UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK DIVISION

IN RE: METFORMIN MARKETING AND SALES PRACTICES LITIGATION	Case No. 2:20-cv-2324-MCA-MAH Honorable Madeline C. Arleo Honorable Michael A. Hammer

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENTS

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Plaintiffs Joseph Brzozowski, Jacqueline Harris, Kristen Wineinger, Michael Hann, Maseo Hendrix, MSP Recovery Claims, Series LLC, County of Monmouth, and Central Midwest Regional Council of Carpenters Welfare Fund f/k/a Ohio Carpenters' Health Fund (together "Plaintiffs"), by and through Co-Lead Counsel,[1] respectfully submit this Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Final Approval of Class Settlements.

INTRODUCTION

By any measure, the settlements achieved by Plaintiffs and Co-Lead Counsel are an exceptional result. The collective $5.5 million Settlement Funds recoup nearly 100% of the Granules Defendants' and more than 50% of the Teva Defendants' MCD-related revenue for Settlement Class Members. Joint Declaration of Co-Lead Counsel ("Joint Decl.") ¶ 5. And the Settlement Class agrees, as thousands of Settlement Class Members submitted presumptively valid claims, while only a single objection to the Teva Settlement and a single request for exclusion were submitted. Declaration of Eric J. Miller ("Miller Decl.") ¶¶ 29-30, 38-40. From these Settlement Funds, Consumer Settlement Class Members with presumptively valid claims will recoup 100% of their out-of-pocket costs related to

[1] All terms not defined herein shall have the same meaning as in the Settlement Agreements (ECF No. 641-1 Exs. 1-2). The Settlement Agreements shall be collectively referred to as the "Agreements" given they have largely identical provisions numbered identically, except where specified.

MCDs, while TPP Settlement Class Members with presumptively valid claims will receive a reasonable portion of their potential damages. Joint Decl. ¶¶ 5-6.

Equally important, the Settlements put an end to two-thirds of this long-running litigation. Plaintiffs and Co-Lead Counsel have litigated multiple rounds of motions to dismiss, adjudicated multiple discovery disputes, and all Consumer Plaintiffs sat for or were scheduled to sit for depositions. All the while, Plaintiffs and Co-Lead Counsel faced substantial risk that the Settlement Class would recover nothing—an outcome made palpable by Judge Arleo's two orders dismissing this case at various junctures.

This exceptional outcome is the result of years of hard work and provides certain and substantial relief when weighed against the delays and significant risks of litigation. For these reasons, and as outlined below, the Settlements are fair, reasonable, and adequate, and warrant this Court's final approval.

MATERIAL TERMS OF THE SETTLEMENTS

I. CLASS DEFINITION

The "Settlement Class" is defined as both the Teva Settlement Class and the Granules Settlement Class, encompassing all persons who paid for metformin-containing drugs manufactured, distributed, and sold by Teva or Granules/Heritage respectively between July 20, 2015 and June 2, 2020. Agreements ¶ 1.39. The Settlement Website includes a non-exhaustive list of NDC numbers corresponding to MCDs manufactured, distributed, or sold by these Defendants.

II. MONETARY RELIEF

The Settlements create a non-reversionary Settlement Fund in the total amount of $5,500,000 ($3 million from Teva, $2.5 million from Granules/Heritage). Agreements ¶ 1.36. The Settlement Funds shall be used to pay "(a) Taxes, (b) Notice and Administration Costs as authorized by … the Court; (c) Attorneys' Fees and Expenses as authorized by the Court; (d) any Service Awards to Plaintiffs as authorized by the Court; and (e) other fees, costs, and expenses, if any, as authorized by the Court. The balance of the Settlement Fund remaining after the above payments shall constitute the Net Settlement Fund, which shall be distributed to Authorized Claimants." Agreements ¶ 3.1. The Teva Settlement Fund and Granules Settlement Fund constitute more than 50% and close to 100% respectively of Teva and Granules' MCD-related revenue. Joint Decl. ¶ 5. The Plan of Allocation provides a fair and efficient means of distributing the Net Settlement Fund: 60% in the first instance will be allocated to Consumer Settlement Class Members and 40% will be allocated to TPPs. All amounts remaining in the Net Settlement Fund after the initial distribution to Consumers and TPPs shall be distributed *pro rata* amongst the TPP Settlement Class Members—in proportion to the amount each TPP claimed—per the Plan of Allocation. Joint Decl. ¶ 6; *id.* Ex. 1 at 19:13-25.

Consumer Class Members with presumptively valid claims (*i.e.*, those who submitted claims for less than $1,000 with proof of purchase) are expected to receive a full refund of their out-of-pocket costs related to their metformin purchases. Joint Decl. ¶¶ 5, 7. These add up to $1,218,113.75 in relief. Miller Decl. ¶ 39. There are also 104 presumptively valid TPP claims for $2,005,184.65. *Id.* ¶ 40.

All other Settlement Class Members shall be provided with the ability to rectify this deficiency and submit acceptable proof-of-payment. Joint Decl. ¶ 7; Miller Decl. ¶ 38. Given metformin is a prescription drug with obtainable documentation, limiting claims to those with proof of purchase is necessary to deter claims fraud. *Id.*; *Becker v. Bank of N.Y. Mellon Trust Co.*, 2018 WL 6727820, at *7 (E.D. Pa. Dec. 21, 2018) ("The requirement that class members submit documentation to substantiate their holdings of the bonds as of the record date will facilitate the filing of legitimate claims, yet is not overly demanding given the range of permissible documentation.").

Further, given the low copay cost for metformin, Co-Lead Counsel deemed claims for $1,000 or more to be *prima facie* fraudulent absent further proof of purchase. *Id*. Many Consumer Settlement Class Members who asked for these large amounts submitted insufficient "proof," such as photographs of bottles without evidence of out-of-pocket expenditures. Miller Decl. ¶ 34. These Consumer Settlement Class Members will be provided with detailed deficiency letters instructing them on how to procure documentation from their pharmacies ensuring they paid for at-issue metformin. *Id.* For TPP Class Members, claims with proof-of-payment for $250,000 or less are presumptively valid. Joint Decl. ¶ 9.

III. RELEASE

In exchange for the relief described above, the Teva and Granules/Heritage Defendants, each of their related affiliated entities, as well as all "Released Defendants" as defined at Agreement ¶ 1.31, will receive a release of claims, as defined at Agreement ¶ 1.26. The Teva and Granules/Heritage Defendants shall also release Released Plaintiffs from certain claims, as defined at Agreement. ¶ 1.46.

A minor clarification of the Releases are warranted, however. Following Preliminary Approval, Co-Lead Counsel was contacted by counsel for plaintiffs in *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, MDL No. 2724, 16-md-2724 (E.D. Pa.); *Connecticut et al. v. Aurobindo Pharma USA, Inc. et al.*, Case No. 3:16-cv-02056-MPS (D. Conn.); *Connecticut et al. v. Teva Pharmaceuticals USA, Inc. et al.*, Case No. 3:19-cv 00710-MPS (D. Conn.); and *Connecticut et al. v. Sandoz Inc. et al.*, Case No. 3:20-cv-00802-MPS (D. Conn.). Joint Decl. ¶ 11. Plaintiffs' counsel in those cases requested that Co-Lead Counsel and the Teva and Granules/Heritage Defendants specify that the Settlements in this Action will not affect the claims at issue in those cases. *Id.* Co-Lead Counsel and the Teva and Granules/Heritage Defendants' counsel agreed, as the intent of the Settlement Agreements was never to release claims in other unrelated active litigation. *Id.*

Thus, the [Proposed] Final Approval Order includes a provision (paragraph 21) setting forth that the Settlement Agreements' releases do not release the claims in the aforementioned actions. *Id*.

IV. NOTICE AND OTHER ADMINISTRATIVE COSTS

All Notice and Administration Costs shall be paid out of the Settlement Fund. Agreement ¶ 1.22. The Parties mutually selected, and the Court appointed, A.B. Data, Ltd. ("AB Data") to serve as the Claims Administrator. ECF No. 658 at ¶ 13. The Notice plan reached at least 70% of the Settlement Class. Miller Decl. ¶ 17.

V. ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARDS

On June 26, 2026, Plaintiffs and Co-Lead Counsel moved the Court for an award of attorneys' fees of $1,833,333.33, of costs and expenses of $350,631.96, and Service Awards of $3,500 for each Plaintiff ($28,000 total). ECF No. 668. Those amounts are reasonable and should be granted for the reasons set forth in Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards. *Id*.

THE CLASS'S FAVORABLE REACTION TO THE SETTLEMENT

On May 5, 2026, the Court granted Preliminary Approval of the Settlement Agreements. ECF No. 658. The Court directed that Notice be disseminated beginning on May 8, 2026 (*id.* at 14), with a Claims Deadline of August 5, 2026 and an Objection/Opt-Out Deadline of July 24, 2026. ECF No. 671 at 8. On June 26, 2026, Plaintiffs filed the Motion for Attorneys' Fees, Costs, Expenses, and Service

Awards. ECF No. 668.

In accordance with that schedule, on May 8, 2026, AB Data began implementing the Notice plan (Miller Decl. ¶¶ 3), the details of which are set forth in the Miller Declaration at ¶¶ 6-28. The claims deadline elapses in roughly two weeks and the objection/opt-out deadline has now elapsed. To date, 3,350 consumers have submitted presumptively valid claims. Miller Decl. ¶ 38. And based on this claims rate, it is expected that Consumer Settlement Class Members with preliminarily valid claims will receive a full refund of their metformin purchases. Joint Decl. ¶ 5. To date, 104 TPPs have submitted presumptively valid claims. Miller Decl. ¶ 38. The initial distribution to TPPs, plus the rollover compensation to TPP Settlement Class Members on a *pro rata* basis according to the total amount of each TPP's qualifying and documented payments, is expected to yield a reasonable portion of each TPP's damages. Joint Decl. ¶ 6.

By contrast, there was a single objection to the Teva Settlement Agreement, and a single request for exclusion. Miller Decl. ¶¶ 29-30.

ARGUMENT

I. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE

A. The Settlement Meets the *Girsh* Factors

There is a "strong judicial policy in favor of class action settlement." *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010). "A court may, in its discretion, approve a proposed class action settlement 'only on finding that it is fair, reasonable, and adequate.'" *Cunningham v. DG3 N. AM., Inc.*, 2025 WL 2919331, at *3 (D.N.J. Oct. 14, 2025) (quoting Fed. R. Civ. P. 23(e)(2)). To determine this, courts in this Circuit evaluate nine factors (the "*Girsch* Factors"):

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Id. (citing *Girsh v. Jepson*, 531 F.2d 153, 157 (3d Cir. 1975)). In finding that a settlement is fair, not every factor must weigh in favor of settlement; rather, a court's decision should be "based on the totality of the factors." *In re Cendant Corp. Litig.*, 264 F.3d 201, 233 (3d Cir. 2001).

For the following reasons, each factor is met here.

1. The Complexity, Expense, And Likely Duration Of The Litigation (Girsh Factor 1)

"This factor is intended to capture the probable costs, in both time and money, of continued litigation." *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litig.*, 55 F.3d 768, 812 (3d Cir. 1995) (cleaned up). This Circuit has consistently found that the resolution of class actions is preferable to the continuation of lengthy and expensive litigation with uncertain results. *In re Prudential Ins. Co. America Sales Practice Litig. Agent Actions*, 148 F.3d 283, 318 (3d Cir. 1998); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 536 (3d Cir. 2004).

This case is no exception. This case has been pending for over six years. *See* ECF No. 1 (filing complaint on March 3, 2020). In that time, the Parties have briefed multiple motions to dismiss, negotiated litigated significant discovery disputes, and all but one Consumer Class Representative has sat for their deposition. Joint Decl. ¶ 2.[2] Notwithstanding this, significant fact and expert discovery remains to be done, including on, among other things, (i) the scope and effect of the alleged NDMA contamination; (ii) scientific evidence regarding the alleged harmful effects of NDMA; (iii) the amount of damages claimed by Settlement Class Members (*i.e.*, how much of the amount each Settlement Class Member paid for an MCD are they entitled to); and (iv) the exact identities of the class members. *Id.* ¶ 17. The Parties would then need to brief class certification, any Rule 23(f) petitions filed by either party, and summary judgment. *Id.* The costs of the litigation would thus continue to increase significantly. *Id.* And Plaintiffs were not guaranteed success, as the Teva

[2] Plaintiff Hann was scheduled to sit for a deposition, but it was taken off calendar in light of the Parties' settlement negotiations. Joint Decl. ¶ 2 n.2. Nonetheless, Plaintiff Hann still prepared for his deposition with Co-Lead Counsel. *Id.*

and Granules/Heritage Defendants are all represented by sophisticated and formidable counsel. *Id.* ¶ 16.

The Settlement, on the other hand, permits a prompt resolution of this action: affording meaningful relief that is fair, reasonable, and adequate to the Settlement Class. This result will be accomplished years earlier than if the case proceeded to judgment through trial and/or appeals, and provides certainty whereas litigation does not and could result in defeat for the Settlement Class on summary judgment, at trial or on appeal. Consequently, this *Girsh* factor plainly weighs in favor of final approval of the Agreement.

2. The Reaction Of The Settlement Class (Girsh Factor 2)

"The second *Girsh* factor attempts to gauge whether members of the class support the settlement." *Cunningham*, 2025 WL 2919331, at *4 (cleaned up). Here, thousands of Settlement Class Members have submitted preliminarily valid claims, compared to only one objection to the Teva Settlement and a single request for exclusion. Miller Decl. ¶¶ 29-30. The "low number of opt-outs and objections suggests the Settlement is fair and reasonable." *Rose v. Travelers Home & Marine Ins. Co.*, 2020 WL 4059613, at *8 (E.D. Pa. July 20, 2020); *Stoetzner v. United States Steel Corp.*, 897 F.2d 115, 118-19 (3d Cir. 1990) (finding 29 objectors out of a class of 281 "strongly favors settlement").

3. *The Stage of The Proceedings and The Amount of Discovery Completed (Girsh Factor 3)*

"This factor captures the degree of case development that Co-Lead Counsel have accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating." *In re Cendant Corp. Litig.*, 264 F.3d at 235 (cleaned up).

This case has been pending for over six years. *Dartell v. Tibet Pharmaceuticals, Inc.*, 2017 WL 2815073, at *5 (D.N.J. June 29, 2017) (finding factor satisfied where counsel "litigated this case for nearly five years"). In that time, Plaintiffs have (i) drafted multiple, comprehensive complaints; (ii) briefed five motions to dismiss; (iii) litigated numerous discovery disputes and review copious documentation; and (iv) sat for or been scheduled to sit for depositions. Joint Decl. ¶ 2. Many members of Co-Lead Counsel's team are also counsel in the *In re Valsartan* matter, a substantially analogous case that has proceeded through dispositive motion briefing and class certification. *Id.* ¶ 14.

As a result, Co-Lead Counsel was well-positioned to evaluate the strengths of Plaintiffs' claims, the Teva and Granules/Heritage Defendants' defenses, and the potential value of the claims. This *Girsh* factor thus also weighs in favor of final approval. *See, e.g.*, *Cunningham*, 2025 WL 2919331, at *4 ("In this case, Plaintiffs engaged in informal discovery, exchanged mediation briefs, and participated in two separate mediations. Thus, the parties had an adequate appreciation of the merits of the case even without formal discovery."); *Dartell*, 2017 WL 2815073, at *5 (factor satisfied where "[t]he parties have fully briefed motions to dismiss, a motion for class certification, and have engaged in discovery").

4. *Plaintiffs Would Face Real Risks If The Case Proceeded (Girsh Factors 4, 5, And 6)*

"Together, the fourth and fifth *Girsh* factors survey the potential risks and rewards of proceeding to litigation in order to weigh the likelihood of success against the benefit of an immediate settlement." *Cunningham*, 2025 WL 2919331, at *5. Relatedly, "[t]he sixth *Girsh* factor measures the likelihood of obtaining and keeping a class certification if the action were to proceed to trial." *Id.* (cleaned up).

Here, although Plaintiffs believe their case is strong, it faces risks. A number of claims were dismissed by Judge Arleo in prior motion to dismiss orders. *See* ECF Nos. 127, 156, 251, 517, 638. Indeed, Judge Arleo's first and third motion to dismiss orders dismissed the prior complaints in their entirety for lack of Article III standing. ECF Nos. 127, 517. And although Plaintiffs' claims against Amneal were permitted to proceed for plausible allegations of Article III standing, the Court never ruled on that same issue as to Teva and Granules/Heritage. ECF No. 638 at 1 n.1. Further, as discussed above, this action involved complex and unique scientific and legal issues regarding the scope and extent of the alleged NDMA contamination in the MCDs and the nature and extent of damages suffered by Settlement Class Members. *See* Argument § I.A.1, *supra*.

At class certification and summary judgment, Plaintiffs faced risks at class certification and on the merits. At class certification, Plaintiffs would be required to satisfy a challenging ascertainability standard. *See generally Carrera v. Bayer Corp.*, 727 F.3d 300 (3d Cir. 2013). More important, Plaintiffs would need to demonstrate that all or substantially all of the MCDs sold by Teva and Granules/Heritage were contaminated with NDMA to ensure all Settlement Class Members had standing. Joint Decl. ¶ 3. On top of this, Plaintiffs would have to demonstrate the amount of NDMA in the MCDs rendered the MCDs so contaminated that they were worth less than what Plaintiffs paid for them. *Id*. On each of these points, Defendants would vigorously contest liability, requiring extensive expert analysis and opinion, with a judge or jury determining the outcome. *Id.* ¶ 18. Further, any judgment or class certification order would be appealed, further prolonging the action. *Id.* ¶ 4.

The Settlement eliminates that uncertainty by providing immediate and substantial relief. These factors thus weigh in favor of final approval. *Dartell*, 2017 WL 2815073, at *6-7 (finding these factors weighed in favor of approval where "expert testimony would likely be expensive and … there is a risk of retaining class certification" through trial); *Cunningham*, 2025 WL 2919331, at *5 ("While Plaintiffs certainly may ultimately succeed in establishing liability and damages at trial, there is no reasonable certainty that such a result is likely.").

5. Defendants' Ability to Withstand a Greater Judgment (Girsh Factor 7)

"Even if Defendants could withstand a much greater judgment, this fact has marginal relevance unless the ability of a defendant to survive a judgment is central to the negotiation process." *Cunningham*, 2025 WL 2919331, at *5. Here, Teva's and Granules/Heritage's financial condition is not at issue in the litigation. "Thus, this factor is neutral." *Cunningham*, 2025 WL 2919331, at *5.

6. The Reasonableness of the Settlement In Light of the Possible Recovery and the Attendant Risk of Litigation (Girsh Factors 8 And 9)

As the Third Circuit has stated:

> [t]he last two *Girsh* factors evaluate whether the settlement represents a good value for a weak case or a poor value for a strong case. The factors test two sides of the same coin: reasonableness in light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial.

Id. Because a settlement provides certain and immediate recovery, courts in this District have stated, "[t]he settlement of a class action may be appropriate even where the settlement is only a fraction of the ultimate total exposure." *Singleton v. First Student Management LLC*, 2014 WL 3865853, at *7 (D.N.J. Aug. 6, 2014); *see also Lenahan v. Sears, Roebuck & Co.*, 2006 WL 2085282, at *12, *15-16 (D.N.J. Jul. 24, 2006) (approving $15 million settlement when maximum exposure at trial may have been over $100 million).

Here, the Teva Settlement represents more than 50% of Teva's MCD-related revenue, while the Granules Settlement represents almost 100% of Granules/Heritage's MCD-related revenue. Joint Decl. ¶ 5. Consumer Settlement Class Members with presumptively valid claims are expected to receive a full refund for their MCDs, while TPP Settlement Class Members presumptively valid are expected to receive approximately 40-50% of their purchase amounts. *Id.* ¶¶ 5-6. Certainly, these amounts are clearly reasonable and support final approval. But so too are the Teva Settlement and TPP recoveries. *See*, *e.g.*, *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 183 (E.D. Pa. 2000) (approving settlement that was between 5.2% to 8.7% of "class counsel's best estimate of recovery at trial if all issues were resolved in their favor"); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 583 (N.D. Ill. 2011) (collecting cases and noting "[n]umerous courts have approved settlements with recoveries around (or below)" 10% of the maximum potential recovery); *Larrea v. FPC Coffees Realty Co.*, 2017 WL 1857246, at *2 (S.D.N.Y. May 5, 2017) (finding recovery of 43% of the anticipated maximum recovery was fair and reasonable).

Thus, these *Girsh* factors also weigh in favor of final approval.

B. The Settlement Meets The Rule 23(e)(2) Factors

In 2018, the Advisory Committee amended Fed. R. Civ. P. 23(e)(2) to harmonize or streamline the factors courts look to for approval between circuits. *See*

Rule 23(e)(2) Advisory Committee Notes to 2018 Amendments. Those factors are:

> (A) The class representative and class counsel have adequately represented the class;
>
> (B) The proposal was negotiated at arm's length;
>
> (C) The relief provided for the class is adequate, taking into account:
>
> > (i) The costs, risks, and delay of trial and appeal;
> >
> > (ii) The effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) The terms of any proposed award of attorney's fees, including timing of payment; and
> >
> > (iv) Any agreement required to be identified under Rule 23(e)(3); and
>
> (D) The proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). "The Rule 23(e)(2) factors, however, do not displace the *Girsh* factors," and instead "overlap" with them. *Hacker v. Elec. Last Mile Solutions Inc.*, 2024 WL 5102696, at *7-8 (D.N.J. Nov. 6, 2024).

Each of these factors is also met here.

1. Plaintiffs and Co-Lead Counsel Have Adequately Represented the Class (Rule 23(e)(2)(A))

This factor overlaps with the adequacy requirement of Fed. R. Civ. P. 23(a), and so courts "look to case law glossing the stipulation that the representative parties will fairly and adequately protect the interests of the class." *Cohen v. Brown Univ.*, 16 F.4th 935, 945 (1st Cir. 2021). Adequacy is a two-part inquiry that asks whether "[t]he named Plaintiffs' interests align with those of other class members" and whether "Co-Lead Counsel are qualified, experienced and capable of litigating the class's claims." *McDermid*, 2023 WL 227355, at *2.

Both elements are met here. As to the former, Plaintiffs—like every Settlement Class Member—purchased MCDs manufactured, distributed, or sold by Teva and/or Granules/Heritage Products. 4AC ¶¶ 188, 193, 198, 203, 208, 213, 230, 232, 239, 246. Thus, Plaintiffs and Settlement Class Members have the exact same interest in recovering the damages to which they are allegedly entitled. As such, Plaintiffs do not have any interests antagonistic to those of the Settlement Class Members, and their pursuit of this litigation is clear evidence of that.

Likewise, Co-Lead Counsel has more than adequately represented the Settlement Class. Co-Lead Counsel are highly experienced in class action litigation concerning pharmaceuticals products, including in the *In re Valsartan* matter. *See* Joint Decl. ¶¶ 2, 14; *see also* ECF No. 670 ¶ 6. Equally important, Co-Lead Counsel has shown nothing but commitment to the Settlement Class over the last six years of litigation. Joint Decl. ¶ 2. In sum, Co-Lead Counsel have vigorously prosecuted this action and will continue to do so throughout its pendency.

2. *The Settlement Was Negotiated at Arm's Length (Rule 23(e)(2)(B))*

The Parties, all represented by sophisticated and experienced counsel, negotiated the Settlements at arm's length over many months. Joint Decl. ¶ 13. In addition, the Parties reached the Granules Settlement with the assistance of the Court. *Id.* ¶ 2. "The participation of an independent mediator in settlement negotiations virtually ensures that the negotiations were conducted at arm's length and without collusion between the parties." *Oliver v. BMW of N. AM., LLC*, 2021 WL 870662, at *9 (D.N.J. Mar. 8, 2021) (cleaned up). Thus, this factor is met.

3. *The Settlement Provides Significant Relief (Rule 23(e)(2)(C))*

Whether relief is adequate takes 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, if required; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C)(i)-(iv).

The costs, risks, and delay of trial and appeal. This factor is satisfied for the same reasons as *Girsh* Factors 4-6. *See* Argument §§ I.A.1, I.A.4, *supra*; *see also Becker*, 2018 WL 6727820, at *7 ("With respect to the adequacy of the relief … the Court finds the settlement is adequate in light of 'the costs, risks, and delay of trial and appeal' for the reasons explained in the analysis of the *Girsh* factors above.").

The effectiveness of any proposed method of distributing relief to the Settlement Class. To receive monetary relief, Settlement Class Members only need to submit a claim form. Agreements ¶ 1.4; ECF Nos. 657-2, 657-4. This is a reasonable method of distributing relief. *See*, *e.g.*, *Somogyi v. Freedom Mortg. Corp.*, 495 F. Supp. 3d 337, 350 (D.N.J. 2020) ("[T]he settlement did not impose an onerous burden on class members who elected to receive a settlement payment. They simply had to certify in a Proof Claim Form … electronically via the Settlement website or by regular U.S. Mail."); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 499 (N.D. Ill. 2015) (it was "neither unfair nor unreasonable" to ask claimants to submit a "short and direct" claim form "to recover under the settlement"). Moreover, "a claims process was the only way to ensure that individuals who submitted claims were actually class members," as Settlement Class Members needed to submit proof of purchase to verify their claims (and could given metformin is a prescription drug). *Abante Rooter and Plumbing, Inc. v. Pivotal Payments Inc.*, 2018 WL 8949777, at *4 (N.D. Cal. Oct. 15, 2018).

Further, "because the [P]arties seek approval of a non[-]reversionary settlement fund," the claims process is clearly not intended to "discourage class members from making claims," *Kolinek*, 311 F.R.D. at 499. Just the opposite, the claim filing process is readily accessible to Settlement Class Members.

The terms of any proposed award of attorneys' fees. Plaintiffs and Co-Lead Counsel have sought an award of attorneys' fees of $1,833,333.33, of costs and expenses of $350,631.96, and Service Awards of $3,500 for each Plaintiff ($28,000 total). ECF No. 668. Those amounts are reasonable and should be granted for the reasons set forth in Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards. *Id*.

Any agreements other than the Settlement. No such agreements exist.

4. The Settlement Treats Settlement Class Members Equitably (Rule 23(e)(2)(D))

This Rule 23(e)(2) factor discusses "whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 330 F.R.D. 11, 47 (E.D.N.Y. 2019).

Here, as noted at the preliminary approval hearing, "the proposed plan of allocation for both settlements is that 60 percent of the fund in the first instance will be allocated to consumer class members and 40 percent of the fund will be allocated to third-party payers." Joint Decl. Ex. 1 at 19:13-16. This was based on Co-Lead Counsel's review of the prescribing data showing the breakdown of prescriptions for consumers versus TPPs and "is similar to the plan that Chief Judge Bumb just approved in the *Valsartan*, *Irbesartan*, and *Losartan* settlements." *Id.* at 19:17-25.

However, "if there is money left over in the consumer side of the fund after consumers have made claims … then any remaining funds will be rolled over onto the third-party payer side of the fund." *Id.* at 19:19-23. The plan of allocation thus equitably accounts for differences between Settlement Class Members in that "the agreement amounts that were paid … the consumers would have paid more, but the individual damages, the third-party payers are going to be out more money." *Id.* at 20:22-21:5.

As to TPP Settlement Class Members, they will receive a *pro rata* share relative to the amount of their claim, which is reasonable. *T.K. ex rel. Leshore v. Bytedance Tech. Co.*, 2022 WL 888943, at *16 (N.D. Ill. Mar. 25, 2022) ("The Proposed Settlement provides for *pro rata* shares to each member of the Proposed Settlement Class. Such distribution plans indicate equitable treatment of class members relative to each other."); *Becker*, 2018 WL 6727820, at *7 (E.D. Pa. Jan. 18, 2023) (finding this factor met where "the net settlement fund is to be distributed to authorized claimants … on a pro rata basis.").

C. The Settlement Meets the *Prudential* Factors

The Third Circuit "has also suggested that, where appropriate, a court considering a proposed class action settlement may wish to consider additional factors" set forth in *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, (3d Cir. 1998). *Becker*, 2018 WL 6727820, at *5. These factors are:

> the maturity of the underlying substantive issues; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved-or likely to be achieved-for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable. An additional inquiry to test the reasonableness of a settlement is whether the settlement provides a direct benefit to members of the class.

Cunningham, 2025 WL 2919331, at *4 (cleaned up). The *Prudential* factors "overlap substantially with the" *Girsh* and Rule 23(e)(2) factors. *Id.* Nonetheless, Plaintiffs address each of these factors below.

The maturity of the underlying issues. This factor is satisfied for the same reasons as set forth above. Argument §§ I.A.1, I.A.3, *supra*.

The existence and probable outcome of claims by other classes or subclasses. No other action related to Teva or the Granules/Heritage Defendants' allegedly contaminated MCDs exists, so this factor is irrelevant. *Cunningham*, 2025 WL 2919331, at *5 ("The *Prudential* factors that relate to the existence of other classes and subclasses are irrelevant here as the Settlement Class encompasses all persons whose PII were affected in the Data Incident."). Nonetheless, Plaintiffs and their counsel achieved a highly favorable outcome to their potential best day in court. *See* Argument §§ I.A.6, I.B.3.

Whether class or subclass members are accorded the right to opt out of the settlement. Settlement Class Members were permitted the right to exclude themselves from the Settlements. Agreement ¶ 9.3. Only one Settlement Class Member did so. Miller Decl. ¶ 29.

Whether any provisions for attorneys' fees are reasonable. This factor is met for the reasons set forth in Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards. ECF No. 668.

Whether the procedure for processing individual claims under the settlement is fair and reasonable. This factor is met for the reasons set forth above. *See* Argument § I.B.3, *supra* (discussing the "effectiveness of any proposed method of distributing relief to the Settlement Class"); *see also Cunningham*, 2025 WL 2919331, at *5 ("The procedure for processing individual claims under the Settlement is fair and reasonable, providing for Settlement Class Members to be able to submit claims online or via a paper claim form.").

Whether the settlement provides a direct benefit to the class. "[T]he Settlement also offers direct benefits to the settlement class given that all Settlement Class Members can receive reimbursement under the Settlement." *Cunningham*, 2025 WL 2919331, at *5 (cleaned up); *see also* Agreements ¶ 3.1.

* * *

Because the *Girsh*, *Prudential*, and Rule 23(e)(2) factors are met for the reasons stated above, the Agreement is within the range of reasonableness and final approval should be granted.

II. THE SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED

The Settlement Class "must meet Rule 23(a)'s requirements," as well as "at least one of the three requirements listed in Rule 23(b)." *McDermid v. Inovio Pharmaceuticals, Inc.*, 2023 WL 227355, at *2-3 (E.D. Pa. Jan. 18, 2023) (cleaned up). In the Preliminary Approval Order, the Court provisionally certified the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3). ECF No. 658 ¶¶ 5, 9. Nothing has changed between Preliminary Approval and Final Approval that would warrant a different result.

Accordingly, for the reasons set forth in the Court's Preliminary Approval Order, the Court should finally certify the Settlement Class. *Davis v. Dixon*, 2022 WL 1267602, at *3 (M.D. Fla. Apr. 28, 2022) ("The Court is unaware of any change in circumstances that would alter its previous conclusions regarding class certification. Thus, the Court will finally certify the class for the reasons stated in the Preliminary Approval Order."); *Watson v. Tennant Co.*, 2020 WL 5502318, at *2 (E.D. Cal. Sept. 11, 2020) ("Because the settlement class satisfies both Rule 23(a) and 23(b)(3), the court will grant final class certification of this action, for the reasons stated in the court's order granting preliminary approval.").

III. THE NOTICE PLAN COMPORTS WITH DUE PROCESS

Before final approval can be granted, Due Process and Fed. R. Civ. P. 23 require that the notice provided to the Settlement Class is "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Notice must clearly state essential information regarding the settlement, including the nature of the action, terms of the settlement, and class members' options. *See* Fed. R. Civ. P. 23(c)(2)(B). "In addition, notice of the settlement must be the best that is practicable under the circumstances, and clearly and concisely state in plain, easily understood language." *Cunningham*, 2025 WL 2919331, at *3 (cleaned up). The Federal Judicial Center notes that a notice plan is reasonable if it reaches at least 70% of the class. *See* FED. JUDICIAL CTR., JUDGES' CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010).

At preliminary approval, the Court approved the Parties' proposed Notice plan, finding it met the requirements of Rule 23 and Due Process. *See* ECF No. 658 ¶ 14. The Notice plan has now been fully carried out by AB Data and easily meets these standards.

The Notice Plan involved informing Consumer Settlement Class Members of their rights via publication notice, "including digital and social media advertising."

Miller Decl. ¶ 11; *see also id.* ¶¶ 7-16 (describing digital notice plan). Publication notice was the best practicable notice because "direct notice to [consumer] class members by mail, e-mail or other electronic individualized means is impractical." *In re Google Referrer Header Privacy Litig.*, 2014 WL 1266091, at *7 (N.D. Cal. Mar. 26, 2014). Conversely, TPP Settlement Class Members were provided notice via mail and e-mail (Miller Decl. ¶¶ 18-21), which also suffices. *See Abat v. Chase Bank USA, N.A.*, 2011 WL 13130637, at *6 (C.D. Cal. July 11, 2011) (approving class notice via email and mail). TPP Settlement Class Members were also provided supplemental notice through paid media. Miller Decl. ¶ 22.

The Notice plan described "(1) the nature of the action and the bases for the claims, (2) the definition of the certified class, (3) the key terms of the Settlement, including the Settlement Amount, the process for each Class Member to receive a Settlement payment, and the release of claims against Defendants, (4) the binding nature of the Settlement on each Class Member, and (5) the rights of each Class Member to retain separate legal counsel, object to the Settlement, opt-out of the Class, or appear at the Fairness Hearing, as well as the deadlines by which to do so." *Cunningham*, 2025 WL 2919331, at *3; *see also* Miller Decl. ¶¶ 26-27, Exs. C-E.

The Notice plan also directed Settlement Class Members to the settlement website, where they were able to submit claims online; access important court filings, including the Motion for Attorneys' Fees, Costs, Expenses, and Service

Awards, and all related documents; and see deadlines and answers to frequently asked questions. *See* Miller Decl. ¶¶ 26-28. Accordingly, the Notice plan meets the requirements of Due Process and Fed. R. Civ. P. 23.

IV. THE OBJECTION TO THE TEVA SETTLEMENT IS WITHOUT MERIT

On June 15, 2026, a single objection to the Teva Settlement was submitted. *See* ECF No. 673. Because Objector McCorvey did not object to the Granules/Heritage Settlement Agreement, there is no objection to that agreement, and it should be approved without issue and for the reasons stated above. Objector McCorvey also did not provide proof-of-payment for Teva Metformin, so it is not clear at this juncture that she is a Teva Settlement Class Member. But even as to the Teva Settlement, Objector McCorvey's objection fails.

First, Objector McCorvey questions "whether the relief provided [in the Teva Settlement] is adequate relative to the scope of the claims being released." ECF No. 673 at 2. For the reasons set forth above, it is. The Teva Settlement Fund represents more than half of Teva's revenue related to MCDs. Joint Decl. ¶ 5. And Consumer Settlement Class Members with presumptively valid claims will receive a *full refund* of their MCD purchases. *Id.*[3] This is undoubtedly a significant and adequate recovery, given it was not certain Consumer Settlement Class Members could

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[3] Objector McCorvey, as a Consumer Settlement Class Member, does not appear to comment on the relief provided to the TPP Settlement Class Members.

recovery their full payment price (if anything at all given the risks present), and this case has already dragged on for more than six years. Joint Decl. ¶¶ 3, 5, 15-20; *see also* Argument §§ I.A.1, I.A.3-I.A.6, I.B.3, *supra*.

For these same reasons, Objector McCorvey's argument that "meaningful review is impossible without disclosure of anticipated consumer recoveries" is without merit. ECF No. 673 at 3. Co-Lead Counsel has now provided the expected consumer recoveries, and they are indeed significant. *See* Argument § I.B.3, *supra*. Moreover, thousands of Consumer Class Members have submitted claims (Miller Decl. ¶ 38), although "a low claims rate is neither indicative of poor notice nor a reason to necessarily deny settlement approval." *In re Samsung Top-Load Washing Mach. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 2020 WL 2616711, at *11 (W.D. Okla. May 22, 2020), *aff'd*, 997 F.3d 1077 (10th Cir. 2021). This is particularly so where, as here, "a claims process was the only way to ensure that individuals who submitted claims were actually class members." *Abante Rooter and Plumbing*, 2018 WL 8949777, at *4.

Second, Objector McCorvey claims the Teva Settlement "release[s] a broad category of claims relating to Teva metformin products." ECF No. 673 at 2. It does not. The release is limited to claims "arising from the factual predicate of the Action, including, but not limited to, Teva's manufacture, distribution, and/or introduction into the U.S. market by Teva of its generic metformin-containing drugs that were alleged to be contaminated." Teva Settlement ¶ 1.26. The release is thus narrowly tailored to the claims at issue in this Action, and not any claim a Settlement Class Member may have against Teva.

In any event, "[p]arties often reach broad settlement agreements encompassing claims not presented in the complaint in order to achieve comprehensive settlement of class actions." *In re Literary Works in Electronic Databases Copyright Litig.*, 654 F.3d 242, 247-48 (2d Cir. 2011). However, the scope of any release is circumscribed by the "identical factual predicate document," which limits the preclusive effect of the release to only those claims actually at issue in this litigation. *See id.* at 248; *see also Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) ("A settlement agreement may preclude a party from bringing a related claim in the future … but only where the released claim is based on the identical factual predicate as that underlying the claims in the settled class action.") (cleaned up); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 2024 WL 3236614, at *34 (E.D.N.Y. June 28, 2024) ("[T]he Court rejects the objectors' contentions that the release is overly broad, because it is constrained by the 'identical factual predicate' test.").[4] Thus, the release is reasonably tailored by

[4] This same doctrine limits any concerns about the Cal. Civ. Code § 1542 waiver. *In re Telescopes Antitrust Litig.*, 2025 WL 1093248, at *9 (N.D. Cal. Apr. 11, 2025) ("California Civil Code § 1542 waivers are commonplace in class action settlements. Such waivers are uncontroversial in the class action context because, like all class

both its plain language and the "identical factual predicate" doctrine.

Finally, Objector McCorvey asks for further elaboration justifying Co-Lead Counsel's Attorneys' Fees and Expenses. ECF No. 673 at 2. Objector McCorvey's objection on this point was premature, as it was made several days before the Motion for Attorneys' Fees, Costs, Expenses, and Service Awards. At this juncture, Co-Lead Counsel has thoroughly justified their requests Attorneys' Fees and Expenses in their motion (*see generally* ECF Nos. 669-670), including the fact that the requested fees "represents a negative 0.17 multiplier over [Co-Lead Counsel's] base lodestar." ECF No. 670 ¶ 8. Co-Lead Counsel has thus more than justified their fee request.

For each of these reasons, the objection should be overruled.

<u>CONCLUSION</u>

For the reasons set forth above, Plaintiffs respectfully request that the Court grant their Unopposed Motion for Final Approval of Class Settlements and enter the [Proposed] Order Granting Final Approval of Class Settlements and [Proposed] Final Judgment in the form submitted herewith.

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settlements, the extent of any release is constrained by the identical factual predicate doctrine.").

Dated: July 24, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2026, a true and correct copy of the foregoing was served on all counsel of record via the Court's CM/ECF system.

By: */s/ Andrew J. Obergfell*
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