

James E. Cecchi, Esq.  
**CARELLA, BYRNE, CECCHI,  
BRODY & AGNELLO, P.C.**  
5 Becker Farm Road  
Roseland, New Jersey 07068  
Telephone: (973) 994-1700  
jcecchi@carellabyrne.com

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

IN RE: METFORMIN MARKETING AND  
SALES PRACTICES LITIGATION

Case No. 2:20-cv-2324-MCA-MAH

Hon. Madeline C. Arleo

Hon. Michael A. Hammer

**JURY TRIAL DEMANDED**

**DECLARATION OF JAMES E. CECCHI IN  
SUPPORT OF MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENTS**

JAMES E. CECCHI declares, pursuant to 28 U.S.C. § 1746, under the penalties of perjury as follows:

1. I am a partner with the law firm of Carella, Byrne, Cecchi, Brody & Agnello, P.C. (“Carella Byrne”) and counsel of record for Plaintiffs.
2. I make this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlements in order to place certain documents and facts before the Court.
3. I have personal knowledge of the matters pertaining to this action and the proposed Settlements<sup>1</sup> and am competent to testify with respect thereto.

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<sup>1</sup> Unless otherwise indicated, capitalized terms have the meanings as those found in the Settlement Agreements, attached hereto respectively as **Exhibit 1** (Teva) and **Exhibit 2** (Granules and Heritage).

4. The proposed Settlements, if approved, will confer valuable benefits on the Settlement Classes' Members.

## **I. BACKGROUND**

5. On March 3, 2020, the initial complaint in this putative class action against Actavis Pharma, Inc., Actavis, LLC, Teva Pharmaceutical Industries, Ltd., Teva Pharmaceuticals USA Inc. (collectively, "Teva"), CVS Health Corporation, and John Does 1-100, alleging claims of selling NDMA contaminated metformin-containing drugs was filed. ECF 1.

6. On March 9, 2020, another putative class action complaint was filed against Granules USA, Inc., Granules Pharmaceuticals, Inc. (collectively, "Granules"), alleging similar claims. *See Wineinger v. Granules USA, Inc., et al.*, No. 2:20-cv-02556 (D.N.J.).

7. On March 27, 2020, another putative class action complaint was filed against Heritage Pharmaceuticals, Inc. ("Heritage") and others, alleging similar claims. *See Harris v. Aurobindo Pharma, Ltd., et al.*, No. 3:20-cv-03350 (D.N.J.).

8. On March 30, 2020, another putative class action complaint was filed against Heritage, alleging similar claims. *See Hann v. Heritage Pharmaceuticals, Inc.*, No. 3:20-cv-03415 (D.N.J.).

9. On June 3, 2020, the Court appointed Interim Co-Lead Counsel and consolidated other related actions under this lead case. ECF 13. Additional actions were later consolidated with the lead case. *See, e.g.*, ECF 82.

10. Throughout the litigation, there has been ample briefing, including several rounds of motions to dismiss and joinders in those motions. *See, e.g.*, ECF 78, 80, 87, 89, 132, 133, 184, 185. On January 31, 2023, the Court granted in part and denied in part Defendants' motions to dismiss the Second Amended Complaint. ECF 251.

11. After the Court's Order sustaining the Second Amended Complaint, the parties commenced targeted discovery. Throughout discovery, the parties have met and conferred over various requests and assorted objections, and raised their unresolved disputes with the Honorable Michael A. Hammer, U.S.M.J.

12. In addition to working through discovery, Plaintiffs have engaged with their experts and consultants.

13. Based on these efforts, Plaintiffs' Counsel were informed and prepared to engage in arm's length negotiations with Teva's counsel.

14. Those efforts resulted in the Parties agreeing to a non-binding confidential term sheet memorializing the material settlement terms on January 2, 2025.

15. Similarly, based on these efforts, Plaintiffs' counsel were likewise informed and prepared to engage in separate arm's length negotiations with Granules' and Heritage's counsel.

16. Those efforts resulted in the parties agreeing to non-binding confidential material settlement terms in or about July 2025.

## **II. THE PROPOSED SETTLEMENTS**

17. The first proposed Settlement provides that Teva will make a \$3,000,000.00 cash payment (the "Settlement Amount") for the benefit of the Teva Settlement Class in exchange for the release of all claims against Teva. Attached as **Exhibit 1** is a true and correct copy of the Settlement Agreement.

18. Pursuant to the Settlement Agreement, Teva has deposited \$3,000,000.00 into the Escrow Account held and administered by Huntington National Bank, which Plaintiffs respectfully request be appointed the Escrow Agent.

19. The second proposed Settlement provides that Granules and Heritage will make a \$2,550,000.00 cash payment (the “Settlement Amount”) for the benefit of the Granules and Heritage Settlement Class in exchange for the release of all claims against Granules and Heritage. Attached as **Exhibit 2** is a true and correct copy of the Settlement Agreement.

20. Pursuant to the Settlement Agreement, Granules and Heritage will deposit \$2,550,000.00 into the Escrow Account held and administered by Huntington National Bank within 14 days of Huntington National Bank being appointed the Escrow Agent.

21. The Escrow Agent will invest the settlement funds in accounts backed by the full faith and credit of the United States Government. Attached as **Exhibit 3** is a true and correct copy of Huntington National Bank’s Banking Handbook for Settlement Funds.

22. Subject to Court approval, and pursuant to the terms of the Settlement Agreements, the Settlement Amount from Teva and Granules and Heritage respectively of \$5,550,000 (the “Total Settlement Amount”) will be used to: (1) pay Taxes; (2) reimburse the Notice and Claims Administrator for the costs, fees, and expenses related to notice and the administration of the Settlements, (3) reimburse the expenses incurred by Class Counsel in litigating the Action, (4) pay attorneys’ fees of up to 34% of the Total Settlement Amount, and (5) pay service awards of up to \$3,500 to each Class Plaintiff (“Fund Expenses”). Exhibit 1 at ¶ 3.1, Exhibit 2 at ¶ 3.1. After subtracting Fund Expenses, the remaining balance of the Total Settlement Amount (“Net Settlement Fund”) shall be distributed to the Settlement Classes’ members through the proposed Plan of Allocation (a non-revisionary common fund).

23. The proposed Settlements are the result of hard-fought litigation and informed, good faith, arm’s length negotiations amongst experienced counsel.

### **III. ATTORNEYS’ FEES, COSTS, CLASS SERVICE AWARDS**

24. Only after the parties agreed on the material terms of each Settlement did they discuss reasonable attorneys' fees, costs and class representative service awards.

25. The parties agreed that Class Counsel may apply to the Court for Fees and Expenses in an amount up to, but not exceeding, 34% of the Total Settlement Amount.

26. Class Plaintiffs will seek reasonable Service Awards of up to, but not exceeding, \$3,500.

#### **IV. NOTICE TO THE CLASSES**

27. Plaintiffs respectfully request that A.B. Data, Ltd. be appointed as the Notice and Claims Administrator. Attached as **Exhibit 4** is a true and correct copy of AB Data's resume/CV.

28. AB Data has devised a Notice Plan to provide the best practical notice under the circumstances. The Notice Plan includes, *inter alia*, individual notice by email to third-party payors, to the extent available, and publication notice for consumers. Attached as **Exhibit 5** is a true and correct copy of the Notice Plan, which will ensure due process and easily permit class members to object, opt-out, or otherwise voice concerns at a later final approval hearing.

#### **V. QUALIFICATIONS OF PROPOSED CLASS COUNSEL**

29. Class Counsel are very experienced in class actions in general, and pharmaceutical class litigation in particular, and have been appointed Class Counsel on numerous occasions within this Circuit and throughout the United States.

30. Proposed Class Counsel have substantial experience, individually and collectively, successfully prosecuting class actions and other complex litigation throughout the United States.

31. Based on their experience generally and efforts in this case specifically, Class Counsel are well positioned to assess the benefits of the proposed Settlements and fully endorse

them as fair, reasonable, and adequate.

32. A Proposed Order reflecting the relief Class Plaintiffs are requesting is attached as **Exhibit 6**.

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

Dated: February 11, 2026

Respectfully submitted,

*s/ James E. Cecchi*  
James E. Cecchi, Esq.

# Exhibit 1

**EXECUTION VERSION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

IN RE: METFORMIN MARKETING AND  
SALES PRACTICES LITIGATION

Case No. 2:20-cv-2324-MCA-MAH

Hon. Madeline C. Arleo

Hon. Michael A. Hammer

**JURY TRIAL DEMANDED**

**STIPULATION AND SETTLEMENT AGREEMENT BETWEEN  
PLAINTIFFS AND TEVA PHARMACEUTICALS USA, INC.,  
ACTAVIS PHARMA, INC., AND ACTAVIS LLC**

**EXECUTION VERSION**

**EXECUTION VERSION**

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## EXECUTION VERSION

THIS STIPULATION AND SETTLEMENT AGREEMENT is made and entered into by and between plaintiffs Joseph Brzozowski, Jacqueline Harris, Kristen Weineinger, Michael Hann, and Masao Hendrix (“Consumer Plaintiffs”) and MSP Recovery Claims, Series LLC, County of Monmouth, and Ohio Carpenters’ Health Fund (“TPP Plaintiffs” and collectively, “Plaintiffs”), on behalf of themselves and the other members of the proposed Settlement Class,<sup>1</sup> and defendants Teva Pharmaceuticals USA, Inc., Actavis Pharma, Inc., and Actavis LLC, including subsidiaries, affiliates, officers, and agents of the foregoing including, but not limited to, Teva Pharmaceutical Industries, Ltd. (collectively, “Teva” and together with Plaintiffs, the “Parties”) and embodies the terms and conditions of the settlement between the Parties in the above-captioned Action. Subject to the approval of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to, upon the occurrence of the Effective Date (as defined in Paragraph 1.11 below, fully, finally, and forever compromise, settle, release, resolve, discharge, and dismiss with prejudice the Action as against Teva and release all Released Claims against Teva and all Released Defendants.

WHEREAS, Plaintiffs, on behalf of themselves and as representatives of the proposed classes, allege that, among other things, they were injured as a result of Teva’s alleged manufacturing, sale, and distribution of adulterated and/or misbranded generic metformin-containing drugs, as explained in the Fourth Amended Consolidated Economic Loss Class Action Complaint (Civil No. 20-cv-02324-MCA-MAH, ECF No. 529);

WHEREAS, several other similar class-action complaints were filed by Plaintiffs in this District on behalf of themselves as Plaintiffs and as representatives of the proposed classes against

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<sup>1</sup> All capitalized words and terms that are not otherwise defined in text have the meaning ascribed to them below in Paragraph 1, entitled “Definitions.”

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Teva, and those matters were consolidated for pretrial purposes before the United States District Court for the District of New Jersey and captioned *In re Metformin Marketing and Sales Practices Litigation*, Civil Action No. 20-cv-02334-MCA-MAH.

WHEREAS, Plaintiffs contend that they and the proposed classes are entitled to actual damages, attorneys' fees, and injunctive relief for loss or damage as a result of violations of the laws as alleged in the Action arising from Teva's and other Defendants' alleged conduct;

WHEREAS, Teva denies Plaintiffs' allegations, denies any and all wrongdoing in connection with the facts and claims that have been or could have been alleged against it in the Action, asserts that it has several valid defenses to Plaintiffs' claims, denies that Plaintiffs are entitled to any damages as a result of Plaintiffs' allegations and claims, and has not conceded or admitted the propriety of certification of any class for any purposes other than this Settlement;

WHEREAS, counsel for the Parties have engaged in arm's-length negotiations on the terms of this Settlement, and this Stipulation, and the confidential Supplemental Agreement referred to herein embody all of the terms and conditions of this Settlement;

WHEREAS, Plaintiffs, through their counsel, investigated the facts and law regarding the Action and, after carefully considering the circumstances of the Action including the claims asserted directly against Teva and derivatively against Pharmacy Defendants who dispensed Teva metformin-containing drugs and the possible legal and factual defenses thereto, have concluded that resolving the claims against Teva, according to the terms set forth below, is in the best interests of Plaintiffs and the Settlement Class in order to avoid the uncertainties of litigation, particularly complex litigation such as this, and to ensure a benefit to Plaintiffs and the Settlement Class, and further, consider the Settlement set forth herein to be fair, reasonable, and adequate compensation;

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WHEREAS, Plaintiffs and Teva agree that neither this Stipulation, nor the Settlement it embodies, nor any actions taken in furtherance of either the Stipulation or the Settlement shall be deemed or construed to be an admission or evidence of any violation of any statute or law or any liability or wrongdoing by Teva or of the truth of any of the claims or allegations alleged in the Action, or a waiver of any defenses thereto;

WHEREAS, Teva, despite its belief that it is not liable for the claims asserted by Plaintiffs and its belief that it has good defenses thereto, has nevertheless agreed to enter into this Settlement to avoid further expense, exposure, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the release, order, and Final Judgment contemplated by this Stipulation, and to put to rest with finality all claims that have been or could have been asserted against Teva, as more particularly set out below;

WHEREAS, the Parties wish to preserve all arguments, defenses, and responses to all claims in the Action, including any arguments, defenses, and responses to any litigation class proposed by Plaintiffs if this Settlement does not obtain Final Approval;

WHEREAS, the Parties have had a full opportunity to examine the facts and circumstances surrounding their respective decisions to accept the terms of this Stipulation;

NOW THEREFORE, it is agreed by and among the Parties that the claims of Plaintiffs and the proposed Settlement Class related to Teva's metformin-containing drugs be settled, compromised, and dismissed on the merits with prejudice and without costs as to Teva, subject to Court approval, on and subject to the terms and conditions set forth below.

### **1. DEFINITIONS**

As used in this Stipulation, the following terms shall have the meanings specified below:

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1.1. “Action” means the putative class action initiated and/or pursued by Plaintiffs in the above-captioned proceeding *In re: Metformin Marketing and Sales Practices Litigation*, No. 2:20-cv-02324-MCA-MAH (D.N.J.) and all other actions currently consolidated thereunder.

1.2. “Alternative Judgment” means a form of judgment with terms materially different from those set forth in the form of Judgment agreed to and proposed by the Parties.

1.3. “Attorneys’ Fees and Expenses” means any portion of the Settlement Fund approved by the Court for payment to counsel who have represented Plaintiffs or the Settlement Class, including such counsel’s attorney’s fees, costs, and litigation expenses (excluding Notice and Administration Costs).

1.4. “Authorized Claimant” means a Settlement Class Member who or which submits to the Claims Administrator a timely and valid Claim Form that the Court approves for payment from the Net Settlement Fund.

1.5. “Claim Form” means the proof of claim and release form, which will be sent to members of the Settlement Class along with the Notice.

1.6. “Claimant” means a person or entity who or which submits a Settlement Claim to the Claims Administrator seeking to be eligible to share in the proceeds of the Net Settlement Fund.

1.7. “Claims Administrator” means the claims administration company selected by the Interim Co-Lead Counsel and appointed by the Court to administer the Settlement and effectuate the notice plan approved by the Court.

1.8. “Complaint” means the Fourth Amended Consolidated Economic Loss Class Action Complaint (Civil No. 20-cv-02324-MCA-MAH, ECF No. 529).

1.9. “Court” means the United States District Court for the District of New Jersey.

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1.10. “Defendants” means those Defendants named in the Complaint (*i.e.*, Teva Pharmaceuticals USA, Inc., Actavis Pharma, Inc., Actavis LLC, Heritage Pharmaceuticals, Inc. d/b/a Avet Pharmaceuticals Inc., Granules USA, Inc., Granules Pharmaceuticals, Inc., Amneal Pharmaceuticals, Inc., Amneal Pharmaceuticals LLC, Amneal Pharmaceuticals of New York, LLC, CVS Pharmacy, Inc., incorrectly named as CVS Health Corporation, and Walmart, Inc., incorrectly named as Walmart Stores, Inc.).

1.11. “Downstream Entity” means any entity in the supply chain of the Released Defendants which purchased or obtained any Teva Metformin Product directly or indirectly, from the Released Defendants or one of its repackagers, wholesalers, distributors, or other sellers. As used in this definition, the term “entity” includes any and all affiliated companies affiliated with the purchasing party, including past, present, and future officers, directors, employees, servants, lessors, partnerships, stockholders, consultants, affiliates, personal representatives, legal representatives, subsidiaries, divisions, parent companies, predecessors, successors, agents, insurers, and assigns. The term “Downstream Entity” expressly includes, but is not limited to, CVS Pharmacy, Inc., incorrectly named as CVS Health Corporation, and Walmart Inc., incorrectly named as Walmart Stores, Inc. The term “Downstream Entity” does not include any manufacturer of metformin-containing products.

1.12. “Effective Date” with respect to the Settlement means the first business day following the occurrence or waiver of all the events and conditions specified in Paragraph 12.1.

1.13. “Escrow Account” means the segregated and separate interest-bearing escrow account to be established with the Escrow Agent as a Qualified Settlement Fund (subject to judicial oversight) into which the Settlement Amount will be deposited for the benefit of Settlement Class

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Members and which will thereafter hold the assets of the Settlement Fund (subject to making such awards, payments, and distributions as authorized herein).

1.14. “Escrow Agent” means Huntington National Bank or its duly appointed successor or such other bank as may be proposed by Interim Co-Lead Counsel and approved by the Court.

1.15. “Execution Date” means the latest date of the execution of this Stipulation.

1.16. “Fairness Hearing” means the hearing scheduled by the Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider Final Approval of the Settlement, and to consider Plaintiffs’ Counsel’s applications for attorneys’ fees, reimbursement of costs and expenses, and service awards as set forth in this Stipulation.

1.17. “Final Approval” means an order and judgment by the Court that finally approves this Stipulation and the Settlement under Federal Rule of Civil Procedure 23 and dismisses Teva with prejudice from the Action.

1.18. “Final Judgment” means a judgment that: (a) has not been appealed or as to which there is no pending stay, motion for reconsideration, motion for rehearing, motion to vacate, appeal, petition for writ of certiorari or similar request for relief; or (b) for which all possible appeals have been exhausted, such that it is no longer subject to judicial review, including upon appeal or review by writ of certiorari.

1.19. “Interim Co-Lead Counsel” or “Co-Lead Counsel” or “Plaintiffs’ Counsel” means the law firms of Carella, Byrne, Cecchi, Brody & Agnello, P.C., Kanner & Whitely, LLC, Bursor & Fisher, P.A., Honik LLC, MSP Recovery Law Firm, Scott+Scott Attorneys at Law LLP, Asherkelly Attorneys at Law, Nigh, Goldenberg, Raso & Vaughn, PLLC, and Levin Sedran & Berman, LLP.

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1.20. “Judgment” means either (a) the proposed judgment to be entered approving the Settlement, substantially in the form agreed to and proposed by the Parties; or (b) an Alternative Judgment, if expressly agreed in writing by the Parties.

1.21. “Net Settlement Fund” means the Settlement Fund less: (i) Taxes; (ii) Notice and Administration Costs as authorized by this Stipulation and any orders of the Court; (iii) Attorneys’ Fees and Expenses as authorized by the Court; (iv) Service Awards as authorized by the Court; and (v) any other fees and expenses as authorized by the Court.

1.22. “Notice and Administration Costs” means the reasonable costs and expenses incurred in connection with locating Settlement Class Members; preparing, printing, mailing, and publishing the Notice and the summary of Notice; soliciting the submission of proofs of claims; assisting with the submission of proofs of claim; processing Claim Forms; administering and distributing the Net Settlement Fund to Authorized Claimants; and paying escrow fees and costs (if any). All such Notice and Administration Costs shall be paid from the Settlement Fund.

1.23. “Notice” means the Notice of Proposed Settlement of Class Action, which is to be sent to members of the Settlement Class.

1.24. “Parties” means the undersigned parties to this Stipulation.

1.25. “Person” means any individual, corporation, partnership, limited liability company or partnership, limited partnership, professional corporation, association, joint stock company, estate, unincorporated association, government or any political subdivision or agency thereof, or any other business or legal entity and (as applicable) their spouses, heirs, predecessors, successors, representatives, or assigns.

1.26. “Plaintiffs’ Released Claims” means all claims that Plaintiffs, Settlement Class Members, and Released Plaintiffs ever had, now have, or hereinafter, can, shall, or may ever have,

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against any Released Defendants and their respective attorneys, whether in their individual or representative capacity, whether arising under federal, state, common, or foreign law, on account of, or any way arising out of, any and all known claims and Unknown Claims, foreseen and unforeseen, suspected and unsuspected, actual or contingent, liquidated or unliquidated claims, causes of action (whether at law or in equity), charges, injuries, liabilities, penalties, demands, obligations, suits, levies, executions, judgments, debts, losses (including, without limitation, all costs, expenses, and attorneys' fees), or damages arising from or in connection with any act or omission through the date of the Preliminary Approval Order relating to or referred to in the Action or 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's Metformin Product"). This definition is expressly intended to include, and does include, any and all claims that Plaintiffs, Settlement Class Members, and Released Plaintiffs ever had, now have, or hereinafter, can, shall, or may ever have or assert against any Downstream Entity arising out of, by reason of, or in any manner connected with the use of or payment or reimbursement for Teva's Metformin Product. This definition is expressly not intended to include, and does not include, any and all claims that Plaintiffs, Settlement Class Members, and the Released Plaintiffs ever had, now have, or hereinafter, can, shall, or may ever have or assert against any Downstream Entity arising out of, by reason of, or in any manner connected with the use of or payment or reimbursement for any metformin products manufactured by any person other than Teva and the Released Defendants.

1.27. "Plaintiffs" means Joseph Brzozowski, Jacqueline Harris, Kristen Weineinger, Michael Hann, Masao Hendrix, MSP Recovery Claims, Series LLC, County of Monmouth, and Ohio Carpenters' Health Fund.

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1.28. “Plan of Allocation” means the plan for allocating the Net Settlement Fund approved by the Court, whereby the Net Settlement Fund shall be distributed to Authorized Claimants.

1.29. “Preliminary Approval Order” means an order by the Court to preliminarily approve this Stipulation under Rule 23 of the Federal Rules of Civil Procedure.

1.30. “Released Claims” means Teva’s Released Claims and Plaintiffs’ Released Claims.

1.31. “Released Defendants” means whether or not each or all of the following Persons were named, served with process, or appeared in the Action, (a) Teva Pharmaceuticals USA, Inc., Actavis Pharma, Inc., Actavis LLC, and Teva Pharmaceutical Industries, Ltd.; (b) the current, former and future parents (including general or limited partners), owners, affiliates, subsidiaries, divisions, successors, predecessors, affiliates, joint ventures, stockholders, assigns, and assignees of each of Teva Pharmaceuticals USA, Inc., Actavis Pharma, Inc., Actavis LLC, and Teva Pharmaceutical Industries, Ltd.; and (c) all of the former, current or future agents, controlling persons, principals, members, managers, managing members, direct or indirect equity holders, employees, officers, directors, trustees, supervisory boards, predecessors, successors, attorneys, heirs, insurers, reinsurers, co-insurers, underwriters, accountants, auditors, consultants, other representatives, servants, respective past or present family members, spouses, agents, fiduciaries, corporations, bankers, estates, and advisors of each Person listed in (a) and (b), in their capacities as such, and each of their current and former officers, directors, employees, parents, affiliates, subsidiaries, successors, predecessors, assigns, and assignees, in their capacities as such.

1.32. “Released Parties” means Released Defendants and Released Plaintiffs.

1.33. “Released Plaintiffs” means all members of the Settlement Class, including Plaintiffs, each on behalf of themselves and their respective predecessors and successors; their

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current and former, direct and indirect parents, subsidiaries and affiliates; their present and former shareholders, partners, directors, officers, owners of any kind, principals, members, agents, employees, contractors, attorneys (including Interim Co-Lead Counsel), insurers, heirs, executors, administrators, devisees, representatives; the assigns of all such persons or entities, as well as any person or entity acting on behalf of or through any of them in any capacity whatsoever, jointly and severally; and any of their past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions, and divisions.

1.34. “Releasing Parties” means Plaintiffs, Settlement Class Members, Released Plaintiffs, Teva and Released Defendants.

1.35. “Service Award” means any Court-approved monetary award for Plaintiffs paid from the Settlement Fund.

1.36. “Settlement Amount” means USD \$3,000,000.00 (three million dollars) in cash.

1.37. “Settlement Claim” means a Claim Form submitted to the Claims Administrator.

1.38. “Settlement Class Member” means any Person who falls within the definition of Settlement Class.

1.39. “Settlement Class” means: All individuals and entities in the United States and its territories and possessions who paid any amount of money for a metformin-containing drug (intended for personal or household use) that was manufactured, distributed, or sold by Teva from July 20, 2015 through June 2, 2020 (the “Class Period”). For purposes of the TPP Plaintiffs, persons or entities “purchased” a metformin-containing drug if they paid or reimbursed some or all of the purchase price. Excluded from the Settlement Class are: (1) Teva and its respective subsidiaries and affiliates; (2) federal governmental entities; (3) State and local governmental entities to the extent their claims may be asserted under applicable state law only by the state

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Attorney General, or are otherwise prohibited by applicable law from being asserted by private counsel on a contingent fee basis; (4) all persons or entities who purchased metformin-containing drugs for purposes of resale or directly from Teva or its affiliates; (5) fully insured health plans (*i.e.*, Plans that purchased insurance from another third-party payer covering 100% of the Plan's reimbursement obligations to its members); (6) pharmaceutical benefit managers; and (7) the judges in this case and any members of their immediate families.

1.40. "Settlement Distribution Order" means an order to be entered by the Court, upon Plaintiffs' application, in accordance with Paragraph 5.11 below, which authorizes the Claims Administrator to distribute the Net Settlement Fund to Authorized Claimants.

1.41. "Settlement Fund" means the Settlement Amount plus any interest earned thereon.

1.42. "Settlement" means the resolution of this Action against Teva and Released Defendants in accordance with the terms and provisions of this Stipulation.

1.43. "Stipulation" means this Stipulation and Settlement Agreement.

1.44. "Taxes" means (i) all federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; and (ii) the expenses and costs incurred by Interim Co-Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

1.45. "Teva's Counsel" means Walsh Pizzi O'Reilly Falanga LLP and Greenberg Traurig, LLP.

1.46. "Teva's Released Claims" means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, by Teva or any of the Released Defendants against Plaintiffs, and their

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respective attorneys (including Co-Lead Counsel), and all other Settlement Class Members, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims relating to or referred to in the Action or arising from the factual predicate of the Action against Teva, except for claims relating to the enforcement of the Settlement. No claims unrelated to the institution, prosecution, or settlement of the claims against Teva will be released by Teva.

1.47. “Teva” has the same meaning as Released Defendants as defined above in Paragraph 1.31.

1.48. “Unknown Claims” means (a) any of Plaintiffs’ Released Claims which Plaintiffs, Settlement Class Members, or Released Plaintiffs do not know or suspect to exist in their favor at the time of the release of such claims, which if known, might have affected their decision(s) with respect to the Settlement, including, but not limited to, the decision not to object to the Settlement; (b) any of Teva’s Released Claims which Teva does not know or expect to exist in their favor at the time of the release of such claims, which if known, might have affected their decision(s) with respect to the Settlement, except that Unknown Claims shall not include any claims unrelated to the institution, prosecution, or settlement of the claims against Teva.

## **2. SETTLEMENT CONSIDERATION**

### **2.1 Monetary Consideration.**

(a) In full consideration for the release of claims and dismissal of the Action, Teva shall pay, or cause to be paid, in cash, the Settlement Amount of \$3,000,000.00, with \$1,500,000.00 million to be paid into the Escrow Account on or before April 1, 2025 and an additional \$1,500,000.00 paid into the Escrow Account on or before July 1, 2025. Plaintiffs, through Interim Co-Lead Counsel, will notify Teva of the establishment and identity of the Escrow Account within 14 calendar days before payment of the Settlement Amount is due. In no event shall Teva be obligated to pay anything beyond the Settlement

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Amount. Plaintiffs and all Settlement Class Members shall look solely to the Settlement Fund for full settlement and satisfaction against Teva of all Plaintiffs' Released Claims as defined in Paragraph 1.26, including any costs, fees, or expenses of any of the Plaintiffs or their attorneys, experts, advisors, agents, and representatives, including with respect to the negotiation, execution, and performance of their obligations under this Stipulation. All payments by Teva of the Settlement Amount are conditioned on preliminary approval being granted by the Court in the Action to this Stipulation and Settlement Agreement.

(b) The Settlement is not a claims-made settlement. Upon the Effective Date, neither Teva, nor any other Person or entity who or which funded the Settlement Amount (including, without limitation, any of Teva's insurance carriers), shall have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever, subject to the provisions of Paragraph 12.7.

(c) In the event the Settlement becomes final under Paragraph 12.1, the Settlement Fund will fully satisfy all Plaintiffs' Released Claims as defined in Paragraph 1.26. Except as provided by order of the Court, no Plaintiff or Settlement Class Member shall have any interest in the Settlement Fund, or any portion thereof. Teva and the Released Defendants shall not be responsible for, and shall have no liability with respect to, disbursements from the Settlement Fund according to any Court-approved Plan of Allocation.

### **3. USE OF THE SETTLEMENT FUND**

3.1 The Settlement Fund shall be used solely for the benefit of Plaintiffs and the Settlement Class, which excludes those who opt out, to pay: (a) Taxes, (b) Notice and Administration Costs as authorized by this Stipulation and other orders of the Court; (c) Attorneys' Fees and Expenses as authorized by the Court; (d) any Service Awards to Plaintiffs as authorized

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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 in accordance with this Stipulation and the Plan of Allocation.

3.2 Except as provided herein or under other orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until the funds shall be distributed or returned under this Stipulation and/or further order of the Court. The Escrow Agent shall not distribute the Settlement Fund except as provided in this Stipulation or by an order of the Court.

3.3 The Escrow Agent shall invest the Settlement Fund solely in accounts that are either (a) backed by the full faith and credit of the United States Government or (b) fully insured by the United States Government or one of its agencies. Permissible accounts include U.S. Treasury Funds or bank accounts that are (i) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or (ii) secured by instruments backed by the full faith and credit of the United States Government. Upon maturity, the Escrow Agent shall reinvest the proceeds in similar instruments at then-current market rates. Interest earned on the money deposited into the Escrow Account shall be part of the Settlement Fund. The Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the decisions or actions of the Escrow Agent, or any transaction executed by the Escrow Agent.

3.4 Released Defendants shall have no responsibility for, interest in, or liability whatsoever for any aspect of the Plan of Allocation or the implementation of the Plan of Allocation.

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### 4. SCOPE AND EFFECT OF SETTLEMENT; RELEASES & COVENANTS NOT TO SUE

4.1 The obligations incurred pursuant to this Stipulation shall be in full and final disposition of: (a) any and all Plaintiffs' Released Claims, as more fully set forth herein; and (b) any and all Teva's Released Claims, as more fully set forth herein.

4.2 Upon the Effective Date of this Settlement and in consideration of the Settlement Amount, Plaintiffs, each Settlement Class Member, and Released Plaintiffs, on behalf of themselves and their respective past and present parents, subsidiaries, and affiliates, general and limited partners, officers, directors, employees, agents, attorneys, servants, predecessors, successors, heirs, executors, administrators, and representatives (the "Releasing Plaintiffs"), shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, waived, relinquished and discharged, and shall forever be enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any forum whatsoever, including any court of law or equity, arbitration tribunal, or administrative forum, all Plaintiffs' Released Claims against Released Defendants, whether or not such Plaintiff, Settlement Class Member, or Released Plaintiff executes and delivers a Claim Form.

4.3 With respect to any and all Released Claims, the Parties, on behalf of themselves and all other Releasing Parties, stipulate and agree that by operation of the Final Judgment, the Releasing Parties shall hereby expressly waive, release, and forever discharge, upon Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

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or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. The Releasing Parties may hereafter discover facts other than or different from those which they know or believe to be true with respect to the Released Claims, but the Releasing Parties hereby expressly waive and fully, finally, and forever settle and release, upon Final Judgment, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that they have agreed to release, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

4.4 Upon the Effective Date of this Settlement, Teva shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, waived, relinquished and discharged, and shall forever be enjoined from prosecuting, each and every one of the Teva's Released Claims against each Plaintiff and Settlement Class Member.

4.5 The releases provided in this Stipulation shall become effective immediately upon the Effective Date without the need for any further action, notice, condition, or event.

## **5. ISSUANCE OF NOTICE, ADMINISTRATION AND CALCULATION OF CLAIMS, FINAL AWARDS, AND DISTRIBUTION OF NET SETTLEMENT FUND**

5.1 The Claims Administrator shall (a) administer the issuance of Notice to the Settlement Class in accordance with the terms of any orders of the Court, (b) determine the validity of the Claim Forms submitted and calculate the recognized loss amounts of Authorized Claimants that shall be allowed, (c) administer the distribution of the Net Settlement Fund to Authorized Claimants, and (d) otherwise provide such claims administration services as are customary in settlements of this type, subject to such supervision of Interim Co-Lead Counsel and (as appropriate or as circumstances may require) the Court. The Claims Administrator shall be retained subject to the condition that it agrees to be subject to the Court's jurisdiction.

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5.2 Notwithstanding the fact that the Effective Date has not yet occurred, Interim Co-Lead Counsel may pay from the Escrow Account the actual and reasonable Notice and Administration Costs, as approved by the Court. In the event that the Settlement is not consummated, such Notice and Administration Costs up to \$250,000 will not be returned or repaid to Teva, nor any other Person or entity who or which funded the Settlement Amount (including, without limitation, any of Teva's insurance carriers).

5.3 Following the filing of this Stipulation with the Court, Teva shall serve the notice required under the Class Action Fairness Act, 28 U.S.C. §1715 *et seq.* ("CAFA") within the time required therein, and shall confirm to Interim Co-Lead Counsel that such notices have been sent. Teva shall be solely responsible for the costs of the CAFA notice and administering the CAFA notice.

5.4 Released Defendants shall have no role in, or any liability, obligation, or responsibility for, the dissemination of Notice (other than as provided in Paragraphs 5.2-5.3 above), the administration of the Settlement, or the distribution of the Settlement Fund, including with respect to: (a) any act, omission, or determination by Interim Co-Lead Counsel, or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (b) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; or (c) the payment or withholding of Taxes (including interest and penalties), expenses, and/or costs incurred with the taxation of the Settlement Fund or the filing of any federal, state, or local returns.

5.5 Plaintiffs will seek Court approval of a notice plan and claims process, and Released Defendants shall take no position on such a motion. Each Settlement Class Member wishing to participate in the Settlement shall be required to submit to the Claims Administrator a

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Claim Form, which, *inter alia*, will provide for the release of all Plaintiffs' Released Claims as against Released Defendants pursuant to Paragraph 4.2. Each Claim Form must be signed under penalty of perjury and supported by such documents as specified in the instructions in the Claim Form or otherwise given by the Claims Administrator.

5.6 The Claims Administrator must receive all Claim Forms within the time prescribed by order of the Court. Any Settlement Class Member who fails to submit a properly completed Claim Form within such period as shall be authorized by the Court shall be forever barred from receiving any payments pursuant to this Stipulation or from the Net Settlement Fund (unless Interim Co-Lead Counsel in its discretion deems such late submission to be a formal or technical defect and waives the lateness of the submission in the interest of achieving substantial justice, or unless by order the Court approves that Settlement Class Member's untimely submitted Claim Form), but will in all other respects be subject to the provisions of this Stipulation and Judgment (or any Alternative Judgment), including, without limitation, the release of Plaintiffs' Released Claims and dismissal of the Action. Claim Forms shall be deemed to have been submitted when actually received by the Claims Administrator.

5.7 Each Claim Form shall be submitted to and reviewed by the Claims Administrator who shall determine, under the supervision of Interim Co-Lead Counsel, in accordance with this Stipulation, Plan of Allocation, and any applicable orders of the Court, the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to Paragraph 5.14 below.

5.8 Settlement Claims that do not meet the submission requirements may be rejected. Prior to rejecting a Settlement Claim, the Claims Administrator shall communicate with the Claimant to permit the Claimant to remedy any curable deficiencies in the Settlement Claim submitted. The Claims Administrator, under the supervision of Interim Co-Lead Counsel, shall

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notify in a timely fashion and in writing, all Claimants whose Settlement Claims they propose to reject in whole or in part, setting forth the reasons thereof, and shall indicate in such deficiency notice that the Claimant whose claims are to be rejected has the right to review by the Court if the Claimant so desires and complies with the requirement of Paragraph 5.10 below.

5.9 If any Claimant whose Settlement Claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within 20 calendar days after the date of mailing of the Notice required by Paragraph 5.9 above, serve upon the Claims Administrator a written statement of reasons indicating the Claimant's ground for contesting the rejection along with copies of any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a Settlement Claim cannot be otherwise resolved, Interim Co-Lead Counsel shall thereafter present the request for review to the Court.

5.10 Plaintiffs shall present the administrative determination of the Claims Administrator accepting and rejecting Settlement Claims to the Court in a motion for approval of the Settlement Distribution Order.

5.11 Without regard to whether a Settlement Claim is allowed, each Claimant who declines to be excluded from the Settlement Class shall be deemed to have submitted to the jurisdiction of the Court with respect to such Claimant's Settlement Claim, and such Claimant's Settlement Claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Claimant's status as a Settlement Class Member and the validity and amount of the Claimant's Settlement Claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of Settlement Claims.

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5.12 Payment pursuant to this Stipulation shall be deemed final and conclusive against all Settlement Class Members. All Settlement Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but shall otherwise be bound by all the terms of the Judgment (or Alternative Judgment) to be entered in the Action and the releases provided for in this Stipulation, and will be barred from bringing any action against Released Defendants arising out of or relating to Plaintiffs' Released Claims.

5.13 All proceedings with respect to the administration, processing, and determination of Settlement Claims described in this Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Settlement Claims, shall be subject to the jurisdiction of and decided by the Court. All Plaintiffs, Settlement Class Members, Claimants, and Released Plaintiffs expressly waive trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to such Settlement Claim determinations as provided herein. The decision of the Court with respect to objections to the Claims Administrator's Settlement Claim determinations shall be final and binding on all Plaintiffs, Settlement Class Members, Claimants, and Released Plaintiffs, and there shall be no appeal to any court, including the United States Court of Appeals for the Third Circuit, such right of appeal having been knowingly and intentionally waived by each Plaintiff, Settlement Class Member, Claimant, and Released Plaintiff.

5.14 After the Claims Administrator calculates the claim value of each Authorized Claimant, Interim Co-Lead Counsel shall file a motion for distribution of the Net Settlement Fund with the Court, requesting the Court to: (a) authorize the payment from the Settlement Fund of any as yet unpaid Notice and Administration Costs; (b) resolve (if it has not previously done so or been asked to do so) any objections with respect to any rejected or disallowed Settlement Claims; and

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(c) approve the distribution of the Net Settlement Fund to the Authorized Claimants upon final resolution of any rejected or disallowed Settlement Claims. Such motion shall not be filed until after all of the following conditions have been met: (a) the Effective Date has occurred; (b) all Settlement Claims have been processed, and all Claimants whose Settlement Claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard by the Claims Administrator concerning such rejection or disallowance; and (c) all matters with respect to Attorneys' Fees and Expenses have been resolved by the Court, and any appeals therefrom have been resolved or the time therefor has expired.

5.15 If any balance remains in the Net Settlement Fund six months after the date of the initial distribution of the Net Settlement Fund (by reason of tax refunds, uncashed checks, or otherwise), Interim Co-Lead Counsel shall request the Claims Administrator, if economically feasible and reasonable, to reallocate such balance among those Authorized Claimants who have cashed their checks, in an equitable fashion, after payment of any unpaid Notice and Administration Costs incurred in administering the Net Settlement Fund for such redistribution. These redistributions shall be repeated until the remaining balance in the Net Settlement Fund is *de minimis* and such remaining balance shall be donated to an appropriate 501(c)(3) non-profit organization selected by Interim Co-Lead Counsel and approved by the Court.

5.16 No Person shall have any claim against Teva, Teva's Counsel, Plaintiffs, Co-Lead Counsel, or the Claims Administrator based on determinations or distributions made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or any orders of the Court.

## **6. TAX TREATMENT**

6.1 The Parties agree that the Settlement Fund is intended at all times to be and shall to the maximum extent permitted by law be treated as a Qualified Settlement Fund within the

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meaning of Treasury Regulation §1.468B-1 and §468B of the Internal Revenue Code of 1986, as amended (the “Code”), for the taxable years of the Settlement Fund, beginning with the date it is created. In addition, Clas Counsel shall timely make such elections as are necessary or advisable to carry out the provisions of this paragraph, including the “relation-back election” (as defined in Treasury Regulation §1.468B-1(j)(2)(ii)) back to the earliest permitted date; provided that no election under Treasury Regulation §1.468B-1(k) to treat a Qualified Settlement Fund as a subpart E trust shall be made. Such elections shall comply with the procedures and requirements contained in such regulations. It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

6.2 For purposes of §468B of the Code and the regulations promulgated thereunder, the “administrator” shall be the Claims Administrator. The Claims Administrator shall timely and properly file all tax returns necessary or advisable with respect to the Settlement Fund, and make all required payments of Taxes, including deposits of estimated Tax payments in accordance with Treas. Reg. §1.468B-2(k). Such tax returns (as well as the elections described in Paragraph 6.1 above) shall be consistent with this §6 and reflect that all Taxes (including any estimated Taxes and tax expenses, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

6.3 All Taxes shall be paid out of the Settlement Fund. In all events, Teva shall have no liability for Taxes. Further, Taxes shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court as directed by Class Counsel. The Escrow Agent, as directed by Class Counsel shall be obligated (notwithstanding anything in this Stipulation to the contrary) to withhold from distribution any funds necessary to pay such Taxes

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or any other amounts required to be withheld by applicable laws, including under Treasury Regulation §1.468B-2(l), including the establishment of adequate reserves for any Taxes. Plaintiffs and Teva agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

6.4 Teva and Teva's Counsel shall not be responsible for and shall have no liability for or obligations with regard to Taxes, including with respect to acts or omissions of the Claims Administrator or its agents with respect thereto. The Escrow Agent, through the Settlement Fund, shall indemnify and hold Teva and Teva's Counsel harmless for any Taxes (including, without limitation, taxes payable by reason of such indemnification).

## **7. ALLOCATION OF NET SETTLEMENT FUND**

7.1 The Claims Administrator shall determine each Authorized Claimant's share of the Net Settlement Fund based on the Plan of Allocation, or in such other Plan of Allocation as the Court approves.

7.2 The Plan of Allocation is not a necessary term of this Stipulation, and it is not a condition of this Stipulation that any particular Plan of Allocation be approved. The Plan of Allocation shall be prepared and proposed (subject to Court approval) by Interim Co-Lead Counsel. Teva will have no involvement in or responsibility for preparing the Plan of Allocation and will take no position with respect to the proposed Plan of Allocation or such Plan of Allocation as may be approved by the Court. The Plan of Allocation, and any changes thereto, is a matter separate and apart from the Settlement between the Parties, and any decision by the Court concerning the Plan of Allocation, or any changes thereto, and any appeal of any order relating thereto or reversal or modification thereof, shall not operate to, or be grounds to, terminate, modify or cancel, or affect the enforceability of, this Stipulation, or affect or delay the validity or finality of the Judgment (or Alternative Judgment) approving the Settlement.

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7.3 Teva shall have no liability for or involvement in the solicitation or review of Claim Forms and shall have no liability for or involvement in the administration process itself, which shall be conducted by the Claims Administrator, under the supervision of Interim Co-Lead Counsel, in accordance with this Stipulation, the Plan of Allocation, and any orders that may be entered by the Court. No Claimant or Authorized Claimant shall have any claim against Teva and Teva's Counsel based on, or in any way relating to, the distributions from the Settlement Fund.

### **8. ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS**

8.1 Interim Co-Lead Counsel may submit an application to the Court (the "Fee and Expense Application") for an award of Attorneys' Fees and Expenses, up to 34% of the Settlement Fund, including for (a) attorneys' fees and payment of incurred and anticipated litigation costs and expenses in connection with the investigation, filing, prosecution, and settlement of the Action, plus interest on such amounts awarded at the same rate as earned on the Settlement Fund until paid; and (b) Service Awards to Plaintiffs not to exceed \$3,500 for each Plaintiff.

8.2 Attorneys' Fees and Expenses awarded by the Court shall be payable solely from the Settlement Fund immediately upon entry by the Court of an order awarding such amounts, notwithstanding the existence of any timely filed objections thereto, or potential for appeal or collateral attack on the Settlement or any part thereof. Teva will take no position, nor object to, the manner in which Interim Co-Lead Counsel shall thereafter allocate the Attorneys' Fees and Expenses among Co-Lead Counsel. However, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, any Attorneys' Fees and Expense award is overturned or reduced, or if the Settlement is terminated or is not approved by the Court, or if there is an appeal and any order approving the Settlement does not become final and binding on the Settlement Class, then, within 15 business days after receiving such an order from a court of appropriate jurisdiction, each Co-Lead Counsel law firm that has received any fees or expenses

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shall refund to the Settlement Fund such funds previously paid to it, plus interest at the same rate as earned on the Settlement Fund, in an amount consistent with such reversal or reduction. Each law firm that serves as Co-Lead Counsel, as a condition of receiving a portion of the Attorneys' Fees and Expense award, on behalf of itself and each partner, shareholder, or member of it, agrees that the law firm and its partners, shareholders, and/or members are subject to the Court's jurisdiction for purposes of enforcing the provisions of this paragraph. Any Service Awards authorized by the Court may be paid only after the Effective Date.

8.3 Teva and Teva's Counsel shall have no responsibility for or liability with respect to any payment or allocation of any award of Attorneys' Fees and Expenses from the Settlement Fund.

8.4 It is agreed that the procedure for and the allowance or disallowance by the Court of any Fee and Expense Application or Service Awards shall be considered by the Court separate and apart from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceeding relating to the Fee and Expense Application or Service Awards, and any appeal of any order relating thereto or reversal or modification thereof, shall not operate to, or be grounds to, terminate, modify, or cancel this Stipulation or affect or delay its finality, and shall have no effect on the terms of this Stipulation or the validity or enforceability of this Settlement. The approval, finality, and effectiveness of the Settlement shall not be contingent on an award of Attorneys' Fees and Expenses, or on any Service Awards to Plaintiffs.

## **9. THE PRELIMINARY APPROVAL ORDER**

9.1 Within 45 days of the execution of this Stipulation (or later should the Parties mutually agree), the Parties shall submit the Stipulation together with any exhibits to the Court, and Interim Co-Lead Counsel shall apply for entry of a Preliminary Approval Order in connection with settlement proceedings. Teva agrees solely for the purposes of settlement that it will consent

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to, and shall not oppose, entry of the Preliminary Approval Order. However, within a reasonable period of time not less than 14 days in advance of submission to the Court, the papers in support of the motion for entry of a Preliminary Approval Order shall be provided by Interim Co-Lead Counsel to Teva for its review. To the extent that Teva objects to any aspect of the motion, it shall communicate such objection to Interim Co-Lead Counsel and the Parties shall meet and confer to resolve any such objection. The Parties shall take all reasonable actions as may be necessary to obtain a Preliminary Approval Order, which will provide for: (i) the preliminary approval of the Settlement set forth in this Stipulation because it is in the range of what is fair, reasonable, and adequate, and in the best interests of the Plaintiffs and Settlement Class; (ii) preliminary approval of the Plan of Allocation; (iii) approval of the Notice and any proposed notice plan; (iv) a schedule for providing Teva and the Court with a complete list of any Settlement Class Member who opts out or seeks exclusion from the Settlement Class and for a Fairness Hearing by the Court after the notice period has expired; (v) a stay of all proceedings in the Action against Teva until such time as the Court renders a final decision regarding approval of the Stipulation and Settlement; (vi) certification of the Settlement Class, as defined in Paragraph 1.39, for purposes of settlement; (vii) appointment of a Notice and Claims Administrator; and (viii) appointment of an Escrow Agent, as defined in Paragraph 1.14.

9.2 Though the Parties agree that it is not practical to establish a timeline or to create the detailed contents of a Notice at this time, the eventual Notice, to also be approved by the Court prior to distribution, will provide for the best notice practicable to the proposed Settlement Class, including at least notice by publication to consumers and individual notice to third-party payors in the proposed Settlement Class that can be identified with reasonable effort, and it will set forth a summary of the terms of the Stipulation (including the Released Claims); the proposed Plan of

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Allocation, and application for Attorneys' Fees and Expenses; the date and time of the Fairness Hearing; the right to object to the Settlement, proposed Plan of Allocation, application for Attorneys' Fees and Expenses or Service Awards; the right to appear at the Fairness Hearing; and the right to request exclusion from the Settlement Class.

9.3 Any Settlement Class Member who or which wishes to be exclude from or "opt out" of the Settlement must submit a timely written request for exclusion (including any required documentation), which shall be signed by the member of the Settlement Class who is opting-out, or by its, his, or her authorized representative (subject to documentation evidencing the representative's legal authority and authorization to act and request exclusion on behalf of each Settlement Class Member), such that it is received on or before the deadline set by the Court (the "Exclusion Deadline"), in accordance with the entered Preliminary Approval Order and the Notice (a "Request for Exclusion"). Requests for Exclusion on behalf of groups, including "mass" or "class" opt-outs, will not be permitted. Third-party payors seeking exclusion must submit with their opt-out request all data reflecting their purchases of, and payments for, Teva's Metformin Products to enable the Parties to make a full assessment in connection with the opt-out threshold referred to in the following Paragraph 9.4. Consumer identities shall not be made public as part of the exclusion process; rather identifying information shall be kept confidential and, absent a consumer's consent, Interim Co-Lead Counsel shall file under seal any such opt-out requests. Any Settlement Class Members who or which do not submit a timely and valid written request for exclusion will be bound by all Court proceedings, orders, and judgments, whether or not they timely submit a Claim Form.

9.4 As set forth in a separate confidential Supplemental Agreement between the Parties as defined below in paragraph 12.5, Teva shall have the discretion to terminate the Settlement if a

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threshold percentage, as defined in the Supplemental Agreement, of potential Settlement Class Members exclude themselves as provided in Paragraph 9.3 above. The confidential Supplemental Agreement will be provided to the Court, *in camera*, upon request.

9.5 Any Settlement Class Member who wishes to object to the fairness, reasonableness, or adequacy of this Settlement or any aspect of the Plan of Allocation or the Fee and Expense Application or Service Awards must do so in the manner specified and within the deadlines specified in the Preliminary Approval Order and the Notice.

9.6 The Claims Administrator shall provide copies of all Requests for Exclusion and materials submitted therewith (including untimely requests and revocations of requests) to Interim Co-Lead Counsel and Teva's Counsel within three business days of receipt.

## **10. SETTLEMENT CLASS CERTIFICATION**

10.1 Concurrently with their motion for Preliminary Approval, and solely for purposes of this Settlement, Plaintiffs shall file, and Teva shall not oppose, a motion to: (i) certify the Settlement Class pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure; (ii) appoint Plaintiffs as representatives of the Settlement Class; and (iii) appoint Interim Co-Lead Counsel as class counsel under Rule 23(g) of the Federal Rules of Civil Procedure.

10.2 The Parties' agreement as to certification of the Settlement Class is only for purposes of effectuating this Settlement, and for no other purpose. Teva retains all of its objections, arguments, and defenses, and reserves all rights to contest class certification if the Settlement set forth in this Stipulation does not receive the Court's Final Approval, if the Court's approval is reversed or vacated on appeal, if this Stipulation is terminated as provided herein, or if the Settlement set forth in this Stipulation otherwise fails to proceed for any reason. The Parties acknowledge that there has been no stipulation to a class or certification of a class for any purpose other than effectuating the Settlement, and that, if the Settlement set forth in this Stipulation does

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not receive the Court's Final Approval, if the Court's approval is reversed or vacated on appeal, if this Stipulation is terminated as provided herein, or if the Settlement set forth in this Stipulation otherwise fails to close for any other reason, then this agreement as to certification of the Settlement Class becomes null and void *ab initio*, and neither this Stipulation nor any other Settlement-related statement or document may be cited in support of an argument for certifying a class related to the Action and all Settlement-related statements or documents shall not constitute, be construed as, or be deemed to be evidence of or an admission or concession by Teva as to whether any class, in this Action or others, may be certified for purposes of litigation and trial.

### **11. FINAL APPROVAL AND JUDGMENT**

11.1 After the certification of the Settlement Class by the Court for purposes of Settlement, the Court's entry of a Preliminary Approval Order, and issuance of Notice, Plaintiffs shall file with the Court a motion for final approval of the Settlement and entry of a Judgment agreed to and proposed by the Parties, which shall be substantially in the form preliminarily approved by the Court. However, within a reasonable time not less than 14 days before submission to the Court, the papers supporting the motion for Final Approval shall be provided by Interim Co-Lead Counsel to Teva for its review. To the extent that Teva objects to any aspect of the motion, they shall communicate such objection to Interim Co-Lead Counsel and the Parties shall meet and confer to resolve any such objection. The Parties agree to take all reasonable best efforts, including undertaking all actions contemplated by and any steps necessary to effectuate this Stipulation and to take all actions as may be necessary to carry out the terms of this Stipulation and obtain Final Approval and entry of a Final Judgment and Order.

### **12. EFFECTIVE DATE OF SETTLEMENT; TERMINATION; FINALITY OF SETTLEMENT; STAY OF PROCEEDINGS**

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12.1 The Effective Date of the Settlement shall be the date on which all of the following events or conditions have occurred:

- (a) the Court has entered the Preliminary Approval Order in all material respects;
- (b) the full amount of the Settlement Amount has been paid into the Escrow Account pursuant to Paragraph 2.1(a);
- (c) Teva has not validly exercised its right (if applicable) to terminate the Settlement pursuant to Paragraph 12.4 or pursuant to Paragraph 12.5 and the Supplemental Agreement, and its right (if applicable) to do so has expired in accordance with the terms of the Stipulation and/or the Supplemental Agreement;
- (d) Plaintiffs have not exercised their right (if applicable) to terminate the Settlement pursuant to Paragraphs 12.4 and 12.6, and their option (if applicable) to do so has expired in accordance with the terms of the Stipulation;
- (e) the Court has entered the Judgment (or Alternative Judgment), following issuance of Notice to the Settlement Class, that approves the Settlement, and such Judgment (or Alternative Judgment) has become a Final Judgment; and
- (f) the time for appeal from the Court's Preliminary Approval Order and the Judgment (or Alternative Judgment) has expired or, if appealed, either such appeal has been dismissed before resolution by the appellate court or approval of the Stipulation and Settlement and the Judgment (or Alternative Judgment) has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

12.2 Upon the occurrence of all of the events referenced in Paragraph 12.1, Plaintiffs shall have, and each Settlement Class Member and Released Plaintiff shall hereby be deemed to

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have, and by operation of the Final Judgment shall have, fully, finally, and forever released, waived, settled, and discharged, the Released Defendants from and with respect to Plaintiffs' Released Claims, whether or not such Plaintiffs, Settlement Class Members, or Released Plaintiffs have executed a Claim Form.

12.3 Upon the occurrence of all of the events and conditions referenced in Paragraph 12.1, any obligation (if otherwise applicable) of the Escrow Agent to return any funds from the Settlement Fund to Teva pursuant to Paragraph 12.7 or any other provision of this Stipulation shall be absolutely and forever extinguished.

12.4 Teva, and Plaintiffs, through their respective counsel, shall each, in their respective discretions, but in all events subject to Paragraph 12.5 herein, have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so ("Termination Notice") to all other counsel for the Parties within 30 calendar days of:

- (a) the Court's Final non-appealable refusal to enter the Preliminary Approval Order in any material respect;
- (b) the Court's Final non-appealable refusal to approve this Stipulation or any material part of it (except with respect to any decision by the Court concerning the Fee and Expense Application, Service Awards, and Plan of Allocation);
- (c) the Court's Final non-appealable refusal to enter the Judgment (or an Alternative Judgment) in any material respect; or
- (d) the date on which the Judgment (or an Alternative Judgment) is modified or reversed in any material respect by a Court of Appeals or the United States Supreme Court and such modification or reversal has become Final.

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12.5 If, before the Fairness Hearing, Persons who otherwise would be Settlement Class Members have timely submitted valid Requests for Exclusion from the Settlement Class in accordance with the provisions of the entered Preliminary Approval Order and the Notice issued pursuant thereto, and who have not retracted their Requests for Exclusion before the Fairness Hearing, and such Persons account for an amount greater than the amount specified in a separate Supplemental Agreement between the Parties (the “Supplemental Agreement”), then Teva shall have the option to terminate this Stipulation and Settlement in accordance with the requirements and procedures set forth in the Supplemental Agreement. Interim Co-Lead Counsel shall, however, have the opportunity to seek retraction of any Requests for Exclusion before the Fairness Hearing. The Supplemental Agreement shall not be filed with the Court unless and until a dispute among the Parties concerning its interpretation or application arises, or as otherwise ordered by the Court, nor shall the Supplemental Agreement otherwise be disclosed unless ordered by the Court. The Court may examine the Supplemental Agreement if so requested by the Court, and if the Court requires that it be filed, the Parties shall request that it be filed under seal.

12.6 If Teva (or its successor) does not pay or cause to be paid the Settlement Amount in full within the time period specified in Paragraph 2.1(a) of this Stipulation, then Interim Co-Lead Counsel, in its sole discretion, may, at any time before the Court entering the Judgment (or an Alternative Judgment): (a) terminate the Settlement by providing written notice to Teva’s Counsel; (b) seek to enforce the terms of the Settlement and this Stipulation and seek entry of a judgment and/or order to effectuate and enforce the terms of this Stipulation; and/or (c) pursue such other rights as Plaintiffs and the Settlement Class may have arising out of the failure to timely pay the Settlement Amount in full into the Escrow Account.

## EXECUTION VERSION

12.7 Except as otherwise provided herein, in the event that the Settlement is terminated in accordance with its terms, the Judgment (or Alternative Judgment) is vacated, or the Effective Date fails to occur, then (a) the Parties shall be deemed to have reverted to their respective statuses and positions in the Action as of January 2, 2025, and the fact and terms of the Settlement shall not be admissible in any trial of the Action and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered, and (b) any portion of the Settlement Amount previously paid by or on behalf of Teva, together with any interest earned thereon (and, if applicable, repayment of any award of Attorneys' Fees and Expenses), less any actual and reasonable Notice and Administration Costs incurred and any Taxes paid or due up to \$250,000, shall be returned to Teva within 30 business days after the date of the event causing termination. Notwithstanding anything to the contrary in this Agreement, however, Paragraphs 1.1-1.48, 3.2, 5.2, 12.7, 12.8, and 13.19 shall survive termination. If the Action against Teva is to resume, the Parties agree that any such resumption will take place in a reasonable manner and be approved by the Court upon joint application by the Parties.

12.8 If this Stipulation is terminated pursuant to its terms at the request of Teva or the Plaintiffs, then the Escrow Agent or the Escrow Agent's designee shall (a) apply for any tax refund owed to the Settlement Fund and (b) pay the proceeds of any tax refund to Teva.

12.9 No order of the Court or modification or reversal of any order of the Court concerning the Plan of Allocation, Attorneys' Fees and Expenses, or Service Awards shall constitute grounds for termination of the Stipulation.

12.10 Pending entry of the Preliminary Approval Order, the Parties agree as of January 2, 2025, to stay any and all proceedings against Teva in the Action other than those incident to the

## **EXECUTION VERSION**

settlement process and agree to extensions of time with respect to any and all court filings, if any, necessary to effectuate such stays.

### **13. MISCELLANEOUS PROVISIONS**

13.1 The Parties acknowledge that it is their intent to consummate the Settlement contemplated by this Stipulation.

13.2 The Parties shall use their reasonable best efforts and take all reasonably necessary steps to consummate the Settlement contemplated herein.

13.3 The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall also retain jurisdiction for purposes of, *inter alia*, entering orders relating to the Fee and Expense Application, Notice and Administration Costs, the Plan of Allocation, distribution of the Net Settlement Fund, and the enforcement of the terms of this Stipulation.

13.4 The Parties agree that the Settlement Amount, and the other terms of the Settlement, were negotiated at arm's-length by experienced and competent legal counsel and in good faith by the Parties.

13.5 By executing this Stipulation, each of the Parties represents that they have the right, legal capacity, power, and authority to enter into this Stipulation and to perform their obligations hereunder, without requiring additional consent, approval, or authorization of any other person, board, entity, tribunal, or other regulatory or governmental authority.

13.6 Each Party agrees that no representations, warranties, inducements, covenants, or promises of any kind or character have been made by any other Party, Released Parties, or anyone else to induce the execution of this Stipulation except as expressly provided in this Stipulation, and that this Stipulation, together with the Supplemental Agreement, constitutes the entire agreement between the Parties.

## EXECUTION VERSION

13.7 Each Party represents and warrants that they have had the opportunity to be represented by counsel of their choice throughout the negotiations that preceded the execution of this Stipulation and in connection with the preparation and execution of this Stipulation, and that they have been afforded sufficient time and opportunity to review this Stipulation with counsel of their choice.

13.8 This Stipulation was negotiated in good faith and reflects a Settlement reached voluntarily and was not the result of coercion or duress.

13.9 The Supplemental Agreement is hereby incorporated by reference as though fully set forth in this Stipulation.

13.10 Plaintiffs have ceased and shall continue to cease all litigation activities against Teva and its former employees. Teva has ceased and shall continue to cease all litigation activities against Plaintiffs in the Action, including seeking discovery from Plaintiffs or their counsel. This provision shall not be construed to prohibit Plaintiffs from seeking appropriate discovery from non-settling defendants or any other person other than Teva.

13.11 No amendment or modification of this Stipulation shall be effective unless in writing and signed by, or on behalf of, all of the Parties.

13.12 Whenever this Stipulation requires or contemplates that Teva shall or may give notice to Plaintiffs (or Interim Co-Lead Counsel), or that Plaintiffs shall or may give notice to a Teva (or Teva's Counsel), unless otherwise specified, such notice shall be provided by email and next business day express delivery service, as set forth below, to the below-listed counsel:

If to Plaintiffs or Interim Co-Lead Counsel:

James E. Cecchi  
Donald A. Ecklund  
Carella Byrne Cecchi Brody Agnello, P.C.  
5 Becker Farm Road

## EXECUTION VERSION

Roseland, NJ 07068  
(973) 994-1700

If to Teva or Teva's Counsel:

Liza M. Walsh  
Christine I. Gannon  
Walsh Pizzi O'Reilly Falanga LLP  
Three Gateway Center  
100 Mulberry Street, 15th Floor  
Newark, NJ 07102  
(973) 757-1100

Any of the Parties may, from time to time, change the address to which such notices are to be delivered, by giving the other Parties prior written notice of the changed address, in the manner provided above, at least 10 calendar days before the change is effective.

13.13 Teva shall bear its own costs and expenses, including costs, expenses, and fees of its counsel. Any award of Attorneys' Fees and Expenses to Co-Lead Counsel shall be paid out of the Settlement Fund, subject to Court approval, and Teva shall have no obligation with respect to the payment of said Attorneys' Fees and Expenses.

13.14 Interim Co-Lead Counsel, on behalf of the Settlement Class, is expressly authorized to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this Stipulation to effectuate its terms and to enter into any written modifications or amendments to this Stipulation on behalf of the Settlement Class.

13.15 This Stipulation shall be binding upon, and inure to the benefit of, the Parties, the Released Parties, and the successors, assigns, executors, administrators, heirs, and representatives of the Parties and the Released Parties. Without limiting the generality of the foregoing, each and every covenant and agreement in this Stipulation by the Plaintiffs and Interim Co-Lead Counsel shall be binding upon all members of the Settlement Class except those who requested and were

## EXECUTION VERSION

granted exclusion from the Settlement Class, and the Released Plaintiffs and their respective successors and assigns. No assignment shall relieve any Party hereto of any obligations hereunder.

13.16 This Stipulation shall be governed by, construed, performed, and enforced in accordance with New Jersey law without regard to conflicts of law provisions, except to the extent that federal law requires that federal law governs.

13.17 Plaintiffs, on behalf of themselves and each Settlement Class Member, as well as the other Parties, hereby irrevocably submit to the Court's jurisdiction for any suit, action, proceeding, or dispute arising out of or relating to this Stipulation, the applicability of this Stipulation, or the enforcement of this Stipulation.

13.18 The Parties acknowledge that each Party has participated jointly and equally in negotiating and preparing this Stipulation. In the event an ambiguity or question of intent or interpretation arises, such ambiguity or question shall not be construed against any Party, and no presumption or burden of proof shall arise from favoring or disfavoring any Party solely by virtue of the authorship of any provision in this Stipulation, and instead this Stipulation shall be construed as if each Party participated equally in the drafting of all such provisions.

13.19 Whether or not Final Judgment is entered or this Settlement is terminated, neither this Stipulation, nor the fact of the Settlement, or any and all statements, negotiations, documents, or discussions associated with it, are an admission or concession by Teva of any liability or wrongdoing whatsoever. This Stipulation shall not constitute a finding of the validity or invalidity of any factual allegation or any claims in the Action or of any liability or wrongdoing by Teva. This Stipulation, the fact of settlement, the settlement proceedings, the settlement negotiations, and any related documents, shall not be used or construed as an admission of any factual allegation, fault, liability, or wrongdoing by any Person, and shall in no event be offered or received in

## **EXECUTION VERSION**

evidence as an admission, concession, presumption, or inference against any party in any action or proceeding of any nature, or otherwise referred to or used in any manner in or before any court or other tribunal, except in such proceeding as may be necessary to enforce this Stipulation. The Parties expressly reserve all of their rights if the Settlement does not become final in accordance with the terms of this Stipulation. Upon the Settlement becoming final, nothing in this paragraph shall prevent Teva from asserting any release or using this Stipulation to offset or dispute any liability to any other party.

13.20 The headings in this Stipulation are used for purposes of convenience and ease of reference only and are not meant to have legal effect.

13.21 The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver by any other Party of such breach, nor shall it be deemed a waiver of any other breach of this Stipulation, including any prior or subsequent breach of this Stipulation. The provisions of this Stipulation may not be waived except in writing signed by the affected Party or counsel for that Party. No failure or delay on the part of any Party in exercising any right, remedy, power, or privilege under this Stipulation shall operate as a waiver thereof or of any other right, remedy, power, or privilege of such Party under this Stipulation; nor shall any single or partial exercise of any right, remedy, power, or privilege under this Stipulation on the part of any Party operate as a waiver thereof or of any other right, remedy, power, or privilege of such Party under this Stipulation, or preclude further exercise thereof or the exercise of any other right, remedy, power, or privilege.

13.22 Each of the Plaintiffs and Teva represents and warrants that he, she, or it is authorized to enter into this Stipulation, or any related Settlement documents, that he, she, or it has authorized his, her, or its counsel to enter into the Stipulation on his, her, or its behalf, and that he,

## **EXECUTION VERSION**

she, or it warrants and represents that he, she, or it has full authority to do so on behalf of his, her, or its respective clients, and that he, she, or it similarly has the authority to take all appropriate actions required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

13.23 This Stipulation may be executed in one or more original, photocopied, PDF copies, or facsimile counterparts, and facsimile or scanned signatures shall have the same force and effect as original signatures, and the exchange of fully executed copies of this Stipulation may similarly be effectuated by emailed PDF to the email addresses shown below for the Parties' respective counsel. All executed counterparts and each of them shall be deemed to be one and the same instrument. A copy of the complete set of executed counterparts of this Stipulation shall be electronically filed with the Court as an exhibit to the motion for Preliminary Approval.

13.24 The Parties agree to maintain the confidentiality of all settlement discussions, and materials exchanged during the settlement negotiation. The Parties further agree to keep any settlement details confidential until the earlier of (a) the motion for a Preliminary Approval Order, or (b) the Parties' mutual agreement that such information can be disclosed and to whom such information can be disclosed. However, Teva can inform other Defendants that it has reached a settlement agreement with Plaintiffs. Likewise, Plaintiffs may inform other plaintiffs that they have reached a settlement agreement with Teva. Aside from these agreed upon disclosures, the Stipulation and the Settlement contemplated herein shall be kept confidential until the Stipulation is filed with the Court for purposes of obtaining a Preliminary Approval Order except (a) as otherwise required by law (including any applicable court order) or regulation or administrative guidance, request, ruling or proceeding or stock exchange rule, and as necessary to prepare tax, securities, and other required documents and disclosure; or (b) to enforce this Stipulation. This provision does not impact the Parties' obligations to continue to abide by the terms of the

**EXECUTION VERSION**

Stipulated Discovery Protective Order of Confidentiality approved and entered by the Court on March 29, 2022 (ECF No. 154).

IN WITNESS WHEREOF, the Parties, intending to be legally bound by this Stipulation, have caused this Stipulation to be executed, by their duly authorized attorneys, as of March 26 2025.



---

Liza M. Walsh  
Christine I. Gannon  
Jessica K. Formichella  
WALSH PIZZI O'REILLY FALANGA LLP  
Three Gateway Center  
100 Mulberry Street, 15<sup>th</sup> Floor  
Newark, NJ 07102  
(973) 757-1100

GREENBERG TRAURIG, LLP  
Lori G. Cohen (*pro hac vice*)  
Victoria Davis Lockard (*pro hac vice*)  
Steven M. Harkins (*pro hac vice*)  
Bardia Sergent (*pro hac vice*)  
3333 Piedmont Road, NE, Suite 2500  
Atlanta, GA 30305  
678-553-2100

Gregory E. Ostfeld (*pro hac vice*)  
77 W Wacker Dr Ste 3100  
Chicago, IL 60601  
312-456-8400

*Counsel for Teva*

---

James E. Cecchi  
Donald A. Ecklund  
CARELLA BYRNE CECCHI BRODY AGNELLO, P.C.  
5 Becker Farm Road  
Roseland, NJ 07068

**EXECUTION VERSION**

(973) 994-1700

*Counsel for Plaintiffs*

## Exhibit 2

EXECUTION VERSION

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE: METFORMIN MARKETING AND  
SALES PRACTICES LITIGATION

Case No. 2:20-cv-2324-MCA-MAH

Hon. Madeline C. Arleo

Hon. Michael A. Hammer

**JURY TRIAL DEMANDED**

STIPULATION AND SETTLEMENT AGREEMENT BETWEEN  
PLAINTIFFS AND GRANULES USA, INC., GRANULES  
PHARMACEUTICALS, INC. AND HERITAGE  
PHARMACEUTICALS INC. D/B/A AVET PHARMACEUTICALS  
INC.

**EXECUTION VERSION**

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## EXECUTION VERSION

THIS STIPULATION AND SETTLEMENT AGREEMENT is made and entered into by and between plaintiffs Joseph Brzozowski, Jacqueline Harris, Kristen Wineinger, Michael Hann, and Masao Hendrix (“Consumer Plaintiffs”) and MSP Recovery Claims, Series LLC, County of Monmouth, and Ohio Carpenters’ Health Fund (“TPP Plaintiffs” and with Consumer Plaintiffs collectively, “Plaintiffs”), on behalf of themselves and the other members of the proposed Settlement Class,<sup>1</sup> and defendants Granules USA, Inc., Granules Pharmaceuticals, Inc. and Heritage Pharmaceuticals, Inc. d/b/a Avet Pharmaceuticals, Inc., including their respective subsidiaries, affiliates, officers, and agents of the foregoing (collectively, “Granules and Heritage” and together with Plaintiffs, the “Parties”) and embodies the terms and conditions of the settlement between the Parties in the above-captioned Action. Subject to the approval of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to, upon the occurrence of the Effective Date (as defined in Paragraph 1.11 below), fully, finally, and forever compromise, settle, release, resolve, discharge, and dismiss with prejudice the Action as against Granules and Heritage and release all Released Claims against Granules and Heritage and all Released Defendants.

WHEREAS, Plaintiffs, on behalf of themselves and as representatives of the proposed classes, allege that, among other things, they were injured as a result of Granules’ and Heritage’s alleged manufacturing, sale, and distribution of adulterated and/or misbranded generic metformin-containing drugs, as explained in the Fourth Amended Consolidated Economic Loss Class Action Complaint (Civil No. 20-cv-02324-MCA-MAH, ECF No. 529);

WHEREAS, several other similar class-action complaints were filed by Plaintiffs in this District on behalf of themselves as Plaintiffs and as representatives of the proposed classes against

## **EXECUTION VERSION**

<sup>1</sup> All capitalized words and terms that are not otherwise defined in text have the meaning ascribed to them below in Paragraph 1, entitled “Definitions.”

## EXECUTION VERSION

Granules and Heritage, and those matters were consolidated for pretrial purposes before the United States District Court for the District of New Jersey and captioned *In re Metformin Marketing and Sales Practices Litigation*, Civil Action No. 20-cv-02334-MCA-MAH.

WHEREAS, Plaintiffs contend that they and the proposed classes are entitled to actual damages, attorneys' fees, and injunctive relief for loss or damage as a result of violations of the laws as alleged in the Action arising from Granules' and Heritage's and other Defendants' alleged conduct;

WHEREAS, Granules and Heritage deny Plaintiffs' allegations, deny any and all wrongdoing in connection with the facts and claims that have been or could have been alleged against it in the Action, assert that they have several valid defenses to Plaintiffs' claims, deny that Plaintiffs are entitled to any damages as a result of Plaintiffs' allegations and claims, and have not conceded or admitted the propriety of certification of any class for any purposes other than this Settlement;

WHEREAS, counsel for the Parties have engaged in arm's-length negotiations on the terms of this Settlement, and this Stipulation, and the confidential Supplemental Agreement referred to herein embody all of the terms and conditions of this Settlement;

WHEREAS, Plaintiffs, through their counsel, investigated the facts and law regarding the Action and, after carefully considering the circumstances of the Action including the claims asserted directly against Granules and Heritage and derivatively against Pharmacy Defendants who dispensed Granules and Heritage metformin-containing drugs and the possible legal and factual defenses thereto, have concluded that resolving the claims against Granules and Heritage, according to the terms set forth below, is in the best interests of Plaintiffs and the Settlement Class in order to avoid the uncertainties of litigation, particularly complex litigation such as this, and to ensure a benefit to Plaintiffs and the Settlement Class, and further, consider the Settlement set forth herein

## **EXECUTION VERSION**

to be fair, reasonable, and adequate compensation;

WHEREAS, Plaintiffs and Granules and Heritage agree that neither this Stipulation, nor the Settlement it embodies, nor any actions taken in furtherance of either the Stipulation or the Settlement shall be deemed or construed to be an admission or evidence of any violation of any statute or law or any liability or wrongdoing by Granules or Heritage or of the truth of any of the claims or allegations alleged in the Action, or a waiver of any defenses thereto;

WHEREAS, Granules and Heritage, despite their belief that they are not liable for the claims asserted by Plaintiffs and their belief that they have good defenses thereto, have nevertheless agreed to enter into this Settlement to avoid further expense, exposure, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the release, order, and Final Judgment contemplated by this Stipulation, and to put to rest with finality all claims that have been or could have been asserted against Granules or Heritage, as more particularly set out below;

WHEREAS, the Parties wish to preserve all arguments, defenses, and responses to all claims in the Action, including any arguments, defenses, and responses to any litigation class proposed by Plaintiffs if this Settlement does not obtain Final Approval;

WHEREAS, the Parties have had a full opportunity to examine the facts and circumstances surrounding their respective decisions to accept the terms of this Stipulation;

NOW THEREFORE, it is agreed by and among the Parties that the claims of Plaintiffs and the proposed Settlement Class related to Granules' and Heritage's metformin-containing drugs be settled, compromised, and dismissed on the merits with prejudice and without costs as to Granules or Heritage, subject to Court approval, on and subject to the terms and conditions set forth below.

### **1. DEFINITIONS**

As used in this Stipulation, the following terms shall have the meanings specified below:

## EXECUTION VERSION

- 1.1. “Action” means the putative class action initiated and/or pursued by Plaintiffs in the above-captioned proceeding *In re: Metformin Marketing and Sales Practices Litigation*, No. 2:20-cv-02324-MCA-MAH (D.N.J.) and all other actions currently consolidated thereunder.
- 1.2. “Alternative Judgment” means a form of judgment with terms materially different from those set forth in the form of Judgment agreed to and proposed by the Parties.
- 1.3. “Attorneys’ Fees and Expenses” means any portion of the Settlement Fund approved by the Court for payment to counsel who have represented Plaintiffs or the Settlement Class, including such counsel’s attorney’s fees, costs, and litigation expenses (excluding Notice and Administration Costs).
- 1.4. “Authorized Claimant” means a Settlement Class Member who or which submits to the Claims Administrator a timely and valid Claim Form that the Court approves for payment from the Net Settlement Fund.
- 1.5. “Claim Form” means the proof of claim and release form, which will be sent to members of the Settlement Class along with the Notice.
- 1.6. “Claimant” means a person or entity who or which submits a Settlement Claim to the Claims Administrator seeking to be eligible to share in the proceeds of the Net Settlement Fund.
- 1.7. “Claims Administrator” means the claims administration company selected by the Interim Co-Lead Counsel and appointed by the Court to administer the Settlement and effectuate the notice plan approved by the Court.
- 1.8. “Complaint” means the Fourth Amended Consolidated Economic Loss Class Action Complaint (Civil No. 20-cv-02324-MCA-MAH, ECF No. 529).
- 1.9. “Court” means the United States District Court for the District of New Jersey.

## EXECUTION VERSION

1.10. “Defendants” means those Defendants named in the Complaint (*i.e.*, Teva Pharmaceuticals USA, Inc., Actavis Pharma, Inc., Actavis LLC, Heritage Pharmaceuticals Inc. d/b/a Avet Pharmaceuticals Inc., Granules USA, Inc., Granules Pharmaceuticals, Inc., Amneal Pharmaceuticals, Inc., Amneal Pharmaceuticals LLC, Amneal Pharmaceuticals of New York, LLC, CVS Pharmacy, Inc., incorrectly named as CVS Health Corporation, and Walmart, Inc., incorrectly named as Walmart Stores, Inc.).

1.11. “Downstream Entity” means any entity in the supply chain of the Released Defendants which purchased or obtained any Granules or Heritage Metformin Product directly or indirectly, from the Released Defendants or one of its repackagers, wholesalers, distributors, or other sellers. As used in this definition, the term “entity” includes any and all affiliated companies affiliated with the purchasing party, including past, present, and future officers, directors, employees, servants, lessors, partnerships, stockholders, consultants, affiliates, personal representatives, legal representatives, subsidiaries, divisions, parent companies, predecessors, successors, agents, insurers, and assigns. The term “Downstream Entity” expressly includes, but is not limited to, CVS Pharmacy, Inc., incorrectly named as CVS Health Corporation, and Walmart Inc., incorrectly named as Walmart Stores, Inc. The term “Downstream Entity” does not include any manufacturer of metformin-containing products.

1.12. “Effective Date” with respect to the Settlement means the first business day following the occurrence or waiver of all the events and conditions specified in Paragraph 12.1.

1.13. “Escrow Account” means the segregated and separate interest-bearing escrow account to be established with the Escrow Agent as a Qualified Settlement Fund (subject to judicial oversight) into which the Settlement Amount will be deposited for the benefit of Settlement Class

## EXECUTION VERSION

Members and which will thereafter hold the assets of the Settlement Fund (subject to making such awards, payments, and distributions as authorized herein).

1.14. “Escrow Agent” means Huntington Bank or its duly appointed successor or such other bank as may be proposed by Interim Co-Lead Counsel and approved by the Court.

1.15. “Execution Date” means the latest date of the execution of this Stipulation.

1.16. “Fairness Hearing” means the hearing scheduled by the Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider Final Approval of the Settlement, and to consider Plaintiffs’ Counsel’s applications for attorneys’ fees, reimbursement of costs and expenses, and service awards as set forth in this Stipulation.

1.17. “Final Approval” means an order and judgment by the Court that finally approves this Stipulation and the Settlement under Federal Rule of Civil Procedure 23 and dismisses Granules and Heritage with prejudice from the Action.

1.18. “Final Judgment” means a judgment that: (a) has not been appealed or as to which there is no pending stay, motion for reconsideration, motion for rehearing, motion to vacate, appeal, petition for writ of certiorari or similar request for relief; or (b) for which all possible appeals have been exhausted, such that it is no longer subject to judicial review, including upon appeal or review by writ of certiorari.

1.19. “Interim Co-Lead Counsel” or “Co-Lead Counsel” or “Plaintiffs’ Counsel” means the law firms of Carella, Byrne, Cecchi, Brody & Agnello, P.C., Kanner & Whitely, LLC, Bursor & Fisher, P.A., Honik LLC, MSP Recovery Law Firm, Scott+Scott Attorneys at Law LLP, AsherKelly Attorneys at Law, Nigh, Goldenberg, Raso & Vaughn, PLLC, and Levin Sedran & Berman, LLP.

## EXECUTION VERSION

1.20. “Judgment” means either (a) the proposed judgment to be entered approving the Settlement, substantially in the form agreed to and proposed by the Parties; or (b) an Alternative Judgment, if expressly agreed in writing by the Parties.

1.21. “Net Settlement Fund” means the Settlement Fund less: (i) Taxes; (ii) Notice and Administration Costs as authorized by this Stipulation and any orders of the Court; (iii) Attorneys’ Fees and Expenses as authorized by the Court; (iv) Service Awards as authorized by the Court; and (v) any other fees and expenses as authorized by the Court.

1.22. “Notice and Administration Costs” means the reasonable costs and expenses incurred in connection with locating Settlement Class Members; preparing, printing, mailing, and publishing the Notice and the summary of Notice; soliciting the submission of proofs of claims; assisting with the submission of proofs of claim; processing Claim Forms; administering and distributing the Net Settlement Fund to Authorized Claimants; and paying escrow fees and costs (if any). All such Notice and Administration Costs shall be paid from the Settlement Fund.

1.23. “Notice” means the Notice of Proposed Settlement of Class Action, which is to be sent to members of the Settlement Class.

1.24. “Parties” means the undersigned parties to this Stipulation.

1.25. “Person” means any individual, corporation, partnership, limited liability company or partnership, limited partnership, professional corporation, association, joint stock company, estate, unincorporated association, government or any political subdivision or agency thereof, or any other business or legal entity and (as applicable) their spouses, heirs, predecessors, successors, representatives, or assigns.

1.26. “Plaintiffs’ Released Claims” means all claims that Plaintiffs, Settlement Class Members, and Released Plaintiffs ever had, now have, or hereinafter, can, shall, or may ever have,

## EXECUTION VERSION

against any Released Defendants and their respective attorneys, whether in their individual or representative capacity, whether arising under federal, state, common, or foreign law, on account of, or any way arising out of, any and all known claims and Unknown Claims, foreseen and unforeseen, suspected and unsuspected, actual or contingent, liquidated or unliquidated claims, causes of action (whether at law or in equity), charges, injuries, liabilities, penalties, demands, obligations, suits, levies, executions, judgments, debts, losses (including, without limitation, all costs, expenses, and attorneys' fees), or damages arising from or in connection with any act or omission through the date of the Preliminary Approval Order relating to or referred to in the Action or arising from the factual predicate of the Action, including, but not limited to, Granules' and Heritage's manufacture, distribution, and/or introduction into the U.S. market by Granules or Heritage of its generic metformin-containing drugs that were alleged to be contaminated ("Granules' and Heritage's Metformin Product"). This definition is expressly intended to include, and does include, any and all claims that Plaintiffs, Settlement Class Members, and Released Plaintiffs ever had, now have, or hereinafter, can, shall, or may ever have or assert against any Downstream Entity arising out of, by reason of, or in any manner connected with the use of or payment or reimbursement for Granules' and Heritage's Metformin Product. This definition is expressly not intended to include, and does not include, any and all claims that Plaintiffs, Settlement Class Members, and the Released Plaintiffs ever had, now have, or hereinafter, can, shall, or may ever have or assert against any Downstream Entity arising out of, by reason of, or in any manner connected with the use of or payment or reimbursement for any metformin products manufactured by any person other than Granules and Heritage and the Released Defendants.

1.27. "Plaintiffs" means Joseph Brzozowski, Jacqueline Harris, Kristen Wineinger, Michael Hann, Masao Hendrix, MSP Recovery Claims, Series LLC, County of Monmouth, and Ohio Carpenters' Health Fund.

## EXECUTION VERSION

1.28. “Plan of Allocation” means the plan for allocating the Net Settlement Fund approved by the Court, whereby the Net Settlement Fund shall be distributed to Authorized Claimants.

1.29. “Preliminary Approval Order” means an order by the Court to preliminarily approve this Stipulation under Rule 23 of the Federal Rules of Civil Procedure.

1.30. “Released Claims” means Granules’ and Heritage’s Released Claims and Plaintiffs’ Released Claims.

1.31. “Released Defendants” means whether or not each or all of the following Persons were named, served with process, or appeared in the Action, Granules and Heritage and their respective subsidiaries and affiliates.

1.32. “Released Parties” means Released Defendants and Released Plaintiffs.

1.33. “Released Plaintiffs” means all members of the Settlement Class, including Plaintiffs, each on behalf of themselves and their respective predecessors and successors; their current and former, direct and indirect parents, subsidiaries and affiliates; their present and former shareholders, partners, directors, officers, owners of any kind, principals, members, agents, employees, contractors, attorneys (including Interim Co-Lead Counsel), insurers, heirs, executors, administrators, devisees, representatives; the assigns of all such persons or entities, as well as any person or entity acting on behalf of or through any of them in any capacity whatsoever, jointly and severally; and any of their past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions, and divisions.

1.34. “Releasing Parties” means Plaintiffs, Settlement Class Members, Released Plaintiffs, Granules and Heritage and Released Defendants.

1.35. “Service Award” means any Court-approved monetary award for Plaintiffs paid from the Settlement Fund.

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1.36. “Settlement Amount” means USD \$2,550,000.00 (two million five hundred and fifty thousand dollars) in cash.

1.37. “Settlement Claim” means a Claim Form submitted to the Claims Administrator.

1.38. “Settlement Class Member” means any Person who falls within the definition of Settlement Class.

1.39. “Settlement Class” means: All individuals and entities in the United States and its territories and possessions who paid any amount of money for a metformin-containing drug (intended for personal or household use) that was manufactured, distributed, or sold by Granules or Heritage from July 20, 2015 through June 2, 2020 (the “Class Period”). For purposes of the TPP Plaintiffs, persons or entities “purchased” a metformin-containing drug if they paid or reimbursed some or all of the purchase price. Excluded from the Settlement Class are: (1) Granules and Heritage and their respective subsidiaries and affiliates; (2) federal governmental entities; (3) State and local governmental entities to the extent their claims may be asserted under applicable state law only by the state Attorney General, or are otherwise prohibited by applicable law from being asserted by private counsel on a contingent fee basis; (4) all persons or entities who purchased metformin-containing drugs for purposes of resale or directly from Granules or Heritage or their respective subsidiaries affiliates; (5) fully insured health plans (*i.e.*, Plans that purchased insurance from another third-party payer covering 100% of the Plan’s reimbursement obligations to its members); (6) pharmaceutical benefit managers; and (7) the judges in this case and any members of their immediate families.

1.40. “Settlement Distribution Order” means an order to be entered by the Court, upon Plaintiffs’ application, in accordance with Paragraph 5.11 below, which authorizes the Claims Administrator to distribute the Net Settlement Fund to Authorized Claimants.

1.41. “Settlement Fund” means the Settlement Amount plus any interest earned thereon.

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1.42. “Settlement” means the resolution of this Action against Granules and Heritage and Released Defendants in accordance with the terms and provisions of this Stipulation.

1.43. “Stipulation” means this Stipulation and Settlement Agreement.

1.44. “Taxes” means (i) all federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; and (ii) the expenses and costs incurred by Interim Co-Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

1.45. “Granules’ and Heritage’s Counsel” means Lewis Brisbois Bisgaard and Smith LLP.

1.46. “Granules and Heritage Released Claims” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, by Granules and Heritage or any of the Released Defendants against Plaintiffs, and their respective attorneys (including Co-Lead Counsel), and all other Settlement Class Members, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims relating to or referred to in the Action or arising from the factual predicate of the Action against Granules and Heritage, except for claims relating to the enforcement of the Settlement. No claims unrelated to the institution, prosecution, or settlement of the claims against Granules or Heritage will be released by Granules or Heritage.

1.47. “Granules” and “Heritage” have the same meaning as Released Defendants as defined above in Paragraph 1.31.

1.48. “Unknown Claims” means (a) any of Plaintiffs’ Released Claims which Plaintiffs, Settlement Class Members, or Released Plaintiffs do not know or suspect to exist in their favor at the time of the release of such claims, which if known, might have affected their decision(s) with

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respect to the Settlement, including, but not limited to, the decision not to object to the Settlement;

(b) any of Granules' or Heritage's Released Claims which either Granules or Heritage does not know or expect to exist in their favor at the time of the release of such claims, which if known, might have affected their decision(s) with respect to the Settlement, except that Unknown Claims shall not include any claims unrelated to the institution, prosecution, or settlement of the claims against Granules or Heritage.

## 2. SETTLEMENT CONSIDERATION

### 2.1 Monetary Consideration.

(a) In full consideration for the release of claims and dismissal of the Action, Granules and Heritage shall pay, or cause to be paid, in cash, the Settlement Amount of \$2,550,000.00. Plaintiffs, through Interim Co-Lead Counsel, will notify Granules and Heritage of the establishment and identity of the Escrow Account within 14 calendar days before payment of the Settlement Amount is due. In no event shall Granules or Heritage be obligated to pay anything beyond the Settlement Amount. Plaintiffs and all Settlement Class Members shall look solely to the Settlement Fund for full settlement and satisfaction against Granules and Heritage of all Plaintiffs' Released Claims as defined in Paragraph 1.26, including any costs, fees, or expenses of any of the Plaintiffs or their attorneys, experts, advisors, agents, and representatives, including with respect to the negotiation, execution, and performance of their obligations under this Stipulation. All payments by Granules and Heritage of the Settlement Amount are conditioned on preliminary approval being granted by the Court in the Action to this Stipulation and Settlement Agreement.

(b) The Settlement is not a claims-made settlement. Upon the Effective Date, neither Granules nor Heritage, nor any other Person or entity who or which funded the Settlement Amount (including, without limitation, any of Granules' or Heritage's insurance

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carriers), shall have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever, subject to the provisions of Paragraph 12.7.

(c) In the event the Settlement becomes final under Paragraph 12.1, the Settlement Fund will fully satisfy all Plaintiffs' Released Claims as defined in Paragraph 1.26. Except as provided by order of the Court, no Plaintiff or Settlement Class Member shall have any interest in the Settlement Fund, or any portion thereof. Granules and Heritage and the Released Defendants shall not be responsible for, and shall have no liability with respect to, disbursements from the Settlement Fund according to any Court-approved Plan of Allocation.

### **3. USE OF THE SETTLEMENT FUND**

3.1 The Settlement Fund shall be used solely for the benefit of Plaintiffs and the Settlement Class, which excludes those who opt out, to pay: (a) Taxes, (b) Notice and Administration Costs as authorized by this Stipulation and other orders of 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 in accordance with this Stipulation and the Plan of Allocation.

3.2 Except as provided herein or under other orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until the funds shall be distributed or returned under this Stipulation and/or further order of the Court. The Escrow Agent shall not distribute the Settlement Fund except as provided in this Stipulation or by an order of the Court.

3.3 The Escrow Agent shall invest the Settlement Fund solely in accounts that are either

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(a) backed by the full faith and credit of the United States Government or (b) fully insured by the United States Government or one of its agencies. Permissible accounts include U.S. Treasury Funds or bank accounts that are (i) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or (ii) secured by instruments backed by the full faith and credit of the United States Government. Upon maturity, the Escrow Agent shall reinvest the proceeds in similar instruments at then-current market rates. Interest earned on the money deposited into the Escrow Account shall be part of the Settlement Fund. The Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the decisions or actions of the Escrow Agent, or any transaction executed by the Escrow Agent.

3.4 Released Defendants shall have no responsibility for, interest in, or liability whatsoever for any aspect of the Plan of Allocation or the implementation of the Plan of Allocation.

### **4. SCOPE AND EFFECT OF SETTLEMENT; RELEASES & COVENANTS NOT TO SUE**

4.1 The obligations incurred pursuant to this Stipulation shall be in full and final disposition of: (a) any and all Plaintiffs’ Released Claims, as more fully set forth herein; and (b) any and all Granules’ and Heritage’s Released Claims, as more fully set forth herein.

4.2 Upon the Effective Date of this Settlement and in consideration of the Settlement Amount, Plaintiffs, each Settlement Class Member, and Released Plaintiffs, on behalf of themselves and their respective past and present parents, subsidiaries, and affiliates, general and limited partners, officers, directors, employees, agents, attorneys, servants, predecessors, successors, heirs, executors, administrators, and representatives (the “Releasing Plaintiffs”), shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, waived, relinquished and discharged, and shall forever be enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any forum whatsoever,

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including any court of law or equity, arbitration tribunal, or administrative forum, all Plaintiffs' Released Claims against Released Defendants, whether or not such Plaintiff, Settlement Class Member, or Released Plaintiff executes and delivers a Claim Form.

4.3 With respect to any and all Released Claims, the Parties, on behalf of themselves and all other Releasing Parties, stipulate and agree that by operation of the Final Judgment, the Releasing Parties shall hereby expressly waive, release, and forever discharge, upon Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. The Releasing Parties may hereafter discover facts other than or different from those which they know or believe to be true with respect to the Released Claims, but the Releasing Parties hereby expressly waive and fully, finally, and forever settle and release, upon Final Judgment, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that they have agreed to release, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

4.4 Upon the Effective Date of this Settlement, Granules and Heritage shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, waived, relinquished and discharged, and shall forever be enjoined from prosecuting, each and every one of the Granules' and Heritage's Released Claims against each Plaintiff and Settlement Class Member.

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4.5 The releases provided in this Stipulation shall become effective immediately upon the Effective Date without the need for any further action, notice, condition, or event.

### **5. ISSUANCE OF NOTICE, ADMINISTRATION AND CALCULATION OF CLAIMS, FINAL AWARDS, AND DISTRIBUTION OF NET SETTLEMENT FUND**

5.1 The Claims Administrator shall (a) administer the issuance of Notice to the Settlement Class in accordance with the terms of any orders of the Court, (b) determine the validity of the Claim Forms submitted and calculate the recognized loss amounts of Authorized Claimants that shall be allowed, (c) administer the distribution of the Net Settlement Fund to Authorized Claimants, and (d) otherwise provide such claims administration services as are customary in settlements of this type, subject to such supervision of Interim Co-Lead Counsel and (as appropriate or as circumstances may require) the Court. The Claims Administrator shall be retained subject to the condition that it agrees to be subject to the Court's jurisdiction.

5.2 Notwithstanding the fact that the Effective Date has not yet occurred, Interim Co-Lead Counsel may pay from the Escrow Account the actual and reasonable Notice and Administration Costs, as approved by the Court. In the event that the Settlement is not consummated, such Notice and Administration Costs up to \$250,000 will not be returned or repaid to Granules or Heritage, nor any other Person or entity who or which funded the Settlement Amount (including, without limitation, any of Granules' or Heritage's insurance carriers).

5.3 Following the filing of this Stipulation with the Court, Granules and Heritage shall serve the notice required under the Class Action Fairness Act, 28 U.S.C. §1715 *et seq.* ("CAFA") within the time required therein, and shall confirm to Interim Co-Lead Counsel that such notices have been sent. Granules and Heritage shall be solely responsible for the costs of the CAFA notice and administering the CAFA notice.

5.4 Released Defendants shall have no role in, or any liability, obligation, or

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responsibility for, the dissemination of Notice (other than as provided in Paragraphs 5.2-5.3 above), the administration of the Settlement, or the distribution of the Settlement Fund, including with respect to: (a) any act, omission, or determination by Interim Co-Lead Counsel, or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (b) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; or (c) the payment or withholding of Taxes (including interest and penalties), expenses, and/or costs incurred with the taxation of the Settlement Fund or the filing of any federal, state, or local returns.

5.5 Plaintiffs will seek Court approval of a notice plan and claims process, and Released Defendants shall take no position on such a motion. Each Settlement Class Member wishing to participate in the Settlement shall be required to submit to the Claims Administrator a Claim Form, which, *inter alia*, will provide for the release of all Plaintiffs' Released Claims as against Released Defendants pursuant to Paragraph 4.2. Each Claim Form must be signed under penalty of perjury and supported by such documents as specified in the instructions in the Claim Form or otherwise given by the Claims Administrator.

5.6 The Claims Administrator must receive all Claim Forms within the time prescribed by order of the Court. Any Settlement Class Member who fails to submit a properly completed Claim Form within such period as shall be authorized by the Court shall be forever barred from receiving any payments pursuant to this Stipulation or from the Net Settlement Fund (unless Interim Co-Lead Counsel in its discretion deems such late submission to be a formal or technical defect and waives the lateness of the submission in the interest of achieving substantial justice, or unless by order the Court approves that Settlement Class Member's untimely submitted Claim Form), but will in all other respects be subject to the provisions of this Stipulation and Judgment (or any Alternative Judgment), including, without limitation, the release of Plaintiffs' Released

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Claims and dismissal of the Action. Claim Forms shall be deemed to have been submitted when actually received by the Claims Administrator.

5.7 Each Claim Form shall be submitted to and reviewed by the Claims Administrator who shall determine, under the supervision of Interim Co-Lead Counsel, in accordance with this Stipulation, Plan of Allocation, and any applicable orders of the Court, the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to Paragraph 5.14 below.

5.8 Settlement Claims that do not meet the submission requirements may be rejected. Prior to rejecting a Settlement Claim, the Claims Administrator shall communicate with the Claimant to permit the Claimant to remedy any curable deficiencies in the Settlement Claim submitted. The Claims Administrator, under the supervision of Interim Co-Lead Counsel, shall

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notify in a timely fashion and in writing, all Claimants whose Settlement Claims they propose to reject in whole or in part, setting forth the reasons thereof, and shall indicate in such deficiency notice that the Claimant whose claims are to be rejected has the right to review by the Court if the Claimant so desires and complies with the requirement of Paragraph 5.10 below.

5.9 If any Claimant whose Settlement Claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within 20 calendar days after the date of mailing of the Notice required by Paragraph 5.9 above, serve upon the Claims Administrator a written statement of reasons indicating the Claimant's ground for contesting the rejection along with copies of any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a Settlement Claim cannot be otherwise resolved, Interim Co-Lead Counsel shall thereafter present the request for review to the Court.

5.10 Plaintiffs shall present the administrative determination of the Claims Administrator accepting and rejecting Settlement Claims to the Court in a motion for approval of the Settlement Distribution Order.

5.11 Without regard to whether a Settlement Claim is allowed, each Claimant who declines to be excluded from the Settlement Class shall be deemed to have submitted to the jurisdiction of the Court with respect to such Claimant's Settlement Claim, and such Claimant's Settlement Claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Claimant's status as a Settlement Class Member and the validity and amount of the Claimant's Settlement Claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of Settlement Claims.

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5.12 Payment pursuant to this Stipulation shall be deemed final and conclusive against all Settlement Class Members. All Settlement Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but shall otherwise be bound by all the terms of the Judgment (or Alternative Judgment) to be entered in the Action and the releases provided for in this Stipulation, and will be barred from bringing any action against Released Defendants arising out of or relating to Plaintiffs' Released Claims.

5.13 All proceedings with respect to the administration, processing, and determination of Settlement Claims described in this Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Settlement Claims, shall be subject to the jurisdiction of and decided by the Court. All Plaintiffs, Settlement Class Members, Claimants, and Released Plaintiffs expressly waive trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to such Settlement Claim determinations as provided herein. The decision of the Court with respect to objections to the Claims Administrator's Settlement Claim determinations shall be final and binding on all Plaintiffs, Settlement Class Members, Claimants, and Released Plaintiffs, and there shall be no appeal to any court, including the United States Court of Appeals for the Third Circuit, such right of appeal having been knowingly and intentionally waived by each Plaintiff, Settlement Class Member, Claimant, and Released Plaintiff.

5.14 After the Claims Administrator calculates the claim value of each Authorized Claimant, Interim Co-Lead Counsel shall file a motion for distribution of the Net Settlement Fund with the Court, requesting the Court to: (a) authorize the payment from the Settlement Fund of any as yet unpaid Notice and Administration Costs; (b) resolve (if it has not previously done so or been asked to do so) any objections with respect to any rejected or disallowed Settlement Claims; and

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(c) approve the distribution of the Net Settlement Fund to the Authorized Claimants upon final resolution of any rejected or disallowed Settlement Claims. Such motion shall not be filed until after all of the following conditions have been met: (a) the Effective Date has occurred; (b) all Settlement Claims have been processed, and all Claimants whose Settlement Claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard by the Claims Administrator concerning such rejection or disallowance; and (c) all matters with respect to Attorneys' Fees and Expenses have been resolved by the Court, and any appeals therefrom have been resolved or the time therefor has expired.

5.15 If any balance remains in the Net Settlement Fund six months after the date of the initial distribution of the Net Settlement Fund (by reason of tax refunds, uncashed checks, or otherwise), Interim Co-Lead Counsel shall request the Claims Administrator, if economically feasible and reasonable, to reallocate such balance among those Authorized Claimants who have cashed their checks, in an equitable fashion, after payment of any unpaid Notice and Administration Costs incurred in administering the Net Settlement Fund for such redistribution. These redistributions shall be repeated until the remaining balance in the Net Settlement Fund is *de minimis* and such remaining balance shall be donated to an appropriate 501(c)(3) non-profit organization selected by Interim Co-Lead Counsel and approved by the Court.

5.16 No Person shall have any claim against Granules or Heritage, Granules' and Heritage's Counsel, Plaintiffs, Co-Lead Counsel, or the Claims Administrator based on determinations or distributions made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or any orders of the Court.

## **6. TAX TREATMENT**

6.1 The Parties agree that the Settlement Fund is intended at all times to be and shall to the maximum extent permitted by law be treated as a Qualified Settlement Fund within the

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meaning of Treasury Regulation §1.468B-1 and §468B of the Internal Revenue Code of 1986, as amended (the “Code”), for the taxable years of the Settlement Fund, beginning with the date it is created. In addition, Class Counsel shall timely make such elections as are necessary or advisable to carry out the provisions of this paragraph, including the “relation-back election” (as defined in Treasury Regulation §1.468B-1(j)(2)(ii)) back to the earliest permitted date; provided that no election under Treasury Regulation §1.468B-1(k) to treat a Qualified Settlement Fund as a subpart E trust shall be made. Such elections shall comply with the procedures and requirements contained in such regulations. It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

6.2 For purposes of §468B of the Code and the regulations promulgated thereunder, the “administrator” shall be the Claims Administrator. The Claims Administrator shall timely and properly file all tax returns necessary or advisable with respect to the Settlement Fund, and make all required payments of Taxes, including deposits of estimated Tax payments in accordance with Treas. Reg. §1.468B-2(k). Such tax returns (as well as the elections described in Paragraph 6.1 above) shall be consistent with this §6 and reflect that all Taxes (including any estimated Taxes and tax expenses, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

6.3 All Taxes shall be paid out of the Settlement Fund. In all events, Granules and Heritage shall have no liability for Taxes. Further, Taxes shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court as directed by Class Counsel. The Escrow Agent, as directed by Class Counsel shall be obligated (notwithstanding anything in this Stipulation to the contrary) to withhold from distribution any funds necessary to pay such Taxes

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or any other amounts required to be withheld by applicable laws, including under Treasury Regulation §1.468B-2(l), including the establishment of adequate reserves for any Taxes. Plaintiffs and Granules and Heritage agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

6.4 Granules, Heritage and Granules' and Heritage's Counsel shall not be responsible for and shall have no liability for or obligations with regard to Taxes, including with respect to acts or omissions of the Claims Administrator or its agents with respect thereto. The Escrow Agent, through the Settlement Fund, shall indemnify and hold Granules and Heritage and Granules' and Heritage's Counsel harmless for any Taxes (including, without limitation, taxes payable by reason of such indemnification).

## **7. ALLOCATION OF NET SETTLEMENT FUND**

7.1 The Claims Administrator shall determine each Authorized Claimant's share of the Net Settlement Fund based on the Plan of Allocation, or in such other Plan of Allocation as the Court approves.

7.2 The Plan of Allocation is not a necessary term of this Stipulation, and it is not a condition of this Stipulation that any particular Plan of Allocation be approved. The Plan of Allocation shall be prepared and proposed (subject to Court approval) by Interim Co-Lead Counsel. Granules and Heritage will have no involvement in or responsibility for preparing the Plan of Allocation and will take no position with respect to the proposed Plan of Allocation or such Plan of Allocation as may be approved by the Court. The Plan of Allocation, and any changes thereto, is a matter separate and apart from the Settlement between the Parties, and any decision by the Court concerning the Plan of Allocation, or any changes thereto, and any appeal of any order relating thereto or reversal or modification thereof, shall not operate to, or be grounds to,

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terminate, modify or cancel, or affect the enforceability of, this Stipulation, or affect or delay the validity or finality of the Judgment (or Alternative Judgment) approving the Settlement.

7.3 Granules and Heritage shall have no liability for or involvement in the solicitation or review of Claim Forms and shall have no liability for or involvement in the administration process itself, which shall be conducted by the Claims Administrator, under the supervision of Interim Co-Lead Counsel, in accordance with this Stipulation, the Plan of Allocation, and any orders that may be entered by the Court. No Claimant or Authorized Claimant shall have any claim against Granules or Heritage and Granules' and Heritage's Counsel based on, or in any way relating to, the distributions from the Settlement Fund.

## **8. ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS**

8.1 Interim Co-Lead Counsel may submit an application to the Court (the "Fee and Expense Application") for an award of Attorneys' Fees and Expenses, up to 34% of the Settlement Fund, including for (a) attorneys' fees and payment of incurred and anticipated litigation costs and expenses in connection with the investigation, filing, prosecution, and settlement of the Action, plus interest on such amounts awarded at the same rate as earned on the Settlement Fund until paid; and (b) Service Awards to Plaintiffs not to exceed \$3,500 for each Plaintiff.

8.2 Attorneys' Fees and Expenses awarded by the Court shall be payable solely from the Settlement Fund immediately upon entry by the Court of an order awarding such amounts, notwithstanding the existence of any timely filed objections thereto, or potential for appeal or collateral attack on the Settlement or any part thereof. Granules and Heritage will take no position, nor object to, the manner in which Interim Co-Lead Counsel shall thereafter allocate the Attorneys' Fees and Expenses among Co-Lead Counsel. However, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, any Attorneys' Fees and Expense award is overturned or reduced, or if the Settlement is terminated or is not approved by the Court, or

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if there is an appeal and any order approving the Settlement does not become final and binding on the Settlement Class, then, within 15 business days after receiving such an order from a court of appropriate jurisdiction, each Co-Lead Counsel law firm that has received any fees or expenses shall refund to the Settlement Fund such funds previously paid to it, plus interest at the same rate as earned on the Settlement Fund, in an amount consistent with such reversal or reduction. Each law firm that serves as Co-Lead Counsel, as a condition of receiving a portion of the Attorneys' Fees and Expense award, on behalf of itself and each partner, shareholder, or member of it, agrees that the law firm and its partners, shareholders, and/or members are subject to the Court's jurisdiction for purposes of enforcing the provisions of this paragraph. Any Service Awards authorized by the Court may be paid only after the Effective Date.

8.3 Granules and Heritage and Granules' and Heritage's Counsel shall have no responsibility for or liability with respect to any payment or allocation of any award of Attorneys' Fees and Expenses from the Settlement Fund.

8.4 It is agreed that the procedure for and the allowance or disallowance by the Court of any Fee and Expense Application or Service Awards shall be considered by the Court separate and apart from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceeding relating to the Fee and Expense Application or Service Awards, and any appeal of any order relating thereto or reversal or modification thereof, shall not operate to, or be grounds to, terminate, modify, or cancel this Stipulation or affect or delay its finality, and shall have no effect on the terms of this Stipulation or the validity or enforceability of this Settlement. The approval, finality, and effectiveness of the Settlement shall not be contingent on an award of Attorneys' Fees and Expenses, or on any Service Awards to Plaintiffs.

## **9. THE PRELIMINARY APPROVAL ORDER**

9.1 Within 45 days of the execution of this Stipulation (or later should the Parties mutually agree), the Parties shall submit the Stipulation together with any exhibits to the Court,

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and Interim Co-Lead Counsel shall apply for entry of a Preliminary Approval Order in connection with settlement proceedings. Granules and Heritage agree solely for the purposes of settlement that they will consent to, and shall not oppose, entry of the Preliminary Approval Order. However, within a reasonable period of time not less than 14 days in advance of submission to the Court, the papers in support of the motion for entry of a Preliminary Approval Order shall be provided by Interim Co-Lead Counsel to Granules and Heritage for their review. To the extent that Granules and Heritage object to any aspect of the motion, they shall communicate such objection to Interim Co-Lead Counsel and the Parties shall meet and confer to resolve any such objection. The Parties shall take all reasonable actions as may be necessary to obtain a Preliminary Approval Order, which will provide for: (i) the preliminary approval of the Settlement set forth in this Stipulation because it is in the range of what is fair, reasonable, and adequate, and in the best interests of the Plaintiffs and Settlement Class; (ii) preliminary approval of the Plan of Allocation; (iii) approval of the Notice and any proposed notice plan; (iv) a schedule for providing Granules and Heritage and the Court with a complete list of any Settlement Class Member who opts out or seeks exclusion from the Settlement Class and for a Fairness Hearing by the Court after the notice period has expired; (v) a stay of all proceedings in the Action against Granules and Heritage until such time as the Court renders a final decision regarding approval of the Stipulation and Settlement; (vi) certification of the Settlement Class, as defined in Paragraph 1.39, for purposes of settlement; (vii) appointment of a Notice and Claims Administrator; and (viii) appointment of an Escrow Agent, as defined in Paragraph 1.14.

9.2 Though the Parties agree that it is not practical to establish a timeline or to create the detailed contents of a Notice at this time, the eventual Notice, to also be approved by the Court prior to distribution, will provide for the best notice practicable to the proposed Settlement Class, including at least notice by publication to consumers and individual notice to third-party payors in

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the proposed Settlement Class that can be identified with reasonable effort, and it will set forth a summary of the terms of the Stipulation (including the Released Claims); the proposed Plan of

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Allocation, and application for Attorneys' Fees and Expenses; the date and time of the Fairness Hearing; the right to object to the Settlement, proposed Plan of Allocation, application for Attorneys' Fees and Expenses or Service Awards; the right to appear at the Fairness Hearing; and the right to request exclusion from the Settlement Class.

9.3 Any Settlement Class Member who or which wishes to be excluded from or "opt out" of the Settlement must submit a timely written request for exclusion (including any required documentation), which shall be signed by the member of the Settlement Class who is opting-out, or by its, his, or her authorized representative (subject to documentation evidencing the representative's legal authority and authorization to act and request exclusion on behalf of each Settlement Class Member), such that it is received on or before the deadline set by the Court (the "Exclusion Deadline"), in accordance with the entered Preliminary Approval Order and the Notice (a "Request for Exclusion"). Requests for Exclusion on behalf of groups, including "mass" or "class" opt-outs, will not be permitted. In addition to the requirements above, third-party payors seeking exclusion must submit with their opt-out request all data reflecting their purchases of, and payments for, Granules' and Heritage's Metformin Products to enable the Parties to make a full assessment in connection with the opt-out threshold referred to in the following Paragraph 9.4. . Any Settlement Class Members who or which do not submit a timely and valid written request for exclusion will be bound by all Court proceedings, orders, and judgments, whether or not they timely submit a Claim Form.

9.4 As set forth in a separate confidential Supplemental Agreement between the Parties as defined below in paragraph 12.5, Granules and Heritage shall have the discretion to terminate the Settlement if a threshold percentage, as defined in the Supplemental Agreement, of potential Settlement Class Members exclude themselves as provided in Paragraph 9.3 above. The confidential Supplemental Agreement will be provided to the Court, *in camera*, upon request.

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9.5 Any Settlement Class Member who wishes to object to the fairness, reasonableness, or adequacy of this Settlement or any aspect of the Plan of Allocation or the Fee and Expense Application or Service Awards must do so in the manner specified and within the deadlines specified in the Preliminary Approval Order and the Notice.

9.6 The Claims Administrator shall provide copies of all Requests for Exclusion and materials submitted therewith (including untimely requests and revocations of requests) to Interim Co-Lead Counsel and Granules' and Heritage's Counsel within three business days of receipt.

## **10. SETTLEMENT CLASS CERTIFICATION**

10.1 Concurrently with their motion for Preliminary Approval, and solely for purposes of this Settlement, Plaintiffs shall file, and Granules and Heritage shall not oppose, a motion to: (i) certify the Settlement Class pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure; (ii) appoint Plaintiffs as representatives of the Settlement Class; and (iii) appoint Interim Co-Lead Counsel as class counsel under Rule 23(g) of the Federal Rules of Civil Procedure.

10.2 The Parties' agreement as to certification of the Settlement Class is only for purposes of effectuating this Settlement, and for no other purpose. Granules and Heritage retain all of their objections, arguments, and defenses, and reserve all rights to contest class certification if the Settlement set forth in this Stipulation does not receive the Court's Final Approval, if the Court's approval is reversed or vacated on appeal, if this Stipulation is terminated as provided herein, or if the Settlement set forth in this Stipulation otherwise fails to proceed for any reason. The Parties acknowledge that there has been no stipulation to a class or certification of a class for any purpose other than effectuating the Settlement, and that, if the Settlement set forth in this Stipulation does not receive the Court's Final Approval, if the Court's approval is reversed or vacated on appeal, if this Stipulation is terminated as provided herein, or if the Settlement set forth

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in this Stipulation otherwise fails to close for any other reason, then this agreement as to certification of the Settlement Class becomes null and void *ab initio*, and neither this Stipulation nor any other Settlement-related statement or document may be cited in support of an argument for certifying a class related to the Action and all Settlement-related statements or documents shall not constitute, be construed as, or be deemed to be evidence of or an admission or concession by Granules or Heritage as to whether any class, in this Action or others, may be certified for purposes of litigation and trial.

### **11. FINAL APPROVAL AND JUDGMENT**

11.1 After the certification of the Settlement Class by the Court for purposes of Settlement, the Court's entry of a Preliminary Approval Order, and issuance of Notice, Plaintiffs shall file with the Court a motion for final approval of the Settlement and entry of a Judgment agreed to and proposed by the Parties, which shall be substantially in the form preliminarily approved by the Court. However, within a reasonable time not less than 14 days before submission to the Court, the papers supporting the motion for Final Approval shall be provided by Interim Co- Lead Counsel to Granules and Heritage for their review. To the extent that Granules or Heritage object to any aspect of the motion, they shall communicate such objection to Interim Co-Lead Counsel and the Parties shall meet and confer to resolve any such objection. The Parties agree to take all reasonable best efforts, including undertaking all actions contemplated by and any steps necessary to effectuate this Stipulation and to take all actions as may be necessary to carry out the terms of this Stipulation and obtain Final Approval and entry of a Final Judgment and Order.

### **12. EFFECTIVE DATE OF SETTLEMENT; TERMINATION; FINALITY OF SETTLEMENT; STAY OF PROCEEDINGS**

12.1 The Effective Date of the Settlement shall be the date on which all of the following events or conditions have occurred:

- (a) the Court has entered the Preliminary Approval Order in all material respects;

## EXECUTION VERSION

- (b) the full amount of the Settlement Amount has been paid into the Escrow Account pursuant to Paragraph 2.1(a);
- (c) Granules and Heritage have not validly exercised their right (if applicable) to terminate the Settlement pursuant to Paragraph 12.4 or pursuant to Paragraph 12.5 and the Supplemental Agreement, and their right (if applicable) to do so has expired in accordance with the terms of the Stipulation and/or the Supplemental Agreement;
- (d) Plaintiffs have not exercised their right (if applicable) to terminate the Settlement pursuant to Paragraphs 12.4 and 12.6, and their option (if applicable) to do so has expired in accordance with the terms of the Stipulation;
- (e) the Court has entered the Judgment (or Alternative Judgment), following issuance of Notice to the Settlement Class, that approves the Settlement, and such Judgment (or Alternative Judgment) has become a Final Judgment; and
- (f) the time for appeal from the Court's Preliminary Approval Order and the Judgment (or Alternative Judgment) has expired or, if appealed, either such appeal has been dismissed before resolution by the appellate court or approval of the Stipulation and Settlement and the Judgment (or Alternative Judgment) has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

12.2 Upon the occurrence of all of the events referenced in Paragraph 12.1, Plaintiffs shall have, and each Settlement Class Member and Released Plaintiff shall hereby be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, waived, settled, and discharged, the Released Defendants from and with respect to Plaintiffs' Released Claims, whether or not such Plaintiffs, Settlement Class Members, or Released Plaintiffs have executed a Claim Form.

## EXECUTION VERSION

12.3 Upon the occurrence of all of the events and conditions referenced in Paragraph 12.1, any obligation (if otherwise applicable) of the Escrow Agent to return any funds from the Settlement Fund to Granules and Heritage pursuant to Paragraph 12.7 or any other provision of this Stipulation shall be absolutely and forever extinguished.

12.4 Granules and Heritage, and Plaintiffs, through their respective counsel, shall each, in their respective discretions, but in all events subject to Paragraph 12.5 herein, have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”) to all other counsel for the Parties within 30 calendar days of:

- (a) the Court’s Final non-appealable refusal to enter the Preliminary Approval Order in any material respect;
- (b) the Court’s Final non-appealable refusal to approve this Stipulation or any material part of it (except with respect to any decision by the Court concerning the Fee and Expense Application, Service Awards, and Plan of Allocation);
- (c) the Court’s Final non-appealable refusal to enter the Judgment (or an Alternative Judgment) in any material respect; or
- (d) the date on which the Judgment (or an Alternative Judgment) is modified or reversed in any material respect by a Court of Appeals or the United States Supreme Court and such modification or reversal has become Final.

12.5 If, before the Fairness Hearing, Persons who otherwise would be Settlement Class Members have timely submitted valid Requests for Exclusion from the Settlement Class in accordance with the provisions of the entered Preliminary Approval Order and the Notice issued pursuant thereto, and who have not retracted their Requests for Exclusion before the Fairness Hearing, and such Persons account for an amount greater than the amount specified in a separate Supplemental Agreement between the Parties (the “Supplemental Agreement”), then Granules and

## EXECUTION VERSION

Heritage shall have the option to terminate this Stipulation and Settlement in accordance with the requirements and procedures set forth in the Supplemental Agreement. Interim Co-Lead Counsel shall, however, have the opportunity to seek retraction of any Requests for Exclusion before the Fairness Hearing. The Supplemental Agreement shall not be filed with the Court unless and until a dispute among the Parties concerning its interpretation or application arises, or as otherwise ordered by the Court, nor shall the Supplemental Agreement otherwise be disclosed unless ordered by the Court. The Court may examine the Supplemental Agreement if so requested by the Court, and if the Court requires that it be filed, the Parties shall request that it be filed under seal.

12.6 If Granules or Heritage (or their successors) do not pay or cause to be paid the Settlement Amount in full within the time period specified in Paragraph 2.1(a) of this Stipulation, then Interim Co- Lead Counsel, in its sole discretion, may, at any time before the Court entering the Judgment (or an Alternative Judgment): (a) terminate the Settlement by providing written notice to Granules' and Heritage's Counsel; (b) seek to enforce the terms of the Settlement and this Stipulation and seek entry of a judgment and/or order to effectuate and enforce the terms of this Stipulation; and/or (c) pursue such other rights as Plaintiffs and the Settlement Class may have arising out of the failure to timely pay the Settlement Amount in full into the Escrow Account.

12.7 Except as otherwise provided herein, in the event that the Settlement is terminated in accordance with its terms, the Judgment (or Alternative Judgment) is vacated, or the Effective Date fails to occur, then (a) the Parties shall be deemed to have reverted to their respective statuses and positions in the Action as of July 1, 2025, and the fact and terms of the Settlement shall not be admissible in any trial of the Action and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered, and (b) any portion of the Settlement Amount previously paid by or on behalf of Granules and Heritage, together with any interest earned thereon (and, if applicable, repayment of any award of Attorneys'

## **EXECUTION VERSION**

Fees and Expenses), less any actual and reasonable Notice and Administration Costs incurred and any Taxes paid or due up to \$250,000, shall be returned to Granules and Heritage within 30 business days after the date of the event causing termination. Notwithstanding anything to the contrary in this Agreement, however, Paragraphs 1.1-1.48, 3.2, 5.2, 12.7, 12.8, and 13.19 shall survive termination. If the Action against Granules and Heritage is to resume, the Parties agree that any such resumption will take place in a reasonable manner and be approved by the Court upon joint application by the Parties.

12.8 If this Stipulation is terminated pursuant to its terms at the request of Granules and Heritage or the Plaintiffs, then the Escrow Agent or the Escrow Agent's designee shall (a) apply for any tax refund owed to the Settlement Fund and (b) pay the proceeds of any tax refund to Granules and Heritage.

12.9 No order of the Court or modification or reversal of any order of the Court concerning the Plan of Allocation, Attorneys' Fees and Expenses, or Service Awards shall constitute grounds for termination of the Stipulation.

12.10 Pending entry of the Preliminary Approval Order, the Parties agree as of July 1, 2025, to stay any and all proceedings against Granules and Heritage in the Action other than those incident to the settlement process and agree to extensions of time with respect to any and all court filings, if any, necessary to effectuate such stays.

## **13. MISCELLANEOUS PROVISIONS**

13.1 The Parties acknowledge that they intend to consummate the Settlement contemplated by this Stipulation.

13.2 The Parties shall use their reasonable best efforts and take all reasonably necessary steps to consummate the Settlement contemplated herein.

13.3 The administration and consummation of the Settlement as embodied in this

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Stipulation shall be under the authority of the Court, and the Court shall also retain jurisdiction for purposes of, *inter alia*, entering orders relating to the Fee and Expense Application, Notice and Administration Costs, the Plan of Allocation, distribution of the Net Settlement Fund, and the enforcement of the terms of this Stipulation.

13.4 The Parties agree that the Settlement Amount and the other terms of the Settlement were negotiated at arm's length by experienced and competent legal counsel and in good faith by the Parties.

13.5 By executing this Stipulation, each of the Parties represents that they have the right, legal capacity, power, and authority to enter into this Stipulation and to perform their obligations hereunder, without requiring additional consent, approval, or authorization of any other person, board, entity, tribunal, or other regulatory or governmental authority.

13.6 Each Party agrees that no representations, warranties, inducements, covenants, or promises of any kind or character have been made by any other Party, Released Parties, or anyone else to induce the execution of this Stipulation except as expressly provided in this Stipulation, and that this Stipulation, together with the Supplemental Agreement, constitutes the entire agreement between the Parties.

13.7 Each Party represents and warrants that they have had the opportunity to be represented by counsel of their choice throughout the negotiations that preceded the execution of this Stipulation and in connection with the preparation and execution of this Stipulation, and that they have been afforded sufficient time and opportunity to review this Stipulation with counsel of their choice.

13.8 This Stipulation was negotiated in good faith and reflects a Settlement reached voluntarily and was not the result of coercion or duress.

13.9 The Supplemental Agreement is hereby incorporated by reference as though fully

## EXECUTION VERSION

set forth in this Stipulation.

13.10 Plaintiffs have ceased and shall continue to cease all litigation activities against Granules and Heritage and its former employees. Granules and Heritage have ceased and shall continue to cease all litigation activities against Plaintiffs in the Action, including seeking discovery from Plaintiffs or their counsel. This provision shall not be construed to prohibit Plaintiffs from seeking appropriate discovery from non-settling defendants or any other person other than Granules and Heritage.

13.11 No amendment or modification of this Stipulation shall be effective unless in writing and signed by, or on behalf of, all of the Parties.

13.12 Whenever this Stipulation requires or contemplates that Granules and Heritage shall or may give notice to Plaintiffs (or Interim Co-Lead Counsel), or that Plaintiffs shall or may provide notice to Granules and Heritage (or Granules' and Heritage's Counsel), unless otherwise specified, such notice shall be provided by email and next business day express delivery service, as set forth below, to the below-listed counsel:

If to Plaintiffs or Interim Co-Lead Counsel:

James E. Cecchi  
Donald A. Ecklund  
Carella Byrne Cecchi Brody Agnello, P.C.  
5 Becker Farm Road  
Roseland, NJ 07068  
(973) 994-1700

If to Granules and Heritage or Granules' and Heritage's Counsel:

Asher A. Block  
Lewis Brisbois Bisgaard and Smith LLP  
550 E. Swedesford Rd  
Wayne, PA 19087  
(215) 977-4066

Any of the Parties may, from time to time, change the address to which such notices are to be delivered, by giving the other Parties prior written notice of the changed address, in the manner

## EXECUTION VERSION

provided above, at least 10 calendar days before the change is effective.

13.13 Granules and Heritage shall bear their own costs and expenses, including costs, expenses, and fees of their counsel. Any award of Attorneys' Fees and Expenses to Co-Lead Counsel shall be paid out of the Settlement Fund, subject to Court approval, and Granules and Heritage shall have no obligation with respect to the payment of said Attorneys' Fees and Expenses.

13.14 Interim Co-Lead Counsel, on behalf of the Settlement Class, is expressly authorized to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this Stipulation to effectuate its terms and to enter into any written modifications or amendments to this Stipulation on behalf of the Settlement Class.

13.15 This Stipulation shall be binding upon, and inure to the benefit of, the Parties, the Released Parties, and the successors, assigns, executors, administrators, heirs, and representatives of the Parties and the Released Parties. Without limiting the generality of the foregoing, each and every covenant and agreement in this Stipulation by the Plaintiffs and Interim Co-Lead Counsel shall be binding upon all members of the Settlement Class except those who requested and were granted exclusion from the Settlement Class, and the Released Plaintiffs and their respective successors and assigns. No assignment shall relieve any Party hereto of any obligations hereunder.

13.16 This Stipulation shall be governed by, construed, performed, and enforced in accordance with New Jersey law without regard to conflicts of law provisions, except to the extent that federal law requires that federal law governs.

13.17 Plaintiffs, on behalf of themselves and each Settlement Class Member, as well as the other Parties, hereby irrevocably submit to the Court's jurisdiction for any suit, action, proceeding, or dispute arising out of or relating to this Stipulation, the applicability of this Stipulation, or the enforcement of this Stipulation.

## **EXECUTION VERSION**

13.18 The Parties acknowledge that each Party has participated jointly and equally in negotiating and preparing this Stipulation. In the event an ambiguity or question of intent or interpretation arises, such ambiguity or question shall not be construed against any Party, and no presumption or burden of proof shall arise from favoring or disfavoring any Party solely by virtue of the authorship of any provision in this Stipulation, and instead this Stipulation shall be construed as if each Party participated equally in the drafting of all such provisions.

13.19 Whether or not Final Judgment is entered or this Settlement is terminated, neither this Stipulation, nor the fact of the Settlement, or any and all statements, negotiations, documents, or discussions associated with it, are an admission or concession by Granules and Heritage of any liability or wrongdoing whatsoever. This Stipulation shall not constitute a finding of the validity or invalidity of any factual allegation or any claims in the Action or of any liability or wrongdoing by Granules and Heritage. This Stipulation, the fact of settlement, the settlement proceedings, the settlement negotiations, and any related documents, shall not be used or construed as an admission of any factual allegation, fault, liability, or wrongdoing by any Person, and shall in no event be offered or received in evidence as an admission, concession, presumption, or inference against any party in any action or proceeding of any nature, or otherwise referred to or used in any manner in or before any court or other tribunal, except in such proceeding as may be necessary to enforce this Stipulation. The Parties expressly reserve all of their rights if the Settlement does not become final in accordance with the terms of this Stipulation. Upon the Settlement becoming final, nothing in this paragraph shall prevent Granules and Heritage from asserting any release or using this Stipulation to offset or dispute any liability to any other party.

13.20 The headings in this Stipulation are used for purposes of convenience and ease of reference only and are not meant to have legal effect.

13.21 The waiver by one Party of any breach of this Stipulation by any other Party shall

## **EXECUTION VERSION**

not be deemed a waiver by any other Party of such breach, nor shall it be deemed a waiver of any other breach of this Stipulation, including any prior or subsequent breach of this Stipulation. The provisions of this Stipulation may not be waived except in writing signed by the affected Party or counsel for that Party. No failure or delay on the part of any Party in exercising any right, remedy, power, or privilege under this Stipulation shall operate as a waiver thereof or of any other right, remedy, power, or privilege of such Party under this Stipulation; nor shall any single or partial exercise of any right, remedy, power, or privilege under this Stipulation on the part of any Party operate as a waiver thereof or of any other right, remedy, power, or privilege of such Party under this Stipulation, or preclude further exercise thereof or the exercise of any other right, remedy, power, or privilege.

13.22 Each of the Plaintiffs and Granules and Heritage represents and warrants that he, she, or it is authorized to enter into this Stipulation, or any related Settlement documents, that he, she, or it has authorized his, her, or its counsel to enter into the Stipulation on his, her, or its behalf, and that he, she, or it warrants and represents that he, she, or it has full authority to do so on behalf of his, her, or its respective clients, and that he, she, or it similarly has the authority to take all appropriate actions required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

13.23 This Stipulation may be executed in one or more original, photocopied, PDF copies, or facsimile counterparts, and facsimile or scanned signatures shall have the same force and effect as original signatures, and the exchange of fully executed copies of this Stipulation may similarly be effectuated by emailed PDF to the email addresses shown below for the Parties' respective counsel. All executed counterparts and each of them shall be deemed to be one and the same instrument. A copy of the complete set of executed counterparts of this Stipulation shall be electronically filed with the Court as an exhibit to the motion for Preliminary Approval.

## EXECUTION VERSION

13.24 The Parties agree to maintain the confidentiality of all settlement discussions, and materials exchanged during the settlement negotiation. The Parties further agree to keep any settlement details confidential until the earlier of (a) the motion for a Preliminary Approval Order, or (b) the Parties' mutual agreement that such information can be disclosed and to whom such information can be disclosed. However, Granules and Heritage can inform other Defendants that they have reached a settlement agreement with Plaintiffs. Likewise, Plaintiffs may inform other Plaintiffs that they have reached a settlement agreement with Granules and Heritage. Aside from these agreed upon disclosures, the Stipulation and the Settlement contemplated herein shall be kept confidential until the Stipulation is filed with the Court for purposes of obtaining a Preliminary Approval Order except (a) as otherwise required by law (including any applicable court order) or regulation or administrative guidance, request, ruling or proceeding or stock exchange rule, and as necessary to prepare tax, securities, and other required documents and disclosure; or (b) to enforce this Stipulation. This provision does not impact the Parties' obligations to continue to abide by the terms of the Stipulated Discovery Protective Order of Confidentiality approved and entered by the Court on March 29, 2022 (ECF No. 154).

IN WITNESS WHEREOF, the Parties, intending to be legally bound by this Stipulation, have caused this Stipulation to be executed, by their duly authorized attorneys, as of September 29, 2025.

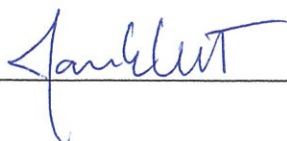


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Asher A. Block, Esquire  
Lewis Brisbois Bisgaard &  
Smith, LLP  
550 E. Swedesford Road  
Suite 270  
Wayne, PA 19087  
(215) 977-4100

**EXECUTION VERSION**

*Counsel for Granules USA, Inc., Granules Pharmaceuticals, Inc.  
and Heritage Pharmaceuticals, Inc. d/b/a Avet Pharmaceuticals  
Inc.*



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James E. Cecchi  
Donald A. Ecklund  
CARELLA BYRNE CECCHI BRODY AGNELLO, P.C.  
5 Becker Farm Road  
Roseland, NJ 07068  
(973) 994-1700



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Ruben Honik  
**Honik LLC**  
1515 Market Street, Suite 1100  
Philadelphia, PA 19102  
Tel: 267-435-1300  
[ruben@honiklaw.com](mailto:ruben@honiklaw.com)

*Counsel for Plaintiffs*

# Exhibit 3



# Banking Handbook for Settlement Funds

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**A resource guide for lawyers, claims administrators, regulators,  
and special masters.**

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# Introduction

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## **BACKGROUND**

While working on thousands of settlement funds, our National Settlement Team received many questions about escrows and disbursements to claimants. We developed this handbook to be a resource guide for lawyers, claims administrators, regulators, and special masters.

The handbook is designed to help responsible parties make more informed decisions about banking matters for settlements.

The information contained in this handbook is designed for informational purposes only, and is based on generally accepted banking principles. Each specific situation may vary, so a banker or tax advisor should be engaged directly for more information. Neither Huntington, its agents, employees, nor affiliates is intending to provide legal advice through this handbook. Nothing in this handbook should be considered a substitute for legal advice from an attorney.

The National Settlement Team welcomes your comments and suggestions to make the handbook more valuable. Please send questions and recommendations to [nst@huntington.com](mailto:nst@huntington.com).

## **ABOUT THE NATIONAL SETTLEMENT TEAM**

Huntington's National Settlement Team provides one of the leading settlement account programs in the country. Our National Settlement Team has handled more than 2,800 settlements for law firms, claims administrators and regulatory agencies. These cases represent over \$60 Billion with more than 50 million checks distributed to class members. The Huntington National Bank is a wholly owned subsidiary of Huntington Bancshares Incorporated, a regional bank holding company headquartered in Columbus, Ohio, with over \$100 billion in assets.



# Best Practices

While law firms, claims administrators and regulators sometimes operate differently, there are best practices universally accepted in the settlement industry. Here are some helpful guidelines to consider:

BEST PRACTICE	WHY	REFERENCE
Appoint a bank to serve as Custodian/ Escrow Agent	A bank provides greater oversight of the Settlement Fund	6
Select a bank with experience servicing Qualified Settlement Funds	Selecting a bank ensures proper execution and simplifies the fiduciary party's role	6, 36
Identify an appropriate investment structure in the Settlement Agreement	Choose investment options that allow for flexibility and appropriate liquidity, while ensuring safety of funds	12-19
Invest settlement funds exclusively in accounts backed by the full faith and credit of the U.S. Government	These investments will ensure the safety and soundness of the settlement fund	12-19
Prepare for distribution by transferring the settlement funds to the disbursement account before checks are mailed or use an automated funding (sweep) service	Ensure a smooth check clearing process for claimants	17-18
Use Fraud Mitigation Services	Reduce the risk of payments fraud and help protect the integrity of the settlement fund	20-21
For distributions over \$100 million, holdback 10% — 20% of the fund for a second distribution later.	Effective way to redistribute unclaimed funds. Also acts as a self-insurance policy for late claims and unexpected issues.	26

# Avoiding Pitfalls

Over the years, class action settlements have become larger and financial challenges more complex. Here are some issues to avoid and ways to reduce risks:

RISK	MITIGANT	REFERENCE
Fiduciary: Your firm experiences a loss due to embezzlement or forgery	Appoint the bank as custodian/escrow agent	6
Market: The custody/escrow fund loses investment value	Invest in vehicles backed by the full faith and credit of the U.S. Government	12-19
Transactional: A settlement check bounces during distribution	Ensure that your bank closely monitors the settlement accounts and that they understand the importance of settlement funds	17, 36
Fraud: Payment fraud occurs during distribution phase	Use Fraud Mitigation Services	20-21
Fraud: A phisher or other scammer attempts to access funds/information	Build protocols to help identify malicious inquiries	20-21
Fiduciary: The financial institution fails	Select a stable bank with adequate capital ratios	28
Fiduciary: The bank loses funds as a result of embezzlement, forgery, robbery, wire transfer fraud, cyber-theft or human error	Select a bank with an adequate Banker's Blanket Bond and Errors and Omissions Insurance	29-30

# Custody/Escrow Accounts

“Custody” and “Escrow” are terms frequently misunderstood in banking because it is applied differently in various situations. In its simplest form, a custody or escrow account refers to funds being held for another party. The “custody/escrow agent” is the person or entity that holds funds on behalf of the third party.

For a settlement account, typically three different entities may serve as a custodian/escrow agent:

- > *Law firm*
- > *Bank*
- > *Claims Administrator*

Sometimes the law firm will serve as the custodian/escrow agent for their clients. Other times, particularly when multiple law firms are involved, a bank is appointed as an independent custodian/escrow agent. In other situations, a claims administrator may hold the funds as custodian/escrow agent prior to distributing the funds.

There are various reasons to consider a bank as custodian/escrow agent:

- > *Multiple Parties Involved:* Defense counsel and Plaintiffs’ counsel, or simply Co-Plaintiffs’ counsel, may want a bank to serve as independent custodian/escrow agent.
- > *Account Monitoring:* The bank can monitor the disbursement of funds based on authorized signer(s), even for custodian/escrow accounts with a single law firm or lawyer.
- > *Banker’s Blanket Bond Insurance:* The bank maintains insurance to protect against a variety of criminal acts including employee fraud, embezzlement, robbery, forgery, wire transfer fraud, and cyber-theft.
- > *Investment Criteria:* The bank may serve as custodian/escrow agent to ensure compliance with investment guidelines.

When selecting a bank as custodian/escrow agent, it is important to inquire about fees. Some banks charge a variety of fees including an issuance fee, acceptance fee, annual administrative fee, disbursement fee, reporting fee and legal fee. Often banks may charge as little as \$3,000–\$5,000 to as much as \$25,000–\$35,000 before investment management expenses.

For Settlement Funds, two of the most important sections are: 1.) The Indemnification Language and 2.) The Investment Criteria.

## 1. The Indemnification Language

The Indemnification Language determines the custody/escrow agent’s standard of liability. There are two levels of care: Negligence and Gross Negligence

According to Black’s Law Dictionary, “negligence” is the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.<sup>1</sup>

In contrast, “gross negligence” is a lower standard of care.

- > *Negligence:* Lower standard of immunity, which can be more advantageous for the beneficiaries, but less desirable for the escrow agent, e.g. “Escrow Agent shall be liable for its negligence or misconduct.”
- > *Gross Negligence:* Higher standard of immunity, which is preferable for the escrow agent, but provides less recourse for the beneficiaries, e.g. “The Escrow Agent shall be liable for its gross negligence or willful misconduct.”

## 2. The Investment Criteria

The Investment Criteria determines which investment vehicles are appropriate placements for the Settlement Fund. We will address the investment criteria in further detail on page 12.

<sup>1</sup>Black’s Law Dictionary 1056 (7th ed. 1999)

This is a custodian/escrow agreement template that may be helpful for settlements. It is available as a Microsoft Word document upon request to melissa.villain@huntington.com. **PLEASE NOTE:** This agreement template is a starting point. The agreement should be reviewed by qualified legal counsel and customized to fit the circumstances surrounding the relevant settlement.

## CUSTODIAN/ESCROW AGREEMENT

This Custodian/Escrow Agreement dated \_\_\_\_\_ is made among \_\_\_\_\_ (“Class Counsel”), \_\_\_\_\_ (“Defense Counsel”), and **THE HUNTINGTON NATIONAL BANK**, as Custodian/Escrow agent (“Custodian/Escrow Agent”).

### Recitals

- A. This Custodian/Escrow Agreement governs the deposit, investment and disbursement of the settlement funds that, pursuant to the Stipulation of Settlement (the “Settlement Agreement”) dated \_\_\_\_\_ attached hereto as Exhibit A, entered into by, among others, Class Counsel on behalf of the Lead Plaintiffs and Defense Counsel on behalf of the Defendant, will be paid to settle the class action captioned \_\_\_\_\_, pending in \_\_\_\_\_ (the “Court”).
- B. Pursuant to the terms of the Settlement Agreement, the Defendant has agreed to pay or cause to be paid the total amount of \_\_\_\_\_ in cash (the “Settlement Amount”) in settlement of the claims brought against the Defendant in the Class Action.
- C. The Settlement Amount, together with any interest accrued thereon, is to be deposited into Custodian/Escrow and used to satisfy payments to Authorized Claimants, payments for attorneys’ fees and expenses, payments for tax liabilities, and other costs pursuant to the terms of the Settlement Agreement.
- D. Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Settlement Agreement.

### Agreement

1. Appointment of Custodian/Escrow Agent. The Custodian/Escrow Agent is hereby appointed to receive, deposit and disburse the Settlement Amount upon the terms and conditions provided in this Custodian/Escrow Agreement, the Settlement Agreement and any other exhibits or schedules later annexed hereto and made a part hereof.
2. The Custodian/Escrow Account. The Custodian/Escrow Agent shall establish and maintain an Custodian/Escrow account titled as \_\_\_\_\_ (the “Custodian/Escrow Account”). Pursuant to the Settlement Agreement, the Defendant shall cause the Settlement Amount to be deposited into the Custodian/Escrow Account within \_\_\_\_\_ days following entry of the Court’s order preliminarily approving the settlement. Custodian/Escrow Agent shall receive the Settlement amount into the Custodian/Escrow Account; the Settlement Amount and all interest accrued thereon shall be referred to herein as the “Settlement Fund.” The Settlement Fund shall be held and invested on the terms and subject to the limitations set forth herein, and shall be released by Custodian/Escrow Agent in accordance with the terms and conditions hereinafter set forth and set forth in the Settlement Agreement and in orders of the Court approving the disbursement of the Settlement Fund.
3. Investment of Settlement Fund. At the written direction of Class Counsel, Custodian/Escrow Agent shall invest the Settlement Fund exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or (b) secured by instruments backed by the full faith and credit of the United States Government. Defendants shall not bear any responsibility for or liability related to the investment of the Settlement Fund by the Custodian/Escrow Agent.
4. Custodian/Escrow Funds Subject to Jurisdiction of the Court. The Settlement Fund shall remain subject to the jurisdiction of the Court until such time as the Fund shall be distributed, pursuant to the Settlement Agreement and on further order(s) of the Court.

5. Tax Treatment & Report. The Settlement Fund shall always be treated as a “Qualified Settlement Fund” within the meaning of Treasury Regulation §1.468B-1. Class Counsel and, as required by law, the Defendant, shall jointly and timely make such elections as necessary or advisable to fulfill the requirements of such Treasury Regulation, including the “relation-back election” under Treas. Reg. § 1.468B-1(j)(2) if necessary to the earliest permitted date. For purposes of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” of the Settlement Fund shall be Class Counsel. Class Counsel shall timely and properly prepare, deliver to all necessary parties for signature, and file all necessary documentation for any elections required under Treas. Reg. §1.468B-1. Class Counsel shall timely and properly prepare and file any informational and other tax returns necessary or advisable with respect to the Settlement Funds and the distributions and payments therefrom including without limitation the returns described in Treas. Reg. §1.468B-2(k), and to the extent applicable Treas. Reg. §1.468B-2(1).
6. Tax Payments of Settlement Fund. All Taxes with respect to the Settlement Fund, as more fully described in the Settlement Agreement, shall be treated as and considered to be a cost of administration of the Settlement Fund and the Custodian/Escrow Agent shall timely pay such Taxes out of the Settlement Fund without prior order of the Court, as directed by Class Counsel. Class Counsel shall be responsible for the timely and proper preparation and delivery of any necessary documentation for signature by all necessary parties, and the timely filing of all tax returns and other tax reports required by law. The Class Counsel may engage an accounting firm or tax preparer to assist in the preparation of any tax reports or the calculation of any tax payments due as set forth in Sections 5 and 6, and the expense of such assistance shall be paid from the Settlement Fund by the Custodian/Escrow Agent at Class Counsel’s direction. The Settlement Fund shall indemnify and hold the Defendant harmless for any taxes that may be deemed to be payable by the Defendant by reason of the income earned on the Settlement Fund, and Custodian/Escrow Agent, as directed by Class Counsel, shall establish such reserves as are necessary to cover the tax liabilities of the Settlement Fund and the indemnification obligations imposed by this paragraph. If the Settlement Fund is returned to the Defendant pursuant to the terms of the Settlement Agreement, the Defendant shall provide Custodian/Escrow Agent with a properly completed Form W-9.
7. Disbursement Instructions
- (a) Class Counsel may, without further order of the Court or authorization by the Defendant’s Counsel, instruct Custodian/Escrow Agent to disburse the funds necessary to pay Notice and Administration Expenses.
  - (b) Disbursements other than those described in paragraph 7(a), including disbursements for distribution of Class Settlement Funds, must be authorized by either (i) an order of the Court, or (ii) the written direction of \_\_\_\_\_ of Class Counsel and \_\_\_\_\_ of Defense Counsel.
  - (c) In the event funds transfer instructions are given (other than in writing at the time of execution of this Agreement), whether in writing, by facsimile, e-mail, telecopier or otherwise, Custodian/Escrow Agent will seek confirmation of such instructions by telephone call back when new wire instructions are established to the person or persons designated in subparagraphs (a) and (b) above only if it is reasonably necessary, and Custodian/Escrow Agent may rely upon the confirmations of anyone purporting to be the person or persons so designated. It will not be reasonably necessary to seek confirmation if Custodian/Escrow Agent receives written letters authorizing a disbursement from each of the law firms required in subparagraphs (a) and (b), as applicable, on their letterhead and signed by one of the persons designated in subparagraphs (a) and (b). To assure accuracy of the instructions it receives, Custodian/Escrow Agent may record such call backs. If Custodian/Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it shall not execute the instruction until all issues have been resolved. The persons and telephone numbers for call backs may be validly changed only in a writing that (i) is signed by the party changing its notice designations, and (ii) is received and acknowledged by Custodian/Escrow Agent. Class Counsel and Defense Counsel agree to notify Custodian/Escrow Agent of any errors, delays or other problems within 30 days after receiving notification that a transaction has been executed. If it is determined that the transaction was delayed or erroneously executed as a result of Custodian/Escrow Agent’s error, Custodian/Escrow Agent’s sole obligation is to pay or refund the amount of such error and any amounts as may be required by applicable law. Any claim for interest payable will be at the then-published rate for United States Treasury Bills having a maturity of 91 days.

- (d) The Custodian/Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Custodian/Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees; (i) to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Custodian/Escrow Agent, including, without limitation, the risk of the Custodian/Escrow Agent acting on unauthorized instructions, and the risk or interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Custodian/Escrow Agent and that there may be more secure methods of transmitting instructions than the method(s) selected by the Custodian/Escrow Agent; and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.
8. Termination of Settlement. If the Settlement Agreement terminates in accordance with its terms, Class Counsel and the Defendant shall jointly notify Custodian/Escrow Agent of the termination of the Settlement Agreement. Upon such notification, the balance of the Settlement Fund, together with any interest earned thereon, less any Notice and Administration Expenses paid and actually incurred in accordance with the terms of the Settlement Agreement but not yet paid, and any unpaid Taxes due, as determined by Class Counsel and the Defendant, shall be returned to the Defendant in accordance with instruction from the Defendant's Counsel.
9. Fees. The Custodian/Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached as Exhibit B. All fees and expenses of Custodian/Escrow Agent shall be paid solely from the Settlement Fund. The Custodian/Escrow Agent may pay itself such fees from the Settlement Fund only after such fees have been approved for payment by Class Counsel. If Custodian/Escrow Agent is asked to provide additional services, such as the preparation and administration of payments to Authorized Claimants, a separate agreement and fee schedule will be entered into.
10. Duties, Liabilities and Rights of Custodian/Escrow Agent. This Custodian/Escrow Agreement sets forth all of the obligations of Custodian/Escrow Agent, and no additional obligations shall be implied from the terms of this Custodian/Escrow Agreement or any other agreement, instrument or document.
- (a) Custodian/Escrow Agent may act in reliance upon any instructions, notice, certification, demand, consent, authorization, receipt, power of attorney or other writing delivered to it by Class Counsel or Counsel for the Defendant, as provided herein, without being required to determine the authenticity or validity thereof or the correctness of any fact stated therein, the propriety or validity of the service thereof, or the jurisdiction of the court issuing any judgment or order. Custodian/Escrow Agent may act in reliance upon any signature which is reasonably believed by it to be genuine and may assume that such person has been properly authorized to do so.
- (b) Custodian/Escrow Agent may consult with legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected to the extent Custodian/Escrow Agent acts in accordance with the reasonable opinion and instructions of counsel. Custodian/Escrow Agent shall have the right to reimburse itself for reasonable legal fees and reasonable and necessary disbursements and expenses actually incurred from the Custodian/Escrow Account only (i) upon approval by Class Counsel and the Defendant or (ii) pursuant to an order of the Court.
- (c) The Custodian/Escrow Agent, or any of its affiliates, is authorized to manage, advise, or service any money market mutual funds in which any portion of the Settlement Fund may be invested.
- (d) Custodian/Escrow Agent is authorized to hold any treasuries held hereunder in its federal reserve account.
- (e) Custodian/Escrow Agent shall not bear any risks related to the investment of the Settlement Fund in accordance with the provisions of paragraph 3 of this Custodian/Escrow Agreement. The Custodian/Escrow Agent will be indemnified by the Settlement Fund, and held harmless against, any and all claims, suits, actions, proceedings, investigations, judgments, deficiencies, damages, settlements, liabilities and expenses (including reasonable legal fees and expenses of attorneys chosen by the Custodian/Escrow Agent) as and when incurred, arising out of or based upon any act, omission, alleged act or alleged omission by the Custodian/Escrow Agent or any other cause, in any case in connection with the acceptance of, or performance or non-performance by the Custodian/Escrow Agent of, any of the Custodian/Escrow Agent's duties under this Agreement, except as a result of the Custodian/Escrow Agent's bad faith, willful misconduct or gross negligence.

(f) Upon distribution of all of the funds in the Custodian/Escrow Account pursuant to the terms of this Custodian/Escrow Agreement and any orders of the Court, Custodian/Escrow Agent shall be relieved of any and all further obligations and released from any and all liability under this Custodian/Escrow Agreement, except as otherwise specifically set forth herein.

(g) In the event any dispute shall arise between the parties with respect to the disposition or disbursement of any of the assets held hereunder, the Custodian/Escrow Agent shall be permitted to interplead all of the assets held hereunder into a court of competent jurisdiction, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets. The parties further agree to pursue any redress or recourse in connection with such a dispute, without making the Custodian/Escrow Agent a party to same.

11. Non-Assignability by Custodian/Escrow Agent. Custodian/Escrow Agent's rights, duties and obligations hereunder may not be assigned or assumed without the written consent of Class Counsel and the Defendant.

12. Resignation of Custodian/Escrow Agent. Custodian/Escrow Agent may, in its sole discretion, resign and terminate its position hereunder at any time following 120 days prior written notice to the parties to the Custodian/Escrow Agreement herein. On the effective date of such resignation, Custodian/Escrow Agent shall deliver this Custodian/Escrow Agreement together with any and all related instruments or documents and all funds in the Custodian/Escrow Account to the successor Custodian/Escrow Agent, subject to this Custodian/Escrow Agreement. If a successor Custodian/Escrow Agent has not been appointed prior to the expiration of 120 days following the date of the notice of such resignation, then Custodian/Escrow Agent may petition the Court for the appointment of a successor Custodian/Escrow Agent, or other appropriate relief. Any such resulting appointment shall be binding upon all of the parties to this Custodian/Escrow Agreement.

13. Notices. Notice to the parties hereto shall be in writing and delivered by hand-delivery, facsimile, electronic mail or overnight courier service, addressed as follows:

If to Class Counsel:

If to Defendant:

If to Custodian/Escrow Agent:

THE HUNTINGTON NATIONAL BANK  
Christopher Ritchie, Executive Managing Director  
650 E. Swedesford Road, Suite 310  
Wayne, PA 19087  
Telephone: (215) 568-2328  
E-mail: [chris.ritchie@huntington.com](mailto:chris.ritchie@huntington.com)

Susan Brizendine, Trust Officer  
Huntington National Bank  
7 Easton Oval – EA5W63  
Columbus, Ohio 43219  
Telephone: (614) 331-9804  
E-mail: [susan.brizendine@huntington.com](mailto:susan.brizendine@huntington.com)

14. Patriot Act Warranties. Section 326 of the USA Patriot Act (Title III of Pub. L. 107-56), as amended, modified or supplemented from time to time (the "Patriot Act"), requires financial institutions to obtain, verify and record information that identifies each person or legal entity that opens an account (the "Identification Information"). The parties to this Custodian/Escrow Agreement agree that they will provide the Custodian/Escrow Agent with such Identification Information as the Custodian/Escrow Agent may request in order for the Custodian/Escrow Agent to satisfy the requirements of the Patriot Act.
15. Entire Agreement. This Custodian/Escrow Agreement, including all Schedules and Exhibits hereto, constitutes the entire agreement and understanding of the parties hereto. Any modification of this Custodian/Escrow Agreement or any additional obligations assumed by any party hereto shall be binding only if evidenced by a writing signed by each of the parties hereto. To the extent this Custodian/Escrow Agreement conflicts in any way with the Settlement Agreement, the provisions of the Settlement Agreement shall govern.
16. Governing Law. This Custodian/Escrow Agreement shall be governed by the law of the State of Ohio in all respects. The parties hereto submit to the jurisdiction of the Court, in connection with any proceedings commenced regarding this Custodian/Escrow Agreement, including, but not limited to, any interpleader proceeding or proceeding Custodian/Escrow Agent may commence pursuant to this Custodian/Escrow Agreement for the appointment of a successor Custodian/Escrow agent, and all parties hereto submit to the jurisdiction of such Court for the determination of all issues in such proceedings, without regard to any principles of conflicts of laws, and irrevocably waive any objection to venue or inconvenient forum.
17. Termination of Custodian/Escrow Account. The Custodian/Escrow Account will terminate after all funds deposited in it, together with all interest earned thereon, are disbursed in accordance with the provisions of the Settlement Agreement and this Custodian/Escrow Agreement.
18. Miscellaneous Provisions.
  - (a) Counterparts. This Custodian/Escrow Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Custodian/Escrow Agreement.
  - (b) Further Cooperation. The parties hereto agree to do such further acts and things and to execute and deliver such other documents as Custodian/Escrow Agent may request from time to time in connection with the administration, maintenance, enforcement or adjudication of this Custodian/Escrow Agreement in order (a) to give Custodian/Escrow Agent confirmation and assurance of Custodian/Escrow Agent's rights, powers, privileges, remedies and interests under this Agreement and applicable law, (b) to better enable Custodian/Escrow Agent to exercise any such right, power, privilege or remedy, or (c) to otherwise effectuate the purpose and the terms and provisions of this Custodian/Escrow Agreement, each in such form and substance as may be acceptable to Custodian/Escrow Agent.
  - (c) Non-Waiver. The failure of any of the parties hereto to enforce any provision hereof on any occasion shall not be deemed to be a waiver of any preceding or succeeding breach of such provision or any other provision.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

THE HUNTINGTON NATIONAL BANK, as Custodian/Escrow Agent

By: \_\_\_\_\_  
Christopher W. Ritchie, Executive Managing Director

Class Counsel  
By: \_\_\_\_\_

Defense Counsel  
By: \_\_\_\_\_



# Investment Criteria

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## **PROPOSED INVESTMENT LANGUAGE FOR A SETTLEMENT AGREEMENT**

When developing the settlement agreement, the responsible party may want to consider investment guidelines similar to the following examples:

### **CONSERVATIVE OPTION:**

The settlement funds shall be invested in one or more of the following: short-term money market funds that include government agencies, commercial paper or repurchase agreements, or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit.

### **MORE CONSERVATIVE OPTION:**

The settlement funds shall be invested exclusively in accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit.

# Investment Options

In light of the uncertain rate environment, fiduciaries are even more concerned when investing settlement funds. Money can remain in escrow for several months or years before distribution. There are a variety of options depending upon your investment guidelines, need for liquidity, and time frame.

Investment options for a Settlement Fund may include one or more of the vehicles below:

- i. U.S. Treasury Bills (T-Bills)
- ii. Insured Cash Sweep (ICS)
- iii. U.S. Treasury Money Market Fund
- iv. U.S. Government Money Market Fund
- v. FDIC Pass Through Insurance Account
- vi. Ginnie Mae Backed Securities (GNMA)

*Important Note:* Any specific securities, or types of securities, used as examples are for illustration purposes only. None of the information provided should be considered a recommendation or solicitation to invest in, or liquidate, a particular security or type of security. Further, investors should consider the investment objectives, risks, charges and expenses of a mutual fund carefully before investing. A mutual fund's prospectus contains this and other information about the mutual fund. Please read the prospectus carefully before investing.

Securities products are: Not FDIC insured, Not insured by any federal government agency, Not obligations of, deposits of, or guaranteed by The Huntington National Bank or its affiliates, May Lose Value.

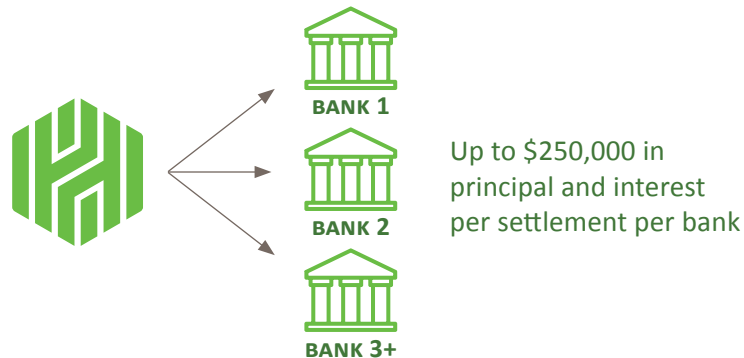
## U.S. TREASURY BILL

<b>Description:</b>	T-Bills are short-term direct obligations of the U.S. Treasury.
<b>Term:</b>	Terms range from one week to one year.
<b>Details:</b>	T-Bills are sold at a discount from the paramount (face value). For example, you might invest \$999,000 to buy a \$1 million T-Bill, which reaches par upon maturity.
<b>Advantages:</b>	Safety of U.S. Treasury. Tax free at state and local level.
<b>Disadvantages:</b>	A term investment provides less liquidity than some other options. May sacrifice part of yield if T-Bill needs to be sold before maturity date.

# Investment Options (continued)

## INSURED CASH SWEEP (ICS®)

- Description:** The Insured Cash Sweep, or ICS, service enables depositors to access multi-million-dollar FDIC Coverage by placing funds into money market deposit accounts at multiple FDIC Insured Banks. Each bank will receive a portion of the settlement fund that is \$250,000 or less in order to comply with the FDIC maximum deposit insurance amount.
- Term:** Liquid account. Funds may be withdrawn at any time with a limit of 6 withdrawals per month.
- Details:** The participating banks are accepted into the ICS network based on an assessment of the safety and soundness of the bank, among other criteria.
- Advantage:** Access multi-million-dollar FDIC protection backed by the full faith and credit of the U.S. Government, while maintaining only one bank contact.
- Disadvantage:** Limit of 6 withdrawals from the network per month. Some settlement funds may be too large to qualify for ICS given the number of available and participating banks. In this case, a portion of the settlement fund may be invested in ICS, or a different investment vehicle may be selected. Taxable at federal, state, and local level.



## U.S. TREASURY MONEY MARKET FUND

- Description:** Money market mutual fund that invests in T-Bills.
- Term:** Liquid account. Funds may be withdrawn at any time.
- Details:** Some Treasury funds are primarily composed of Treasuries (e.g., 60%), and they enhance their yield by including U.S. agencies. Other Treasury funds are exclusively composed of Treasuries (100%). Check the prospectus for details.
- Advantages:** Underlying safety of U.S. Treasuries.  
Funds with 100% Treasuries are tax free at the state and local level.
- Disadvantage:** Uncertainty surrounding interest volatility provides low yield.

*continued >>*

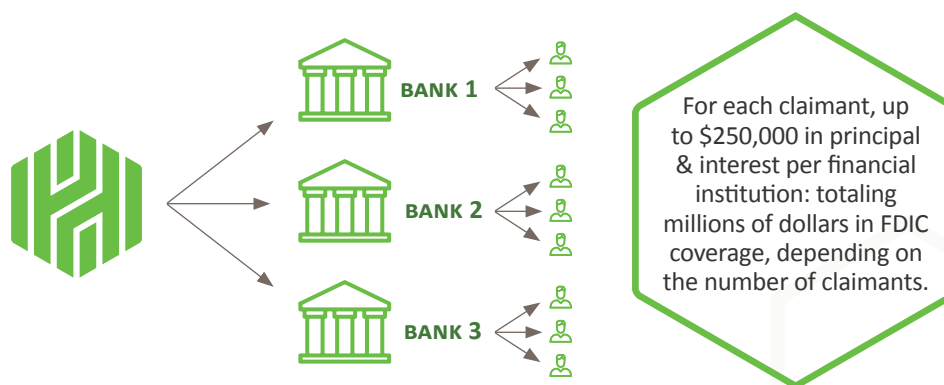
# Investment Options (continued)

## U.S. GOVERNMENT MONEY MARKET FUND

- Description:** Money market fund that invests in T-Bills, repurchase agreements, and U.S. agencies.
- Term:** Liquid account. Funds may be withdrawn at any time.
- Details:** Not all U.S. agencies are backed by the full faith and credit of the U.S. Government. Securities such as those issued by the Government National Mortgage Association (Ginnie Mae), are supported by the full faith and credit of the U.S. Government. In contrast, securities issued by the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Bank System (FHLB) are not backed by the full faith and credit of the U.S. Government. Check the prospectus for details.
- Advantage:** Provides a slightly higher yield than a Treasury Money Market Fund.
- Disadvantages:** More risk than T-Bills or a Treasury Money Market Fund due to inclusion of U.S. agency securities. Taxable at federal, state, and local level.

## FDIC PASS-THROUGH DEPOSIT INSURANCE

- Description:** FDIC Pass-Through Deposit Insurance applies when a Qualified Settlement Fund (QSF) meets the requirements for coverage. The insurance refers to the way the interests of the beneficiaries in a QSF are protected. Each beneficiary, or claimant, is entitled to up to \$250,000 of FDIC Insurance per financial institution. Each beneficiary's share of the settlement fund is divided among a network of credit worthy financial institutions to ensure full FDIC Insurance coverage for the QSF and its beneficiaries.
- Term:** Liquid account. Funds may be withdrawn at any time.
- Details:** FDIC Pass-Through Insurance can provide multi-million-dollar FDIC insurance per beneficiary by spreading the beneficiary's deposits into smaller amounts up to \$250,000 per beneficiary per institution.
- Advantage:** Multi-million-dollar FDIC insurance.
- Disadvantages:** Taxable at federal, state, and local level.



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# Investment Options (continued)

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## **GINNIE MAE BACKED SECURITIES (GNMA)**

<b>Description:</b>	Government National Mortgage Association (GNMA), a federal agency, guarantees mortgage-backed securities.
<b>Term:</b>	Typically, liquid by investing in Ginnie Maes through an automatic investment account or collateralized structure.
<b>Details:</b>	Securities issued by the GNMA are supported by the full faith and credit of the U.S. Government. This should not be confused with securities issued by the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Bank System (FHLB) which are not backed by the full faith and credit of the U.S. Government.
<b>Advantages:</b>	Safety of U.S. Government. Higher yield than Treasury Bills or a Treasury Money Market.
<b>Disadvantage:</b>	Taxable at federal, state, and local level.



# Distribution Accounts

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The distribution phase of a class action settlement spans the funding of a distribution account, the printing and mailing of checks, and reconciling payments until the final funds have been paid out to claimants or via cy pres. Checks have been the payment vehicle of choice, but depending on the characteristics of the class, other or additional payment methods may be most effective. Typically, a claims administrator will work closely with a bank partner during the distribution phase.

If funds need to be invested, there are two common account structures available to support the disbursing of funds class members: An automated funds investment account or a controlled disbursement account.

Each structure supports the liquidation of investment products as funds are disbursed to claimants:

1. **Automated Funds Investment** sweeps invested funds from a Money Market Fund into a checking account to support daily liquidity. This function occurs seamlessly to fund checks presented to clear against the distribution account.
2. **Controlled Disbursement Account** performs an early calculation of the total dollar amount of payments that will clear the distribution account later that day. The client may then liquidate any investments necessary in order to transfer the appropriate dollar amount to the distribution account for payment.

Fraud mitigation services are recommended regardless of the type of account structure above. There are several methods of fraud mitigation, all of which are important tools to help protect against malicious and unauthorized access to funds.



# Automated Funds Investment

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Automated Funds Investment (AFI) accounts, often referred to as “sweep” accounts, may be used for settlement funds during the escrow and disbursement phases. This service automatically transfers funds between a checking account and an investment account, based on the investment criteria of the settlement fund. Funds remain available through the checking account to cover transactions such as checks and wire transfers.

Financial institutions offer a variety of sweep vehicles to provide safety, collateralization, interest or dividends together with the full scope of treasury management services for disbursement accounts such as positive pay, account reconciliation, and transactional online banking. Interest or dividends may be posted daily or monthly, depending upon the investment product.

AFI service saves time by eliminating these steps.

- > First, a target balance for the checking account is established based on the investment option selected.
- > Then, each night, after all the debits and credits have been posted to the account, the financial institution automatically sweeps excess funds above the target balance into the investment option chosen.
- > The next morning or as needed, funds are moved back into the account.

Some common investment products used for sweep accounts include:

- > Treasury Money Market Fund
- > Government Money Market Fund

Most sweep accounts can be established with a target balance, over which balance funds will sweep into the given investment choice. This may be used to accrue earnings credits to cover bank service charges.



# Controlled Disbursement

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A Controlled Disbursement Account (CDA) provides early notification of the total value of checks that will post to the account that day. If the funds are held in an account other than the CDA, then the client transfers funds into that account to cover the presenting checks by wire transfer, ACH transfer, manual transfer from another account within the same bank, or automatic transfer through a Zero Balance Account (ZBA) arrangement. Account information is available through the online banking portal and can also be sent as an image file via direct file transmission.

This type of account may be used when the settlement funds will not reside in the same account from which checks will be issued. Typically, this would result from the funds being held in a non-liquid investment product, such as T-Bills. It also may be used for accounts disbursing a high volume of checks to allow additional time for the bank's operations department to process incoming items.

Controlled Disbursement Accounts are given a routing number separate from standard checking accounts which identifies checks to the Federal Reserve for early processing.

Check presentments are usually reported twice in the morning, with the majority of items being reported in the first notification by 9:30 a.m. EST, which includes early direct presentments, on-us items, and the first Reserve Bank presentments. The second notification is typically made by 11:00 a.m. EST and includes the second Reserve Bank presentment from the high dollar group sort program and most same-day settlement presentments.

CDAs cannot be used to clear ACH debits, including checks converted to ACH through Accounts Receivable Entry (ARC), Point of Purchase (POP), or Back Office Conversion (BOC). To ensure that checks are ineligible for check conversion for Automated Clearing House (ACH) they should be longer than 6" wide and contain an Auxiliary On-Us field.

While CDAs are useful for disbursing checks from T-Bills, the process is more complicated than managing a disbursement through a single account, due to multiple presentments, accounts, and transfers.

# Fraud Mitigation

Unfortunately, the amount of fraud in settlement distributions has increased during recent years. As the size of settlements has increased, so has the amount of attempted fraudulent activity.

One way this occurs is an impostor may intercept a legitimate distribution check to retrieve the ABA number, account number, and signature. They use this information to gain unauthorized access to the settlement fund by creating counterfeit checks. Alternatively, criminals may attempt ACH debits to steal funds electronically. The ABA reports that banks successfully prevented 91% of all check fraud attempts in 2018 through early identification.<sup>2</sup>

There are several tools clients may use to help mitigate the risk of fraudulent activity:

- > Positive Pay
- > ACH Debit Blocks
- > Security Features for Checks
- > Business Email Compromise (BEC) – Red Flags

## POSITIVE PAY

Using Positive Pay can reduce losses from check fraud. This tool systematically compares checks presented for payment against a list of checks issued by the claims administrator. Each day, the program provides early detection of fraudulent, altered, or counterfeit checks, and allows these transactions to be returned without payment. The bank notifies the claims administrator of exceptions that do not match the provided check information (e.g., no issuing information recorded, dollar amount discrepancies, payee mismatch, duplicate items, and voids).

The administrator of the account can view images of all check exceptions and make all pay/return decisions online. An email alert sends a notice when there are exceptions that need to be reviewed.

Information on additional security features with Positive Pay:

**Max Dollar** allows customers to set maximum dollar limitations on their account. In the event an item is in excess of the defined Maximum Dollar Amount, the item will pass to the customer to review and decision on the online banking portal. A return default decision is recommended on exceptions since these items don't match the check register data that the customer provided to the bank. That means if a decision isn't made by the cutoff time those items will be returned.

**Stale Date** allows customers to set stale date limitations on their account (i.e.- don't pay anything after 180 days). In the event that an item is received that is stale, the item will pass through to the customer as an exception on the online banking portal.

**Dual Authorization**, aka dual approval, is an optional control which segregates the decision and approval process—effectively minimizing risk for both internal fraud potential and human keying errors.

## ACH DEBIT BLOCKS

With Automated Clearing House (ACH) blocks, the claims administrator can prevent any outgoing ACH debit, incoming ACH credit, or both against the distribution account. This can help prevent any unauthorized electronic transactions from occurring on custodian/escrow and disbursement accounts.

With ACH Filters, the administrator can instruct a bank to block all incoming ACH transactions except for specific companies and/or specific dollar thresholds. This can prevent unauthorized transactions while allowing certain transactions, such as IRS tax payments, to occur as expected.

Similar to the Positive Pay service, the administrator is notified of pending transactions that need to be approved or rejected.

<sup>2</sup>American Bankers Association. January 2020. Banks Stop \$22.3 Billion in Fraud Attempts in 2018

# Fraud Mitigation (continued)

## SECURITY FEATURES FOR CHECKS

To reduce the risk of check fraud, there are key security features which may be utilized:

- > Checks may contain a watermark on optically dull paper with the image in the body of the paper to prevent checks from being copied or scanned.
- > Check paper may have bleach and oxidizer reactivity that triggers a color reaction with a brown stain on paper if the checks were to be washed, rendering the checks unusable.
- > Check paper may have full solvent reactivity that triggers color reaction to polar and non-polar solvents including alcohol, acetones, mineral spirits, and degreasers; this creates blue/black/red stains on paper, rendering the checks unusable.
- > Checks may contain invisible embedded fibers that produce fluorescent yellow under UV light.
- > A visible “Void” may appear in orange when a check is tampered with, such as through erasing.
- > A two-bar pattern may be printed on both sides of the check, making cutting, and pasting impossible.
- > Checks may contain a microprint signature line that looks like a black line for the signature, but under magnification has the name of the bank repeated in micro-type.
- > Checks may contain a warning bar that lists the security features of the paper for teller use.

## PHISHING & BUSINESS EMAIL COMPROMISE SCAMS

As custodians of highly sensitive personal and financial information, law firms and claims administrators are targets of cyber-thieves. Be aware of common red flags and establish protocols for handling electronic requests.

### Red Flags:

- > Requester sends a rush request, insisting funds be wired immediately.
- > Communication includes incorrect grammar/spelling or awkward formatting.
- > Email address is incorrect.
- > Email shows inconsistencies between the “Sender” and “From” domain names, or the email originates from a non-corporate email address.
- > Request is sent at an unusual time of day.
- > Request includes suspicious attachments/links.

### How to Help Protect Yourself:

- > When receiving email requests, verify the sender’s email address with a known source.
- > Implement email banners/notifications to easily identify an externally originated message.
- > Establish safety protocols for all types of payment origination, including call backs, dual controls, and contingency plans.
- > Never accept wire instructions via email in a format that is not secure/encrypted.
- > Never wire money to a company without speaking to a representative of that company directly using a phone number you have on file.
- > Beware of emails stating wire instructions have changed, as they generally never do.
- > Monitor your domain names (or pay a firm to do so) for infringement or “typo-squatting” (sitting on similar domain names and targeting users who incorrectly type a web address into a browser, then redirecting traffic to another URL; also known as URL hijacking).
- > Consider purchasing cyber liability and fraud insurance coverage.

# Checks

## PROCESS-ORIENTED CHECK FRAUD MITIGATION METHODS

- > Require the check production facility to separate duties to ensure no one person has access to data, stock, the printing resources, or a printer, and that no single person can produce a check. Require multiple personal verifications for production to be set up and run for any check cycle. Confirm the provider is a SAS70 certified company with annual third-party audits designed to identify situations that might allow for this type of occurrence.
- > Use PDF versions of checks for manual review when producing images of checks, which would suppress the MICR or signature line so that duplicate checks can't be produced from this file.
- > Confirm the bank can implement Positive Pay (see page 20), which is a reporting and review system that allows daily verification of checks presented for payment. If the check's dollar amount, date, check number, and/or payee name do not match with the data file provided by the client, the check will be presented to the client for review so it can be rejected if it is a fraudulent item.

## POST CARD CHECKS

- > For cases with high check volumes and low dollar amounts, post card checks may be considered, as this will significantly reduce postage costs for the distribution. Not all banks can provide full processing for accounts issuing post card checks including services such as Positive Pay and Account Reconciliation. Therefore, a bank that can accommodate these needs should be sought when choosing this option. Confirm details associated with the unique magnetic character arrangement specification sheet as to size, paper weight, and number of digits for post card check distributions with the bank.
- > In order to receive 1st Class Post Card Postage rates by the U.S. Postal Service, mailings must be no larger than 4.25" x 6" and be between 0.007 and 0.016 inches thick. Mailings larger than this will be charged letter or envelope rates, depending on the size. The check size must be at least 2.75" x 6" and no taller than 3.66" to comply with Federal regulations.
- > There are several items to consider in addition to postage costs when selecting post card checks. Checks that are 6" wide and do not contain an Auxiliary On-Us Field are eligible for check conversion for Automated Clearing House (ACH) through Accounts Receivable Entry (ARC), Point of Purchase (POP), or Back Office Conversion (BOC). This means some checks issued could clear as an ACH, rather than a check, and would bypass Positive Pay controls. Using a bank that offers ACH screening services will allow the account administrator to monitor those items. Also, there is greater potential for damage in the mail to perforated post card checks than to traditional checks in envelopes. Finally, due to consumer suspicion, post card checks have lower clearing rates than conventional checks.

# Checks (continued)

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## PRINT AND MAIL CHECKS TO FUND BENEFICIARIES

- > Seek an experienced bank or check printer offering services which include form set-up and design, laser printing, document inserting, and mailing. The ability to provide printing and mailing in conjunction with reconciliation provides a complete solution for receivables and payments from one source.
- > The bank or check printer should work with the claims administrator to build the process to produce the required check documents and issue files. An agreed upon implementation schedule should be established to ensure all preparation tasks are assigned and completed prior to productions. The process should also include check printing quality control whereby a 5% sample size or every 500 items is pulled and checked for MICR quality.
- > The bank or check printer should identify large dollar checks (e.g. \$100,000 or greater), and those items should be sorted for certified mailing or handled according to instruction by the customer.
- > As required, check reissues should be processed as files are received from the claims administrator after the administrator verifies that the original item has not been paid and cancels of the original item through the account reconciliation system.
- > The bank's operation center must be a secure location with limited card reader access with a camera-monitored production area with all checks under camera view. Documents should be MICR printed so that no account information is placed on checks until print production starts.



# Electronic Payments

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Electronic payments are becoming an increasingly prevalent payment method in consumer class actions. The primary advantage to offering one or more types of electronic payments when distributing funds is to offer the claimant a choice, resulting in a higher probability of redemption. This is positive for multiple stakeholders in a class action because it more effectively achieves the overall resolution of the matter – compensating the class.

The most common electronic payment methods offered to class members include:

- > ACH Payments (Direct Deposit)
- > Prepaid debit cards (typically digital)
- > The Zelle Network
- > Venmo
- > PayPal

When electronic payment methods are offered, they are typically supplemented / accompanied by the option of receiving a check, should the claimant prefer a traditional payment. Depending on the type(s) of electronic payment method offered, they reduce the costs of issuing digital disbursements. Specifically, the Claims Administrator can reduce their expenses by avoiding costly check printing and mailing costs.

The electronic payment method(s) available to class members should be tailored to suit the characteristics of the class. Offering one or more electronic payment methods makes it easier to pay class members who do not participate in the US banking system, such as the unbanked or internationally located class members. We expect that the flexibility offered by electronic payments will contribute to their growing momentum in consumer class action compensation.



# Foreign Payments

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Occasionally, a settlement may involve claimants living outside of the United States. Sending funds in a claimant's local currency is faster, less expensive, and more convenient than a typical payment in U.S. dollars.

Claimants abroad have difficulty cashing American checks. An American check presented at a bank outside of the United States may take 2-6 weeks to clear or may not be accepted at all. The expense of cashing an American check at a foreign bank may range from \$75 - \$125 due to collection fees. This is in addition to fees associated with the currency exchange.

A best practice to preserve the value of the settlement fund payment to the claimant abroad is to issue a payment in the claimant's local currency. Both foreign currency checks and wires are appropriate payment vehicles for this purpose.



# Holdbacks

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Settlements over \$100 million may consider employing a “holdback” from the initial claimant distribution. The holdback provision is written into the settlement agreement and typically constitutes 10-20% of the net settlement amount.

The holdback funds are disbursed to the claimants in a second distribution which would generally occur 6-12 months after the first distribution.

The purpose of the holdback is to allow corrections to the initial distribution due to errors, late claims, and duplicate claims caused by submissions filed both by claimants and their fiduciaries. The holdback allows for ease in these recalculations, and ultimately maximizes the amount that class members receive.

Also, it reduces the possibility of recalling funds from claimants in the event of an overpayment.

The disadvantages of a holdback include the added cost of a second distribution and a delay to claimants in receiving the full amount of their claim.



# Cy Pres

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The term *cy pres* is derived from the Norman French phrase *cy pres comme possible*, which means “as near as possible.” This legal doctrine allows the Court to amend the terms of a settlement to honor the intended purpose as closely as possible.<sup>3</sup>

In a class action or mass tort settlement, when it becomes impractical or impossible to directly distribute all of the monies to the class, a *cy pres* distribution of the remainder of the settlement fund to a nonprofit organization whose work advances the public interest and indirectly benefits the class members has been accepted as the next best use of the funds. It also has been used for the entirety of a statutory damage award when the amount of the damages is too small to warrant distribution.

The first *cy pres* application in the United States came in 1867 in *Jackson v. Phillips*, a case regarding a trust fund established to abolish slavery. Since the Emancipation Proclamation eliminated slavery, the monies were applied to charities that benefited people of African descent.<sup>4</sup>

Today, most settlements have residual funds. Lawyers have a fiduciary responsibility to complete the distribution of these funds. Claims administrators support this final resolution of the case to avoid trailing work due to taxes, bank statements, and other administration.

Bar foundations and legal service organizations across the country rely on *cy pres* contributions as part of their fundraising efforts.

The best time to designate a *cy pres* beneficiary is in the settlement agreement, so the parties can address the issue up front. Alternatively, it can be done in the distribution motion. The final option is after the distribution, when the amount of remaining funds is determined.

<sup>3</sup>Law French “as near as” Black’s Law Dictionary 392 (7th ed. 1999)

<sup>4</sup>*Jackson v. Phillips*, 96 Mass. 539 (1867)



# Selecting a Bank

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In volatile economic conditions, there is even more concern about selecting a bank for settlement accounts. There are five important factors to consider when choosing a bank:

1. Financial Safety
2. Knowledgeable Bankers
3. Convenience
4. Bank Fees
5. Interest Rates

## **FINANCIAL SAFETY**

Financial soundness may be the most important issue to consider when selecting an institution to hold settlement funds. The primary measure of safety is a bank's capital ratio, which is the percentage of capital to risk-weighted assets. The bank's capital serves as its rainy-day fund in case of losses. To be well-capitalized under federal regulatory agency definitions, a bank must have a Tier 1 capital ratio of at least 6%, and a combined Tier 1 and Tier 2 capital ratio of at least 10%. Other factors to consider include asset size, asset quality, profitability, and liquidity.

## **KNOWLEDGEABLE BANKERS**

Does the bank have expertise in working with large settlement accounts? Are they comfortable serving as escrow agent? Do they have experience handling large disbursements? Do they understand the roles of counsel, claims administrators, special masters, or independent distribution consultants? Can the bank provide references from customers in the settlement industry? Do you have a dedicated banker supported by a team of people?

## **CONVENIENCE**

Can the bank provide one-stop shopping to handle both the escrow and distribution phases of the settlement? Are the bank's products and services user-friendly? Since most settlement funds are transferred by wire, not a teller deposit, branch location is less important. The most important consideration is a high level of customer service from a banker who can make the settlement banking process easier.

## **BANK FEES**

Financial institutions charge settlement accounts for a variety of services including custodian/escrow fees, check activity, account reconciliation, positive pay, sweep accounts, monthly maintenance, bank statements, check copies, cashiers' checks, and wire transfers. Bank fees should be reviewed to allow selection of a bank with a competitive pricing schedule to maximize the economic benefit for the class.

Bank fees should also be compared with investment return, since a non-interest-bearing account may provide more benefit to the class depending on the interest rate environment.

## **INTEREST RATES**

Interest rates are an important factor to consider, though they may change over the lifetime of the distribution fund based on the interest rate environment.



# Banker's Blanket Bond

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When selecting a bank, it is important to ask about the institution's Banker's Blanket Bond. This insurance policy covers a variety of criminal acts including employee fraud, embezzlement, robbery, forgery, wire transfer fraud, and computer crime. This can also be referred to as a fidelity bond.

This fidelity bond is purchased from a private insurance broker. This bond is not to be confused with insurance provided by the Federal Deposit Insurance Corporation (FDIC), which provides depositor insurance to protect against bank failure.

A Banker's Blanket Bond provides protection from internal employee dishonesty and contains some coverage for external hazards, such as forgery and theft. Internal hazards, which pose a far greater risk, include defalcations by the bank's own personnel. Banks try to protect themselves against these types of losses by maintaining internal systems and controls.

Bonds have a single loss limit that applies to individual claims, and an aggregate limit that applies to the total of all losses during the bond's period. For example, if there is a \$25,000,000 single loss limit and a \$50,000,000 aggregate limit, payment of the single loss could reduce the remaining coverage to \$25,000,000 during the policy period.

In addition to losses by bank employees, the Banker's Blanket Bond also covers attorneys retained by the bank and non-employee data processors while performing services for the bank. This bond generally excludes loss caused by a director, unless a director is also a salaried employee of the bank.

When the bank is a member of a holding company or group of affiliated banks, one fidelity bond is usually purchased to cover the parent company and affiliated banks.

There are no specific requirements to determine the amount of blanket coverage a financial institution should maintain. Bank management determines the coverage based on several factors including asset size, internal operations, number of employees and their experience level, delegations of authority to employees, personnel turnover rates, information technology, and customer needs.



# Errors and Omissions Insurance

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When selecting a bank, it is also important to ask about the institution's Errors & Omissions (E&O) insurance. Unlike a Banker's Blanket Bond that covers criminal acts, E&O insurance protects against errors or the failure of the work to perform as promised.

Policies have a single loss limit that applies to individual claims and an aggregate limit that applies to the total of all losses during the policy period. For example, if there is a

\$25,000,000 single loss limit and a \$50,000,000 aggregate limit, payment of the single loss could reduce the remaining coverage to \$25,000,000 during the policy period.

There are no specific requirements to determine the amount of coverage that a financial institution should maintain. Bank management determines the coverage based on several factors including deposit size, internal operations, number of employees and their experience level, delegations of authority to employees, personnel turn-over rates, information technology, and customer needs.



# How to Apply for an EIN

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The fastest and easiest way to receive an EIN from the IRS is through their online application system.

The process should take less than 15 minutes. The EIN and a confirmation notice will be available to download, save, and print upon completion. The bank will require the confirmation notice from the IRS in order to open an account.

It will take up to two weeks for the IRS's permanent records to be updated. This must occur before filing an electronic return or making an electronic payment.

Settlement Funds fall under the category of "Corporations" and the subcategory of "Settlement Fund (under IRC Sec 468B)," which designates that a settlement fund or qualified settlement fund is a trust or fund established under IRC Sec 468B. This code permits a defendant to deposit money or property into a trust or fund and receive a full and complete release of liability.

**The online SS-4 Application for Employer Identification Number can be found at:**

<https://sa2.www4.irs.gov/modiein/individual/index.jsp>

The online application is available Monday to Friday, 7 a.m. to 10 p.m. EST.

The IRS cannot process the application online if the responsible party is an entity with an EIN previously obtained through the Internet. If this is the case, another method, such as fax or mail, must be used to apply. The unique prefixes (20, 26 or 27) identify the EIN as a number issued via the Internet.

If applying by fax, a valid fax number should be supplied to the IRS along with the completed Form SS-4 (PDF) application. A fax will be sent from the IRS with the EIN within four (4) business days.

Visit [www.irs.gov](http://www.irs.gov) for more information.



# Tax Payments

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Qualified Settlement Funds may need to remit annual and/or quarterly estimated federal tax payments to the IRS. Consult with the QSF Claims Administrator or Accountant to determine if a tax payment will be needed.

## TIMING

Arrangements for tax payments should be made well in advance of the payment due date to ensure calculations can be completed, payment authorization obtained, and investments liquidated in order to ensure timely remittance and avoid IRS penalties.

PAYMENT PERIOD	DUE DATE
January 1 – March 31	April 15
April 1 – May 31	June 15
June 1 – August 31	September 15
September 1 – December 31	December 15

If the due date for making an estimated tax payment falls on a Saturday, Sunday, or legal holiday, the payment will be due on the following business day.

## PAYMENT

The authorization requirements and appropriate payment method will vary depending on the type of account the Qualified Settlement Fund is using (custodian/escrow, checking, custody, etc.) and should be coordinated between the QSF Claims Administrator or Accountant and the bank.

In general, the preferred method to remit payment is electronically through the IRS EFTPS® system. Payments may also be made as a same-day wire to the IRS.

# Financial Dictionary

## **ABA (American Bankers Association) Number**

Number identifying a bank for check clearing and wire transfers.

## **ACH (Automated Clearing House)**

Method of electronically depositing or withdrawing funds from an account.

## **Account Analysis**

System which measures the account balance and transaction history and applies an earnings credit earned to offset bank fees for a non-interest-bearing account.

## **AFI (Automated Funds Investment)**

Investment service that transfers funds automatically between a checking account and investment vehicle. (See page 16 for more details.)

## **Agencies**

Type of security issued by a federal agency or federally sponsored corporation; such as the Government National Mortgage Association (GNMA), Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Bank System (FHLB).

## **APY (Annual Percentage Yield)**

Yield that a deposit would earn over an entire year, based on the compounding of interest.

## **Auxiliary On-Ups Field**

Field appearing in the leftmost position of the MICR line of large-sized checks. This field renders checks ineligible for check conversion for Automated Clearing House (ACH) through Accounts Receivable Entry (ARC), Point of Purchase (POP), or Back Office Conversion (BOC).

## **Banker's Blanket Bond**

Bond which covers a financial institution for dishonest or fraudulent acts of employees, and losses resulting from reliance upon a document later discovered to be counterfeited or forged.

## **Check Block**

Eliminates the risk of check fraud by restricting the business checking account to electronic activity. All paper-based transactions are automatically rejected and returned, which prevents checks from posting to the account.

## **Controlled Disbursement**

Checking account service providing early morning notification of the total value of the checks that will post to the account that day. This service may be used when settlement funds need to be transferred from a non-liquid investment, such as T-Bills, to cover checks (see page 19 for more details).

## **Custodian Bank**

Financial institution responsible for safeguarding a firm's or individual's financial assets.

## **Cy Pres**

Legal doctrine permitting residual funds from a case to be directed to a nonprofit organization whose work advances the public interest and indirectly benefits the class members (see page 27 for more details).

## **Earnings Credit**

Calculation based on the average available balance in an account to help offset bank fees.

## **Escrow**

Money or property held by a third party (see page 6 for more details) for delivery to a grantee after the fulfillment of specified conditions.

## **EFT (Electronic Funds Transfer)**

Movement of money by electronic means, such as an electronic terminal, telephone, computer, ATM, or magnetic tape.

## **EFTPS® (Electronic Federal Tax Payment System®)**

Tax payment service provided free by the U.S. Department of the Treasury to make federal tax payments to the Internal Revenue Service (IRS)

## **EIN (Employer Identification Number)**

Also known as a Taxpayer Identification Number (TIN), is used by the IRS to identify an entity, such as a Qualified Settlement Fund.

## **E&O (Errors and Omissions) Insurance**

Helps protect a company, its employees, and others, from claims regarding negligence in performing or failing to perform professional services.

## **FDIC (Federal Deposit Insurance Corporation)**

United States Government corporation provides deposit insurance up to \$250,000 per depositor per bank.

*continued >>*

# Financial Dictionary (continued)

## **Foreign Payments (FX)**

The conversion of a U.S. dollar payment into the local currency of a claimant who lives outside the United States.

## **Ginnie Mae or GNMA (Government National Mortgage Association)**

U.S. Government agency that guarantees mortgage-back securities. Unlike Fannie Mae or Freddie Mac, the Ginnie Mae securities carry the full faith and credit guarantee of the U.S. Government (see page 18 for more details).

## **Holdback**

Amount withheld from an initial distribution for a subsequent disbursement to class members 6-12 months later. The holdback allows corrections to be made for errors and duplicate claims, to maximize the funds that class members receive (see page 26 for more details).

## **MICR (Magnetic Ink Character Recognition)**

Technique for reading and processing checks. The MICR line is the series of digits on the bottom of a check used to identify a bank and account number.

## **Money Market Account**

Bank savings account eligible for FDIC insurance.

## **Money Market Mutual Fund**

Invests in conservative short-term securities such as Treasury Bills, Government Agencies, and Commercial Paper. Not FDIC insured.

## **Payee Positive Pay**

The customer is required to provide payee name detail within their Check Issue File. Banks will utilize this information to compare the checks presented against the account to the Check Issue File information provided by the company. When checks presented do not match the Check Issue File information, the check should be added to the exception list for customer decisioning

## **Positive Pay**

A feature that matches certain data fields on the check register aka check issue file provided by the customer with the information that appears on the actual check, increasing the level of security.

## **Qualified Settlement Fund (QSF)**

Established to administer monies to a class of plaintiffs and is governed by IRS regulations under Section 26 CFR 1.468B-1. A QSF may also be referred to as a "468B Trust".

## **Sweep Account**

Automatically transfers, or "sweeps," funds between a checking account and an investment account daily (see page 18 for more details).

## **Teller Positive Pay**

A feature used in conjunction with Check Positive Pay, this service identifies potential fraud items before they reach the payment stream by systematically comparing the check number and dollar amount (payee name if applicable) of the check with the customer provided check register data aka check issue file at the time of presentment at any Huntington Branch location. If an item doesn't match the check issue file aka check register data provided by the customer then it will be rejected.

## **Treasury Bill**

Marketable debt obligation of the U.S. Department of Treasury with a maturity of less than one year.

## **Treasury Note**

Marketable debt obligation of the U.S. Department of Treasury with a maturity between one and ten years.



## **USA Patriot Act**

Enacted in 2001 to help prevent terrorism-related activities. The Act increases the ability of law enforcement agencies to search financial and other records, and it expands the Secretary of the Treasury's authority to regulate financial transactions. The Act requires banks to collect personal and business information when opening new accounts.

Fees from a correspondent bank or depository bank may reduce value of the claimant's payment. Local government regulations apply.

Investment, Insurance and Non-deposit Trust products are: NOT A DEPOSIT • NOT FDIC INSURED • NOT GUARANTEED BY THE BANK • NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY • MAY LOSE VALUE

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# Exhibit 5

## Exhibit 5

### Part 1 – Long Form Notice

# Did You Purchase, Pay for, or Provide Reimbursement for a Drug that Contained Metformin?

## You Could Get Money from \$5.55 Million in Settlements.

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

*Para conseguir una notificación en español, llame a 1-800-000-0000 o visite el sitio web: [website].*

- There are Settlements in a class action lawsuit with Teva Pharmaceuticals USA, Inc.; Teva Pharmaceutical Industries Ltd.; Actavis Pharma, Inc.; and Actavis LLC (“Teva”) and Granules USA, Inc., and Granules Pharmaceuticals, Inc. (“Granules”) and Heritage Pharmaceuticals, Inc. (doing business as Avet Pharmaceuticals Inc.) (“Heritage”).
- The lawsuit claims that Defendants (*see* Question XX) falsely advertised their generic drugs containing metformin as being the same or equivalent to Glucophage and/or Glucophage XR, but they were actually contaminated with N-nitrosodimethylamine (“NDMA”) and did not meet the U.S. Food and Drug Administration (“FDA”) standards for metformin. It says as a result, people and businesses paid for drugs they would not have. Teva, Granules, and Heritage (the “Settling Defendants”) deny that they did anything wrong. This lawsuit does not include personal injury or wrongful death claims.
- Teva has agreed to a \$3 million Settlement and Granules and Heritage have agreed to a \$2.55 million Settlement to resolve the claims against them in this lawsuit. The lawsuit is continuing against the non-Settling Defendants.
- Generally, you are included in the Settlements if you paid any amount of money for a metformin-containing drug (intended for personal or household use) that was manufactured, distributed, or sold by any Settling Defendant from July 20, 2015 through June 2, 2020. If you are a third-party payor, “purchased” means you paid or reimbursed some or all of the purchase price for a metformin-containing drug. (*See* Question XX). You may be able to get money from these Settlements.
- The \$5.55 million Settlement Fund will be used to pay (1) taxes; (2) reasonable notice and administration costs up to a total of \$500,000; (3) Court-approved attorneys’ fees and expenses up to 34% of the Settlement Fund; (4) class representative service awards not to exceed \$3,500 per class representative; (5) other Court-approved fees and expenses and (6) money to eligible Class Members.
- **Your legal rights are affected even if you do nothing. Please read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT		DEADLINE
<b>SUBMIT A CLAIM</b>	The only way to get a payment from the Settlements.	<b>Xxx XX, 2026</b>
<b>EXCLUDE YOURSELF</b>	You will not be bound by the Settlement and will not receive any benefits from the Settlements. You will keep any rights you may have to sue the Settling Defendants on your own for the same legal claims made in this lawsuit.	<b>Xxx XX, 2026</b>

<b>OBJECT</b>	Write to the Court about why you do not like the Settlements. Whether or not you object, you must still file a claim by the deadline above to receive money from the Settlements.	<b>Xxx XX, 2026</b>
<b>GO TO A HEARING</b>	Attend a Court hearing and ask to speak in Court about the fairness of the Settlements.	<b>Xxx XX, 2026</b>
<b>DO NOTHING</b>	Get no payment from the Settlements. Give up your rights to sue the Settling Defendants on your own for the same legal claims made in this lawsuit.	<b>Xxx XX, 2026</b>

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlements.
- Payments will only be made to those who qualify if the Court approves the Settlements and after any appeals, if any, are resolved. Please be patient.

## Basic Information

### 1. Why was this notice issued?

The Court authorized this notice because you have a right to know about proposed Settlements, and your rights and options, before the Court decides whether to approve the Settlements. This notice explains the lawsuit, the Settlements, and your legal rights. Your legal rights are affected whether you act or not.

Judge Madeline C. Arleo of the United States District Court for the District of New Jersey is overseeing this case. This lawsuit is known as *In Re Metformin Marketing and Sales Practices Litigation*, No. 2:20-cv-2324. The people who sued are called the “Plaintiffs.” Teva, Granules, and Heritage are the “Settling Defendants.”

This Notice is about a \$3 million Class Settlement with Teva and a \$2.55 million Class Settlement with Granules and Heritage. If the Court approves them, the Settlements will resolve the claims against the Settling Defendants. The lawsuit will continue against the non-Settling Defendants who are Amneal Pharmaceuticals, Inc., Amneal Pharmaceuticals LLC, Amneal Pharmaceuticals of New York, LLC, CVS Pharmacy, Inc. and Walmart, Inc..

### 2. Who are the Defendants?

The manufacturer Defendants in this lawsuit are: Teva; Granules; Heritage; and Amneal Pharmaceuticals, Inc., Amneal Pharmaceuticals LLC, Amneal Pharmaceuticals of New York, LLC (“Amneal”).

The pharmacy Defendants in this lawsuit are: CVS Pharmacy, Inc. and Walmart, Inc. (“Wal-Mart”).

### 3. What is this lawsuit about?

The lawsuit claims that the manufacturing Defendants falsely advertised their generic drugs containing metformin as being the same or equivalent to Glucophage and/or Glucophage XR and the pharmacy Defendants sold these products. However, the lawsuit says these metformin-containing drugs were contaminated with N-nitrosodimethylamine (“NDMA”) and did not meet the U.S. Food and Drug Administration (“FDA”) standards for metformin. The lawsuit says as a result, people and businesses paid for drugs they would not have. This lawsuit does not include personal injury or wrongful death claims.

The Settling Defendants deny these allegations, including that the Plaintiffs or Settlement Class Members are entitled to damages or other relief, and maintain that they did nothing wrong.

There has been no determination by the Court or a jury that the allegations against the Settling Defendants have been proven or that, if proven, their conduct caused harm to any Class Member. This Notice is not an expression of any opinion by the Court as to the claims against the Settling Defendants or the defenses asserted by the Settling Defendants.

This notice is only a summary. More detail is provided in the Settlement Agreements, available at [[website](#)].

#### 4. Why is this a class action?

In a class action, one or more people or entities called “class representatives” sue on behalf of themselves and other people who have similar claims. Together, all of these people and entities are a “class” or “class members.” In this case, the class representatives for consumers are Joseph Brzozowski, Jacqueline Harris, Kristen Weineinger, Michael Hann, and Masao Hendrix and third-party payors are MSP Recovery Claims, Series LLC; County of Monmouth; and Ohio Carpenters’ Health Fund. One court and one case resolve the issues for all class members, except for those who exclude themselves (“opt out”) from the class.

#### 5. Why are there Settlements?

The Court has not decided in favor of the Plaintiffs or Settling Defendants. Instead, Settling Defendants have agreed to a settle with Plaintiffs. By agreeing to Settlements, both sides avoid the costs and uncertainty of a trial, and Class Members receive the benefits described in this notice. The proposed Settlements do not mean that any law was broken or that Settling Defendants did anything wrong. Co-Lead Counsel believes that the Settlements are best for all Class Members.

### Who Is in the Settlements?

#### 6. Who is included in the Settlements?

If you received a notice, then you may be a Class Member. But even if you did not, you may be a Class Member, as described below.

You are included in the Settlement with Teva if you are a person or entity in the United States and its territories and possessions who paid any amount of money for a metformin-containing drug (intended for personal or household use) that was manufactured, distributed, or sold by Teva from July 20, 2015 through June 2, 2020.

You are included in the Settlement with Granules and Heritage if you are a person or entity in the United States and its territories and possessions who paid any amount of money for a metformin-containing drug (intended for personal or household use) that was manufactured, distributed, or sold by Granules or Heritage from July 20, 2015 through June 2, 2020.

Persons or entities “purchased” a metformin-containing drug if they paid or reimbursed some or all of the purchase price.

#### 7. Who is not included?

The Settlements do not include:

- Settling Defendants (Teva, Granules, and Heritage) and their subsidiaries and affiliates;
- Federal governmental entities;
- State and local governmental entities that can only make claims under applicable state law only by the state Attorney General or are otherwise prohibited by applicable law from being asserted by private counsel on a contingent fee basis;
- Anyone who purchased metformin-containing drugs for resale;
- Anyone who purchased metformin-containing drugs directly from Settling Defendants or their affiliates;
- Fully insured health plans (*i.e.*, plans that purchased insurance from another third-party payor that covered 100% of the plan’s reimbursement obligation for its members);
- Pharmaceutical benefit managers;
- The judges in this case and any members of their immediate families; and
- Anyone that properly excludes themselves from the Class (*see* Question **XX**).

**QUESTIONS? CALL TOLL-FREE 1-800-000-0000 OR VISIT [[WEBSITE](#)]**

## 8. What if I'm still not sure if I'm included?

If you are not sure whether you are a Class Member, or have any other questions about the Settlements, visit the website, [\[website\]](#), or call the toll-free number, 1-800-000-0000. You may also send questions to the Claims Administrator at [XXXXXXXXXX](#), c/o A.B. Data, Ltd., [P.O. Box 0000](#), Milwaukee, WI 53217.

## The Benefits of the Settlements

### 9. What do the Settlements provide?

If the Settlements are approved and become final, the Settlements will provide money to Class Members and will resolve all Class Members' claims against the Settling Defendants. Teva will pay \$3 million and Granules and Heritage will pay \$2.55 million into a Settlement Fund. If the Settlements are approved by the Court, the Settlement Fund will be used to pay:

- Taxes,
- Notice and administration costs,
- Attorneys' fees and expenses,
- Class representative service awards,
- Other Court-approved fees and expenses, and
- Money to eligible Class Members;

The Settlement Agreements and Plan of Allocation, available at [\[website\]](#), have more information about the above items that will be paid from the Settlement Fund.

The lawsuit is continuing against the non-Settling Defendants.

### 10. How much will my payment be?

At this time, it is unknown how much each Class Member who submits a valid claim will receive.

After the taxes; notice and administration costs; and any Court-approved attorneys' fees and expenses, other fees and expenses, and service awards are paid from the Settlement Fund, the remaining amount will be used to pay eligible Settlement Class Members.

Money will be paid proportionally (or *pro rata*) to eligible Class Members. Your payment amount will depend on the amount of generic metformin-containing drugs you purchased, how much you paid for them, and the number of valid claims.

Payments will be based on a Plan of Allocation approved by the Court. The proposed Plan of Allocation will be available for review at [\[website\]](#).

### 11. What happens if there are funds remaining after distribution?

If there are any funds remaining after all Settlement distributions are made, those funds will be distributed to a non-profit organization approved by the Court. No remaining funds will be returned to the Settling Defendants.

### 12. When will I get my payment?

Class Members who are eligible will receive their payments after the Court grants final approval to the Settlements and any appeals are resolved. If there are appeals, resolving them can take time. Please be patient.

### 13. What am I giving up to stay in the Settlements?

Unless you exclude yourself, you will give up your right to separately sue the Settling Defendants about the claims in this lawsuit. All of the Court's decisions will bind you. The Settlement Agreements describe the specific claims you will give up (or "release"), so read them carefully. The Settlement Agreements are available at [website]. If you have any questions, you can talk to the lawyers listed in Question XX for free, or you can talk to your own lawyer if you have questions about what this means.

## How to Get a Payment

### 14. How can I get a payment?

To ask for a payment, you must complete and submit a valid Claim Form. You can get a Claim Form at [website] or by calling 1-800-000-000.

If you are a consumer and unless you consent, your identity will not be made public during any part of the claims process. Unless a consumer consents, all Claim Form submissions will be kept confidential.

You must submit your Claim Form online at [website] or by mail so it is received no later than Month 00, 2026. Claims submitted by mail should be sent to the below address:

XXXXXXXXXXXXXX  
c/o A.B. Data, Ltd.  
P.O. Box 0000  
Milwaukee, WI 53217

## Excluding Yourself From the Settlements

### 15. How can I get out of the Settlements?

If you do not want a payment from these Settlements, but you want to keep the right to sue or continue to sue the Settling Defendants on your own about the claims in this lawsuit, then you must take steps to get out of the Settlements. This is called excluding yourself – or it is sometimes referred to as "opting out."

The specific claims you are giving up (the "Plaintiffs Released Claims") against the Settling Defendants are described in the Settlement Agreements, available at www.[website]. The Settlement Agreements describe the Plaintiffs Released Claims in detail, so please read it carefully.

To exclude yourself, you must mail a letter to the Claims Administrator by [Month 00, 2026] stating that you want to exclude yourself. You cannot exclude yourself by phone.

Your letter must include:

- Your name, mailing address, and telephone number,
- Documents, data, or other proof showing that you are a Class Member and you purchased and/or paid for generic versions of metformin-containing drugs;
- If you are a third-party payor, data showing all your purchases and payments for generic versions of metformin-containing drugs;
- A statement that you want to be excluded from the Settlement with Teva, Settlement with Granules and Heritage, or both Settlements in *In Re Metformin Marketing and Sales Practices Litigation*, No. 2:20-cv-2324; and
- Your signature (NOTE: You or your legally authorized representative must personally sign the letter).

If you are an authorized agent or representative, you must provide proof showing you have the legal authority and are authorized to submit the exclusion request for the Class Member.

You must mail your exclusion request so it is received no later than [Month 00, 2025] to:

XXXXXXXXXXXXX  
EXCLUSIONS  
P.O. Box 173001  
Milwaukee, WI 53217

You may not submit a request for exclusion for groups of Class Members. Moreover, group or class-wide exclusions shall not be permitted. A request for exclusion must be submitted by each Settlement Class Member on an individual basis, and any request for exclusion by a purported authorized agent or representative of a Class Member must include proof of the representative's legal authority and authorization to act and request exclusion on behalf of each Class Member they seek to opt out.

Identifying information for consumers who submit exclusion requests, absent consent, will be kept confidential and their requests will be filed with the Court under seal.

**16. If I exclude myself, can I still get a payment?**

No. You will not get a payment from the Settlements if you exclude yourself.

**17. If I don't exclude myself, can I sue Settling Defendants for the same thing later?**

No. Unless you exclude yourself, you give up the right to sue Teva and/or Granules and Heritage for the claims these Settlements resolve.

**The Lawyers Representing You**

**18. Do I have a lawyer in the case?**

Yes. The Court has appointed attorneys at the firms Carella, Byrne, Cecchi, Brody & Agnello, P.C.; Kanner & Whitely, LLC; Bursor & Fisher, P.A.; Honik LLC; MSP Recovery Law Firm; Scott+Scott Attorneys at Law LLP; Asherkelly Attorneys at Law; Nigh, Goldenberg, Raso & Vaughn, PLLC; and Levin Sedran & Berman, LLP to represent you and the other Class Members. These attorneys are called "Co-Lead Counsel." You may contact Co-Lead Counsel as follows:

James E. Cecchi  
Donald Ecklund  
Carella Byrne Cecchi Brody Agnello,  
P.C.  
5 Becker Farm Road  
Roseland, NJ 07068

You will not be charged for contacting these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**19. How will the lawyers be paid?**

Co-Lead Counsel have not been paid anything to date for their work on this case. Co-Lead Counsel will ask the Court for attorneys' fees of up to 34% of the Settlement Fund, plus interest. Co-Lead Counsel will also ask the Court for service awards up to \$3,500 for each class representative for their work on behalf of the Class.

Any attorneys' fees and expenses and service awards approved by the Court will be paid out of the Settlement Fund.

When Class Counsel's motion for fees, expenses, and class representative service awards is filed, it will be available at [\[website\]](#).

## Objecting to the Settlements

### 20. How can I tell the Court if I do not like the Settlements?

You have a right to object to or comment on any part of the proposed Settlements, Plan of Allocation, and/or the request for attorneys' fees, expenses, and service awards. The Court will consider your views. You cannot ask the Court to order different Settlements; the Court can only approve or reject the Settlements. If the Court does not approve the Settlements, no Settlement payments will be made, and the lawsuit against the Settling Defendants will continue. If that is what you want to happen, you may object.

To object, you, or your authorized agent or representative, must send a letter to the Court that includes the following:

- Your full legal name, address, telephone number;
- A statement saying that you object to the Settlements in *In Re Metformin Marketing and Sales Practices Litigation*, No. 2:20-cv-2324;
- A statement of all reasons you object,
- Any documents, data, and/or any other supporting evidence, including for any TPP Class Member data showing all your purchases and payments for generic versions of metformin-containing drugs;
- Documentation demonstrating that you are a member of the Class and/or this statement, followed by your signature: "I declare under penalty of perjury under the laws of the United States of America that [insert your name] is a member of the Class."
- Documentation for any request for exclusion by an authorized agent or representative of a Class Member must include proof of the representative's legal authority and authorization to act and request exclusion on behalf of each Class Member they seek to opt out.
- A list of all other objections submitted by you, or your counsel, to any class-action settlements submitted in any court in the United States in the previous five (5) years, including the full case name, the jurisdiction in which the objection was filed, and the docket number (or a statement that there are no such objections);
- The name and contact information of your lawyer (if you have one);
- A statement of whether you (or your lawyer) intend to appear and speak at the Fairness Hearing;
- Your lawyer's signature (if you have one); and
- Your (or your officer's or legal representative's) signature.

You must mail your comment or objection to the Court, the Claims Administrator, Co-Lead Counsel, and Counsel for the Settling Defendants at the following addresses, received by [\[MONTH 00, 2026\]](#):

Court
Clerk United States District Court District of New Jersey Martin Luther King Building & U.S. Courthouse 50 Walnut Street Newark, New Jersey 07102

<p>For Plaintiffs:  James E. Cecchi  Donald Ecklund  Carella Byrne Cecchi Brody Agnello, P.C.  5 Becker Farm Road  Roseland, NJ 07068</p>
<p>For Teva:   Christine I. Gannon  Walsh, Pizzi, O'Reilly, Falanaga LLP  Three Gateway Center  100 Mulberry Street, 15th Floor  Newark, NJ 07102</p>
<p>For Granules and Heritage  Asher A. Block  Lewis Brisbois Bisgaard and Smith LLP  575 E. Swedesford Road, Suite 102  Wayne, PA 19087</p>

Individual consumers who do not want their identities to be put on the public record as part of the objection process may send their objection only to the Claims Administrator (mailing address included below), who will redact (or “black out”) such consumers’ names, addresses, and telephone numbers and then provide such redacted versions to the Court for filing on the public court docket. The Claims Administrator will also send copies of the original, unredacted objections to the Court, Class Counsel, and Settling Defendants’ Counsel. How the Judge and the parties treat the merits of your objection does not depend on whether you keep your identifying information off the public record.

XXXXXXXXXXXXX  
OBJECTIONS  
P.O. Box 173001  
Milwaukee, WI 53217

Any lawyer representing a Class Member for the purpose of making comments or objections must also file a Notice of Appearance with the Court using the Court’s Case Management/Electronic Case Files (CM/ECF) system.

**21. If I object to the Settlements, can I still file a claim?**

Yes. You may file a claim even if you object to, or comment on, the Settlements.

**22. What is the difference between objecting and asking to be excluded?**

Objecting is simply telling the Court that you do not like something about the Settlements. You can only object to the Settlements if you stay in the Class. If you object to the Settlements, you are still a Class Member, and you can submit a Claim Form by [Month 00, 2026].

Excluding yourself is telling the Court that you do not want to be a part of the Class and the Settlements. You cannot receive a payment from the Settlement(s) from which you exclude yourself. If you exclude yourself, you also will have no reason to object to the Settlements and appear at the Final Fairness Hearing, because they no longer affect you.

## The Fairness Hearing

### 23. When and where will the Court decide whether to approve the Settlements?

The Court will hold a hearing (called a Fairness Hearing) to decide whether to approve the Settlements. You may attend and ask to speak, but you don't have to.

The Court will hold a hearing on **[Month 00, 2026]** at **[0:00 x.m.]** at the United States District Court for the District of New Jersey, , Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07102. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check **[website]** for updates.

At this hearing, the Court will consider whether the Settlements are fair, reasonable, and adequate. If there are objections, the Court will consider them and may listen to people who have asked to speak at the hearing. The Court may also decide whether to award attorneys' fees and expenses and service awards for the class representatives. After the hearing, the Court will decide whether to approve the Settlements. We do not know how long these decisions will take.

### 24. Do I have to come to the hearing?

No. Co-Lead Counsel will answer questions the Court may have at the Fairness Hearing. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

### 25. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter stating that it is your "Notice of Intention to Appear in *In Re Metformin Marketing and Sales Practices Litigation*, No. 2:20-cv-2324." Be sure to include your full legal name, address, telephone number, and your signature, along with copies of any papers, exhibits, or other evidence and the identity of all witnesses you intend to present to the Court in connection with the Fairness Hearing. Your Notice of Intention to Appear must be received no later than **[Month 00, 2026]** and must be sent to the Court's address listed in Question 20.

## If You Do Nothing

### 26. What happens if I do nothing?

If you do nothing, you will not get any money from the Settlements. You will be bound by the Court's decisions. You will remain in the Class and give up your right to sue the Settling Defendants on your own for the legal claims made in this lawsuit. To ask for a payment, you must complete and submit a Claim Form by **[Month 00, 2026]** (see Question **XX**).

## Getting More Information

### 27. How do I get more information?

This notice is only a summary. More details are in the Settlement Agreements, available at **[website]**. If you have questions, you also may contact the Claims Administrator by writing to **XXXXXXXXXX**, c/o A.B. Data, Ltd., **P.O. Box 0000**, Milwaukee, WI 53217, emailing **info@XXXXXXXXXX.com**, or calling the toll-free number **1-800-000-0000**.

Complete copies of public pleadings, Court rulings, and other filings are available for review and copying at the Clerk's office during normal business hours. The address is United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07102.

Please do not contact the Court or the Judge regarding this Notice.

**QUESTIONS? CALL TOLL-FREE 1-800-000-0000 OR VISIT [WEBSITE]**

DATED: XXX XX, 2026

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

## Exhibit 5

### Part 2 – Short Form Notice

## **Did You Purchase, Pay for, or Provide Reimbursement for a Drug that Contained Metformin?**

### ***You Could Get Money from \$5.55 Million in Settlements.***

There are Settlements in a class action lawsuit with Teva Pharmaceuticals USA, Inc.; Teva Pharmaceutical Industries Ltd.; Actavis Pharma, Inc.; and Actavis LLC (“Teva”) and Granules USA, Inc., and Granules Pharmaceuticals, Inc. (“Granules”) and Heritage Pharmaceuticals, Inc. (doing business as Avet Pharmaceuticals Inc.) (“Heritage”) (“Settling Defendants”).

The lawsuit claims that certain manufacturers, including the Settling Defendants, falsely advertised their generic drugs containing metformin as being the same or equivalent to Glucophage and/or Glucophage XR, but they were actually contaminated with N-nitrosodimethylamine (“NDMA”) and did not meet the U.S. Food and Drug Administration (“FDA”) standards for metformin. It says as a result, people and businesses paid for drugs they would not have. The Settling Defendants deny that they did anything wrong. This lawsuit does not include personal injury or wrongful death claims.

#### **Who is included in the Settlements?**

You may be included in the Settlements if you paid any amount of money for a metformin-containing drug (intended for personal or household use) that was manufactured, distributed, or sold by any Settling Defendant from July 20, 2015 through June 2, 2020. If you are a third-party payor, “purchased” means you paid or reimbursed some or all of the purchase price for a metformin-containing drug.

A more detailed notice, including the full class definitions and who is not included, is available at [www.XXX.com](http://www.XXX.com).

#### **What do the Settlements provide?**

Teva will pay \$3 million and Granules and Heritage will pay \$2.55 million into a Settlement Fund. The Settlement Fund will pay taxes, notice and administration costs, attorneys’ fees and expenses, class representative service awards, other Court-approved fees and expenses, and money to eligible class members.

#### **How can I get a payment?**

You must submit a claim form online or by mail. If your claim is valid, you will get money from the Settlements. Your payment amount will depend on the amount of metformin-containing drugs you purchased, how much you paid for them, and the number of valid claims. Claim Forms, and information on how to submit them, are available at [www.XXX.com](http://www.XXX.com). Claim forms must be postmarked (if mailed) or received (if submitted online) on or before **[Month 00, 2026]**.

#### **What are my rights?**

Even if you do nothing, you will be bound by the Court’s decisions. If you want to keep your right to sue the Settling Defendants yourself, you must exclude yourself by **[Month 00, 2026]**. If you do not exclude yourself, you may object to the Settlements by **[Month 00, 2026]**. Detailed instructions about how to exclude yourself or object are available at [www.XXX.com](http://www.XXX.com).

The Court will hold a hearing on [Month 00, 2026] to consider whether to approve the Settlements, a request for attorneys' fees of up to 34% of the Settlement Fund plus interest, payment of reasonable notice and claims administration costs up to \$500,000, and service awards up to \$3,500 for each of the class representatives. You or your own lawyer may appear and speak at the hearing at your own expense. The Court may change these deadlines or the hearing date and time. Check the website below for updates. Please do not call the Court or the Clerk of the Court for information about the Settlement.

**For more information: 1-800-000-0000**

**[www.XXX.com](http://www.XXX.com)**

## Exhibit 5

### Part 3 – Consumer Claim Form

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE: METFORMIN MARKETING  
AND SALES PRACTICES  
LITIGATION

Case No. 2:20-cv-2324

**Instructions for Submitting Your Consumer Claim Form**

If you are a Class Member who is a consumer and would like to qualify to receive a payment from the Settlements with Teva and Granules and Heritage, you must complete and submit this Claim Form. Your identity will not be made public during any part of the claims process.

You must complete this Claim Form and mail it to the Claims Administrator at the address provided below, postmarked **no later than [Month 00, 2026]**, or you can submit your claim online at [**WEBSITE**], **no later than [Month 00, 2026]**.

Complete all required sections of the attached Claim Form:

1. Fill out *Section A*: You must provide your name and contact information.
2. Review and fill out *Section B*: You must confirm you qualify to file a claim.
3. Fill out *Section C*: You must provide information about your total purchases of generic versions of metformin-containing drugs.
4. Review *Section D*: You must provide documents or other proof showing you purchased or paid for generic versions of metformin-containing drugs at least once.
5. Review *Section E* and sign the Claim Form: You must sign this form to certify that the information you provided is true and correct to the best of your knowledge.

If you sign and submit a Claim Form, you are swearing under penalty of perjury that you qualify to submit a claim according to the criteria in *Section B*.

You have two options to submit your Claim Form:

- You can mail your completed and signed Claim Form and supporting documents by First-Class U.S. Mail, postage prepaid, postmarked no later than **[Month 00, 2026]**, to:

**XXXXXXXXXX**  
c/o A.B. Data, Ltd.  
P.O. Box **173XXX**  
Milwaukee, WI 53217

OR

- You can complete and submit the Claim Form and upload your supporting documents on the Settlement website, [**website**], no later than **[Month 00, 2026]**. If you complete the online Claim Form, you will receive a receipt saying that your claim was submitted. If you file your claim electronically, your electronic signature and submission of the form will meet the requirements of the Electronic Signatures Act, 15 U.S.C. § 7001, *et seq.*, and will be the same as if you signed your Claim Form in hard copy.
- If you do not complete a Claim Form or if your completed Claim Form is not postmarked (if mailed) or received (if submitted) online by **[Month 00, 2026]**, you will not get a payment from the Settlements. Submitting this Claim Form does not guarantee that you will receive payment. If the Claims Administrator rejects or reduces your Claim, you may follow the dispute resolution process described on page 5.

**MUST BE  
POSTMARKED ON OR  
BEFORE,  
OR SUBMITTED  
ONLINE BY,  
[MONTH 00, 2026]**

***In Re: Metformin Marketing and Sales  
Practices Litigation  
Teva Settlement and Granules and Heritage  
Settlement***

**CONSUMER CLAIM FORM**

Use Blue or Black Ink Only

**Attention: You should only fill out this form if you are a Consumer.**

If you are a Third-Party Payor, please fill out the Third-Party Payor Claim Form, available at [\[website\]](#).

**Section A: Claimant Identification**

Claimant's Name

Agent/Legal Representative (if any)

Street Address

City

State

Zip Code

Daytime Telephone Number

Email Address\*

\*By providing your email address, you authorize the Claims Administrator to use that email address to send you information relevant to this claim.

**Section B: Should I File a Claim Form?**

You may be eligible to file a Claim Form and receive a payment from these Settlements if you are a member of a Settlement Class as defined below.

The consumer Teva Settlement Class is defined as:

All individuals in the United States and its territories and possessions who paid any amount of money for a metformin-containing drug (intended for personal or household use) that was manufactured, distributed, or sold by Teva from July 20, 2015 through June 2, 2020 (the "Class Period").

The consumer Granules and Heritage Settlement Class is defined as:

All individuals in the United States and its territories and possessions who paid any amount of money for a metformin-containing drug (intended for personal or household use) that was manufactured, distributed, or sold by Granules or Heritage from July 20, 2015 through June 2, 2020 (the "Class Period").

Please note, certain consumers are **not included** in the Settlements. Do not file a claim for yourself if you are (or anyone who is) one of the following consumers:

- Persons who purchased metformin-containing drugs for resale (not for personal use);
- Persons who purchased metformin-containing drugs directly from Teva, Granules, Heritage, or their affiliates;
- Judges in this case and any members of their immediate families; and/or
- Persons who excluded themselves from (or opted out of) both Settlements.

**If you excluded yourself from both Settlements, you may not file a claim.**

Check this box and sign the certification in *Section E* to confirm that the claimant in *Section A* is a consumer Class Member and they are not excluded (based on the criteria above). If the claimant is excluded from the Settlement Classes, the Claims Administrator may reject this claim.

### Section C: Purchase Information

Please type (or print) in the boxes below the total number of prescriptions and amounts you paid, from July 20, 2015 through June 2, 2020, for metformin-containing drugs (intended for personal or household use).

Total number of prescriptions of generic versions of metformin-containing drugs purchased from July 20, 2015 through June 2, 2020 in the United States:	
Total amount of out-of-pocket payments for the metformin-containing drug purchases identified above:	\$

### Section D: Claim Documentation and Disputes about Claim Amounts

You may file a claim by providing the information requested in *Sections A, B, and C* and completing the Certification in *Section E*, below. Please also submit **one or more** of the following documents to support your claim:

- 1) Records from your pharmacy or insurer showing that you purchased generic versions of metformin-containing drugs at least once;
- 2) A note from your doctor (or records) describing the amount of generic versions of metformin-containing drugs you were prescribed;
- 3) An explanation of benefits (“EOB”) from your health plan or insurer describing transactions in generic versions of metformin-containing drugs; and/or
- 4) Other records showing you purchased generic versions of metformin-containing drugs any time from July 20, 2015 through June 2, 2020. These records could include, but are not limited to, receipts, checkbook entries, and credit-card statements.

**Note:** You must submit documents (or proof) to support your claim. If you do not provide documents now, the Claims Administrator will ask you to provide additional claim documentation after you submit your Claim Form. Please keep all records of your purchases, such as receipts, checkbook entries, credit card statements, and insurance EOBs. Claims may be audited and rejected because of fraud concerns or potentially inaccurate amounts based on expected average purchases.

If the Claims Administrator rejects or reduces your claim and you believe the rejection or reduction is in error, you may contact the Claims Administrator to ask for further review. If the dispute about your claim cannot be resolved by the Claims Administrator and Co-Lead Counsel, you may ask the Court to review your claim.

To ask for Court review, you must send the Claims Administrator a signed written statement that states: (a) the reasons you disagree with your claim being rejected or your claim's payment determination; and (b) specifically that you "request that the Court review the determination regarding this claim." You must include all documents that support your argument(s). The Claims Administrator and Co-Lead Counsel will present the dispute to the Court for review, which may include one or more public filings with the Court describing the dispute and any related arguments. However, all personal medical data and history relating to the dispute will be filed under seal so it stays confidential. Please note, you should ask for Court review only if you disagree with the Claims Administrator's determination regarding your claim.

### **Section E: Certification**

By signing below, I hereby swear and affirm that I have read and am familiar with the Claim Form instructions. I certify that the information I provided in this Claim Form and any documents I attached are true, correct, and complete to the best of my knowledge. I certify I provided all of the information requested above to the extent I have it.

I certify further that I, or the consumer Class Member I represent, am/are a person in the United States and its territories and possessions who paid any amount of money for a metformin-containing drug (intended for personal or household use) that was manufactured, distributed, or sold by Teva, Granules, and/or Heritage from July 20, 2015 through June 2, 2020.

I also certify that I, or the Class Member(s) I represent, did not ask to be excluded ("opt out") from the Settlements with Teva and Granules and Heritage and did not purchase metformin-containing drugs for purposes of resale (not for personal use). In addition, I am not (or the represented Class Member is not) among the persons that are excluded from the Settlement Classes (as listed in *Section B*).

I further certify that I, or the Class Member(s) I represent, have read and are familiar with the releases stated in Paragraph 4 of the Settlements (including terms defined in Section 1 of the Settlements).

The releases in Paragraphs 4.2 and 4.3 of the Teva Settlement and the Granules and Heritage Settlement provide as follows:

4.2 Upon the Effective Date of this Settlement and in consideration of the Settlement Amount, Plaintiffs, each Settlement Class Member, and Released Plaintiffs, on behalf of themselves and their respective past and present parents, subsidiaries, and affiliates, general and limited partners, officers, directors, employees, agents, attorneys, servants, predecessors, successors, heirs, executors, administrators, and representatives (the "Releasing Plaintiffs"), shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, waived, relinquished and discharged, and shall forever be enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any forum whatsoever, including any court of law or equity, arbitration tribunal, or administrative forum, all Plaintiffs' Released Claims against Released Defendants, whether or not such Plaintiff, Settlement Class Member, or Released Plaintiff executes and delivers a Claim Form.

4.3 With respect to any and all Released Claims, the Parties, on behalf of themselves and all other Releasing Parties, stipulate and agree that by operation of the Final Judgment, the Releasing Parties shall hereby expressly waive, release, and forever discharge, upon Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. The Releasing Parties may hereafter discover facts other than or different from those which they know or believe to be true with respect to the Released Claims, but the Releasing Parties hereby expressly waive and fully, finally, and forever settle and release, upon Final Judgment, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that they have agreed to release, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

To the extent a consumer Class Member authorized me to submit this Claim Form on their behalf, and I am submitting this Claim Form as an authorized agent, and I have been authorized to receive any and all amounts from the Settlements that may be allocated to this consumer Class Member on their behalf, I certify that such authority has been properly vested in me and I will fulfill all duties I may owe the consumer Class Member. If amounts from the Settlements are distributed to me, and a consumer Class Member later claims I did not have the authority to claim and/or receive those amounts on their behalf, I and/or my employer will hold the Class, Co-Lead Counsel, and the Claims Administrator harmless with respect to any claims made by the consumer Class Member.

I hereby submit to the jurisdiction of the United States District Court for the District of New Jersey for all purposes connected with this Claim Form, including resolving disputes related to this Claim Form. I understand that if I provided any false information or representations related to this claim, I may be subject to sanctions, including criminal prosecution. If the Claims Administrator asks for additional supporting documents to supplement this Claim Form and the information in it, I agree to provide them.

**I certify that the above information supplied by the undersigned is true and correct to the best of my knowledge, and this Claim Form was signed on \_\_\_\_\_ 2026.**

Signature

Print or Type Name

Mail your completed Claim Form, along any available documents supporting your claim, to the address below, postmarked no later than [Month 00, 2026] or submit the information online at the website below by that date:

XXXXXXXXXXXXXX

c/o A.B. Data, Ltd.

P.O. Box 173XXX

Milwaukee, WI 53217

Toll-Free Telephone: 1-800-000-0000

Website: [WEBSITE]

**REMINDER CHECKLIST:**

1. Please complete and sign the above Claim Form or complete the online Claim Form. Attach or upload any documents supporting your claim.
2. Keep a copy of your Claim Form and supporting documents for your records.
3. If you would also like a receipt acknowledging your Claim Form was received, please complete the form online or mail this form via Certified Mail, Return Receipt Requested.

If you move and/or your name changes, please send your new address and/or your new name or contact information to the Claims Administrator at [email address] or via U.S. Mail at the address above.



## Exhibit 5

### Part 4 – TPP Claim Form

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

IN RE: METFORMIN MARKETING  
AND SALES PRACTICES  
LITIGATION

Case No. 2:20-cv-2324

**INSTRUCTIONS FOR SUBMITTING YOUR THIRD-PARTY PAYOR CLAIM FORM**

If you are a Class Member who is a third-party payor (“TPP”) and would like to qualify to receive a payment from the Settlements with Teva and Granules and Heritage, you must complete and submit this Claim Form.

A third-party payor (“TPP”) Class Member, or an authorized agent for a TPP, can complete this Claim Form. If both a TPP Class Member and its authorized agent submit a Claim Form, the Claims Administrator will consider only the TPP Class Member’s Claim Form. The Claims Administrator may ask for supporting documents in addition to the documents and information requested below. The Claims Administrator may reject a claim if the TPP Class Member or its authorized agent does not provide all requested documents in a timely manner.

If you are a TPP Class Member submitting a Claim Form on your own behalf, complete “Section A – COMPANY OR HEALTH PLAN THIRD-PARTY PAYOR CLASS MEMBER ONLY,” in addition to the other information in this Claim Form.

If you are an authorized agent of one or more TPP Class Members, you must provide the information requested in “Section B – AUTHORIZED AGENT ONLY,” in addition to the other information in this Claim Form. **Do not submit a Claim Form on behalf of any other TPP Class Member unless that TPP Class Member provided you with prior written authorization to submit this Claim Form. You may be required to send the Claims Administrator such written authority to resolve any conflicts that arise.**

If you are submitting a Claim Form as only an authorized agent of one or more TPP Class Members, you may submit a separate Claim Form for each TPP Class Member OR you may submit one Claim Form for all such TPP Class Members, so long as you provide the required information for each TPP Class Member on whose behalf you are submitting this Claim Form.

If you are submitting Claim Forms on both your own behalf as a TPP Class Member AND as an authorized agent on behalf of one or more TPP Class Members, you should submit one Claim Form for yourself, completing Section A, and another Claim Form or Claim Forms as an authorized agent for the other TPP Class Member(s), completing Section B.

You can submit your Claim Form by mail or electronically on the Settlement website ([website](#)). You need to provide documents, as described below, to substantiate (or prove) your claim.

If you do not complete and submit your Claim Form postmarked (if mailed) or received (if submitted online) by **[Month 00, 2026]**, you will not receive a payment from these Settlements. Submitting a Claim Form does not guarantee you will get a payment from the Settlements. If the Claims Administrator rejects or reduces your Claim, you may follow the dispute resolution process described on page 6-7.

**CLAIM INFORMATION AND DOCUMENTATION REQUIREMENTS**

Please provide information to show you (or the entity you represent) is a Class Member.

The TPP Teva Settlement Class is defined as:

All entities in the United States and its territories and possessions who paid any amount of money for a

metformin-containing drug (intended for personal or household use) that was manufactured, distributed, or sold by Teva from July 20, 2015 through June 2, 2020 (the “Class Period”).

The TPP Granules and Heritage Settlement Class is defined as:

All individuals in the United States and its territories and possessions who paid any amount of money for a metformin-containing drug (intended for personal or household use) that was manufactured, distributed, or sold by Granules or Heritage from July 20, 2015 through June 2, 2020 (the “Class Period”).

Persons or entities “purchased” a metformin-containing drug if they paid or reimbursed some or all of the purchase price.

Please note, certain entities are **not included** in the Settlement Classes. Do not file a claim for any entity that is one of the following:

- a) Teva Pharmaceuticals USA, Inc.; Teva Pharmaceutical Industries Ltd.; Actavis Pharma, Inc.; and Actavis LLC (“Teva”); Granules USA, Inc., and Granules Pharmaceuticals, Inc. (“Granules”); and Heritage Pharmaceuticals, Inc. (doing business as Avet Pharmaceuticals Inc.) (“Heritage”) and their respective subsidiaries and affiliates;
- b) Federal government entities;
- c) State and local government entities that can only make claims under applicable state law only by the state Attorney General, or are otherwise prohibited by applicable law from being asserted by private counsel on a contingent fee basis;
- d) All entities that purchased metformin-containing drug for purposes of resale or directly from Teva, Granules, Heritage, or their affiliates;
- e) Fully insured health plans (*i.e.*, plans that purchased insurance from another third-party payor covering 100% of the plan’s reimbursement obligations to its members);
- f) Pharmaceutical benefit managers; and
- g) Entities who excluded themselves from (or opted out of) the Settlements.

The following information should be provided to support your claim as a TPP Class Member:

- a) Name of TPP Class Member;
- b) NDC Number (the Settlement website provides a list of the NDCs the Claims Administrator will accept) – *e.g.*, 00000-0000-00;
- c) Fill Date or Date of Purchase – *e.g.*, 06/01/2017;
- d) Location (State) of Purchase – *e.g.*, CA;
- e) Location (State) of insured or beneficiary; and
- f) Amount Paid by TPP net of co-pays, deductibles, and co-insurance – *e.g.*, \$20.00.

If you are submitting a Claim Form on behalf of multiple TPP Class Members, also provide the following information for each purchase or reimbursement:

- g) Plan or Group Name; and
- h) Plan or Group FEIN – provide group number for each transaction.

An exemplar spreadsheet containing these categories and a list of applicable NDC Numbers can be downloaded from the Settlement website, [\[website\]](#). Please use this format if possible, and provide the electronic data in Microsoft Excel, ASCII flat file pipe “|”, tab-delimited, or fixed-width format.

Data and/or information demonstrating membership in the class is mandatory. Transaction data is mandatory for claims of \$100,000 or more, but the Claims Administrator may also require transaction data for claims of less than \$100,000, so

keep related transaction data and any other documents supporting your claim in case the Claims Administrator requests them later. If your claim is for less than \$100,000, you should still provide the transaction data with your claim submission if you can. If, after an audit of your claim, the Claims Administrator still has questions about your claim and you have not provided sufficient data and/or documentation, the Claims Administrator may reject your claim.

Please contact the Claims Administrator at 1-800-000-0000 with any questions about the required claim information and documentation. Please do not contact the Court about these issues.

**MUST BE POSTMARKED ON  
OR BEFORE,  
OR SUBMITTED  
ONLINE BY [Month 00, 2026]**

***In Re: Metformin Marketing and  
Sales Practices Litigation  
Teva Settlement and Granules and  
Heritage Settlement***

**THIRD-PARTY PAYOR CLAIM FORM**

Use Blue or Black Ink Only

**Attention: You should only fill out this Claim Form if you are a Third-Party Payor (or its authorized agent).**

If you are a Consumer, please fill out the Consumer Claim Form, available at [[website](#)].

- Complete Section A only if you are filing as an individual TPP Class Member.
- Complete Section B only if you are an authorized agent filing on behalf of one or more TPP Class Members.

**Section A: Company or Health Plan Class Member Only**

Company or Health Plan Name

Contact Name

Address 1

Address 2

Floor/Suite

City

State

Zip Code

Area Code - Telephone Number

Tax Identification Number

Email Address

List other names by which your company or health plan has been known or other Federal Employer Identification Numbers ("FEINs") it has used since July 20, 2015.

Health Insurance Company/HMO       Self-Insured Employee Health or Pharmacy Benefit Plan

Self-Insured Health & Welfare Fund

Other (Explain):

**Section B: Authorized Agent Only**

As an authorized agent, please check the box that best describes your relationship with the TPP Class Member. (You must provide documents demonstrating this relationship.)

Third-Party Administrator or Administrative Services Only Provider

Pharmacy Benefits Manager

Other (Explain):

Authorized Agent's Company Name

Contact Name

Address  Floor/Suite

City  State  Zip Code

Area Code - Telephone Number

Authorized Agent's Tax Identification Number

Email Address

Please list the name and FEIN of every TPP Class Member (*i.e.*, company or health plan) for which you were authorized to submit this Claim Form. (Attach additional sheets to this Claim Form as needed.) Alternatively, you may submit the requested list of TPP Class Member names and FEINs in an electronic format, such as Excel or a tab-delimited text file. Please contact the Claims Administrator to determine which formats are acceptable.

TPP CLASS MEMBER'S NAME

TPP CLASS MEMBER'S FEIN

### Section C: Purchase Information

Please type or print in the box below, the total amount, from July 20, 2015 through June 2, 2020, that you paid or reimbursed for generic versions of metformin-containing drugs, for consumption by your members, employees, insureds, participants, or beneficiaries, where the person(s) purchased the drug in the United States for personal or household use.

If you are an authorized agent completing this Claim on behalf of more than one TPP Class Member, enter the total amount paid by all the TPP Class Members included in this Claim. You must also provide the required information for each TPP Class Member on whose behalf you are submitting this Claim Form. An exemplar spreadsheet containing the required categories can be downloaded from the Settlement website, [\[website\]](#).

Total amount (net of co-pays, deductibles, and co-insurance) you paid or reimbursed for <b>generic versions of metformin-containing drugs in the United States, from July 20, 2015 through June 2, 2020</b> , for personal or household use, by your members, employees, insureds, participants, or beneficiaries:	\$
--	----

- Check this box and sign the claim form in *Section E* to confirm that the claimant(s) indicated in Section A and/or Section B are TPP Class Members and they are not excluded (based on the criteria above). If any claimants are excluded from the Settlements, the Claims Administrator may reject this Claim.

### Section D: Proof of Payment and Disputes Regarding Claim Amounts

Please provide as much of the information requested above in the “CLAIM INFORMATION AND DOCUMENTATION REQUIREMENTS” section in the instructions as possible.

Transaction data supporting claims is **mandatory** for claims of **\$100,000** or more, but the Claims Administrator may also require you to provide transaction data for claims of less than **\$100,000**. Please keep related transaction data, business records used to create the transaction list, and any other documents supporting your claim (e.g., invoices) in case the Claims Administrator requests them later. If, after an audit of your claim, the Claims Administrator still has questions about your claim and you did not provide sufficient data and/or documents, the Claims Administrator may reject your claim.

If the Claims Administrator rejects or reduces your claim and you believe the rejection or reduction is in error, you may contact the Claims Administrator to ask for further review. If the dispute concerning your claim cannot be resolved by the Claims Administrator and Co-Lead Counsel, you may ask the Court to review your claim.

To request Court review, you must send the Claims Administrator a signed written statement that states: (a) the reasons you disagree with your claim being rejected or your claim’s payment determination and (b) specifically that you “request that the Court review the determination regarding this claim.” You must include all documents supporting your argument(s). The Claims Administrator and Co-Lead Counsel will present the dispute to the Court for review, which may include publicly filing your claim and any supporting documents with the Court. Please note, you should only ask for Court review if you disagree with the Claims Administrator’s determination regarding your claim.

### Section E: Certification

By signing below, I hereby swear and affirm that I have read and am familiar with the Claim Form instructions. I certify the information I provided in this Claim Form and any documents I attached are true, correct, and complete to the best of my knowledge.

I certify I provided all the information requested above to the extent I have it.

I further certify that I, or the TPP Class Member(s) I represent:

- a) purchased, paid for, or reimbursed some or all of the purchase price for a generic version of a metformin-containing drug (intended for personal or household use) in the United States that was manufactured, distributed, or sold by Teva, Granules, and/or Heritage from July 20, 2015 through June 2, 2020; and
- b) am/is/are not one of the following:
  - i.) Teva, Granules, and Heritage, or their respective subsidiaries and affiliates;
  - ii.) A federal government entity;
  - iii.) A state or local government entity that can only make claims under applicable state law only by the state Attorney General, or are otherwise prohibited by applicable law from being asserted by private counsel on a contingent fee basis;
  - iv.) An entity that purchased metformin-containing drug for purposes of resale or directly from Teva, Granules, Heritage, or their affiliates;
  - v.) A fully insured health plan (i.e., plan that purchased insurance from another third-party payor covering 100% of the plan's reimbursement obligations to its members); or
  - vi.) A pharmaceutical benefit manager.

I further certify that neither I, nor the TPP Class Member(s) I represent, asked to be excluded ("opted out") from the Settlements with Teva and Granules and Heritage.

I further certify that I, or the TPP Class Member(s) I represent, have read and are familiar with the releases stated in Paragraph 4 of the Settlements (including terms defined in Section 1 of the Settlements).

The releases in Paragraphs 4.2 and 4.3 of the Teva Settlement and the Granules and Heritage Settlement provide as follows:

4.2 Upon the Effective Date of this Settlement and in consideration of the Settlement Amount, Plaintiffs, each Settlement Class Member, and Released Plaintiffs, on behalf of themselves and their respective past and present parents, subsidiaries, and affiliates, general and limited partners, officers, directors, employees, agents, attorneys, servants, predecessors, successors, heirs, executors, administrators, and representatives (the "Releasing Plaintiffs"), shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, waived, relinquished and discharged, and shall forever be enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any forum whatsoever, including any court of law or equity, arbitration tribunal, or administrative forum, all Plaintiffs' Released Claims against Released Defendants, whether or not such Plaintiff, Settlement Class Member, or Released Plaintiff executes and delivers a Claim Form.

4.3 With respect to any and all Released Claims, the Parties, on behalf of themselves and all other Releasing Parties, stipulate and agree that by operation of the Final Judgment, the Releasing Parties shall hereby expressly waive, release, and forever discharge, upon Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. The Releasing Parties may hereafter discover facts other than or different from those which they know or believe to be true with respect to the Released Claims, but the Releasing Parties hereby expressly waive and fully, finally, and forever settle and release, upon Final Judgment, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that they have agreed to release, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

To the extent I was authorized to submit this Claim Form on behalf of one or more TPP Class Members, am submitting this Claim Form as an authorized agent, and have been authorized to receive on behalf of the TPP Class Member(s) any and all amounts from the Settlements that may be allocated to them, I certify that such authority has been properly vested in me in writing, I can and will submit such written authorization to the Claims Administrator if requested, and I will fulfill all duties I may owe the TPP Class Member(s). If amounts from the Settlements are distributed to me, and a TPP Class Member later claims I did not have the authority to claim and/or receive such amounts on its behalf, I and/or my employer will hold the Class, Co-Lead Counsel, and the Claims Administrator harmless with respect to any claims made by the TPP Class Member.

I/We hereby submit to the jurisdiction of the United States District Court for the District of New Jersey for all purposes connected with this Claim Form, including resolving disputes related to this Claim Form. I/We acknowledge that if I/we provided any false information or representations related to this claim, I/we may be subject to sanctions, including criminal prosecution. If the Claims Administrator asks for additional supporting documents to supplement this Claim Form and the information in it, I agree to provide them.

**I certify that the above information supplied by the undersigned is true and correct to the best of my knowledge and that this Claim Form was executed this \_\_\_\_\_ day of \_\_\_\_\_ 2026.**

Signature

Position/Title

Print Name

Date

Mail your completed Claim Form, along with any supporting documents as described in the CLAIM INFORMATION AND DOCUMENTATION INSTRUCTIONS on pages 2-3 above, to the address below, postmarked no later than [Month 00, 2026] or submit the information online at the website below by that date:

XXXXXXXXX Settlement  
c/o A.B. Data, Ltd.  
P.O. Box 173XXX  
Milwaukee, WI 53217  
Toll-Free Telephone: 1-800-000-0000  
Website: [Website]

**REMINDER CHECKLIST:**

1. Please complete and sign the above Claim Form or complete the online Claim Form. Attach or upload

documents supporting your claim.

2. Keep a copy of your Claim Form and supporting documents for your records.
3. If you would also like a receipt acknowledging your Claim Form was received, please complete the form online or mail this form via Certified Mail, Return Receipt Requested.

If you move and/or your name changes, please send your new address and/or your new name or contact information to the Claims Administrator at [\[Email\]](#) or via U.S. Mail at the address above.

# Exhibit 6

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

IN RE: METFORMIN MARKETING AND  
SALES PRACTICES LITIGATION

Case No. 2:20-cv-2324-MCA-MAH

**ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENTS**

**WHEREAS**, Plaintiffs Joseph Brzozowski, Jacqueline Harris, Kristen Wineinger, Michael Hann, and Masao Hendrix (“Consumer Plaintiffs”) and MSP Recovery Claims, Series LLC, County of Monmouth, and Central Midwest Regional Council of Carpenters Welfare Fund f/k/a Ohio Carpenters’ Health Fund (“TPP Plaintiffs”) (collectively, Consumer Plaintiffs and TPP Plaintiffs are “Plaintiffs”) filed an Unopposed Motion pursuant to Federal Rules of Civil Procedure 23(e) and (g) to grant preliminary approval of the proposed Settlements between Plaintiffs and defendants Teva Pharmaceuticals USA, Inc., Actavis Pharma, Inc., and Actavis LLC (collectively, “Teva”) and defendants Granules USA, Inc., Granules Pharmaceuticals, Inc. and Heritage Pharmaceuticals, Inc. d/b/a Avet Pharmaceuticals, Inc. (collectively, “Granules and Heritage”; collectively with Teva, “Defendants”); to certify the Settlement Classes; to appoint Plaintiffs as Class Representatives; to appoint James Cecchi, Conlee Whiteley, David Stanoch, Max Roberts, Ruben Honik, Joseph Guglielmo, Marlene Goldenberg, Charlie Schaffer, Fred Longer, Janpaul Portal, and Michael Fitzgerald (“Interim Co-Lead Counsel”) as Class Counsel for the Settlement Classes; to appoint Huntington National Bank as the Escrow Agent; and to appoint A.B. Data, Ltd. as the Notice and Claims Administrator;

**WHEREAS**, the Court has read and considered the Settlement Agreements and Plaintiffs’ Unopposed Motion for Preliminary Approval;

**NOW, IT IS HEREBY ORDERED THAT:**

1. This Order incorporates by reference the definitions in the Settlement Agreements, and all terms used in this Order shall have the same meanings as stated in the Settlement Agreements. The motion for preliminary approval (ECF No. \_\_\_ ) is **GRANTED**.

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d).

3. Venue is proper in this District.

4. The Court preliminarily approves the Settlement Agreements and finds their terms to be fair, reasonable, and adequate under Rule 23, subject to further consideration at the Final Fairness Hearing.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies, for settlement purposes only, two Settlement Classes. The two Settlement Classes (the “Teva Settlement Class” and the “Granules and Heritage Settlement Class” respectively) consist of:

All individuals and entities in the United States and its territories and possessions who paid any amount of money for a metformin-containing drug (intended for personal or household use) that was manufactured, distributed, or sold by Teva from July 20, 2015 through June 2, 2020 (the “Class Period”). For purposes of the TPP Plaintiffs, persons or entities “purchased” a metformin-containing drug if they paid or reimbursed some or all of the purchase price.

Excluded from the Settlement Class are: (1) Teva and its respective subsidiaries and affiliates; (2) federal governmental entities; (3) State and local governmental entities to the extent their claims may be asserted under applicable state law only by the state Attorney General, or are otherwise prohibited by applicable law from being asserted by private counsel on a contingent fee basis; (4) all persons or entities who purchased metformin-containing drugs for purposes of resale or directly from Teva or its affiliates; (5) fully insured health plans (*i.e.*, Plans that purchased insurance from another third-party payer covering 100% of the Plan’s reimbursement obligations to its members); (6) pharmaceutical benefit managers; and (7) the judges in this case and any members of their immediate families (the “Teva Settlement Class”);

And,

All individuals and entities in the United States and its territories and possessions who paid any amount of money for a metformin-containing drug (intended for personal or household use) that was manufactured, distributed, or sold by Granules or Heritage from July 20, 2015 through June 2, 2020 (the “Class Period”). For purposes of the TPP Plaintiffs, persons or entities “purchased” a metformin-containing drug if they paid or reimbursed some or all of the purchase price.

Excluded from the Settlement Class are: (1) Granules and Heritage and their respective subsidiaries and affiliates; (2) federal governmental entities; (3) State and local governmental entities to the extent their claims may be asserted under applicable state law only by the state Attorney General, or are otherwise prohibited by applicable law from being asserted by private counsel on a contingent fee basis; (4) all persons or entities who purchased metformin-containing drugs for purposes of resale or directly from Granules or Heritage or their respective subsidiaries affiliates; (5) fully insured health plans (i.e., Plans that purchased insurance from another third-party payer covering 100% of the Plan’s reimbursement obligations to its members); (6) pharmaceutical benefit managers; and (7) the judges in this case and any members of their immediate families (the “Granules and Heritage Settlement Class”).

6. The Court preliminarily appoints James Cecchi, Conlee Whiteley, David Stanoch, Max Roberts, Ruben Honik, Joseph Guglielmo, Marlene Goldenberg, Charlie Schaffer, Fred Longer, Janpaul Portal, and Michael Fitzgerald (“Interim Co-Lead Counsel”) as Class Counsel for the Settlement Classes.

7. The Court preliminarily appoints Joseph Brzozowski, Jacqueline Harris, Kristen Wineinger, Michael Hann, and Masao Hendrix (“Consumer Plaintiffs”) and MSP Recovery Claims, Series LLC, County of Monmouth, and Central Midwest Regional Council of Carpenters Welfare Fund f/k/a Ohio Carpenters’ Health Fund (“TPP Plaintiffs”) as the Settlement Classes’ Representatives.

8. The Court preliminarily appoints Huntington National Bank as the Escrow Agent.

9. The Court preliminarily finds, solely for purposes of the Settlements, that the Rule 23 criteria for certification of the Settlement Classes exists in that: (a) the Settlement Classes are so numerous that joinder is impracticable; (b) there are questions of law and fact common to the

Settlement Classes that predominate over individual questions; (c) the claims of the Settlement Class Representatives are typical of the claims of the Settlement Classes; (d) the Settlement Classes' Representatives and Settlement Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

10. The Court preliminarily finds that certification of the Settlement Classes is appropriate when balanced against the risks and delays of further litigation. The proceedings that occurred before the Parties entered into the Settlement Agreements allowed counsel to adequately assess the claims and defenses in the Action, the relative positions, strengths, weaknesses, risks, and benefits to each Party, and, as such, to negotiate Settlement Agreements that are fair, reasonable, and adequate and reflect those considerations.

11. The Court also preliminarily finds that the Settlement Agreements were reached as a result of arm's-length negotiations of disputed claims and that the proposed Settlements are not the result of any collusion.

12. The Court further finds that setting a schedule for providing notice in the manner set forth in the Settlement Agreements and Memorandum of Law in Support of Plaintiffs' Unopposed Motion and establishing an escrow account in the interim is the most efficient approach under the circumstances.

13. The Court preliminarily appoints A.B. Data, Ltd. as the Notice and Claims Administrator.

14. The Court also preliminarily finds that the Notice Plan is reasonably calculated to apprise the Settlement Classes of the pendency of the Action; the certification of the Settlement Classes for settlement purposes only; the terms of the Settlements, their benefits, and the Release

of Claims; the Settlement Class Members' rights, including the right to, and the deadlines and procedures for, requesting exclusion from a Settlement or objecting to the Settlements; Class Counsel's application for Fees and Expenses and/or the application for Settlement Classes' Representative Service Awards; the deadline, procedures, and requirements for submitting a Claim for Reimbursement under the Settlements' terms; the time, place, and right to appear at the Final Fairness hearing; and other pertinent information about the Settlements and the Settlement Class Members' rights.

15. Accordingly, the Court approves and directs the implementation of the terms of the Settlement Agreements.

16. A.B. Data is directed to perform all settlement administration duties set forth in, and under the terms and time periods set by this Court, set forth in the Settlement Agreements, and required under the CAFA. A.B. Data will also create and maintain a Settlement website, implement the Notice Plan approved by the Court, process, review, and determine the validity of timely submitted and proper Claims, and submit any declarations and other materials to counsel and the Court, as well as perform any other duties required under the Settlement Agreements.

17. Following dissemination of notice, any Settlement Class Member who wishes to be excluded from the Settlement Class(es) will be provided at least 45 days to mail, by first-class mail, a written request for exclusion ("Request for Exclusion") to each of the following: (a) the notice and claims administrator at the address specified in the Class Notice; (b) Donald A. Ecklund, Esq., Carella, Byrne, Cecchi, Brody & Agnello, P.C., 5 Becker Farm Road, 3rd Floor, Roseland, New Jersey 07068 on behalf of Class Counsel; (c) Christine I. Gannon, Esq., Walsh, Pizzi, O'Reilly, Falanaga LLP, Three Gateway Center, 100 Mulberry Street, 15<sup>th</sup> Floor, Newark, NJ 07102 on behalf of Teva and Asher Block, Esq., Lewis Brisbois, 575 E. Swedesford Road, Suite

102, Wayne, PA 19087 on behalf of Granules and Heritage. To be effective, the Request for Exclusion must be timely and must:

- a. Include the Settlement Class Member's full name, address, and telephone number;
- b. identify his/her/their/its purchasers or reimbursements of metformin-containing drug (intended for personal or household use) that was manufactured, distributed, or sold by Teva and/or Granules and Heritage from July 20, 2015 through June 2, 2020; and
- c. Specifically and unambiguously state his/her/their/its desire to be excluded from the Settlement Class(es).

18. Any Settlement Class Member who fails to submit a timely and complete Request for Exclusion sent to the proper addresses shall remain in the Settlement Classes and shall be subject to and bound by all determinations, orders, and judgments in the Action concerning the Settlements, including, but not limited to, the Released Claims set forth in the Settlement Agreements.

19. Any Settlement Class Member who has not submitted a Request for Exclusion may object to the fairness of the Settlement Agreements and/or the requested amount of Class Counsel Fees and Expenses and/or Settlement Class Representative service awards.

- a. To object, a Settlement Class Member must either: (i) file the objection, together with any supporting briefs and/or documents, with the Court in person or via the Court's electronic filing system within 45 days before the date originally set for the Final Approval Hearing; or (ii) mail, via first-class mail postmarked within 35 days before the date originally set for the Final

Approval Hearing, the objection, together with any supporting briefs and/or documents, to each of the following: (a) the Clerk's Office of the United States District Court, District of New Jersey, Martin Luther King Jr. Federal Building and United States Courthouse, 50 Walnut Street, Newark, New Jersey 07102; (b) Donald A. Ecklund, Esq., Carella, Byrne, Cecchi, Brody & Agnello, P.C., 5 Becker Farm Road, 3rd Floor, Roseland, New Jersey 07068 on behalf of Class Counsel; and (c) Christine I. Gannon, Esq., Walsh, Pizzi, O'Reilly, Falanaga LLP, Three Gateway Center, 100 Mulberry Street, 15<sup>th</sup> Floor, Newark, NJ 07102 on behalf of Teva and Asher Block, Esq., Lewis Brisbois, 575 E. Swedesford Road, Suite 102, Wayne, PA 19087 on behalf of Granules and Heritage.

- b. Any objecting Settlement Class Member must include the following with his/her/their/its objection: (i) the objector's full name, address, and telephone number; (ii) must identify his/her/their/its purchases and/or reimbursements of Defendants' metformin-containing drug (intended for personal or household use) that was manufactured, distributed, or sold by Teva and/or Granules and Heritage from July 20, 2015 through June 2, 2020; (iii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection; (v) the name, address and telephone number of any counsel representing said objector; (vi) a statement of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing,

either with or without counsel, and the identity(ies) of any counsel who will appear on behalf of the Settlement Class Member's objection at the Final Approval Hearing; and (vii) a list of all other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any court in the United States in the previous five years, including the full case name, the jurisdiction in which it was filed and the docket number. If the Settlement Class Member or his/her/their/its counsel has not objected to any other class action settlement in the United States in the previous five years, he/she/they/it shall affirmatively so state in the objection.

- c. Subject to the approval of the Court, any Settlement Class Member who has properly filed a timely objection may appear, in person or by counsel, at the Final Fairness Hearing to explain why the proposed Settlements should not be approved as fair, reasonable and adequate, or to object to any motion for Class Counsel Fees and Expenses or Settlement Class Representative service awards. In order to appear, any Settlement Class Member must file with the Clerk of the Court no later than the objection deadline and serve upon all counsel designated in the Class Notice, a Notice of Intention to Appear at the Final Fairness Hearing. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence and the identity of all witnesses that the objecting Settlement Class Member (or the objecting Settlement Class Member's counsel) intends to present to the Court in connection with the Final Fairness Hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear by the

deadline and other requirements set forth in this Order and the Class Notice shall be deemed to have waived any right to appear, in person or by counsel, at the Final Fairness Hearing.

- d. Any Settlement Class Member who has not properly filed a timely objection in accordance with the deadline and requirements set forth in this Order and the Class Notice shall be deemed to have waived any objections to the Settlements and any adjudication or review of the Settlement Agreements and/or their approval by appeal or otherwise.

20. In the event the Settlements are not granted final approval by the Court, or for any reason the Parties fail to obtain a Final Order and Judgment as contemplated in a given Settlement Agreement, or either Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

- a. All orders and findings entered in connection with that Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding, judicial or otherwise;
- b. All the Parties to that Settlement shall return to their respective pre-Settlement claims, defenses, and positions, their procedural rights will be preserved, and the parties will be restored to their positions status *quo ante*;
- c. Nothing contained in this Order is, or may be construed as, any admission or concession by or against the Parties or Released Parties on any allegation, claim, defense, or point of fact or law in connection with this Action;

- d. Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Class Notice, court filings, orders, and public statements, may be used as evidence in this or any other proceeding, judicial or otherwise; and
- e. The preliminary certification of the Settlement Class pursuant to this Order shall be vacated automatically, and the Action shall proceed as though the Settlement Class had never been preliminarily certified.

21. Pending the Final Fairness Hearing and the Court's decision whether to grant final approval of the Settlements, no Settlement Class Member, either directly, representatively, or in any other capacity (including those Settlement Class Members who filed Requests for Exclusion from the Settlement which have not yet been reviewed and approved by the Court at the Final Fairness Hearing), shall commence, prosecute, continue to prosecute, or participate in, against any of the Released Parties, any action or proceeding in any court or tribunal (judicial, administrative or otherwise) asserting any of the matters, claims or causes of action that are to be released in the Settlement Agreement. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuing this preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action.

22. Pending the Final Fairness Hearing and any further determination, this Court shall maintain continuing jurisdiction over these Settlement proceedings.

Dated: \_\_\_\_\_, 2026 \_\_\_\_\_