) whether the class representatives and class counsel have adequately represented the class; (B) whether the proposed settlement was negotiated at arm's length; (C) whether 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 attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) whether the proposal treats class members equitably relative to each other. *See* Fed. R. Civ. P. 23(e)(2). As set forth herein, these factors are satisfied.

discovery.") (internal quotations omitted); *Kress v. Fulton Bank, N.A.*, No. 19-cv-18985, 2022 WL 2357296, at *2 (D.N.J. June 30, 2022) (discussing the "key indicia of fairness"). Based upon the years of hard-fought litigation and its extensive knowledge of counsel and this case, this Court can and should preliminarily approve the proposed Settlement.

A. The Settlement Provides Substantial Relief to the Class, Particularly Given the Risks Posed by Continued Litigation

In order to evaluate the fairness of a settlement, the Court must consider the strength of EPPs' case balanced against the amount offered by Defendants in the Settlements. The Settlements provide for a $5,475,000 million total payment into the Escrow Account established for the benefit of the Settlement Class. After deducting fees, costs and expenses, and service awards to the named EPPs,[10] the balance in the Settlement Fund will be distributed to Settlement Class Members *pro rata* based on

[10] EPPs propose filing a formal fee petition for these awards 35 days before the Fairness Hearing. The Court thus may consider any request for fees in determining whether to grant final approval of the proposed Settlements. A 33 1/3% fee award is, however, within the range of amounts typically approved as reasonable by courts in the Third Circuit. *See, e.g.*, *Lincoln Adventures LLC v. Those Certain Underwriters at Lloyd's, London Members*, No. 08-cv-00235, 2019 WL 4877563, at *6 (D.N.J. Oct. 3, 2019) ("Courts in the Third Circuit, including this one, have viewed fee percentages of 33% as reasonable." (citing cases)); *O'Hern v. Vida Longevity Fund, LP*, No. 21-cv-00402, 2023 WL 3204044, at *9-10 (D. Del. May 2, 2023).

the qualifying volume of their purchases of brand Seroquel XR and generic quetiapine fumarate ER during the Class Period. *See* Eisler Decl., Ex. 9.

Class Members will be able to receive financial relief from AstraZeneca and Handa that would have been uncertain and extremely difficult to obtain otherwise. As with all litigations, EPPs ran a risk of denial of class certification, an adverse decision regarding summary judgment, or an unfavorable verdict at trial. Any appeals of class certification or a trial verdict would add more delay, expense, and uncertainty. In sharp contrast, the proposed Settlements provide a certain recovery opportunity for Settlement Class members who submit valid claims. Rather than risk an adverse ruling on summary judgment or class certification, and later risking an adverse verdict at trial, and years of uncertain appeals, EPPs and their counsel took advantage of a unique opportunity to negotiate a Settlement that provides immediate, certain, and meaningful relief to all Class Members.

The consideration to be paid by AstraZeneca and Handa, when balanced against the substantial risks and potential benefits of continued litigation including post-trial motions and the appellate process, would then deprive the Class of any recovery for years, possibly forever.

The proposed method of distribution likewise warrants preliminary approval. Courts generally find reasonable "a plan of allocation that reimburses class members based on the type and extent of their injuries." *McCoy v. Health Net, Inc.*, 569 F.

Supp. 2d 448, 469 (D.N.J. 2008). Here, although the Settlement Class consists only of TPPs, the method of allocation is similar to other court-approved *pro rata* plans in cases brought by consumers and TPPs to recover damages arising from generic suppression and can be implemented efficiently.[11] *See, e.g.*, *In re Novartis and Par Antitrust Litig.*, No. 18-cv-04361 (S.D.N.Y.), ECF No. 600-3. Thus, the proposed distribution plan fairly and appropriately reimburses Settlement Class members.

B. The Settlement Is the Result of Arm's-Length Negotiations and Based on More Than Five Years of Litigation.

"A settlement is presumed fair when it results from arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Easterday*, 2023 WL 4398491, at *5 (internal quotations omitted). As set forth above, EPPs initiated this litigation in 2019, and it was transferred to this District in August 2020. D.I. 91. The years leading up to the proposed Settlements were spent actively engaged in filing an amended complaint; briefing and arguing the motion to dismiss and various discovery matters; document and deposition discovery; the retention of and

[11] The monies shall be distributed on a *pro rata* basis. To determine each eligible claiming Settlement Class Member's *pro rata* share of the settlement, the Claims Administrator shall multiply the total value of the Total Settlement Amount less Fund Expenses by a fraction, for which (a) the numerator is the Qualifying Claim for that eligible claiming Settlement Class Member, and (b) the denominator is the sum total of all Qualifying Claims by all eligible claiming Settlement Class Members. A "Qualifying Claim" means the amount paid and/or reimbursed by eligible claiming Settlement Class Members for 50 mg, 150 mg, 200 mg, and 300 mg strengths of Seroquel XR and AB-rated generic versions thereof purchased in the Class States from September 5, 2015, through the Preliminary Approval date.

consultation with experts on class certification, liability, and damages; as well as extensive briefing of class certification and summary judgment motions.[12] The Parties were able to use all the information mustered during the five-year pendency of the action to scrutinize the strengths and weaknesses of EPPs' claims and utilized their experience with pharmaceutical antitrust litigation while engaging in extensive arm's length discussions of the merits of the respective claims and defenses and the value of EPPs' claims under the circumstances and procedural posture of the case. *See* Eisler Decl. ¶ 14. This factor strongly supports preliminary approval. *See, e.g.*, *Lazy Oil Co. v. Witco Corp*., 166 F.3d 581, 588 (3d Cir. 1999); *Du ex rel. Enteromedics, Inc.,* 2018 WL 4691046 at *6; *Easterday*, 2023 WL 4398491, at *5.

C. The Proponents of the Settlement Are Experienced in Antitrust Litigation.

In approving class-action settlements, courts regularly defer to the judgment of experienced counsel who have engaged in arm's-length settlement negotiations. *See, e.g.*, *In re Gen. Inst. Sec. Litig*., 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001); *In re Cendant Corp. Sec. Litig*., 109 F. Supp. 2d 235, 255 (D.N.J. 2000), *aff'd*, 264 F.3d 201 (3d Cir. 2001); *In re Prudential Ins. Co. of Am. Sales Practices Litig*., 962 F.

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[12] Moreover, "antitrust class actions are inherently complex." *In re Cardizem CD Antitrust Litig*., 218 F.R.D. 508, 533 (E.D. Mich. 2003). Here, there are complex economic issues as well as "regulatory issues arising out of the Hatch-Waxman Act" and other issues regarding the "intricacies of the pharmaceutical industry" *Id.* at 533-34.

Supp. 450, 534, 543 (D.N.J. 1997), *aff'd*, 148 F.3d 283, 311 (3d Cir. 1998). Here, the settlement negotiations were conducted by Class Counsel, who, as set forth above, have extensive experience in generic suppression antitrust class actions, class actions generally, and other complex cases. Eisler Decl. ¶¶ 3, 5. Class Counsel know how to pursue generic-suppression cases and are fully aware of the risks and rewards of proceeding based upon their multi-year litigation of this case. Class Counsel's informed and reasoned judgment should be given weight in the Court's preliminary approval determination. *See, e.g.*, *In re Prudential*, 962 F. Supp. at 543. This provides an additional basis for the Court to preliminarily approve the Settlements.

VI. THE PROPOSED NOTICE PLAN, CLAIMS ADMINISTRATOR, AND ESCROW AGENT SHOULD BE APPROVED

"Rule 23(e)(1)(B) requires the court to 'direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise' regardless of whether the class was certified under Rule 23(b)(1), (b)(2), or (b)(3)." *Manual for Complex Lit.* (4th ed.) § 21.312. The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also In re Wilmington Trust Secs. Litig.*, No. 10–cv–00990, 2018 WL 3369674, at *5 (D. Del. July 10, 2018); *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 252 (D. Del. 2002). The notice should contain specific information in plain, easily understood language, including the nature of the action and the rights of class members. Fed. R. Civ. P. 23(c)(2)(B)(i)-(vii).

A. Epiq Is Qualified to Serve as Claims Administrator

Epiq is an experienced national class action and claims administrator and has been appointed as claims administrator in many consumer and antitrust class actions, including pharmaceutical antitrust cases. Eisler Decl., Ex. 4 ¶¶ 4-6. Epiq is eminently qualified to serve in that capacity here. As Claims Administrator, Epiq would have the authority to contact claimants as necessary to confirm the information provided in the Claim Forms or to seek additional information as required. Under the supervision of Class Counsel, Epiq will ensure that Settlement Class Members' claims are administered fairly and accurately.

B. The Proposed Notice Plan Should Be Approved

As explained in the Declaration of Cameron R. Azari, Esq. Regarding Notice Plan, Epiq will provide direct notice via first class U.S. mail, postage pre-paid, to approximately 56,000 TPP mailing addresses and via email to approximately 45,000 email addresses on Epiq's proprietary list of drug stores, pharmacies, insurance companies, and health, welfare and pension funds that Epiq has obtained and manages. *See id.* ¶¶ 23, 26; Fed. R. Civ. P. 23(e)(1) (calling for notice to be provided in a "reasonable manner to all class members who would be bound by the proposal").

The Notice Plan also provides for supplemental media notice plan including half-page insertions in *HR Magazine* and *America's Benefit Specialist Magazine*, banner notices on websites *Employee Benefit News* and *Think Advisor*, as well as the implementation of a dedicated Settlement Website and a toll-free telephone line where Settlement Class members can learn more about their rights and options pursuant to the terms of the Settlements. Eisler Decl., Ex. 4 ¶¶ 28-31. The proposed settlement notices are written in plain, easily understood language and clearly and concisely describe, *inter alia*: (i) the claims asserted in the Action; (ii) the Class; (iii) the Settlements' terms; (iv) the time and manner for requesting exclusion, and the data that must be provided in order for exclusion to be effective; (v) the binding effect of a class judgment on Class members; (vi) the Court-approved process for the proposed Settlements; and (vii) Class Counsel's request for attorneys' fees, costs, expenses, and service awards. *See* Eisler Decl., Ex. 7. They also prominently feature Class Counsel's contact information, directions to a website providing supplemental information, and the Claims Administrator's contact information. *Id.* The proposed notices thus satisfy both Rules 23(c)(2) and 23(e). *See, e.g.*, Fed. R. Civ. P. 23(c)(2)(B), (e); *Easterday*, 2023 WL 4398491, at *5-6; *In re Prudential*, 962 F. Supp. at 526-28.

Similarly, the Claim Form Settlement Class members must complete to receive any settlement funds is straightforward, not overly burdensome, and clearly and succinctly explains the information that must be provided and the deadlines for doing so. *See* Eisler Decl., Ex. 6.

Accordingly, the Court should approve the manner and form of the proposed notice and the claim form.

C. Huntington Bank Is Qualified to Serve as Escrow Agent

EPPs also request that the Court approve Huntington Bank as the Escrow Agent for the Settlement Fund, from which any taxes, court-awarded attorneys' fees, costs and expenses, and payments to the Settlement Class Members will be deducted, with the remaining amount available for distribution to the Classes. Huntington is a highly respected bank with $183 billion in assets and provides consumers, corporations, and others with a broad range of financial services. *See* Eisler Decl., Ex. 8 (Decl. of Robyn Griffin). Huntington was also selected with Defendants' consent. With the Court's approval, the Escrow Agent will establish the Escrow Account and will comply with all requirements for the account identified in the Settlement Agreements. Huntington National Bank has served as escrow agent for more than 3,500 settlements representing over $70 billion, including other reverse-payment antitrust litigation, and should also be appointed as the Escrow Agent here. *See, e.g.*, *In re Remicade Antitrust Litig.*, No. 17-cv-04326, 2022 WL 3042766, at *3 (E.D. Pa. Aug. 2, 2022) (appointing Huntington Bank as escrow agent); *In re Thalomid and Revlimid Antitrust Litig.*, No. 14-cv-06997, 2020 WL 4197092, at *2

(D.N.J. May 26, 2020); *In re Flonase Antitrust Litig.*, No. 08-cv-03149, 2013 WL 12148283, at *2 (E.D. Pa. Jan. 14, 2013).

VII. THE PROPOSED SCHEDULE IS ADEQUATE AND FAIR

EPPs seek the Court's approval of the following schedule:

Event	Deadline for Compliance
Mailing Notice Complete	No later than 30 calendar days after entry of the Preliminary Approval Order (the "Notice Date")
Publication of Summary Notice and Notice posted on www.SeroquelXRAntitrustSettlement.com	No later than 30 calendar days after entry of the Preliminary Approval Order
Deadline for filing Claim Forms	No later than 180 calendar days after entry of the Preliminary Approval Order
Deadline for requests for exclusion, objections, and notices of intent to appear at the Fairness Hearing	No later than 45 calendar days after the Notice Date
Deadline for filing motions (if necessary) as to any opt-outs who do not provide the required data	16 calendar days after Deadline for requests for exclusion, objections, and notices of intent to appear at the Fairness Hearing

Expedited hearing regarding potential opt-outs who do not provide the required data, if any	To be scheduled by the court after the deadline for filing motions as to any opt-outs who do not provide the required data
Deadline for EPPs to file motion for final approval of the Settlement, the Plan of Allocation, and application for attorneys' fees, costs, expenses, and service awards	35 calendar days prior to the Fairness Hearing
Deadline for EPPs to file reply, if any, in further support of above	7 calendar days prior to the Fairness Hearing

This schedule is fair to Settlement Class members since it provides a reasonable amount time to consider the Settlement and Class Counsel's request for fees, expenses, and incentive awards before the deadline for submitting objections. For instance, EPPs propose a period of 45 days from the Notice Date to the date by which Class members must postmark a request to exclude themselves from the Class. This proposed 45-day period provides Class Members sufficient time to decide whether to opt out. Courts have approved opt-out periods of 45 days (or shorter) in many analogous cases, including similar generic suppression antitrust class actions. *See, e.g.*, *In re Suboxone (Buprenorphine Hydrochloride and Naloxone) Antitrust Litig.*, No. 13-md-02445, 2021 WL 5758896, at *2 (E.D. Pa. Dec. 3, 2021); *In re Remeron End-Payor Antitrust Litig.,* No. 02-cv-2007, 2005 WL 2230314, *13 (D.N.J. Sept. 13, 2005).

VIII. CONCLUSION

For the reasons set forth above, EPPs respectfully request that the Court enter an order, substantially in the form of Eisler Decl., Ex. 3, granting EPPs' Unopposed Motion for: (a) Preliminary Approval of Proposed Settlement, (b) Certification of Settlement Class, (c) Appointment of Class Counsel; (d) Appointment of Class Representatives, (d) Preliminary Approval of Plan of Allocation, (e) Approval of Form and Manner of Notice to Class, (f) Appointment of Epiq as Settlement Administrator (g) appointment of Huntington Bank as Escrow Agent, and (h) Proposed Schedule for an Opt-Out hearing, if necessary, and a final Fairness Hearing.

Respectfully submitted,

Dated: September 27, 2024

GRANT & EISENHOFER P.A.

/s/ Laina M. Herbert
Michael J. Barry (# 4368)
Laina M. Herbert (# 4717)
123 Justison St., 7th Floor
Wilmington, DE 19801
Telephone: (302) 622-7000
Facsimile: (302) 622-7100
mbarry@gelaw.com
lherbert@gelaw.com

Counsel for the Proposed End-Payor Class

OF COUNSEL:

Robert G. Eisler (*Pro Hac Vice*)
Chad B. Holtzman (*Pro Hac Vice*)
GRANT & EISENHOFER P.A.
485 Lexington Avenue, 29th Floor
New York, NY 10017
Telephone: (646) 722-8500
Facsimile: (646) 722-8501
reisler@gelaw.com
choltzman@gelaw.com

Jayne A. Goldstein (*Pro Hac Vice*)

Natalie Finkelman (*Pro Hac Vice*)
MILLER SHAH LLP
1845 Walnut Street, Suite 806
Philadelphia. PA 19103
Telephone: (610) 891-9880
Facsimile: (866) 300-7367
jgoldstein@millershah.com
nfinkelman@millershah.com

Sharon K. Robertson (*Pro Hac Vice*)
Donna M. Evans (*Pro Hac Vice*)
COHEN MILSTEIN SELLERS
& TOLL PLLC
88 Pine Street, 14th Floor
New York, NY 10005
Telephone: (212) 838-7797
Facsimile: (212) 838-7745
srobertson@cohenmilstein.com
devans@cohenmilstein.com

Robert A. Braun (*Pro Hac Vice*)
Nathaniel D. Regenold (*Pro Hac Vice*)
COHEN MILSTEIN SELLERS
& TOLL PLLC
1100 New York Avenue, 5th Floor
Washington, DC 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699
rbraun@cohenmilstein.com
nregenold@cohenmilstein.com

Co-Lead Interim Counsel for the Proposed
End-Payor Class