UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IRON WORKERS DISTRICT COUNCIL OF NEW ENGLAND HEALTH AND WELFARE FUND, UTAH-IDAHO TEAMSTERS SECURITY FUND, JACKSONVILLE POLICE OFFICERS AND FIRE FIGHTERS HEALTH INSURANCE TRUST, and NYST COUNCIL HEALTH & HOSPITAL FUND, on behalf of themselves and others similarly situated, Plaintiffs v. TEVA PHARMACEUTICAL INDUSTRIES LTD.; TEVA PHARMACEUTICALS USA, INC.; TEVA BRANDED PHARMACEUTICAL PRODUCTS R&D, INC.; and NORTON (WATERFORD) LTD., Defendants.	Civ. No. 23-cv-11131 (NMG)

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS

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I. INTRODUCTION

Plaintiffs Iron Workers District Council of New England Health and Welfare Fund, Utah-Idaho Teamsters Security Fund, Jacksonville Police Officers and Fire Fighters Health Insurance Trust, and NYST Council Health & Hospital Fund (collectively, the "End-Payor Plaintiffs" or "EPPs"), individually and on behalf of a class of similarly situated end payors (collectively, the "End-Payor Class" or "Class"), respectfully request final approval of their settlement with defendants Teva Pharmaceutical Industries Ltd.; Teva Pharmaceuticals USA, Inc.; Teva Branded Pharmaceutical Products R&D LLC; and Norton (Waterford) Ltd. (collectively, "Teva" or the "Defendants" and, together with Plaintiffs, the "Parties").[1]

The Court granted preliminary approval of the proposed settlement on April 2, 2026. ECF 204 ("Preliminary Approval Order"). The Settlement, the product of two and a half years of litigation, including contested, arm's-length negotiations spanning several months and involving experienced and highly skilled counsel, provides an excellent result for the Class. In particular, the proposed settlement provides (1) for $35 million in cash for the benefit of the End-Payor Class, and (2) that Teva request that all patents currently listed for QVAR (beclomethasone dipropionate HFA) prescription asthma inhalers be removed from the FDA's list of Approved Drug Products with Therapeutic Equivalence Evaluations (the "Orange Book"), pursuant to 21 C.F.R. § 314.53(f)(2)—a settlement requirement that has now been completed. In exchange, the Settlement provides for the dismissal of this action with prejudice and the provision of releases from the End-Payor Class, as set forth in the Settlement Agreement.[2] The agreed-upon injunctive relief included in the settlement—Teva's withdrawal of all QVAR patents from the Orange Book that Defendants allegedly listed to impede generic entry—is what End-Payor Plaintiffs sought to achieve in this

[1] Capitalized terms used but not defined herein have the meaning ascribed to them in the Order preliminarily approving the Settlement (ECF No. 204).

[2] The Settlement Agreement is on file with the Court. *See* Exhibit A to the Decl. of Todd A. Seaver ("Seaver Decl. Ex."), ECF No. 198-1 ("Settlement Agreement").

action at trial. And the cash component will directly benefit the End-Payor Class to offset past alleged overcharges suffered by Class members due to Teva's alleged misconduct.

The proposed Settlement is in all respects fair, reasonable, and adequate, and should be granted final approval. Members of the Class received notice through a mixture of first-class mail, email, and digital and print media publication, informing them of the Settlement, their rights to object, and Class Counsel's requests for attorneys' fees (of up to one-third of the Settlement Fund), reimbursement of expenses, and service awards for the Class Representatives of up to $25,000 each.[3] No objections have been received. Moreover, only a single individual consumer has sought exclusion from the Class. The favorable reaction of the Class confirms the fairness and reasonableness of the Settlement and of the accompanying requests.

Class Counsel, on behalf of the End-Payor Class, respectfully request that this Court issue an Order granting final approval of the proposed settlement, approving the proposed plan of allocation, certifying the Class, and dismissing this action with prejudice. Class Counsel have also requested an order awarding attorneys' fees and expenses and approving service awards, and respectfully request that the Court grant that relief, as well.[4]

II. BACKGROUND

The facts and procedural history of this case are familiar to the Court, were recently recounted in the preliminary approval papers, and are discussed at length in the motion for an award of attorneys' fees, reimbursement of expenses, and service awards, and in the Declaration of Todd A. Seaver in support thereof. A brief overview is provided here.

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[3] *See*, Decl. of Eric J. Miller Regarding Notice of Settlement to the End-Payor Class ("Miller Decl."), attaching as Exhibits A and E thereto the short-form and long-form notices, respectively, sent to members of the Class.

[4] Plaintiffs' Notice of Motion and Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards, ECF No. 209.

The End-Payor Plaintiffs brought this class action against Defendants approximately three years ago, alleging that they engaged in an anticompetitive scheme to prevent and/or delay the approval and marketing of generic versions of QVAR prescription asthma inhalers. As alleged in the amended class action complaint, the scheme included improper patent listings in the FDA's Orange Book, product hops, and sham litigation to prevent and/or delay multiple generic companies from entering the market with less expensive competing inhalers. The EPPs allege that Defendants' scheme violated various federal and state antitrust, consumer protection, and unjust enrichment laws, and caused End-Payors (i.e., consumers and third-party payors like health and welfare benefit plans) to pay supracompetitive prices for inhalers.

Class Counsel vigorously prosecuted this action, and the settlement was reached at a reasonably mature stage of the case. The Parties engaged in two rounds of briefing at the pleadings phase, on which this Court ruled and issued opinions. Seaver Decl. ¶ 3 (ECF No. 198). Thereafter, the Parties engaged in discovery for approximately a year, including the exchange of written discovery; document production and review, including Defendants' production of more than 460,000 documents totaling about 4.6 million pages; third-party discovery that included the production of about 825,000 more pages; and preparation for numerous depositions. *Id.* ¶ 4. The Parties also consulted extensively with economic, scientific, patent, and regulatory experts, in preparation for the submission of expert reports and formal expert discovery. *Id.* Thus, issues relating to liability, causation, and damages were well-developed, enabling Class Counsel to make an informed decision regarding the strengths and weaknesses of the case and the merits of the proposed settlement.

In this context, counsel for the End-Payor Plaintiffs and counsel for Teva engaged in five months of arm's-length, hard-fought settlement negotiations. These negotiations were based upon the foregoing extensive record in this case. Further informing the settlement discussions was recent and further development of the case law articulating when it is appropriate, and not appropriate, for patents to be listed in the FDA's Orange Book. In particular, in December 2024, the Federal Circuit affirmed a district court opinion that ordered some of the same patent listings at issue in

this case to be stricken from the Orange Book. *Teva Branded Pharm. Prods. R&D, Inc. v. Amneal Pharms. of New York, LLC*, 124 F.4th 898, 911 (Fed. Cir. 2024) (affirming *Teva Branded Pharm. Prods. R&D, Inc. v. Amneal Pharms. of New York, LLC*, 736 F.Supp.3d 227 (D.N.J. 2024) ("*Teva v. Amneal*") ("[T]o qualify for listing [in the Orange Book], a patent must claim at least what made the product approvable as a drug in the first place—its active ingredient. In other words, Teva cannot list its patents just because they claim the dose-counter and canister parts…."). *See also In re Lantus Direct Purchaser Antitrust Litig*., 950 F.3d 1, 8 (1st Cir. 2020) (holding that, if "the claims of [a] patent [in the Orange Book] do not mention the drug for which the [related NDA] was submitted, the patent does not 'claim the drug,' and it was improper for [the manufacturer] to have submitted it for listing in the Orange Book.").

As End-Payor Plaintiffs contend here, the patents Teva listed in the Orange Book for QVAR do not mention the drug beclomethasone dipropionate or, accordingly, a beclomethasone dipropionate drug product—in the patents' claims or elsewhere; and other patents Teva listed in the Book for QVAR Redihaler likewise do not include beclomethasone dipropionate or a beclomethasone dipropionate drug product in their claims. End-Payor Plaintiffs accordingly maintained, consistent with the appellate holdings in *Teva v. Amneal* and *Lantus*, that these patents did not belong in the Orange Book.

Against this backdrop, and after extensive negotiations lasting several months, Teva and the End-Payor Plaintiffs reached a settlement involving payment of $35 million and withdrawal of all patents currently listed for QVAR from the Orange Book, subject to this Court's approval.

III. ARGUMENT

A. Legal Standard

Rule 23(e)(2) of the Federal Rules of Civil Procedure provides that the court may approve a class action settlement "only after a hearing and only on finding that it is fair, reasonable, and adequate" after considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

As amended in 2018, the Rule 23(e)(2) factors include both "procedural checks" and "substantive checks." *Murray v. Grocery Delivery E-Servs. USA Inc.*, 55 F.4th 340, 345 (1st Cir. 2022); *see also Cohen v. Brown Univ.*, 16 F.4th 935, 943–44 (1st Cir. 2021). Paragraphs (A) and (B) are the procedural checks, which require the Court to examine "the conduct of the litigation and of the negotiations leading up to the proposed settlement." Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment. Paragraphs (C) and (D) are the substantive checks, which require the Court to examine "[t]he relief that the settlement is expected to provide to class members." *Id*.

"The First Circuit has not settled on a single test for determining the fairness, reasonableness, and adequacy of a proposed class action settlement . . . ." *Anderson v. Team Prior, Inc.*, No. 2:19-CV-00452-NT, 2021 WL 3852720, at *5 n.3 (D. Me. Aug. 27, 2021). Many courts in this Circuit, including this Court, look to the factors set forth by the Second Circuit Court of Appeals in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974). *See, e.g., In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F.Supp.3d 241, 244 (D. Mass. 2022) (Gorton, J.). The *Grinnell* factors are:

1) the complexity, expense, and likely duration of the litigation;
2) the reaction of the class to the settlement;

3) the stage of the proceedings and the amount of discovery completed;

4) the risks of establishing liability;

5) the risks of establishing damages;

6) the risks of maintaining the class action through the trial;

7) the ability of the defendants to withstand a greater judgment;

8) the range of reasonableness of the settlement fund in light of the best possible recovery; and

9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.[5]

Other courts in this Circuit look to substantially similar factors, recently enumerated by Magistrate Judge Neiman:

(1) Plaintiffs' likelihood of success on the merits;

(2) the amount and nature of discovery or evidence;

(3) the actual settlement terms and conditions;

(4) the recommendation and experience of counsel;

(5) the future expense and likely duration of litigation;

(6) the recommendation of neutral parties, if any;

(7) the number and nature of objections; and

(8) the presence of good faith and the absence of collusion.

Rolland v. Cellucci, 191 F.R.D. 3, 8–9 (D. Mass. 2000).

"There is significant overlap between the Rule 23(e)(2) and *Grinnell* factors, which complement, rather than displace each other." *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, No. 05-MD 1720, 2024 WL 3236614, at *12 (E.D. NY. June 28, 2024). "Importantly, the Advisory Committee noted that the amendment was not intended to 'displace any factor' previously in use. *Cohen v. Brown Univ.*, 16 F.4th 935, 943 n.5 (1st Cir. 2021) (citing Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendments.). Courts applying the

[5] *Grinnell,* 495 F.2d at 463; *Ranbaxy*, 630 F.Supp.3d at 244. *See also In re Relafen Antitrust Litig*., 231 F.R.D. 52, 72 (D. Mass. 2005) ("*Relafen*").

Grinnell factors recognize that not all of them must be satisfied for a settlement to receive approval; instead, courts look at the factors in light of the circumstances of the case.[6] A court should neither substitute its judgment for that of the parties who negotiated the settlement, nor conduct a mini-trial on the merits of the action.[7]

B. The Settlement is procedurally fair.

1. The Class Representatives and Class Counsel have adequately represented the Class (Rule 23(e)(2)(A) and *Rolland* factor 4).

Rule 23(e)(2) instructs the district court to "'consider[ ]' the adequacy of representation by the class representatives. It does not direct the court to make specific findings as to adequacy of representation." *Cohen*, 16 F.4th at 946.

The Class Representatives have adequately represented the EPP Class for all the reasons given in the Memorandum in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class-Action Settlement and Certification of Settlement Class, ECF No. 197 ("Preliminary Approval Brief"), at 8. Their service is also summarized and described in Plaintiffs' Memorandum of Law in Support of Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards, ECF No. 209-1 ("Fee Brief"), at 15–16, and the declarations referenced therein. The Court concluded in the Preliminary Approval Order that "the End-Payor Plaintiffs have and will continue to fairly and adequately protect the interests of the Settlement Class." ECF 204 at 4. Since that Order, nothing has diminished the Class Representatives' adequacy.

Likewise, the quality of class counsel supports final approval. Class Counsel have adequately represented the EPP Class for all the reasons given in Plaintiffs' Preliminary Approval

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[6] *New England Carpenters Health Benefits Fund v. First DataBank, Inc.*, 602 F. Supp. 2d 277, 280-81 (D. Mass. 2009).

[7] *See Greenspun v. Bogan*, 492 F.2d 375, 381 (1st Cir. 1974) ("[A]ny settlement is the result of a compromise—each party surrendering something in order to prevent unprofitable litigation, and the risks and costs inherent in taking litigation to completion. A district court, in reviewing a settlement proposal, need not engage in a trial of the merits, for the purpose of settlement is precisely to avoid such a trial.").

Brief, ECF No. 197, at 8–9. The Court concluded in the Preliminary Approval Order that "Class Counsel are well qualified to represent the Settlement Class in this case, given their experience in prior cases and the vigor with which they have prosecuted this Action." ECF 204 at 4.

In approving class action settlements, courts give great weight to the opinion and judgment of experienced counsel who have conducted arm's-length negotiations. "When the parties' attorneys are experienced and knowledgeable about the facts and claims, their representations to the court that the settlement provides class relief which is fair, reasonable, and adequate should be given significant weight."[8] With respect to the quality of counsel, courts have looked at various factors, including "the length of their involvement in the litigation, their competence, and their experience in this particular type of litigation."[9]

Here, Class Counsel investigated the facts and initiated the litigation, and then oversaw every aspect of the case going forward, including significant discovery and motion practice, so as to fully appreciate the pros and cons of proceeding with litigation. Class Counsel are experienced in pharmaceutical antitrust litigation generally and delayed generic entry cases in particular, and do not hesitate to take these cases to or through trial when in their judgment it is in the class's best interest to do so.[10] This Court and other courts have recognized Class Counsel's expertise in this

[8] *Rolland*, 191 F.R.D. at 10.

[9] *Giusti-Bravo v. U.S. Veterans Admin.*, 853 F. Supp. 34, 40 (D.P.R. 1993). *See also Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 348 (D. Mass. 2015), *aff'd,* 809 F.3d 78 (1st Cir. 2015) (finding that the parties had a sufficient understanding of the merits of the case to engage in informed negotiations, "particularly where plaintiffs' counsel are skilled and experienced in consumer class action litigation, including class actions involving alleged misrepresentation of the health benefits of footwear"); *Bussie v. Allmerica Fin. Corp.,* 50 F. Supp. 2d 59, 77 (D. Mass. 1999), 50 F. Supp. 2d at 77 ("The Court's fairness determination also reflects the weight it has placed on the judgment of the parties' respective counsel, who are experienced attorneys and have represented to the Court that they believe the settlement provides to the Class relief that is fair, reasonable and adequate.").

[10] The firm resumes of Class Counsel are attached as Exhibits H, I, J and K to the Seaver Declaration (ECF Nos. 198-9 through 198-11).

field and have repeatedly adjudged Class Counsel adequate in the context of class settlements.[11] In light of Class Counsel's appraisal of the strengths and weaknesses of the End-Payor Plaintiffs' claims, the damages claimed in this action, the important injunctive relief and cash recovery achieved, and counsel's experience in other pharmaceutical antitrust cases, counsel believe this to be an excellent result for the Class that should be approved.

2. The Settlement was negotiated at arm's length (Rule 23(e)(2)(B) and *Rolland* factor 8).

In the Preliminary Approval Order, the Court found that "The Settlement Agreement was the result of extensive, arm's-length negotiations of disputed claims, with sufficient discovery." ECF No. 204 ¶ 14. "That the settlement is the result of arms-length negotiations weighs heavily in its favor, as does the quality of class counsel." *Ranbaxy*, 630 F.Supp.3d at 245.

As explained in the Preliminary Approval Brief, the proposed Settlement here was negotiated at arm's-length by counsel experienced in similar class action antitrust cases.[12] Each side vigorously advocated and considered the strengths and weakness of its positions, weighing the costs and benefits of further litigation, prior to settlement. Through these comprehensive negotiations, Class Counsel advocated the best possible case while pressing for the maximum recovery in light of the litigation risks that the Class faced. The time and effort spent, and the

[11] *See, e.g., Ranbaxy*, 630 F.Supp.3d at 245 (citing "quality of class counsel," including Sperling and Hilliard Shadowen, as a factor supporting approval of settlement in generic-delay case); *In re Glumetza Antitrust Litig.*, No. 19-5822, 2022 U.S. Dist. LEXIS 20157, at *38 (N.D. Cal. Feb. 3, 2022) (noting "counsel [including Sperling and Hilliard Shadowen] provided strong representation for the class"); *In re Google Play Antitrust Litig.*, No. 20-cv-05792-JD, 2024 WL 150585 at *3 (N.D.Cal. Jan. 11, 2024) ("Class Counsel [including Sperling] obtained monetary relief and structural reforms for the Settlement Class, as to which the class members had no objections…."); *In re Loestrin 24 Fe Antitrust Litig.*, No. 13-md-2472, 2020 U.S. Dist. LEXIS 125746, at *48-49 (D.R.I. July 17, 2020) (finding counsel, including co-lead Hilliard Shadowen, "have demonstrated that they are skillful and well-experienced and that they have effectively and efficiently prosecuted this complex and protracted litigation to the benefit of the" class); *In re Aggrenox Antitrust Litig.*, No. 14-md-2516 (D. Conn. Mar. 6, 2018), ECF No. 766 (appointing Hilliard Shadowen as co-lead counsel); *Staley v. Gilead Sciences, Inc.*, No. 19-2573 (N.D. Cal. Sep. 9, 2019), ECF No. 163 (appointing Hilliard Shadowen as interim co-lead counsel).

[12] Preliminary Approval Brief at 9–11; Seaver Decl. ¶¶ 6–9.

circumstances of the negotiations, are persuasive indicators that there was no collusion in either the negotiation process or the result achieved. Counsel for the End-Payor Plaintiffs and counsel for Teva engaged in five months of arm's-length, hard-fought settlement negotiations. These negotiations were based upon the extensive record in this case, including briefing and rulings on both a motion to dismiss and a motion for judgment on the pleadings, review of millions of pages of documents produced, exhaustive consultations with experts, and Class Counsel's extensive experience in prosecuting delayed generic entry cases. This factor indicates that the Settlement is fair.[13]

C. The Settlement is substantively fair, reasonable, and adequate.

1. The costs, risks, and delay of trial and appeal support approval of the Settlement (Rule 23(e)(2)(C)(i), *Grinnell* factors 1, 4, 5, and 6, and *Rolland* factors 1 and 5).

In granting preliminary approval of the Settlement, the Court found that the relief afforded to the Settlement Class under the Settlement Agreement is adequate considering "the costs, risks, and delay of trial and appeal." Preliminary Approval Order ¶ 14.

As an initial point, "antitrust cases, by their nature, are highly complex,"[14] and antitrust class actions are "'arguably the most complex action(s) to prosecute' as 'the legal and factual issues involved are always numerous and uncertain in outcome.'"[15] This case is no exception.

The investment of time and costs in this complex case has already been substantial, and the case would take significant time and expense to continue to litigate, with the prospect of delay

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[13] *See, e.g., Ranbaxy, supra*; *City P'ship Co. v. Atl. Acquisition Ltd. P'ship*, 100 F.3d 1041, 1043 (1st Cir. 1996).

[14] *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 122 (2d Cir. 2005).

[15] *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. Civ.A. 03-4578, 2005 WL 1213926, *11 (E.D. Pa. May 19, 2005) (quoting *In re Linerboard Antitrust Litig.,* 296 F. Supp. 2d 568, 577 (E.D. Pa. 2003)). *See also In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 533 (E.D. Mich. 2003) ("Moreover, the complexity of this case cannot be overstated. Antitrust class actions are inherently complex….").

even after trial. At the time of settlement the parties had been litigating this matter for two and a half years, through two rounds of briefing at the pleadings stage, and extensive document discovery. Proceeding to trial would have come with substantial cost and taken considerable time. At the time the settlement was reached, the Parties were gearing up to take a host of depositions. Soon after discovery was to close in late September 2025, the Parties were scheduled to engage in expert discovery, which is extensive in pharmaceutical antitrust cases such as this one. Thereafter, the Parties would have engaged in highly contested class certification and summary judgment motion practice, followed by trial in September 2026 and potential appeals.

Throughout this process, the parties would have continued to litigate the complex issues attendant to a matter such as this. As noted above, for example, the law regarding when patents should be delisted from the Orange Book was developing as this case played out, with the Federal Circuit's decision in the *Teva v. Amneal* case coming down as the Parties were in the midst of discovery. Were this case to proceed through dispositive motions and trial, the Parties also would have addressed sophisticated matters related to the elements of causation, relevant market, and market power. As evident from its motion for judgment on the pleadings, for instance, Teva has vigorously contended that EPPs could not show that the allegedly unlawful Orange Book listings prevented generic QVAR from coming to market in a but-for world; Teva contends that it has valid patents that lawfully prevent generic competitors from developing and selling generic QVAR inhalers, whether listed in the Orange Book or not. Teva also contends that the relevant market is far more expansive than beclomethasone dipropionate and extends to all inhaled corticosteroid maintenance inhaler products because, Teva asserts, asthma patients routinely switch to corticosteroid maintenance inhaler products. These and other complex issues would have dominated this matter as it proceeded toward trial.

Litigating this matter for two-plus years has consumed significant attorney time and financial resources. Class Counsel conducted independent research, took extensive fact discovery, worked with noted experts, engaged in motion practice, and were deeply engaged in preparing for further fact and expert discovery, dispositive and other motion practice and, ultimately, a

complicated and lengthy trial.[16] Class Counsel ultimately incurred over $9,763,905.50 in attorney time and spent over $666,412.26 in out-of-pocket expenses to litigate this matter to the point of settlement.[17] Notably, the full financial risk of prosecuting this litigation was borne by Class Counsel, as it did not avail itself of any litigation financing.[18]

This time-consuming and expensive litigation is fraught with risks. Were End-Payor Plaintiffs to proceed with their claims through trial, they would have faced significant challenges related to the elements of causation, relevant market, and market power. As noted above, Teva contends that EPPs cannot show that the allegedly unlawful Orange Book listings prevented generic QVAR from coming to market in a but-for world.[19] Indeed, Teva prevailed at trial against generic drugmaker Cipla, where the court found that Cipla's proposed generic QVAR inhaler infringed certain of Teva's patents at issue in this action. *See Teva Branded Pharm. Prods. R&D, Inc. v. Cipla Ltd.*, 678 F.Supp.3d 559 (D.N.J. 2023). And, as also noted above, Teva also contends that the relevant market is far more expansive than beclomethasone dipropionate and extends to all inhaled corticosteroid maintenance inhaler products.

In addition to such issues, the End-Payor Plaintiffs faced the hurdle of having to prove damages. While the EPPs are confident in the proof of damages, a risk of not obtaining the support and endorsement of the jury and/or appellate courts nevertheless existed. Establishing damages in an antitrust class action is a complex task, and federal courts have long noted that in "antitrust cases … market uncertainties 'usually deny us the sure knowledge of what plaintiff's situation

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[16] *See* Declaration of Todd A. Seaver on Behalf of Berman Tabacco in Support of Plaintiff's Motion for Final Approval and for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards ¶¶ 5–42, ECF No. 210 (June 5, 2026).

[17] *Id*. ¶¶ 43-45.

[18] *See Id*. ¶ 49 ("costs and expenses were advanced by Plaintiffs' Counsel at risk of total loss").

[19] In contrast to the End-Payor Plaintiffs, the direct purchaser plaintiffs voluntarily dismissed their claims rather than contest Teva's Rule 12(c) motion for judgment on the pleadings. *See id.* ¶¶ 18–20.

would have been in the absence of the defendant's antitrust violation.'"[20] Antitrust jurisprudence is thus "replete with cases in which plaintiffs prevailed at trial on issues of liability, but recovered little or nothing by way of damages."[21]

In addition to the risks of establishing liability and damages, the risks of maintaining a class action through trial and beyond also supports approving the proposed settlement. End-Payor Plaintiffs would need to move to obtain class certification, which Defendants would likely challenge. Further, even if class certification were granted in the litigation context, class certification can always be reviewed or modified before trial, so "the specter of decertification makes settlement an appealing alternative."[22] EPPs believe the Court would certify the Class. However, the uncertainty of that result, as well as the time and expense necessary to litigate class certification generally, further supports final approval of the Settlement.[23] And, while the risk of decertification on appeal is likely minimal, it still exists,[24] likewise supporting final approval.

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[20] *Storage Tech Corp. v. Custom Hardware Eng'g & Consulting, Ltd..,* No. 02-12102-RWZ, 2006 WL 1766434, at *21 (citing *Hasbrouck v. Texaco, Inc.,* 842 F.2d. 1034, 1044 (9th Cir. 1987)).

[21] *In re Lupron Mktg. & Sales Pracs. Litig.*, MDL No. 1430, 2005 WL 2006833, at *4 (D. Mass. Aug. 17, 2005); *see also Sutton v. Med. Serv. Ass'n of Pa.*, No. 92-cv-4787, 1994 WL 246166, at *7 (E.D. Pa. June 8, 1994) (granting final approval, noting that "even assuming that plaintiffs ultimately would have prevailed on liability, they faced the risk that they could not establish damages….").

[22] *O'Brien v. Brain Research Labs*., No. 12-204, 2012 WL 3242365, at *18 (D.N.J. Aug. 9, 2012).

[23] *See In re Ikon Off. Sols., Inc. Sec. Litig.*, 209 F.R.D. 94, 105 (E.D. Pa. 2002); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liability Litig.*, 55 F.3d 768, 817 (3d Cir. 1995) ("The value of a class action depends largely on the certification of the class because, not only does the aggregation of the claims enlarge the value of the suit, but often the combination of the individual cases also pools litigation resources and may facilitate proof on the merits. Thus, the prospects for obtaining certification have a great impact on the range of recovery one can expect to reap from the action.").

[24] *See In re Modafinil Antitrust Litig.,* 837 F.3d 238 (3d Cir. 2016) (vacating district court's certification of class); *In re Zetia Antitrust Litig.,* 7 F.4th 227, 239 (4th Cir. 2021) (decertifying class).

When the Parties agreed in principle to the proposed Settlement, Class Counsel believed in the merits of the case. But Class Counsel also recognized that success at trial on liability and damages—and then upon a possible appeal—was hardly assured. Given the risk of no, or a substantially reduced, monetary recovery, along with the risk of no equitable relief and/or no relief on a class-wide basis—risks that would persist even after a lengthy and costly trial—the relief obtained through the Settlement is substantial, and well within the range of possible approval.

Such risks posed significant hurdles for End-Payor Plaintiffs in proceeding with their claims to trial. Class Counsel, experienced in these types of cases and aware of these risks, believe the proposed Settlement is fair, reasonable, and adequate, and courts often give significant weight when evaluating the reasonableness of a proposed class action settlement to the judgment of experienced counsel.[25] The Settlement provides immediate, definite and substantial relief for the Class without the delay, risk, and uncertainty of continued litigation.

Considering all these factors together, "[t]he complexity, expense and . . . duration of the litigation . . . all weigh heavily in favor of final approval" of the proposed Settlement. *Relafen*, 231 F.R.D. at 72; *see also Ranbaxy*, 630 F.Supp.3d at 245 (finding that "the complexities of class action litigation in the field of antitrust" and "the risks associated with extending the litigation through trial" supported approval of settlement in generic-delay case). The Settlement should be approved because it "avoids substantial risks and costs for both sides, giving a certain positive outcome in the face of a costly and uncertain one."[26] Final approval is appropriate here, where "continuing litigation through trial would have required additional discovery, extensive pretrial

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[25] *See, e.g.*, *Rolland*, 191 F.R.D. at 10 ("When the parties' attorneys are experienced and knowledgeable about the facts and claims, their representations to the court that the settlement provides class relief which is fair, reasonable and adequate should be given significant weight."). *Accord In re Imprelis Herbicide Mktg., Sales Pracs. & Prods. Liab. Litig.*, 296 F.R.D. 351, 364 (E.D. Pa. 2013); *In re Southeastern Milk Antitrust Litig.*, No. 08-md-1000, 2013 U.S. Dist. LEXIS 70167, at *21-22 (E.D. Tenn. May 17, 2013).

[26] *Storage Tech.*, 2006 WL 1766434, at *21 (citing *Hasbrouck v. Texaco, Inc.,* 842 F.2d. 1034, 1044 (9th Cir. 1987)).

motions addressing complex factual and legal questions, and ultimately a complicated, lengthy trial."[27]

2. The reaction of the Settlement Class to the Settlement supports approval (*Grinnell* factor 2 and *Rolland* factor 7)

The positive response of members of the Class to the proposed Settlement supports final approval. "While not dispositive, the lack of objections from class members weighs in favor of approving a class-action settlement, at least where, as here, class members stand to recover significant awards." *Mongue v. Wheatleigh Corp.*, 165 F.4th 49, 61 (1st Cir. 2026). "Reaction to a settlement is positive when the number of objectors is minimal compared with the number of claimants, provided notice effectively reached absent class members."[28] The deadline to object was June 15, 2026. No member of the End-Payor Class has filed an objection to any aspect of the proposed Settlement.[29] "Such acceptance of the Settlement on the part of the Class is convincing evidence of the Settlement's fairness and adequacy."[30]

Particularly where, as here, a significant portion of the class is comprised of sophisticated business entities, the absence of any objections is a strong indicator of the adequacy of the Settlement.[31] The absence of objections is particularly significant because numerous class

[27] *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, at 103 (D.N.J. 2012) (quoting *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 536 (3d Cir. 2004)); *accord Castro v. Sanofi Pasteur Inc.*, No. 11-7178 (JMV)(MAH), 2017 WL 4776626, at *3 (D.N.J. Oct. 23, 2017) ("Settlement is favored … if litigation is expected to be complex, expensive and time consuming.") (internal quotations omitted).

[28] *Gulbankian v. MW Mfrs., Inc.*, No. 10-cv-10392, 2014 WL 7384075, at *2 (D. Mass. Dec. 29, 2014).

[29] Miller Decl. ¶ 16.

[30] *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-cv-0085, 2005 WL 3008808, at *6 (D.N.J. Nov. 9, 2005) (citing *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118-19 (3d Cir. 1990) ("only" 29 objections in 281 member class "strongly favors settlement")); *In re Prudential Ins. Co. of Am. Sales Pracs. Litig.*, 148 F.3d 283, 318 (3d Cir. 1998) (affirming conclusion that class reaction was favorable where 19,000 policyholders out of 8 million opted out and 300 objected).

[31] *See In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 254-55 (D. Del. 2002), *aff'd*, 391 F.3d 516 (3d Cir. 2004) ("[T]he court finds the low number of objections from [third party payors] particularly significant, because these are sophisticated businesses with, in some case, large

members have been members of classes in other pharmaceutical antitrust cases challenging similar conduct, and are therefore well-situated to evaluate the proposed Settlement in this case.[32] The favorable reaction of the Class Members supports final approval of the proposed Settlement. *See Ranbaxy*, 630 F.Supp.3d at 245 (findings that "the lack of objections to the settlement" supported approval of settlement in generic-delay case).

3. The stage of the proceedings and the amount of discovery completed favors approving the Settlement (*Grinnell* factor 3 and *Rolland* factor 2)

The parties reached settlement after "meaningful discovery," which weighs in favor of final approval. *Ranbaxy*, 630 F.Supp.3d at 244-245. The Parties reached the proposed Settlement after two rounds of briefing at the pleadings phase and with the benefit of much discovery, including the exchange of written discovery; document production and review, including production of about 5.4 million pages of documents; preparation for numerous depositions; and consultation with economic, scientific, patent, and regulatory experts, in preparation for the submission of expert reports and formal expert discovery. Accordingly, issues relating to liability, causation, and damages were well-developed, enabling Class Counsel to make an informed decision regarding the strengths and weaknesses of the case and the merits of the proposed settlement.[33]

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potential claims, and they could be expected to object to a settlement they perceived as unfair or inadequate."); *In re M.D.C. Holdings Sec. Litig.*, No. 89-cv-0090, 1990 WL 454747, at *7 n.5 (S.D. Cal. Aug. 30, 1990) (lack of objections "is significant since the class includes sophisticated financial institutions . . . who have counsel available to advise and represent them and submit objections to either the settlement or the fees and expenses").

[32] *See Remeron*, 2005 WL 3008808, at *6 (citing *Relafen*, 231 F.R.D. 52).

[33] *See Warfarin*, 212 F.R.D. at 255 (finding this factor supported final approval of settlement since Class Counsel "pursued this litigation for over three years" and "engaged in substantial discovery" including review of "voluminous documents"); *First DataBank*, 602 F. Supp. 2d at 280-81 (quoting *Grinnell*, 495 F.2d at 463); *Sheinberg v. Sorensen*, No. 00-6041 (CCC), 2016 WL 3381242, at *7 (D.N.J. June 14, 2016) (recognizing the role of "meaningful discovery" in evaluating and arriving at a proper settlement amount).

4. Settling Defendants' ability to withstand a greater judgment does not affect the fairness of this Settlement (*Grinnell* factor 7)

Defendants could withstand a judgment larger than the proposed settlement, but that does not weigh against approval.[34] As in *Relafen*, this consideration "is largely neutral" with a defendant such as this "'with classic deep pockets.'"[35]

5. The Settlement is reasonable given the risks and potential range of recovery (*Grinnell* factors 8 and 9 and *Rolland* factor 3)

Courts consider the range of reasonableness of the settlement in light of (i) the best possible recovery and (ii) litigation risks. In analyzing these factors, the issue for the Court is not whether the settlement represents the best possible recovery, but how the settlement relates to the strengths and weaknesses of the case. "[T]he court . . . consider[s] and weigh[s] the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable,"[36] while "guard[ing] against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution."[37] "[A] settlement need not reimburse 100% of the estimated damages to class members in order to be fair."[38] Potential

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[34] *Relafen,* 231 F.R.D. at 73 (citing *In re Lupron Mktg. & Sales Pracs. Litig.*, 228 F.R.D. 75, 97 (D. Mass. 2005)); *Remeron*, 2005 WL 3008808, at *9 ("[M]any settlements have been approved where a settling defendant has had the ability to pay greater amounts.").

[35] *Relafen,* 231 F.R.D. at 73 (citing *Lupron*, 228 F.R.D. at 97); *see also Shapiro v. JPMorgan Chase & Co.*, No. 11-Civ-8331, 2014 U.S. Dist. LEXIS 37872, at *41 (S.D.N.Y. Mar. 21, 2014).

[36] *Grinnell*, 495 F.2d at 462.

[37] *Gen. Motors.*, 55 F.3d 768 at 806 (citing *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)).

[38] *In re Celexa and Lexapro Mktg. and Sales Pracs. Litig.,* No. 09-cv-2067, 2014 WL 4446464, at *7 (D. Mass. Sept. 8, 2014). As Judge Young explained in *In re Relafen*, "[a] fine-tuned equation by which to determine the reasonableness of the size of a settlement fund does not exist. In any case there is a range of reasonableness with respect to a settlement. Moreover, a high degree of precision cannot be expected in valuing a litigation, especially regarding the estimation of the probability of particular outcomes." 231 F.R.D. at 73 (citations omitted; cleaned up).

damages, minus any trebling or any punitive damages, "appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement."[39]

The Settlement provides a recovery well within the range of reasonableness in light of the best possible recovery and the risks of litigation outlined above.[40] Indeed, the proposed Settlement represents an excellent result for the End-Payor Class. In particular, the injunctive relief included in the settlement—Teva's withdrawal of all QVAR patents from the Orange Book that Defendants allegedly listed to impede generic entry, which has now been completed—is what End-Payor Plaintiffs sought to achieve in this action at trial, and opens the QVAR market to generic competition. Moreover, the $35 million cash component will further directly benefit the End-Payor Class to offset past alleged overcharges suffered by Class members due to Teva's alleged misconduct.

With respect to this amount, Class Counsel's economics expert, Dr. Keith Leffler, estimated reasonable single damages of approximately $308.5 million based on the assumption that three generic versions of QVAR would have entered the market in 2019 absent the alleged unlawful conduct.[41] The $35 million cash payment achieved by End-Payor Plaintiffs here thus amounts to approximately 11.3% of estimated damages, which is in line with settlement amounts approved in other complex pharmaceutical cases.[42]

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[39] *Lupron*, 228 F.R.D. at 97.

[40] *See Gulbankian*, 2014 WL 7384075, at *5 (citing *Celexa*, 2014 WL 4446464, at *5) (in class action seeking damages to consumers from defective windows, settlement compensation was fair even though it did not cover "actual real world cost of replacing a defective window"); *Rolland*, 191 F.R.D. at 14-15 ("In evaluating the substantive fairness of a class action settlement, the court cannot, and should not, use as a benchmark the highest award that could be made to the plaintiff after full and successful litigation of the claim(s)." (citation omitted)).

[41] Seaver Decl. Ex. C (Leffler Decl.) ¶¶ 5, 10 (ECF No. 198-3).

[42] *See, e.g., Nichols v. SmithKline Beecham Corp.*, No. CIV.A.00-6222, 2005 WL 950616, at *16 (E.D. Pa. Apr. 22, 2005) (approving settlement that amounted to "between 9.3% and 13.9% of damages" and noting that this percentage "is consistent with those approved in other complex class action cases"). The Settlement amount in the case at bar compares favorably to the potential damages especially when considering the significant risks faced by End-Payor Plaintiffs (as

Although Class Counsel have always been (and remain) confident in the strength of the End-Payor Plaintiffs' claims, there was no guarantee that a jury would have agreed. Given the risk of no injunctive relief and of no (or a substantially reduced) monetary recovery—risks that would persist even after a lengthy and costly trial—the Class recovery through settlement is substantial, and well within the range of possible approval. *See Ranbaxy*, 630 F.Supp.3d at 245 (fact that "[t]he settlement is … within the range of reasonableness when compared to other settlements in other generic delay antitrust cases" supported approval of settlement).

6. The Distribution Plan provides an effective and equitable method for distributing relief (Rule 23(e)(2)(C)(ii) and Rule 23(e)(2)(D) and *Rolland* factor 6)

"A plan for allocating settlement proceeds, like the settlement itself, should be approved if it is fair, reasonable and adequate." *Hill v. State St. Corp.,* No. 09-cv-12146*,* 2014 U.S. Dist. LEXIS 179702, at *27 (D. Mass. Nov. 26, 2014). A plan of allocation is fair and reasonable so long as it has a "reasonable, rational basis." *Id.* (quoting *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012)). "A reasonable plan of allocation need not necessarily treat all class members equally" and "may allocate funds based on the extent of class members' injuries and consider the relative strength and values of different categories of claims." *Id*. (internal citations and quotations omitted).

The proposed Plan of Allocation[43] meets this standard. In granting preliminary approval of the Settlement, the Court found that the relief afforded to the Settlement Class under the Settlement Agreement is adequate considering "the effectiveness of the proposed method of distributing relief to the Settlement Class, including the method of processing Settlement Class member claims." Preliminary Approval Order ¶ 14.

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described above) and the fact that damages would be lower if fewer generics entered the market, or generics entered the market at a later entry date—both scenarios that were credible potential litigated outcomes.

[43] The proposed Plan of Allocation is attached as Exhibit B to the Seaver Declaration (ECF No.198-2).

The Plan of Allocation first divides the Net Settlement Fund into two Allocation Funds: the Consumer Fund and the Third-Party Payor Fund. The Plan allocates 20.7 percent of the Net Settlement Fund to the Consumer Fund and 79.3 percent to the Third-Party Payor Fund. This allocation is based on expert analysis of the QVAR market and transaction-level data, which shows that a reasonable allocation of damages in this case would be 20.7% of damages to consumers and 79.3% of damages to Third-Party Payors ("TPPs") (such as health and welfare funds). Leffler Decl. ¶ 11 (ECF No. 198-3).

The Plan of Allocation will further (i) calculate each Eligible Claimant's *pro rata* share of their corresponding Allocation Fund based on the amounts they have respectively paid and/or reimbursed for prescriptions of QVAR and QVAR Redihaler purchased in the Class States during the Class Period; and (ii) allocate the Fund among Class Members *pro rata* based upon this calculation. Seaver Decl. Ex. B ¶¶ 1, 10, 14 (ECF No. 198-2). Thus, consumer Eligible Claimants will receive their *pro rata* shares of the Consumer Fund, and TPP Eligible Claimants will receive their *pro rata* shares of the Third-Party Payor Fund.

Splitting the Net Settlement Fund into consumer and TPP Allocation Funds recognizes the reality of the QVAR market and ensures that claims from TPPs will not exhaust the settlement funds at the expense of consumers, and vice versa. This type of allocation has been approved by a number of courts in pharmaceutical cases like this one. *See, e.g., Relafen*, 231 F.R.D. 52; *Nichols*, 2005 WL 950616.

"A plan of allocation that reimburses class members based on the type and extent of their injuries is generally reasonable." *In re Lucent Techs., Inc., Sec. Litig.*, 307 F Supp. 2d 633, 649 (D.N.J. 2004). This is precisely what the proposed method of distribution contemplates here. The Plan of Allocation is straightforward and not burdensome, essentially consisting of the same process utilized in scores of settlements of similar pharmaceutical antitrust cases. *See, e.g., In re Cardizem CD Antitrust Litig.*, 218 F.R.D. at 531 (approving *pro rata* allocation plan); *see also Relafen*, 231 F.R.D. 52; *Nichols*, 2005 WL 950616. The plan of allocation thus has a "reasonable, rational basis" and should be approved.

To apply *Rolland* factor 6 where, as here, there is no recommendation of any neutral third parties, a court may "consider[] the views of . . . Plaintiffs' experts." *Rolland*, 191 F.R.D. at 10. Here, as noted above, the plan of allocation follows the opinion of Plaintiffs' expert Kieth Leffler regarding the reasonable allocation of settlement funds between TPPs and consumers. Leffler Decl., ECF No. 198-3. The Plan of Allocation is described in Notice, and no Class Member objected to it.

7. The proposed service awards to named plaintiffs treat class members equitably relative to each other (Rule 23(e)(2)(D))

Incentive payments to named class representatives are permitted as long as they fit into the requirement that a settlement treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(D); *Murray*, 55 F.4th at 353.

It is equitable for each of the Class Representatives to receive the requested $20,000 service awards that absent class members do not. "Rule 23 class actions still require named plaintiffs to bear the brunt of litigation (document collection, depositions, trial testimony, etc.), which is a burden that could guarantee a net loss for the named plaintiffs unless somehow fairly shifted to those whose interests they advance." *Id*. "In this important respect, incentive payments remove an impediment to bringing meritorious class actions and fit snugly into the requirement of Rule 23(e)(2)(D) that the settlement 'treats class members equitably relative to each other.'" *Id*.

8. The proposed attorneys' fee award, reimbursement of expenses, and service awards confirm that the Class will receive adequate relief from the Settlement (Rule 23(e)(2)(C)(iii))

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." This factor recognizes that "[e]xamination of the attorney-fee provisions may also be valuable in assessing the fairness of the proposed settlement."[44] The Settlement Agreement (¶ 11) provides that End-Payor Plaintiffs' Counsel may petition for attorneys' fees of up to 33 percent of the Settlement Fund, plus the reimbursement of reasonable

[44] Fed. R. Civ. P. 23, Advisory Committee Notes to December 1, 2018 Amendments.

costs and expenses incurred in the prosecution of this action; all fees and expenses allowed by the Court would be paid from the Settlement Fund, leaving the Net Settlement Fund for distribution to the Settlement Class. Counsel has contemporaneously filed such a fee petition addressing the requested attorneys' fees under the appropriate factors.

The relief provided to the Class is adequate, taking into account the amount of attorneys' fees. As the fee petition discusses, a 33 percent fee award—a 1:2 ratio of fees to class recovery (i.e., two dollars to the class for every dollar in fees)—is within the range of amounts typically approved as reasonable. *See, e.g.*, *In re Solodyn Antitrust Litig.*, No. 1:14-MD-02503, 2018 WL 7075881, at *2 (D. Mass. July 18, 20018) (awarding one-third fee on settlement of $40 million); *In re Suboxone (Buprenorphine Hydrochloride and Naloxone) Antitrust Litig.*, No. 13-MD-2445, 2023 WL 8437034, at *17, 20 (E.D. Pa. Dec. 4, 2023) (awarding fee of 33-1/3 percent of the settlement fund plus interest).

As to the timing of attorneys' fees, the Settlement Agreement (¶ 7.a.) provides that Teva will pay the $35 million Settlement Fund in four installments, with the first installment of $450,000 paid ten days after entry of an order preliminarily approving the settlement, the second paid January 5, 2026 ($9.55 million), a third to be paid June 30, 2026 ($10 million) and the final one to be paid March 31, 2027 ($15 million). Class Counsel and the End-Payor Plaintiffs respectfully request that, upon the finality of a final approval order, expenses for this matter, service awards, and a *pro rata* amount of any attorneys' fee award, be paid out of the first three installments, with the remaining fees and the Net Settlement Fund to be distributed subsequently per the terms of the Settlement Agreement and the Plan of Allocation. That is, the expenses and 57% of the awarded attorneys' fees would be paid to Class Counsel when the final approval order becomes final (presumably 30 days after entry, assuming no appeal), and the balance of the attorneys' fees and the distributions to the Class would be made in March 2027.

Payment of attorneys' fees before distribution of net settlement funds to the Class is consistent with arrangements commonly approved by courts, particularly where, as here, the lead plaintiffs are "sophisticated," have "a substantial stake in the settlement fund," therefore "have an

interest in ensuring that the settlement fund is quickly distributed," and "also have a longstanding professional relationship with Lead Counsel." *In re Turquoise Hill Resources Ltd. Sec. Litig.*, No. 20-cv-8585 (LJL), 2025 WL 2984717 at *13 (S.D.N.Y. Oct. 23, 2025). And here Teva will have already paid the first three installments into the escrow account—irrevocably paid them, after the approval order becomes final. This, too, supports a *pro rata* payment of the fees to Class Counsel. *See In re Ranbaxy*, 630 F.Supp.3d at 245 ("Counsel who recovers common funds for a class is entitled to reasonable attorneys' fees and reimbursement of expenses prior to the distribution of the balance to the class."); *Pelzer v. Vassalle*, 655 Fed. Appx. 352, 365 (6th Cir. 2016) (prompt payment of attorneys' fees "does not harm the class members in any discernible way, as the size of the settlement fund available to the class will be the same regardless of when the attorneys get paid").

9. The Settlement identifies all relevant agreements, and such agreements do not impact the adequacy of the relief (Rule 23(e)(2)(C)(iv))

As disclosed in the Preliminary Approval brief, there is a Confidential Supplement, referenced in paragraph 17 of the Settlement Agreement, relating to the percentage of opt-outs necessary to trigger Teva's right to terminate the Settlement. This Supplement will be provided to the Court, *in camera*, upon request, and is of the type that is routinely utilized in class settlements of this nature. Only one request for exclusion was received (Declaration of Eric J. Miller Ex. G) and the provision at issue was not triggered.

Otherwise, the Settlement Agreement is the only agreement concerning the subject matter of this lawsuit or settlement.

D. Certification of the Settlement Class remains warranted.

In presenting the proposed Settlement to the Court for preliminary approval, Plaintiffs requested, for purposes of the Settlement only, that the Court preliminarily certify the Settlement Class under Rules 23(a) and (b)(3). The Court did so. ECF 204 (Preliminary Approval Order). As Subdivision (f) to the Committee Notes on Rules – 2018 Amendment to Federal Rules of Civil Procedure directs, however, the Court's decision at preliminary approval "determin[es] that the

prospect of eventual class certification justifies giving notice," but the Court cannot actually certify the Settlement Class until this final approval stage.

Nothing has changed to alter the propriety of the Court's preliminary certification, and no Class Member has objected to class certification. For all the reasons stated in the Preliminary Approval Brief (ECF No. 197 at 25-36), End-Payor Plaintiffs ask the Court to grant final certification to the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3), appoint the End-Payor Plaintiffs as Class Representatives, and appoint Berman Tabacco, Sperling Kenny Nachwalter, LLC, and Hilliard Shadowen LLP as Class Counsel for the Settlement Class.

E. The Notice Plan informed the Class of the Settlement and satisfied due process.

In the Preliminary Approval Order, the Court approved the proposed notice plan and the long- and short-form notices. ECF No. 204 at 6–7.

In considering whether to grant final approval of a proposed class action Settlement, the Court must determine whether adequate notice was issued to all prospective class members, in accordance with due process concerns and Rule 23. To satisfy due process considerations, notice to class members must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."[45]

For Third-Party Payors, which include health and welfare funds, notice was provided via direct mail, email, and targeted digital advertising. Declaration of Eric J. Miller (AB Data) ¶¶ 4–5, 7. Notice was provided via a comprehensive digital, print and earned media campaign that included ads and information on websites, blogs, social media, *People* magazine, press releases, and a dedicated case website, QVARAntitrustSettlement.com. *Id*. ¶¶ 6–8. The Notice informed the Class regarding the claims alleged in the class action, the terms of the Settlement Agreement, the rights of members of the End-Payor Class under the Settlement (including the right to object to any terms of the Settlement), Class Counsel's request for fees (not to exceed one-third of the Settlement Fund plus expenses), the request for proposed service awards to the Class

[45] *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Representatives (maximum of $25,000 each), and how the Settlement Funds would be distributed to members of the Class. Class members were also advised that they may appear at the August 5, 2026, fairness hearing.

The multi-channel notice program, including direct notice, paid media consisting of print, digital, and social media advertising, earned media, and a targeted TPP campaign, successfully achieved the planned delivery goals. Miller Decl. ¶ 3. The campaign reached over 80.2% of the target audience with an average frequency of 1.6 impressions and reached more than 80.0% of TPP Class Members. *Id*.; *see also* Miller Decl. ¶¶ 3–12.

The Notice fairly apprised Class Members of the Settlement and their options and satisfied the requirements of due process and Rule 23(c)(2).

F. The CAFA Notice requirement has been satisfied.

"Under the Class Action Fairness Act ("CAFA"), no later than 10 days after a proposed settlement of a class action is filed in court, the defendant is required to serve notice of the proposed settlement with the appropriate federal and state officials. See 28 U.S.C. § 1715(b). A court may not finally approve a settlement until 90 days after the delivery of such notice. See 28 U.S.C. § 1715(d)." *Curtis v. Scholarship Storage Inc.*, No. 2:14-CV-303-NT, 2016 WL 3072247, at *4 (D. Me. May 31, 2016).

Defense counsel have filed a Notice of Compliance with CAFA (ECF No. 212). Final approval is now appropriate because more than 90 days have passed since defense counsel sent the appropriate documents to the federal and state officials. *See* 28 U.S.C. § 1715(d).

IV. CONCLUSION

For all the foregoing reasons, End-Payor Plaintiffs respectfully request that the Court certify the Settlement Class, approve the proposed Settlement with Teva, and grant the additional relief outlined herein.

Dated: July 1, 2026

SPERLING KENNY NACHWALTER, LLC

By: /s/ *Joseph M. Vanek*

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CERTIFICATE OF SERVICE

The undersigned certifies that on July 1, 2026, a true and accurate copy of the foregoing was electronically filed with the Clerk of the United States District Court for the District of Massachusetts by filing through the CM/ECF system, which served a copy upon all counsel of record.

By: */s/ Joseph M. Vanek*