

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE INTUNIV ANTITRUST LITIGATION Civil Action No. 16-cv-12653-ADB

This Document Relates to:
Direct Purchaser Actions

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into on September 1, 2020 by and between plaintiff Meijer, Inc. and Meijer Distribution, Inc. (“Plaintiff”), individually and on behalf of the Direct Purchaser Class as defined below (“Direct Purchaser Class”), by and through Hagens Berman Sobol Shapiro LLP attorneys Thomas M. Sobol and Lauren G. Barnes, in their capacity as attorneys for the Plaintiff and Lead Class Counsel for the Direct Purchaser Class in *In re Intuniv Antitrust Litigation*, C.A. No. 1:16-cv-12653-ADB (the “Action”), and defendant Actavis Elizabeth LLC, Actavis LLC, and Actavis Holdco US, Inc. (“Actavis”), by and through its counsel Goodwin Procter LLP. This Settlement Agreement is intended to, and upon occurrence of the Effective Date will fully, finally, and forever resolve, compromise, discharge, and settle the claims of the Direct Purchaser Class in this Action as to Actavis, subject to the terms and conditions set forth herein. The Settlement Agreement resolves claims against Actavis only, and does not resolve, compromise, discharge, or settle any of the claims of Plaintiff or the Direct Purchaser Class against defendant Shire plc, Shire LLC, and Shire U.S., Inc. (“Shire”)

RECITATIONS

WHEREAS, on December 30, 2016, this Action was commenced on behalf of a class of businesses that purchased brand or generic extended release guanfacine hydrochloride sold under the brand name Intuniv directly from Shire and Actavis, alleging that Shire and Actavis engaged in a scheme in violation of the federal antitrust laws to unlawfully delay entry of generic

substitutes for brand Intuniv imposing antitrust overcharges on members of the Direct Purchaser Class;

WHEREAS, on October 17, 2017, the Court issued an order denying the defendants' motion to dismiss the complaints filed on behalf of the Direct Purchaser Class. *See FWK Holdings LLC v. Shire*, C.A. No. 1:16-cv-12653-ADB, 2017 WL 11449668 (D. Mass. Oct. 10, 2017);

WHEREAS, on September 24, 2019, the Court issued an order on Direct Purchasers' motion for class certification pursuant to Fed. R. Civ. P. 23 certifying the Direct Purchaser Class, as defined below. *See In re Intuniv Antitrust Litigation (Direct Purchasers)*, C.A. No. 1:16-cv-12653-ADB, 2019 WL 4645503, at *11 (D. Mass. 9/24/19);

WHEREAS, on July 24, 2020, the Court issued an order granting Plaintiff's motion to intervene in the Action through mandatory intervention pursuant to Fed. R. Civ. P. 24(a), and finding that "Meijer has made a *prima facie* showing that it will adequately represent the DPP class in this case." *See In re Intuniv Antitrust Litigation (Direct Purchasers)*, C.A. No. 1:16-cv-12653-ADB, ECF No. 462, at *19 (D. Mass. 7/24/20);

WHEREAS, on August 11, 2020, Plaintiff filed its Complaint in Intervention alleging facts and asserting claims substantively identical to those alleged in prior complaints on behalf of the Direct Purchaser Class;

WHEREAS, on August 18, 2020, Actavis and the Direct Purchaser Class entered into a Binding Term Sheet;

WHEREAS, Actavis denies each and every one of the allegations asserted in the current pending and prior complaints on behalf of the Direct Purchaser Class, and has not conceded or

admitted any liability, and has asserted a number of defenses to the claims on behalf of the Direct Purchaser Class;

WHEREAS, Plaintiff and Actavis agree that neither this Settlement Agreement nor the settlement it embodies (the “Settlement”) nor any actions taken in furtherance of either the Settlement Agreement or the Settlement shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Actavis or of the truth of Plaintiff’s claims or allegations for purposes other than the Settlement;

WHEREAS, after substantial factual and expert discovery of the facts, including the claims asserted in Plaintiff’s complaint in this Action, and the legal and factual defenses thereto asserted by Actavis, and in light of ongoing litigation against and joint and several liability of Shire in this Action, Lead Counsel, along with additional counsel for Plaintiff and the Class (“Class Counsel”), believe that it would be in the best interests of the Direct Purchaser Class to enter into this Settlement Agreement with Actavis to avoid the uncertainties of litigation against Actavis, streamline the case for trial against a single defendant, Shire, and to assure a benefit to the Direct Purchaser Class;

WHEREAS, Lead Counsel, on behalf of Plaintiff and the Direct Purchaser Class, and counsel for Actavis, all of which are highly experienced in pharmaceutical antitrust litigation and settlement, engaged in arm’s-length settlement negotiations 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 Direct Purchaser Class, and Actavis;

WHEREAS, Class Counsel have concluded that the Settlement is fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23 and is in the best interests of the Direct Purchaser Class;

WHEREAS, Actavis has concluded, despite its belief that it is not liable for the claims asserted and that it has good defenses thereto, that it would be in its best interests to enter into this Settlement Agreement solely to avoid the uncertainties and additional costs of further litigation and to put to rest all claims asserted on behalf of the Direct Purchaser Class in this Action;

WHEREAS, the Settlement resolves claims against Actavis only, and does not resolve, compromise, discharge, or settle any of the claims of Plaintiff or the Direct Purchaser Class against Shire.

NOW THEREFORE, in consideration of the foregoing and the representations, warranties, and covenants contained herein, and intending to be legally bound hereby, it is agreed by the undersigned, on behalf of Plaintiff and the Direct Purchaser Class, and Actavis, that this Action and all claims of the Plaintiff and the Direct Purchaser Class be settled, compromised, and dismissed with prejudice as to Actavis, with each party bearing its own costs, subject to the approval of the Court, on the following terms and conditions:

1. Direct Purchaser Class. The Court has previously certified the following Direct Purchaser Class, which Actavis shall not challenge for purposes of this Settlement:

All persons or entities in the United States and its territories, or subsets thereof, that purchased Intuniv and/or generic Intuniv in any form directly from Shire or Actavis, including any predecessor or successor of Shire or Actavis, from October 19, 2012 through June 1, 2015 (the "Class"). Excluded from the Class are Shire, Actavis, and any of their officers, directors, management, employees, subsidiaries, and affiliates, as well as governmental entities.

2. Appointment of Meijer as Class Representative.

Meijer shall seek, and Actavis shall support, for purposes of the Settlement only, the determination that Meijer will fairly and adequately protect the interests of the class within the meaning of Fed. R. Civ. P. 23(a)(4), and the appointment of Meijer as class representative for purposes of the Settlement. This provision is without prejudice to Actavis's right to challenge the adequacy of Meijer as a class representative in any other proceeding and, in the event that the Settlement is not finalized, in the litigation of this Action.

3. Reasonable Best Efforts to Effectuate This Settlement. Plaintiff, Lead Class Counsel, and Actavis agree to recommend approval of this Settlement to the Court and to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, to carry out the terms of this Settlement Agreement, and to secure the prompt, complete, and final dismissal with prejudice of claims in this Action against Actavis. This includes Actavis serving notice of this Settlement on the appropriate federal and state officials under the Class Action Fairness Act, 28 U.S.C. § 1715.

4. Motion for Preliminary Approval of the Settlement. As soon as is possible and in no event later than 10 business days after the date of this Settlement Agreement, Plaintiff and the Direct Purchaser Class shall submit to the Court, and Actavis shall support, a motion seeking entry of an order preliminarily approving the Settlement and authorizing dissemination of Notice to the Direct Purchaser Class, substantially in the form of **Exhibit A** hereto (the "Preliminary Approval Order"), and shall:

a. Request preliminary approval of the Settlement set forth in this Settlement Agreement as fair, reasonable, and adequate, and in the best interests of the Direct Purchaser Class, pursuant to Fed. R. Civ. P. Rule 23;

b. Request a stay of all proceedings in this Action on behalf of Plaintiff and the Direct Purchaser Class against Actavis only, except those proceedings provided for or required by this Settlement Agreement;

c. Request approval of the notice plan, providing for direct mail notice to all members of the Direct Purchaser Class, along with best efforts to provide email notice to all members of the Direct Purchaser Class as well, substantially in the form of **Exhibit B** hereto; and

d. Seek a schedule for a hearing by the Court after the notice period has expired to approve the Settlement and Class Counsel's application for an award of attorney fees and reimbursement of expenses.

5. Motion for Final Approval and Entry of Final Judgment. If the Court preliminarily approves this Settlement, Plaintiff and the Direct Purchaser Class shall submit and Actavis shall support a motion for final approval of this Settlement by the Court (the "Final Approval Motion"), after Notice has been disseminated to the Direct Purchaser Class pursuant to the Preliminary Approval Order. The Final Approval Motion shall seek entry of an order and final judgment ("Final Approval Order") substantially in the form of **Exhibit C** hereto

a. Finding this Settlement Agreement and its terms to be a fair, reasonable, and adequate settlement as to Plaintiff and the Direct Purchaser Class within the meaning of Fed. R. Civ. P. 23 and directing its consummation pursuant to its terms;

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

c. Finding that the proposed Plan of Allocation, which allocates the Settlement Fund (net of Court-approved attorney fees, expenses, and settlement administration costs) *pro rata* based on the number of tablets of brand and/or generic Intuniv purchased during the relevant period (net of returns) by each member of the Direct Purchaser Class, is fair and efficient.

d. Finding that all members of the Direct Purchaser Class shall be bound by this Settlement Agreement, including the release provisions and covenant not to sue set forth in this Settlement Agreement;

e. Incorporating the releases set forth in Paragraphs 10 and 11, below, and forever barring the Releasors from asserting any Released Claims against any of the Releasees as defined below;

f. Providing for an award of reasonable attorneys' fees and reimbursement of expenses solely from the Settlement Fund;

g. Retaining exclusive jurisdiction over the Settlement and this Settlement Agreement, including the administration and consummation of this Settlement;

h. Directing that all claims by and on behalf of Plaintiff and the Direct Purchaser Class be dismissed with prejudice as to Actavis only and, except as provided for herein, with prejudice and without costs or attorney's fees recoverable under 15 U.S.C. § 15(a); and

i. Determining pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that all of the Direct Purchaser Class claims in this Action as to Actavis only shall be final and immediately appealable.

6. Finality of Settlement. This Settlement Agreement and the Settlement shall become final upon the occurrence of all of the following (the “Effective Date”):

a. The Settlement and this Settlement Agreement are approved by the Court as required by Fed. R. Civ. P. 23(e);

b. The Court enters an order finally approving the Settlement substantially in the form attached hereto as the Final Approval Order, entering a final judgment of dismissal with prejudice as to Actavis only against Plaintiff and the Direct Purchaser Class;

c. 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; and

d. The Settlement is not terminated pursuant to Paragraph 15, below.

7. Settlement Payment. By the later of (a) 10 business days following entry of the Preliminary Approval Order of the Settlement without material change, and (b) October 5, 2020, and receipt of wiring instructions, Actavis shall pay \$19.9 million (the “Settlement Payment”) to the designated account (the “Settlement Fund”). The Settlement Fund shall be held in escrow (the “Escrow Account”), subject to the terms and conditions of an escrow agreement in the form of **Exhibit D** hereto (the “Escrow Agreement”) and in accordance with the provisions of Paragraph 8 below, to be held in escrow pending finality of this Settlement Agreement pursuant

to Paragraph 6, above. The total consideration that Actavis will pay for this Settlement shall be the Settlement Payment only.

8. The Settlement Fund.

a. Before the Court issues the Final Approval Order, disbursements for expenses associated with providing notice of the Settlement to the Class, expenses associated with administering the Settlement, and any payments and expenses incurred in connection with taxation matters relating to the Settlement and this Settlement Agreement (collectively, “Administration Expenses”) may be made from the Settlement Fund. In the event the Agreement is disapproved, terminated, or otherwise fails to become effective, the Settlement Fund shall be refunded to Actavis plus interest earned (net of any taxes paid on such interest), minus half the actual costs of notice and claims administration. Court approval shall not be required for disbursements or distributions of Administration Expenses for amounts (in the aggregate) of less than \$50,000. Otherwise, no disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court.

b. At all times prior to the Effective Date, the Settlement Fund shall be invested as set forth in the Escrow Agreement, 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, including a U.S. Treasury Money Market Fund or a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit. After the Effective Date, the Settlement Fund shall be invested as directed in writing by Lead Counsel. All interest and dividends earned on the Settlement Fund shall become and remain part of the Settlement Fund. Any losses on the Settlement Fund shall

be borne by the Settlement Fund and shall not be recoverable from Actavis. Actavis shall have no liability, obligation, or responsibility of any kind in connection with the investment, disbursement, or other oversight of the Settlement Fund.

c. After the Effective Date, the Settlement Fund shall be distributed in accordance with the Court-approved plan for such distribution. After making the Settlement Payment, Actavis shall have no responsibility whatsoever for the allocation or distribution of the Settlement Fund and shall not be responsible for disputes relating to the amount, allocation, or distribution of any fees or expenses. Further, after making the Settlement Payment, Actavis shall not be liable for any additional payments to the Plaintiff, Class Counsel, of the Direct Purchaser Class pursuant to this Settlement Agreement.

d. Actavis shall have no right of reimbursement or repayment from the Settlement Fund except as set forth in Paragraphs 8(a) and 15.

e. Plaintiff and Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses. Actavis shall not be liable for any costs, attorneys' fees, other fees, or expenses of any of Plaintiff's or the Direct 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.

f. 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.

9. **Cooperation.** Actavis agrees to provide reasonable cooperation to Class Counsel to ensure the admissibility at trial or other proceedings in this Action of any document and/or data produced by Actavis in this Action or created by Actavis and produced by another party in this Action, as follows:

a. At the request of Lead Counsel, provide a declaration, conforming to the requirements of Fed. R. Evid. 902(11), certifying that documents produced by Actavis in this Action or created by Actavis and produced by another party in this Action, including but not limited to business plans, forecasts and projections, meeting minutes and agendas, and memos, emails, and correspondence, meet the requirements of Fed. R. Evid. 803(6) (A)-(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court. Actavis can limit the applicability of the declaration to this case and request that such declaration be filed under seal.

b. The parties believe that the declaration and prior deposition testimony of Actavis personnel will be sufficient to introduce into evidence at any trial in this Action the documents produced by Actavis in this Action or created by Actavis and produced by another party in this Action. If, despite Class Counsel's best efforts to avoid it, the Court orders that such documents may only come in at trial with live testimony, Actavis will employ best efforts to make a witness available to testify at trial solely to authenticate and lay business records foundation for the documents identified in the declaration described above. The Plaintiff, Class Counsel, and the Direct Purchaser Class understand and acknowledge that Actavis has no ability to control whether any of its former employees would agree to appear at any trial in this matter, either in person or remotely.

10. Releases. In consideration for the Settlement Payment and Cooperation described in this Settlement Agreement, upon the occurrence of the Effective Date, Plaintiff and all members of the Direct Purchaser Class (on behalf of themselves and their respective past, present, and future parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, and general or limited partners, as well as their past, present, and future respective officers, directors, employees, trustees, insurers, agents, associates, attorneys, and any other representatives thereof, and predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing), on their own behalf and as assignee or representative of any other entity (the “Plaintiff Releasers”), will dismiss Actavis (and its past, present, and future parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, and general or limited partners, as well as their past, present, and future respective officers, directors, employees, trustees, insurers, agents, associates, attorneys, and any other representatives thereof, and the predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing) (the “Actavis Releasees”) from this Action with prejudice, and release the Actavis Releasees from all claims, rights, debts, obligations, demands, actions, suits, causes of action, liabilities, including costs, expenses, penalties, and attorneys’ fees, or damages whenever incurred, known or unknown, that were or could have been brought against Actavis in this litigation relating to brand or generic Intuniv, or that arise out of or relate, in whole or in part in any manner, to:

(a) the subject matter of or acts, omissions, or other conduct alleged in the complaints in this Action, any prior complaints or subsequent amended complaints filed in this Action; (b) all claims concerning alleged delayed entry of generic versions of Intuniv (including any authorized generic) that could have been asserted in this Action; and/or (c) any and all claims alleging that any agreement between Actavis and Shire relating to brand and/or generic Intuniv resulted in the delayed entry of generic versions of generic Intuniv (including any authorized generic), (collectively, this entire paragraph, the “Released Claims”).

Plaintiff and the Direct Purchaser Class hereby covenant and agree that, after the Effective Date, each shall not sue or otherwise seek to establish or impose liability against the Actavis Releasees based, in whole or in part, on any of the Released Claims. The Plaintiff Releasors are releasing claims (upon final Court approval) only against the Actavis Releasees. Actavis shall release Plaintiff and the Class from all claims, regardless of legal theory, that would have been a compulsory counterclaim in this Action. Actavis hereby covenants and agrees that, after the Effective Date, neither Actavis nor any other Actavis Releasee shall sue or otherwise seek to establish or impose liability against any Plaintiff and/or the Direct Purchaser Class for any and all claims, regardless of legal theory, that would have been a compulsory counterclaim in this Action.

11. Additional Release. In addition, upon the Effective Date, Plaintiff and each member of the Direct Purchaser Class hereby expressly waives and releases any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code, which reads:

SECTION 1542. GENERAL RELEASE-CLAIMS EXTINGUISHED. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, Plaintiff and each member of the Direct Purchaser Class also hereby expressly waives and releases any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Plaintiff and each member of the Direct Purchaser Class may hereafter discover facts other than or different from those that it knows or believes to be true with respect to the claims that are the subject of

this Paragraph, but Plaintiff and each member of the Direct Purchaser Class hereby agrees that as of the Effective Date, it expressly waives and fully, finally, and forever settles and releases as to the Actavis Releasees only any known or unknown, suspected or unsuspected, accrued or unaccrued, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. For the avoidance of doubt, Plaintiff and each member of the Direct Purchaser Class also hereby agrees that as of the Effective Date, it expressly waives and fully, finally, and forever settles and releases any and all claims that would otherwise fall within the definition of Released Claims it may have against any of the Actavis 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 claims are hereby expressly incorporated into the definition of Released Claims.

12. Reservation of Claims. Notwithstanding the foregoing, Released Claims shall not include any claims arising in the ordinary course of business between Plaintiff and/or member(s) of the Direct Purchaser Class and the Released Parties concerning Article 2 of the Uniform Commercial Code (pertaining to sales), the laws of negligence, product liability or implied warranty, breach of warranty, breach of contract (other than breach of contract based in whole or in part on any of the Released Claims), or personal or bodily injury. No party other than the Actavis Releasees is intended to be, or is, included within the scope of the release contained herein. For the avoidance of doubt, neither Shire nor their past or future parent(s) or successor(s) in interest is intended to be, or is, included within the scope of this release. This

Settlement is as to Actavis only and is not intended to release any claims other than those specified in herein.

13. Full Satisfaction; Limitation of Interest and Liability. Members of the Direct Purchaser Class shall look solely to the Settlement Fund for settlement and satisfaction against Actavis of all claims that are released hereunder. Except as provided by order of the Court, no member of the Direct Purchaser Class shall have any interest in the Settlement Fund or any portion thereof. Plaintiff and Class Counsel or any other counsel acting on Plaintiff's behalf, will be paid solely out of the Settlement Fund for any costs and expenses relating to this Action.

14. Attorneys' Fees and Costs.

a. Class Counsel intend to seek, solely from the Settlement Fund, attorneys' fees of up to one-third of the Settlement Fund (including interest accrued thereon but net of any reasonable costs and expenses incurred prior to Settlement), reimbursement of reasonable litigation expenses incurred in the prosecution of the Action, and payment for costs of Administration Expenses of the Settlement Fund. Plaintiffs' Counsel shall file a motion for approval of the Fee and Expense Award ("Motion for Fee and Expense Award") after the Court has granted preliminary approval to the Settlement but sufficiently before the Court's final fairness hearing on the Settlement, and Actavis agrees to take no position with respect to the Motion for Fee and Expense Award, or on any other application by Class Counsel for fees or expenses to be paid only from the Settlement Fund as may be necessary to effectuate this Settlement Agreement. Class Counsel shall be paid solely out of the Settlement Fund for all such fees and expenses. Plaintiff, Class Members, and their respective counsel, shall not seek payment of any

attorneys' fees or costs from Actavis in this Action, or in any other action related to the released claims set forth above, from any source other than the Settlement Fund.

b. The procedures for and the allowance or disallowance by the Court of the application by Plaintiffs' Counsel for attorneys' fees, costs and expenses to be paid out of the Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to the fee and expense application, or any appeal from any such order, shall not operate to terminate or cancel this Agreement, or provide a basis to terminate or cancel this Agreement, affect or delay the finality of the judgment approving settlement, or affect or delay the payment of the Fee and Expense Award.

c. If the Court's award of such fees and expenses is vacated, reversed, or reduced subsequent to the disbursement of any Fee and Expense Award, Class Counsel shall within 10 business days after receiving written notice from the Court or Actavis of such vacatur, reversal, or reduction, make a refund to the Escrow Account in the amount of such vacatur, reversal, or reduction with interest; and further, if the Settlement Agreement is terminated pursuant to Paragraph 15 below, Class Counsel shall within 10 business days after giving notice to or receiving notice from Actavis of such termination, make a refund to the Escrow Account in the amount of any such Fee and Expense 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 Fee and Expense Award and any refund required by this Paragraph.

15. Termination. Actavis and Plaintiff shall each have the option to terminate the Settlement and have the Settlement Payment refunded to Actavis if any of the following occurs: (a) the Court declines to grant final approval to the Settlement, or (b) a mutually agreed upon percentage of the proposed Direct Purchaser Class opts out of the Settlement. The agreed upon opt-out percentage triggers, as well as the consequences should Actavis elect to proceed with the Settlement despite the occurrence of one or more of the agreed triggers, are specified in a confidential supplemental agreement to be filed *in camera* attached hereto as **Exhibit E**. If for any reason the Settlement does not become final in accordance with the terms of this Settlement Agreement, then (i) this Settlement Agreement shall be of no force or effect; (ii) all funds paid by Actavis into the Settlement Fund, plus interest (net of any taxes paid on such interest), minus half the actual costs of notice and claims administration, shall be returned to Actavis as soon as practicable after the Escrow Agent receives notice of termination; (iii) any release pursuant to Paragraphs 10 and 11 above shall be of no force or effect; and (iv) that litigation of this Action will resume in a reasonable manner and on a reasonable timetable to be approved by the Court.

16. Plan of Allocation. Lead Counsel has provided Actavis with a proposed Plan of Allocation that proposes to allocate the Settlement Fund, net of any Court-approved attorneys' fees, litigation expenses, and/or settlement administration costs, based on each class member's *pro rata* share of combined unit purchases of brand and/or generic Intuniv during the relevant period, that is, based on the number of tablets of brand and/or generic Intuniv purchased (net of returns). Lead Counsel has represented that the Direct Purchaser Class' expert, economist Dr. Jeffrey J. Leitzinger, Ph.D., can calculate each class member's *pro rata* share of the net settlement fund using sales data for brand and generic Intuniv produced by Shire and Actavis during the course of the litigation, and that this proposal is similar to allocation plans that have

been approved in similar antitrust class actions, including in this District. *See In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 14-md-2503, ECF Nos. 1163-4, 1179 (D. Mass.) (pro rata shares of settlement fund computed on basis of claimants' brand and generic purchases) The Plan of Allocation will be available for review by class members following preliminary approval and submitted to the Court with Plaintiff's motion for final approval. The proposed Plan of Allocation is attached hereto as **Exhibit F**. The Declaration of Dr. Leitzinger in support of the Plan of Allocation is attached hereto as **Exhibit G**.

17. Taxes Paid by Settlement Fund.

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. Lead Counsel shall be solely responsible for directing the Claim Administrator to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Fund. Further, Lead Counsel shall be solely responsible for directing the Claim Administrator to make any tax payments, including interest and penalties due, on income earned by the Settlement Fund. Lead 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. Actavis 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. Other than as specifically set forth herein, Actavis shall have no responsibility for the

payment of taxes or tax-related expenses. If, for any reason, for any period of time, Actavis is required to pay taxes on income earned by the Settlement Fund, the Escrow Agent shall, upon written instructions from Actavis with notice to Lead Counsel, timely pay to Actavis sufficient monies from the Settlement Fund to enable it 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 Claim 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 to this Settlement Agreement and their counsel shall treat, and shall cause the Escrow Agent to treat, the Settlement Fund as being at all times 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 Accounts 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 1(j)) 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 Accounts being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B.

18. Binding Effect. 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 Lead Counsel shall be binding upon all Class Members.

19. Integrated Agreement. Except as provided in the Binding Term Sheet between the parties executed August 18, 2020, this Settlement Agreement, together with 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 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 signatories hereto.

20. Independent Settlement. This Settlement is not conditioned on approval by any other member of the Direct Purchaser Class or settlement of any other case.

21. 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.

22. 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.

23. Intended Beneficiaries. No provision of this Settlement Agreement will provide any rights to, or be enforceable by, any person or entity that is not Plaintiff, Class Counsel, or Actavis. Shire shall have no rights under this Settlement Agreement and cannot enforce its terms. Neither Plaintiff nor Class Counsel may assign or otherwise convey any right to enforce or dispute any provision of this Settlement Agreement.

24. Choice of Law. All terms of this Settlement Agreement shall be governed by and interpreted according to federal common law or, where state substantive law must apply, New York law.

25. Consent to Jurisdiction. Actavis and each Direct Purchaser Class member hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Massachusetts 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.

26. Representations and Warranties. The signatories hereto represent and warrant that they each have 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.

27. **No Admission.** Nothing in this Settlement Agreement, 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, including, without limitation, that Actavis engaged in any conduct or practices that violate any antitrust statute or other law.

28. **Notice.** Notice to Actavis pursuant to this Settlement Agreement shall be sent by United States mail and electronic mail to:

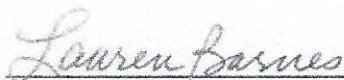
Christopher T. Holding
Sarah K. Frederick
Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210
cholding@goodwinlaw.com
sfr frederick@goodwinlaw.com

Notice to the Plaintiff or Class Counsel pursuant to this Settlement Agreement shall be sent by United States mail and electronic mail to Lead Counsel:

Thomas M. Sobol
Lauren Guth Barnes
Hagens Berman Sobol Shapiro LLP
55 Cambridge Parkway, Suite 301
Cambridge MA 02142
Tel: 617-482-3700
tom@hbsslaw.com
lauren@hbsslaw.com

29. **Execution in Counterparts.** This Settlement Agreement may be executed in counterparts. Signatures transmitted by electronic means shall be considered valid signatures as of the date signed.

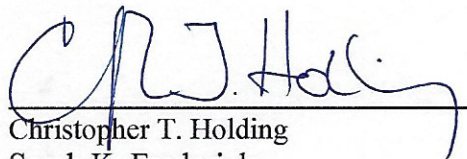
IN WITNESS WHEREOF, the parties hereto through their fully authorized representatives have agreed to this Settlement Agreement as of the date first herein above written.



Thomas M. Sobol
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*Attorneys for Plaintiff and Lead Counsel
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Dated: September 1, 2020



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*Attorneys for Actavis Elizabeth LLC, Actavis
LLC, and Actavis Holdco U.S., Inc.*

Dated: September 1, 2020