

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**IN RE NAMENDA INDIRECT
PURCHASER
ANTITRUST LITIGATION**

Case No. 1:15-cv-6549 (CM) (RWL)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into on November 11, 2022, by and between Allergan Sales, LLC, as successor-in-interest to Forest Laboratories, LLC, and Allergan Limited, as successor-in-interest to Actavis plc (collectively, “Actavis”), Merz GmbH & Co KGaA, Merz Pharmaceuticals GmbH, and Merz Pharma GmbH & Co. KGaA (collectively, “Merz,” and together with Actavis, “Defendants”) and Sergeants Benevolent Association Health & Welfare Fund (“Plaintiff”), individually and on behalf of the Indirect Purchaser Class (as defined in Paragraph 1 below) in the above-captioned litigation (the “Indirect Purchaser Class Action,” or the “Action”). This Settlement Agreement is intended to, and upon occurrence of the Effective Date (as defined in Paragraph 5 below) will fully, finally, and forever resolve, compromise, discharge, and settle the claims of the Indirect Purchaser Class in the above-captioned litigation, subject to the terms and conditions set forth herein (the “Settlement”).

WHEREAS, Plaintiff filed suit alleging that Actavis and Merz (1) implemented a “hard switch” of the U.S. memantine hydrochloride market from Namenda IR to Namenda XR, drugs approved by the FDA for the treatment of Alzheimer’s disease, and (2) entered into reverse-payment settlements that caused Plaintiff to pay supracompetitive prices for Namenda IR and Namenda XR and their generic equivalents known as memantine hydrochloride, in violation of state antitrust and consumer-protection laws, and the equitable remedy unjust enrichment;

WHEREAS, Plaintiff's claims were styled *In re Namenda Indirect Purchaser Antitrust Litigation*, No. 15-cv-06549-CM-RWL, before the United States District Court for the Southern District of New York (the "Court") as a putative class action; and the Class was certified on February 11, 2021. *In re Namenda Indirect Purchaser Antitrust Litig.* No. 15:6549-CM, 2021 WL 509988 (S.D.N.Y.);

WHEREAS, Actavis and Merz deny each and every one of Plaintiff's allegations, have not conceded or admitted any liability or that Plaintiff's claims were filed within the applicable statutes of limitations, have not conceded or admitted the propriety of certification of any class in this Action for any purposes other than settlement, that any conduct challenged by Plaintiff caused any damage whatsoever, and have asserted a number of defenses to Plaintiff's claims;

WHEREAS, the Plaintiff and Actavis and Merz (the "Parties") have concluded, after extensive discovery and investigation of the facts and after fully preparing for trial, and after carefully considering the circumstances of the Indirect Purchaser Class Action, including the claims asserted in said Action, and the possible and asserted legal and factual defenses thereto, that it would be in the best interests of the Parties to enter into this Settlement Agreement in order to avoid the uncertainties of litigation, particularly complex litigation such as this, and to assure a benefit to the Indirect Purchaser Class and further, that the Parties consider the Settlement set forth in this Settlement Agreement to be fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23 and in the best interests of the Indirect Purchaser Class;

WHEREAS, Plaintiff's Counsel, on behalf of themselves and the Indirect Purchaser Class, on the one hand, and counsel for Actavis and Merz on the other hand, have engaged in arm's-length settlement negotiations, including with the assistance of neutrals, and have reached this Settlement Agreement, subject to Court approval, which embodies all of the terms and conditions

of the Settlement between Plaintiff, both individually and on behalf of the Indirect Purchaser Class, and Actavis and Merz.

NOW THEREFORE, it is agreed by the undersigned, on behalf of Plaintiff and the Indirect Purchaser Class, on the one hand, and Actavis and Merz, on the other hand, that the Indirect Purchaser Class Action and all claims of Plaintiff and the Indirect Purchaser Class be settled, compromised and dismissed with prejudice as to Actavis and Merz (and, except as hereinafter provided, without costs as to Plaintiff, the Indirect Purchaser Class, or Actavis and Merz), subject to Court approval, on the following terms and conditions:

1. Indirect Purchaser Class. The Court has previously certified the following class (the “Indirect Purchaser Class,” “Certified Class,” or “Class”), which Actavis and Merz shall support for purposes of this Settlement only:

All Third-Party Payors who indirectly purchased, and/or paid, and/or provided reimbursement for, some or all of the purchase price for branded Namenda IR 5 or 10 mg tablets, their AB-rated generic equivalents, and/or Namenda XR capsules, other than for resale in Alabama, Arizona, California, D.C., Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island (for purchases after July 15, 2013), South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin, for consumption by themselves, or their members, employees, insureds, participants, or beneficiaries, from June 1, 2012 through December 31, 2017.

Excluded from the Class are: (a) Defendants and Defendants’ [Actavis and Merz] parents, subsidiaries and affiliates; (b) fully-insured health care plans (i.e., health care plans that purchased insurance from another third-party payor covering 100% of the insureds’ prescription drug benefits on behalf of the Plan’s members and beneficiaries); (c) all federal or state governmental entities, excluding cities, towns or municipalities with self-funded prescription drug plans; (d) Pharmacy Benefit Managers (“PBMs”); and (e) all judges presiding in this case, their chambers staff, and any members of their immediate families, and all counsel of record.

2. Reasonable Best Efforts to Effectuate This Settlement. Counsel for the Plaintiff and Actavis and Merz agree to recommend approval of this Settlement Agreement to the Court and to undertake their reasonable best efforts, including undertaking all actions contemplated by

and steps necessary to effectuate this Settlement Agreement, to carry out the terms of this Settlement Agreement and to secure the prompt, complete, and final dismissal with prejudice of all claims in the Indirect Purchaser Class Action. This includes Actavis and Merz serving notice on those entities required to receive notice pursuant to 28 U.S.C. § 1715.

3. Motion for Preliminary Approval of the Settlement. Plaintiff shall submit to the Court—and Actavis and Merz shall take no position regarding—a motion (the “Motion”) requesting entry of an order preliminarily approving the Settlement, and authorizing dissemination of notice to the Indirect Purchaser Class (the “Preliminary Approval Order”) substantially in the form of Exhibit A hereto. The Motion, which Actavis and Merz shall have the reasonable opportunity to review in advance of Plaintiff filing, shall:

a. request preliminary approval of the Settlement set forth in this Settlement Agreement as fair, reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23, and in the best interests of the Indirect Purchaser Class;

b. seek appointment of a notice administrator;

c. seek appointment of an Escrow Agent (as defined in Paragraph 6 below);

d. request a stay of all proceedings against Actavis and Merz in the Indirect Purchaser Class Action, except those proceedings provided for or required by this Settlement Agreement;

e. seek approval for class notice by means of notice substantially in the form attached hereto as Exhibit B; and

f. include a proposed form of order, which includes such provisions as are typical in such orders, including a finding that the proposed plan of notice complies with Rule 23 and the requirements of due process, and a provision that if final approval of the Settlement is not obtained,

the Settlement is null and void and the Parties will revert to their positions *ex ante* without prejudice to their rights, claims, or defenses as of October 4, 2022.

4. **Motion for Final Approval and Entry of Final Judgment.** If the Court preliminarily approves this Settlement Agreement, Plaintiff shall submit—and Actavis and Merz shall take no position regarding—a motion for final approval by the Court of this Settlement Agreement (“Final Approval Motion”) after notice has been disseminated to the Class pursuant to the Preliminary Approval Order. The Final Approval Motion, which Actavis and Merz shall have the reasonable opportunity to review in advance of Plaintiff filing, shall be submitted to the Court within twenty-one days after the Court-ordered deadline by which members of the Class may object to the Settlement, and shall seek entry of an order and final judgment (“Final Approval Order”) substantially in the form attached hereto as Exhibit C:

a. finding this Settlement Agreement and its terms to be a fair, reasonable, and adequate settlement as to Plaintiff and the Indirect Purchaser Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms;

b. finding that all members of the Class (“Class Members”) shall be bound by this Settlement Agreement, including the release provisions and covenant not to sue set forth in this Settlement Agreement;

c. finding that the notice given constitutes due, adequate, and sufficient notice and meets the requirements of due process and the Federal Rules of Civil Procedure;

d. incorporating the releases set forth in Paragraphs 11 and 12 of this Settlement Agreement, and forever barring the Releasers (as defined in Paragraph 13 below) from asserting any Released Claims (as defined in Paragraph 11 below) against any of the Releasees (as defined in Paragraph 11 below);

e. providing for the payment of reasonable attorneys' fees and reimbursement of expenses, if any, solely from a settlement fund underwritten by the Settlement Amount and any settlement amounts received by Plaintiff from other defendants in this Action (the "Settlement Fund");

f. providing for payment solely from the Settlement Fund of any incentive award to the named Plaintiff in addition to whatever monies it will receive from the Settlement Fund pursuant to court order;

g. directing that the Indirect Purchaser Class Action be dismissed with prejudice as to Actavis and Merz at the appropriate time and, except as provided for herein, without costs or attorneys' fees recoverable under 15 U.S.C. § 15(a);

h. retaining exclusive jurisdiction over the Settlement and the Settlement Agreement, including the administration and consummation of the Settlement; and

i. directing that the judgment of dismissal with prejudice of all Indirect Purchaser Class claims against Actavis and Merz shall be final and appealable pursuant to Fed. R. Civ. P. 54(b), there being no just reason for delay.

5. Finality of Settlement. This Settlement Agreement shall become final upon the occurrence of all of the following (the "Effective Date"):

a. The Settlement is not terminated pursuant to Paragraph 13 below;

b. The Settlement and this Settlement Agreement are approved by the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure;

c. The Court enters the Final Approval Order, entering a final judgment of dismissal with prejudice against Plaintiff and the Class; and

d. The time for appeal from the Court's signing of the Final Approval Order has expired or, if the Final Approval Order is appealed, it has been resolved by agreement and withdrawn by the appealing party, or it has been affirmed by the court of last resort to which an appeal of such Final Approval Order may be taken.

6. Settlement Payments.

a. Actavis and Merz shall pay a total settlement amount of Fifty-Four Million, Four Hundred Thousand U.S. dollars and zero cents (\$54,400,000.00) (the "Settlement Amount") across two separate payments into an escrow account (the "Escrow Account") held and administered by Valley National Bank (formerly Bank Leumi USA) (the "Escrow Agent"), as set forth below.

b. Subject to the terms and conditions of this Settlement Agreement and the escrow agreement executed by Plaintiff and Actavis and Merz (the "Escrow Agreement"), within ten (10) business days after the entry by the Court of the Preliminary Approval Order, or five (5) business days after receipt of wire transfer instructions and bank verification documentation necessary to make the wire transfer, whichever is later, Actavis and Merz shall deposit Seventy Five Thousand Dollars (\$75,000) into the Escrow Account to be used for the costs of disseminating notice to the Class and for related notice administration costs ("Notice Expenses"). Court approval shall not be required for disbursements for expenses associated with providing notice of this Settlement to the Class. In the event that the Settlement Agreement is disapproved, terminated, or otherwise fails to become final, all Notice Expenses up to a total amount of Seventy-Five Thousand Dollars (\$75,000) shall be borne equally by Plaintiff's Counsel and Actavis and Merz (collectively). Any Notice Expenses in excess of Seventy-Five Thousand Dollars (\$75,000) shall be the sole responsibility of Plaintiff's Counsel.

c. Within thirty (30) days after entry of the Final Approval Order, Actavis and Merz shall pay Fifty-Four Million, Three-Hundred Twenty-Five Thousand U.S. Dollars and Zero Cents (\$54,325,000.00) into the Escrow Account subject to the terms and conditions of the Escrow Agreement, and in accordance with the provisions of Paragraphs 7, 14, and 16 below. If payment is due on a Saturday, Sunday, or a federal holiday, the payment shall be due on the next business day.

d. Actavis and Merz shall not pay any amount in excess of the Settlement Amount at any time, whether for service awards if any, taxes, wire transfer fees or bank fees of any kind associated with the wire transfer of funds, interest, notice, administration, costs, attorneys' fees, or otherwise, into the Escrow Account. The total consideration that Actavis and Merz collectively will pay for this Settlement shall be the Settlement Amount only.

7. The Settlement Fund.

a. The Escrow Account is to be administered under the Court's continuing supervision and control. The Escrow Agent shall cause the funds deposited in the Escrow Account to be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, or money market invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All funds held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Settlement Agreement and/or further order(s) of the Court. After the Effective Date, the Settlement Fund shall be distributed in accordance with the Court-approved plan or formula of allocation of the Settlement Fund, (the

“Plan of Allocation”). It is understood and agreed by the Parties that any Plan of Allocation is not a part of this Settlement Agreement and is to be considered by the Court separately from the Court’s consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Settlement Agreement, and any order or proceedings solely relating to the Plan of Allocation shall not operate to terminate or cancel this Settlement Agreement or affect the finality of the judgment, the Final Approval Order, or any other orders entered pursuant to this Settlement Agreement.

b. After making the payments described in Paragraph 6 above, Actavis and Merz shall have no responsibility whatsoever for the allocation or distribution of the Settlement Fund and shall not be responsible for any disputes relating to the amount, allocation, or distribution of any fees, costs, or awards. Further, after making the payments described in Paragraph 6 above, Actavis and Merz shall not be liable for any additional payments to the Indirect Purchaser Class or Plaintiff’s Counsel for any reason. Liability for additional payments, if any, to the Indirect Purchaser Class or Plaintiff’s Counsel pursuant to this Settlement Agreement shall be the sole responsibility of Plaintiff’s Counsel.

c. Plaintiff and Counsel for the Class shall be reimbursed and indemnified for all expenses solely out of the Settlement Fund. After payment of the Settlement Amount, Actavis and Merz shall not be liable for any costs, attorneys’ fees, other fees, or expenses of any of Plaintiff’s or the Indirect Purchaser Class’s respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

d. To the extent that there is any ambiguity or inconsistency concerning disbursements when this Settlement Agreement and the Escrow Agreement are read together, the terms of this Settlement Agreement shall control.

8. No Injunctive Relief. This Settlement Agreement does not include any provisions for injunctive relief.

9. Full Satisfaction; Limitation of Interest and Liability. Class Members shall look solely to the Settlement Fund for settlement and satisfaction of all claims that are released hereunder, including any costs, fees or expenses of any Class Member or their attorneys, experts, advisors, agents, and representatives, including with respect to the negotiation, execution and performance of their obligations under this Settlement Agreement. In the event that the Settlement becomes final pursuant to Paragraph 5 herein, the Settlement Fund will satisfy any and all Released Claims. Except as provided by order of the Court, no Class Member shall have any interest in the Settlement Fund or any portion thereof. Actavis and Merz shall have no liability with respect to disbursements from the Settlement Fund pursuant to any Court-approved plan of allocation.

10. Attorneys' Fees, Expenses and Costs.

a. Plaintiff's Counsel intend to seek, solely from the Settlement Fund, attorneys' fees (including any interest accrued thereon), up to 33 1/3% of the Settlement Fund plus reimbursement of reasonable costs and expenses incurred in the prosecution of the Action, and an incentive award to the named Plaintiff. Plaintiff's Counsel may file a motion for approval of the attorneys' fees, reimbursement of expenses, and incentive award after the Court has granted preliminary approval to the Settlement but sufficiently before the Court's final fairness hearing on the Settlement. Actavis and Merz agree to take no position with respect to such motion. Actavis and Merz also agree to take no position with respect to the allocation among the various

counsel to the Class that have participated in this litigation. In no event shall any attorneys' fees, reimbursement of expenses, or incentive award be paid before the Effective Date. Plaintiff, Class Members, and their respective counsel, shall not seek payment of any attorneys' fees, expenses, costs, or service awards from Actavis and Merz in this Action, or in any other action related to the Released Claims, from any source other than the Settlement Fund.

b. The procedures for and the allowance or disallowance by the Court of the application by Plaintiff's Counsel for attorneys' fees, reimbursement of expenses, and/or incentive award to be paid out of the Settlement Fund are not part of this Settlement Agreement. Notwithstanding any right of termination in Paragraph 13, any order or proceeding relating solely to the application by Plaintiff's Counsel for any award of attorneys' fees, reimbursement of expenses, and incentive award, or any appeal from any such order, shall not operate or provide a basis to terminate or cancel this Settlement Agreement.

c. If the Court's award of such fees and expenses is reduced subsequent to the disbursement of any attorneys' fees, reimbursement of expenses, and/or incentive award, Plaintiff's Counsel shall within ten (10) business days after receiving written notice from the Court refund to the Escrow Account the amount of any such reduction in attorneys' fees, reimbursement of expenses, and/or incentive award with interest. The interest rate applicable to any refund made to the Escrow Account pursuant to this Paragraph shall be the same interest rate earned by the Settlement Fund during the period between the disbursement of any attorneys' fees, reimbursement of expenses, and/or incentive award and any refund required by this Paragraph. The amount deposited into the Escrow Account shall be solely for the benefit of the Class and shall be included in the Settlement Fund and be distributed according to the Plan of Allocation.

d. If the Court's award of such fees, expenses, and/or incentive is vacated or reversed, subsequent to the disbursement of any attorneys' fees, reimbursement of expenses, and/or incentive award, Plaintiff's Counsel shall within ten (10) business days after receiving written notice from the Court or from Actavis and Merz of such vacatur or reversal refund to the Escrow Account the amounts of any such attorneys' fees, reimbursement of expenses, and/or incentive award with earned and paid interest, and further provided that if the Settlement Agreement is terminated pursuant to Paragraph 13 below, Plaintiff's Counsel shall within ten (10) business days after giving notice to or receiving notice from Actavis and Merz of such termination, refund to the Escrow Account the amounts of any such attorneys' fees, reimbursement of expenses, and/or incentive award with earned and paid interest. The interest rate applicable to any refund made to the Escrow Account pursuant to this Paragraph shall be the same interest rate earned by the Settlement Fund during the period between the disbursement of any attorneys' fees, reimbursement of expenses, and/or incentive award and any refund required by this Paragraph.

11. Releases and Covenants.

a. Upon the occurrence of the Effective Date and in consideration of payment of the Settlement Amount specified in Paragraph 6 above, Plaintiff and all Class Members, whether or not they object to the Settlement and whether or not they make a claim upon or participate in the Settlement Fund, on behalf of themselves and their respective past, present, and future parents, members, subsidiaries, associates, affiliates, stockholders or shareholders (in their capacity as shareholders), officers, directors, management, supervisory boards, employees, insurers, general or limited partners, divisions, agents, attorneys, servants, trustees, joint ventures, heirs, executors, administrators, representatives (and the parents' subsidiaries' and affiliates' past and present officers, directors, employees, agents, attorneys, servants, and representatives), and their trustees,

predecessors, successors, heirs, executors, administrators, representatives, and assigns (collectively, the “Releasers”), hereby release and forever discharge Actavis and Merz and their past, present, and future parents, members, subsidiaries, divisions, associates, affiliates, joint ventures, stockholders or shareholders (in their capacity as shareholders), officers, directors, management, supervisory boards, insurers, general or limited partners, employees, agents, attorneys, servants, trustees, heirs, executors, administrators, representatives (and the parents’, subsidiaries’, and affiliates’ past, present, and future officers, directors, employees, agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors, administrators and representatives and assigns of each of the foregoing, including but not limited to Forest Laboratories, LLC, Actavis plc, Allergan Sales, LLC, Allergan Limited, AbbVie Inc., and Merz Pharma GmbH & Co. KGaA (collectively, the “Releasees”) from all manner of claims, debts, obligations, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys’ fees, under federal or state laws, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, contingent or non-contingent, in law or equity, that (i) arise out of or relate, in whole or in part, to: (a) the acts or omissions alleged in the Second Amended Complaint (Dkt. No. 326) (and any prior complaints) in the Indirect Purchaser Class Action and/or (b) any acts or omissions relating to Namenda IR and Namenda XR that could give rise to claims under antitrust, consumer protection, and/or unjust enrichment laws, and/or (ii) were or could have been asserted in the Indirect Purchaser Class Action (collectively, the “Released Claims”).

b. Releasers hereby covenant not to sue the Releasees with respect to any such Released Claims. Releasers shall be permanently barred and enjoined from instituting, commencing, or prosecuting against the Releasees any Released Claims or claims related to the

Released Claims. The Parties contemplate and agree that this Settlement Agreement may be pleaded as a bar to a lawsuit, and an injunction may be obtained, preventing any action from being initiated or maintained in any case sought to be prosecuted on behalf of any Releasers with respect to the Released Claims.

12. Additional Release. In addition, with respect to the Released Claims that are the subject matter of Paragraph 11, each Releaser hereby expressly waives and releases, upon the occurrence of the Effective Date, any and all provisions, rights, and/or benefits conferred by § 1542 of the California Civil Code, which reads:

SECTION 1542. GENERAL RELEASE; EXTENT. 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.

Each Releaser hereby also expressly waives and releases, upon the occurrence of the Effective Date, any and all provisions, rights, and/or benefits conferred 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 § 1542 of the California Civil Code. Each Releaser may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the Released Claims. Nonetheless, upon the Effective Date, each Releaser hereby expressly waives and fully, finally, and forever settles and releases any known or unknown, foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, contingent or non-contingent Released Claim, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Releaser, upon the occurrence of the Effective Date, also hereby expressly waives and fully, finally, and forever settles, releases and discharges any and all Released Claims that it may have against any Releasees under § 17200, *et seq.*, of the California Business and

Professions Code or any similar comparable or equivalent provision of the law of any other state or territory of the United States or other jurisdiction, which are expressly incorporated into the definition of Released Claims.

13. Termination.

a. Each of Actavis and Merz and Plaintiff shall have the option to terminate the Settlement, and Actavis and Merz have the right to have their Settlement Amount refunded (but excluding Actavis and Merz's portion of incurred Notice Expenses up to Thirty-Seven Thousand Five Hundred Dollars (\$37,500)), if (i) the Court declines to grant final approval of the Settlement; or (ii) the Court enters the Final Approval Order and appellate review is sought, and on such review, the Final Approval Order and corresponding judgment are set aside or affirmed with material modification.

b. For the avoidance of doubt, any order of the Court that (i) materially narrows or does not approve the scope of the release and covenant not to sue set forth in Paragraphs 11 and 12, (ii) purports to impose additional material obligations on Actavis and/or Merz, or (iii) declines to enter a Final Approval Order that materially meets the requirements set forth in Paragraph 4 of this Settlement Agreement, or any order on review or appeal that would have the foregoing effects, constitutes a failure to grant final approval of this Settlement Agreement and confers on Actavis and Merz the right to terminate provided by this Paragraph.

c. If for any reason the Settlement does not become final in accordance with the terms of Paragraph 5 of this Settlement Agreement, then (i) this Settlement Agreement shall be of no force or effect; (ii) all funds paid by Actavis and Merz into the Settlement Fund, plus interest (net of any taxes paid on such interest) shall be returned to Actavis and Merz as set forth in Paragraphs 7 and 14; (iii) any release pursuant to Paragraphs 11 and 12 above shall be of no force or effect;

and (iv) the Parties agree, subject to the Court's approval, that litigation of the Indirect Purchaser Class Action by Plaintiff and the Indirect Purchaser Class will resume, in a reasonable manner and on a reasonable timetable to be approved by the Court.

d. A modification or reversal on appeal of any amount of the attorneys' fees, reimbursement of expenses, and/or incentive award shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such Final Approval Order and shall not give rise to any right of termination.

14. Reimbursement of the Settlement Fund Upon Termination. If this Settlement Agreement is terminated pursuant to the provisions of Paragraph 13 above, the Escrow Agent shall return any amounts paid by Actavis and Merz into the Settlement Fund—including any attorneys' fees, reimbursement of expenses, or incentive award paid to Plaintiff or Plaintiff's Counsel (but excluding Actavis and Merz's portion of incurred Notice Expenses up to Thirty-Seven Thousand Five Hundred Dollars (\$37,500)) (the "Net Settlement Fund")—to Actavis and Merz. Subject only to expiration of any time deposit investment(s) not to exceed ninety (90) days, the Escrow Agent shall disburse the Net Settlement Fund to Actavis and Merz in accordance with this Paragraph within fifteen (15) business days after receipt of either (i) written notice signed by Actavis's and Merz's counsel stating that this Settlement Agreement has been terminated, or (ii) any order of the Court so directing. Any remaining portion of the Net Settlement Fund invested in time deposits not to exceed ninety (90) days shall be disbursed within ten (10) days after the expiration of such investments. If the Settlement Agreement is terminated pursuant to Paragraph 13 above, any obligations pursuant to this Settlement Agreement (other than disbursement of the Net Settlement Fund to Actavis and Merz as set forth above) shall cease immediately and the releases set forth in Paragraphs 11 and 12 shall be null and void.

15. Preservation of Rights. The Parties hereto agree that this Settlement Agreement, whether it becomes final or not, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party (except to the extent provided herein), shall not be deemed or construed to be an admission or evidence of any violation of any statute or law (or lack thereof), of any liability or wrongdoing by Actavis or Merz (or lack thereof), or of the truth (or lack thereof) of any of the claims or allegations contained in the Second Amended Complaint or any other pleading or document, and evidence thereof shall not be discoverable or used directly or indirectly, in any way (other than to effectuate or enforce the terms of this Settlement Agreement), whether in the Action or in any other action or proceeding. Neither this Settlement Agreement, nor any terms and provisions, nor any of the negotiations or proceedings connected with it, nor any action taken to carry out this Settlement Agreement shall be referred to, offered into evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law. The Parties expressly reserve all of their rights if the Settlement does not become final in accordance with the terms of this Settlement Agreement. Upon the Settlement becoming final, nothing in this Paragraph shall prevent Actavis and/or Merz from asserting any release or using this Settlement Agreement to offset any liability to any other parties.

16. Taxes.

a. The Parties intend that any taxes due as a result of income earned by the Settlement Fund will be paid from the Settlement Fund. Plaintiff's Counsel shall be solely responsible for directing the Escrow Agent to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Fund. Further, Plaintiff's Counsel shall

be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Settlement Fund. Plaintiff's Counsel shall be entitled to direct the Escrow Agent to pay from the Escrow Account customary and reasonable tax expenses, including professional fees and expenses incurred in connection with carrying out the Escrow Agent's or tax preparer's responsibilities as set forth in this Paragraph. Actavis and Merz shall have no responsibility to make any tax filings related to the Settlement, this Settlement Agreement, or the Settlement Fund, and shall have no responsibility to pay taxes on any income earned by the Settlement Fund, or to pay taxes with respect thereto unless the Settlement is not consummated and the Settlement Fund or the Net Settlement Fund is returned to Actavis and Merz. Other than as specifically set forth herein, Actavis and Merz shall have no responsibility for the payment of taxes or tax-related expenses. If, for any reason, for any period of time, Actavis or Merz are required to pay taxes on income earned by the Settlement Fund, the Escrow Agent shall, upon written instructions from Actavis and Merz with notice to Plaintiff's Counsel, timely pay to Actavis and Merz sufficient monies from the Settlement Fund to enable them to pay all taxes (state, federal, or other) on income earned by the Settlement Fund.

b. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "Administrator" of the Escrow Account shall be the Claims Administrator, who shall timely and properly file or cause to be filed on a timely basis, all tax returns necessary or advisable with respect to the Escrow Account (including without limitation all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B-2(1)).

c. The Parties and their counsel shall treat and shall at all times cause the Escrow Agent to treat, the Settlement Fund as a "qualified settlement fund" within the meaning of Treas.

Reg. § 1.468B-1. The Parties, their counsel, and the Escrow Agent agree that they will not ask the Court to take any action inconsistent with the treatment of the Escrow Account in this manner. In addition, the Escrow Agent and, as required, the Parties shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1G)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent 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. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Escrow Account being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1.

17. Binding Effect.

a. This Settlement Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and to the Releasees. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Plaintiff and their Counsel shall, upon occurrence of the Effective Date, be binding upon all Class Members, Releasers, and their respective successors and assigns.

b. With respect to any member of the Certified Class who requested exclusion from the Certified Class and is therefore not a member of the Class, Actavis and Merz reserve all of their legal rights and defenses.

18. Integrated Agreement. This Settlement Agreement, together with the schedules and exhibits hereto and the documents incorporated herein by reference, contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among

the Parties hereto with respect to the transactions contemplated by this Settlement Agreement, and supersedes all prior agreements or understandings, whether written or oral, between or among any of the Parties hereto with respect to the subject matter hereof. This Settlement Agreement shall not be modified in any respect except by a writing executed by all of the Parties hereto.

19. **Headings.** The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

20. **No Party is the Drafter.** None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

21. **Choice of Law.** All terms of this Settlement Agreement shall be governed by New York law.

22. **Consent to Jurisdiction.** Actavis and Merz and each Class Member hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein. Nothing in this paragraph shall prohibit (a) the assertion in any forum in which a claim is brought that any release herein is a defense, in whole or in part, to such claim or (b) in the event that such a defense is asserted in such forum, the determination of its merits in that forum.

23. **Representations and Warranties.** Each party hereto represents and warrants to each other party hereto that it has the requisite authority (or in the case of natural persons, the legal

capacity) to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby.

24. No Admission. Nothing in this Settlement Agreement, nor in any document related to this Settlement Agreement, nor anything contained herein or therein or contemplated hereby or thereby, nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement, shall be construed as an admission or concession in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body, or any other body or authority, present or future, by Actavis or Merz, including, without limitation, that Actavis or Merz have engaged in any conduct or practices that violate any statute or other law.

25. Notice. Notice to Plaintiff pursuant to this Settlement Agreement shall be sent by United States mail and electronic mail.

If directed to Plaintiff and/or the Class, address notice to:

MILLER LAW LLC
Marvin A. Miller
Lori A. Fanning
145 S. Wells St., Suite 1800
Chicago, IL 60606
Telephone: (312)332-3400
mmiller@millerlawllc.com
lfanning@millerlawllc.com

SAFIRSTEIN LAW LLC
Peter G. A. Safirstein
45 N. Broad Street, Suite 100
Ridgewood, NJ 07450
Telephone: (917) 952-9458
psafirstein@safirsteinlaw.com

CONSTANTINE CANNON LLP
Lloyd Constantine
335 Madison Avenue, 9th Floor
New York, NY 10017

Telephone: (212) 350-2700
lconstantine@constantinecannon.com

If directed to Actavis and Merz, address notice to:

KIRKLAND & ELLIS LLP
James F. Hurst
Gabor Balassa
Amanda Hollis
300 North LaSalle
Chicago, IL 606054
Telephone: (312) 862-2000
james.hurst@kirkland.com
gabor.balassa@kirkland.com
amanda.hollis@kirkland.com

KIRKLAND & ELLIS LLP
Olivia Adendorff
4550 Travis Street
Dallas, Texas 75205
Tel: (214) 972-1759
olivia.adendorff@kirkland.com

COHEN & GRESSER LLP
John Roberti
Melissa Maxman
David Lisner
2001 Pennsylvania Ave NW Suite 300
Washington, DC 20006
Telephone: (202) 851-2070
jroberti@cohengresser.com
mmaxman@cohengresser.com
dlisner@cohengresser.com

Any of the Parties may, from time to time, change the address to which such notices, requests, consents, directives, or communications are to be delivered, by giving the other Parties prior written notice of the changed address, in the manner hereinabove provided, ten (10) calendar days before the change is effective.

26. Execution in Counterparts. This Settlement Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

27. **No Press Release.** The Parties and their respective counsel shall not issue any press release regarding the proposed Settlement unless and only to the extent agreed to by all Parties. Nothing in this Agreement shall be construed to limit any corporate defendant's ability to make such disclosures regarding the Settlement as it believes are required or advisable under the securities laws and disclosure requirements applicable to it.

(Remainder of page intentionally left blank; signature page follows.)

IN WITNESS WHEREOF, the Parties hereto through their fully authorized representatives have agreed to this Settlement Agreement as of November 11, 2022.

/s/

Marvin A. Miller
Lori A. Fanning
MILLER LAW LLC
145 South Wells Street
Suite 1800
Chicago, IL 60606
Tel: (312) 332-3400
mmiller@millerlawllc.com
lfanning@millerlawllc.com

Lloyd Constantine
Ankur Kapoor
CONSTANTINE CANNON LLP
335 Madison Avenue, 9th Floor
New York, NY 10017
Tel: (212) 350-2700
lconstantine@constantinecannon.com
akapoor@constantinecannon.com

Counsel for the Plaintiff Class

/s/

Peter Safirstein
SAFIRSTEIN LAW LLC
45 N. Broad Street
Suite 100
Ridgewood, NJ 07450
Tel: (917) 952-9458
psafirstein@safirsteinlaw.com

Co-Lead Counsel for the Plaintiff and the Class

/s/


Scott Reents,
President, Allergan Sales, LLC, as
successor-in-interest to Forest Laboratories,
LLC

Director, Allergan Limited, as successor-in-
interest to Actavis, plc

/s/

Dr. Kerstin Degenhardt
Merz Group General Counsel
Merz Pharma GmbH & Co. KGaA
Eckenheimer Landstraße 100
60318 Frankfurt am Main
Germany
Kerstin.Degenhardt@merz.de

/s/

Hans-Jörg Bergler
Chief Operating Officer
Merz Pharma GmbH & Co. KGaA
Eckenheimer Landstraße 100
60318 Frankfurt am Main
Germany
Hans-Joerg.Bergler@merz.de

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/s/

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Chicago, IL 60606
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mmiller@millerlawllc.com
lfanning@millerlawllc.com

Lloyd Constantine
Ankur Kapoor
CONSTANTINE CANNON LLP
335 Madison Avenue, 9th Floor
New York, NY 10017
Tel: (212) 350-2700
lconstantine@constantinecannon.com
akapoor@constantinecannon.com

Counsel for the Plaintiff Class

/s/

Peter Safirstein
SAFIRSTEIN LAW LLC
45 N. Broad Street
Suite 100
Ridgewood, NJ 07450
Tel: (917) 952-9458
psafirstein@safirsteinlaw.com

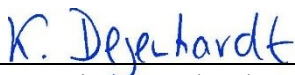
Co-Lead Counsel for the Plaintiff and the Class

/s/

Scott Reents,
President, Allergan Sales, LLC, as
successor-in-interest to Forest Laboratories,
LLC

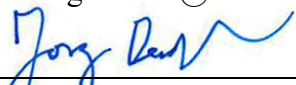
Director, Allergan Limited, as successor-in-
interest to Actavis, plc

/s/



Dr. Kerstin Degenhardt
Merz Group General Counsel
Merz Pharma GmbH & Co. KGaA
Eckenheimer Landstraße 100
60318 Frankfurt am Main
Germany
Kerstin.Degenhardt@merz.de

/s/



Hans-Jörg Bergler
Chief Operating Officer
Merz Pharma GmbH & Co. KGaA
Eckenheimer Landstraße 100
60318 Frankfurt am Main
Germany
Hans-Joerg.Bergler@merz.de

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/s/ *Lori Fanning*

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Suite 1800
Chicago, IL 60606
Tel: (312) 332-3400
mmiller@millerlawllc.com
lfanning@millerlawllc.com

Lloyd Constantine
Ankur Kapoor
CONSTANTINE CANNON LLP
335 Madison Avenue, 9th Floor
New York, NY 10017
Tel: (212) 350-2700
lconstantine@constantinecannon.com
akapoor@constantinecannon.com

Counsel for the Plaintiff Class

/s/ Signature: *Peter Safirstein*

Peter Safirstein
SAFIRSTEIN LAW LLC
45 N. Broad Street
Suite 100
Ridgewood, NJ 07450
Tel: (917) 952-9458
psafirstein@safirsteinlaw.com

Co-Lead Counsel for the Plaintiff and the Class

/s/
Scott Reents,
President, Allergan Sales, LLC, as
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Merz Group General Counsel
Merz Pharma GmbH & Co. KGaA
Eckenheimer Landstraße 100
60318 Frankfurt am Main
Germany
Kerstin.Degenhardt@merz.de

/s/
Hans-Jörg Bergler
Chief Operating Officer
Merz Pharma GmbH & Co. KGaA
Eckenheimer Landstraße 100
60318 Frankfurt am Main
Germany
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