

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SAN MIGUEL HOSPITAL CORPORATION
d/b/a ALTA VISTA REGIONAL HOSPITAL, on
behalf of itself and all others similarly situated,

Plaintiff

v.

JOHNSON & JOHNSON, *et al.*,

Defendants

Case No. 1:23-cv-00903-KWR-JFR

The Hon. Judge Kea Riggs

**MEMORANDUM OF LAW IN SUPPORT OF CLASS PLAINTIFFS' AGREED
MOTION TO CERTIFY THE SETTLEMENT CLASSES FOR SETTLEMENT
PURPOSES, PRELIMINARILY APPROVE CLASS ACTION SETTLEMENTS,
APPROVE FORM AND MANNER OF NOTICE, AND SET DATE FOR FINAL
FAIRNESS HEARING**

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Plaintiff San Miguel Hospital Corporation d/b/a Alta Vista Regional Hospital (“Plaintiff”), on behalf of itself and the classes of similarly situated persons described below (collectively, the “Settlement Classes”) respectfully moves for an Order preliminarily approving four proposed class action settlement agreements (“Settlement Agreements”) with the Distributor Defendants¹, Janssen Defendants², Teva Defendants³, and Allergan Defendants⁴ (collectively, “Settling Defendants”; together with the Plaintiff, the “Settling Parties”). Specifically, Plaintiff requests an Order that will:

1. provisionally certify each of the Settlement Classes for settlement purposes only;
2. preliminarily approve the Settlement Agreements;
3. appoint Plaintiff and other specified Acute Care Hospitals⁵ as Settlement Class Representatives for each of the Settlement Classes;
4. appoint John W. (“Don”) Barrett, Warren Tavares Burns, Steven A. Martino, Robert

¹ Distributor Defendants means Cencora, Inc. (“Cencora,” formerly AmerisourceBergen Corporation), Cardinal Health, Inc., (“Cardinal”), and McKesson Corporation (“McKesson”), including all Released Entities specified in the Distributor Class Action Settlement Agreement with Acute Care Hospitals (“Distributors Settlement Agreement”) (Exhibit 1).

² Janssen Defendants means Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc., including all Released Entities specified in the Janssen Class Action Settlement Agreement with Acute Care Hospitals (“Janssen Settlement Agreement”) (Exhibit 2).

³ Teva Defendants means Teva Pharmaceuticals Industries, Ltd., Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Actavis Pharma, Inc., Actavis LLC, Watson Laboratories, Inc. and Anda, Inc., including all Released Entities specified in the Teva Defendants Class Action Settlement Agreement with Acute Care Hospitals (“Teva Settlement Agreement”) (Exhibit 3).

⁴ Allergan Defendants means Allergan Finance, LLC (f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.); Allergan Sales, LLC; and Allergan USA, Inc., including all Released Entities specified in the Allergan Defendants’ Class Action Settlement Agreement with Acute Care Hospitals (“Allergan Settlement Agreement”) (Exhibit 4).

⁵ By agreement between the Settling Parties, the plaintiff acute care hospitals in the following four related stated court cases seek appointment as Settlement Class Representatives for the Settlement Class: *Florida Health Sciences Center, Inc., et al. v. Richard Sackler, et al.*, Case No. 19-018882 (Cir. Ct. Broward Cnty., Fla.); *The DCH Health Care Authority, et al. v. Purdue Pharma, L.P., et al.*, Case No. CV-19-07 (Cir. Ct. Conecuh Cnty., Ala.); *Fort Payne Hospital Corporation, et al. v. McKesson Corporation, et al.*, Case No. 21-cv-2021-900016.00 (Cir. Ct. Conecuh Cnty., Ala.); and *Lester E. Cox Medical Centers d/b/a Cox Medical Centers, et al. v. Amneal Pharmaceuticals, LLC, et al.*, No. 6:22-cv-3192 (W.D. Mo.). For the convenience of the Court, a listing of the plaintiffs in the foregoing cases is attached as Exhibit 8.

- A. Clifford, Charles J. LaDuca, and Stephen B. Farmer as Interim Settlement Class Counsel for each of the Settlement Classes;
5. approve the form and manner of the proposed Notice to the Settlement Classes;
 6. appoint A.B. Data and Cherry Bekaert Advisory, LLC as Notice and Claims Administrators;
 7. appoint the Hon. Thomas Hogan (Ret.) as Special Master;
 8. appoint Pinnacle Bank as Custodian/Escrow Agent;
 9. establish the respective Escrow Accounts as Qualified Settlement Funds;
 10. set a Hearing on Final Approval of Settlements, Attorneys' Fees, Litigation Expenses, and Notice and Administrative Costs ("Final Fairness Hearing") and associated deadlines in anticipation of that hearing;
 11. grant a stay of all proceedings⁶ in any forum brought by Releasors as to the Settling Defendants, as specified in the Settlement Agreements, and directing Settlement Class Representatives to file motions to sever and stay the Other Actions brought by the Settlement Class Representatives as against the Settling Defendants, to the extent not already filed; and
 12. enjoin all Settlement Class Members from filing or prosecuting any new proceedings for Released Claims, as specified in the Settlement Agreements, unless and until the Settlement Class Member has timely and validly excluded itself from the Settlement Classes, beginning as of the date the exclusion becomes effective.

⁶ For the avoidance of doubt, the Settling Parties will not seek alteration of the current stay orders in place until the Court renders a final decision regarding the approval of the Settlement Agreements.

SUMMARY OF THE LITIGATION AND CLASS SETTLEMENTS

On October 16, 2023, Plaintiff San Miguel Hospital Corporation d/b/a Alta Vista Regional Hospital, an acute care hospital in Las Vegas, New Mexico, filed this putative class action against the Distributors, Janssen, Teva, and Allergan Defendants, amongst others. ECF No. 1. Plaintiff alleged, *inter alia*, that Defendants participated in a conspiracy that resulted in an epidemic of opioid addiction throughout the United States. *See id.* ¶ 2. Plaintiff alleged that it and the putative class were injured as a result of Defendants' actions. *See id.* ¶ 22. Defendants have and continue to deny Plaintiff's allegations and any associated liability.

Proposed Settlement Class Counsel represent hundreds of acute care hospitals throughout the nation, including Plaintiff. Exhibit 7, Declaration of Warren Tavares Burns ("Burns Dec.") at ¶ 6. Since 2017, acute care hospitals represented by proposed Settlement Class Counsel have been litigating claims similar to those alleged in this suit against many of the same Defendants in numerous state and federal courts, including in the federal MDL proceedings, *In re National Prescription Opiate Litigation*, Case No. 1:17-md-2804, MDL 2804, (N.D. Ohio). *Id.* Collectively, Plaintiff and the proposed Settlement Class Representatives will refer to their ongoing litigation in multiple *fora* against Defendants related to the opioid crisis as the ACH Opioids Litigation.

Since 2017, Plaintiffs in the ACH Opioids Litigation have vigorously pursued their claims. *Id.* at ¶ 7. Their efforts have included multiple rounds of dispositive briefing and interlocutory and other appeals. *Id.* Some Plaintiffs have produced millions of pages of documents, and terabytes of data related to their treatment of patients diagnosed with opioid use disorder or related conditions. *Id.* Plaintiffs in the ACH Opioids Litigation have likewise reviewed voluminous discovery produced by Defendants. *Id.* Certain of the Plaintiffs have provided depositions of corporate representatives and employee witnesses. *Id.* During the ongoing ACH Opioids Litigation, Plaintiffs have also engaged over a dozen experts to provide testimony on issues relating to alleged liability and damages. *Id.* Before

reaching the Settlement Agreements, the Settling Parties were preparing vigorously for a July 2024 trial of certain Settlement Class Members' claims in Alabama state court. *Id.* at ¶ 9.

Since 2022, proposed Settlement Class Counsel have been engaged in negotiations with Settling Defendants to resolve the Settling Parties' dispute. *Id.* at ¶ 10. These negotiations involved numerous in-person and remote presentations to elucidate Plaintiffs' claims and the Settling Defendants' defenses. *Id.* Proposed Settlement Class Counsel have participated in a total of over a dozen in-person mediation sessions and additional remote negotiating sessions with the different groups of Settling Defendants. *Id.* The Settling Parties were assisted in their negotiations through the dogged efforts of a prominent national mediator, Fouad Kurdi, as well as, in the case of the Settling Distributors, Judge Sidney Schenkier. *Id.* Mr. Kurdi was instrumental in settling disputes involving other litigants involved in *In re National Prescription Opiate Litigation, id.*, while Judge Schenkier is a former federal magistrate judge and respected Chicago-based mediator. After reaching agreement on key terms, the Settling Parties have spent months negotiating final Settlement Agreements. *Id.* The Settling Parties are now before this Court to implement their Settlement Agreements.

SUMMARY OF THE SETTLEMENT AGREEMENTS

The Settlement Agreements, once approved by this Court, will provide significant and nearly immediate compensation to the proposed Settlement Classes. Collectively, the Settlement Agreements total \$651,000,000, and provide other relief important to the Settlement Classes. The following is a summary of the key financial terms found in the Settlement Agreements:

- Distributors Settlement Agreement: \$390,000,000 to be paid into the agreed Escrow Account no later than thirty days following the order preliminarily approving the Settlement Agreements;

- Janssen Settlement Agreement: \$110,000,000 to be paid into the agreed Escrow Account no later than thirty days following the order preliminarily approving the Settlement Agreements;
- Teva Settlement Agreement: \$126,000,000 to be paid into the agreed Escrow Account over a period of 18 years as detailed in the payment schedule found in the Settlement Agreement; and
- Allergan Settlement Agreement: \$25,000,000 to be paid into the agreed Escrow Account over a period of two years following the Effective Date defined in the Settlement Agreement.

In addition to the \$651,000,000 in Settlement Funds, the Teva Settlement Agreement provides for the distribution of Naloxone Hydrochloride Nasal Spray, a medication designed to rapidly reverse opioid overdose, to Settlement Class Members valued at up to \$49,000,000. Under the terms of the Settlement Agreements, the Settlement Funds will be used to pay for Notice and Administrative Costs. Further, the Settlement Funds will be used for any award of attorneys' fees and costs authorized by the Court.

Additional terms are detailed in each of the Settlement Agreements.

Neither the Settlement Agreements nor this Motion affect the pendency of Plaintiff's claims against the non-settling Defendants. Further, although non-settling Defendants have no standing to object to the Settlement Agreements, Plaintiff has informed non-settling Defendants that Plaintiff is willing to stipulate that the Court's certification of the Settlement Classes and approval of the Settlement Agreements shall not be binding on any subsequent effort by Plaintiff to certify a litigation class pursuant to Rule 23. Ex. 7, Burns Dec. at ¶ 12.

I. ARGUMENT AND AUTHORITY

A. The Court Should Certify the Settlement Class for Settlement Purposes Only

In considering a proposed class action settlement, federal courts determine whether a settlement class would be appropriate under Rule 23. *See, e.g., Tennille v. Western Union Co.*, 785 F.3d 422, 430 (10th Cir. 2015). Rule 23 has four factors for class certification: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *See* Fed. R. Civ. P. 23(a). Rule 23(b) also examines whether common questions predominate over individual issues, and whether a class action is superior to other methods of litigation. *See* Fed. R. Civ. P. 23(b).

Federal courts have “considerable discretion” in making class certification decisions. *DG v. Devaughn*, 594 F.3d 1188, 1194 (10th Cir. 2010). The Tenth Circuit defers to a trial court’s certification ruling where “it applies the proper Rule 23 standard and its decision falls within the bounds of rationally available choices given the facts and law involved in the matter at hand.” *Id.* (citation and internal quotations omitted).

Each Settlement Agreement provides that the parties to that Agreement stipulate to: (1) the certification of the Settlement Class for settlement purposes; (2) the appointment of Plaintiff and other identified acute care hospitals as the Settlement Class Representatives; and (3) the appointment of John W. (“Don”) Barrett, Warren Tavares Burns, Steven A. Martino, Robert A. Clifford, Charles J. LaDuca, and Stephen B. Farmer as Settlement Class Counsel for the Settlement Class. The Parties to each Settlement Agreement therefore jointly move the Court to certify for that Settlement, a Settlement Class defined as follows:

All Acute Care Hospitals in the United States that (i) are not owned or operated by a federal, state, county, parish, city, or other municipal government; and (ii) treated patients diagnosed with opioid use disorder and/or other opioid-related conditions at any time from January 1, 2009, through the date of entry of the Preliminary Approval Order.

See, e.g., Distributors Settlement Agreement, § III.A.1. For the avoidance of doubt and as agreed between the Settling Parties to each Settlement Agreement, each proposed Settlement Class includes

all entities listed on Exhibit A and all Plaintiffs in the Other Actions listed on Exhibit B to each of the Settlement Agreements. Exhibits A and B are non-exhaustive lists and do not purport to identify all members of the proposed Settlement Classes.

Excluded from the Class[es] are any Acute Care Hospitals whose Released Claims have been released by any other settlement with the Settling Defendants.

Id. § III.A.2.

Certification of the Settlement Classes for settlement purposes furthers the interests of Settlement Class Members and the Settling Defendants by allowing the case to be settled on a class-wide basis. The proposed Settlement Classes satisfy the requirements of Rule 23, and thus the Court should grant class certification.

1. Numerosity

Rule 23(a)(1) requires “the class [be] so numerous that joinder of all members is impracticable.” *See Horn v. Associated Wholesale Grocers, Inc.*, 555 F.2d 270, 275 (10th Cir. 1977) (holding class as small as 46 members is sufficient). Here, each of the Settlement Classes consists of potentially over five thousand acute care hospitals dispersed throughout the nation, making joinder of all Settlement Class Members impracticable. Exhibit 5, Declaration of Eric Schachter at ¶ 6; *see Cline v. Sonoco, Inc.*, 333 F.R.D. 676, 682 (E.D. Okla. 2019) (“[T]he proposed class encompasses thousands of interest owners, which easily satisfies the numerosity requirement under Rule 23(a)(1).”). Numerosity, therefore, is satisfied.

2. Commonality

Rule 23(a)(2) requires the existence of “questions of law or fact common to the class.” A “common question is one where ‘the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof.’” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted). “Factual differences in the claims of class members should not result in a denial of class certification where common questions of law exist.”

Milonas v. Williams, 691 F.2d 931, 938 (10th Cir. 1982). The plaintiff need only show a single issue common to all members of the class. *See DG*, 594 F.3d at 1195; William B. Rubenstein, 4 *Newberg On Class Actions* § 3:10, at 272-73 (5th ed. 2011).

As detailed fully in its complaint, Plaintiff's and each of the proposed Settlement Class's claims involve numerous common questions of law and fact, including, depending on the Settling Defendant in question, *inter alia*:

- Did the Settling Defendants manufacture prescription opioids?
- Did Settling Defendants make misleading statements regarding the risks and benefits of prescription opioids?
- Did Settling Defendants distribute prescription opioids?
- Did Settling Defendants distribute prescription opioids without conducting adequate due diligence?
- What is the scope of Settling Defendants' duties under the Controlled Substances Act?
- Did Settling Defendants receive suspicious orders for prescription opioids?
- Did Settling Defendants fill suspicious orders of prescription opioids?
- Did Settling Defendants report suspicious orders of prescription opioids to DEA and other regulators?
- Did Settling Defendants engage in wire fraud?
- Did Settling Defendants engage in mail fraud?
- Did Settling Defendants corrupt an official proceeding?

Exhibit 6, First Amended Class Action Complaint, Doc. 144, at ¶1167.

3. Typicality

Rule 23(a)(3) requires “the claims or defenses of the representative parties [to be] typical of the claims or defenses of the class.” To meet this requirement, “[e]very member of the class need not be in a situation identical to that of the named plaintiff.” *DG*, 594 F.3d at 1195 (citation

omitted). Rather, “[p]rovided the claims and Named Plaintiffs and class members are based on the same legal or remedial theory, differing fact situations of the class members do not defeat typicality.” *Id.* at 1198-99.

The proposed Settlement Class Representatives’ claims are typical of each of the Settlement Class’s claims, because the proposed Settlement Class Representatives are acute care hospitals who treated patients diagnosed with opioid use disorder and/or other opioid-related conditions. The same legal theories and issues of fact underlie the claims of the Settlement Classes and the proposed Settlement Class Representatives. Accordingly, the Settlement Classes satisfy typicality.

4. Adequacy of Representation

Rule 23(a)(4) requires plaintiffs to show they “will fairly and adequately protect the interests of the class.” In the Tenth Circuit, adequacy is satisfied when (1) neither the plaintiff nor its counsel has interests that conflict with the interests of other class members, and (2) the plaintiff will prosecute the action vigorously through qualified counsel. *See Rutter Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188-89 (10th Cir. 2002). No conflicts exist between Plaintiff or its counsel and other members of any of the Settlement Classes. To the contrary, Plaintiff and the proposed Settlement Class Representatives share the same incentive as the Settlement Classes to vigorously prosecute this case and obtain recovery.

Plaintiff, the proposed Settlement Class Representatives, and proposed Settlement Class Counsel, have vigorously prosecuted this case and related cases in multiple state and federal jurisdictions throughout the country. Proposed Settlement Class Counsel are highly experienced in class actions. *See* Exhibit 7, Declaration of Warren Tavares Burns at ¶ 5 (“Burns Dec.”). Proposed Settlement Class Counsel have been appointed as lead counsel in multiple previous class actions. *Id.* The proposed Settlement Class Representatives and Settlement Class Counsel satisfy adequacy of representation.

5. Predominance

Rule 23(b)(3) requires that “questions of law or fact common to class members predominate over any questions affecting only individual members.” “The predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation” by asking “whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.” *Tyson Foods*, 136 S. Ct. at 1045 (citation omitted); *see also, e.g., CCG Holding Co. v. Hutchens*, 773 F.3d 1076, 1087 (10th Cir. 2014) (same); *In re Urethane Antitrust Litig.*, 768 F.3d 1245, 1255 (10th Cir. 2014) (“Classwide proof is not required for all issues. Instead, Rule 23(b)(3) simply requires a showing that the questions common to the class predominate over individualized questions.”). Thus, when “one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.” *Tyson Foods*, 136 S. Ct. at 1045 (citation omitted). Where, as here, proposed Settlement Class Representatives’ and the Settlement Class’s claims stem from a “common nucleus of operative facts,” common issues predominate and certification is appropriate. *Arkalon Grazing Ass’n v. Chesapeake Operating, Inc.*, 275 F.R.D. 325, 331 (D. Kan. 2011) (citation omitted).

The Settlement Classes readily satisfy predominance. Common questions regarding the existence of a RICO conspiracy, Settling Defendants’ participation in the same, and causation all predominate over potential individual issues, to the extent any may be identified. Damages, too, will be subject to common proof. Ex. 7, Burns Dec. at ¶ 7. Under the circumstances, predominance is satisfied in this case.

6. Superiority

Rule 23(b)(3) requires a class action to be “superior to other available methods for fairly and efficiently adjudicating the controversy.” In considering the superiority of a class action, courts consider:

(A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). “In deciding whether to certify a settlement class, the Court need not inquire whether the case, if tried, would present difficult management problems under Rule 23(b)(3)(D).” *In re Motor Fuel Temperature Sales Pract. Litig.*, 271 F.R.D. 263, 269 (D. Kan. 2010).

Superiority is satisfied here. The claims asserted in the ACH Opioids Litigation are highly complex and require significant investment of time and capital by the acute care hospitals and their counsel. Ex. 7, Burns Dec. at ¶ 8. Any individual case may take years to reach trial, without regard to subsequent appeals. *Id.* Litigating individual cases likewise requires a significant commitment of court resources. A class action is the superior method of fair and efficient adjudication in this matter for purposes of implementing the Settlements.

II. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Court Should Grant Preliminary Approval of the Proposed Settlements

Settlement is strongly favored as a method for resolving disputes. *See Sears v. Atchison, Topeka & Santa Fe Ry., Co.*, 749 F.2d 1451, 1455 (10th Cir. 1984); *see also Trujillo v. State of Colo.*, 649 F.2d 823, 826 (10th Cir. 1981) (citing “important public policy concerns that support voluntary settlements”); *Amoco Prod. Co. v. Fed. Power Comm’n*, 465 F.2d 1350, 1354 (10th Cir. 1972). This is particularly true in large, complex class actions such as the current case. *See Acevedo v. Sw. Airlines Co.*, No. 1:16-CV-00024-MV-LF, 2019 WL 6712298, at *2 (D.N.M. Dec. 10, 2019) (quoting *Armstrong v. Board of School*

Directors, 616 F.2d 305, 313 (7th Cir. 1980)), *report and recommendation adopted*, No. 1:16-CV-00024-MV-LF, 2020 WL 85132 (D.N.M. Jan. 7, 2020).

Under Rule 23(e), the trial court must approve a class action settlement. Fed. R. Civ. P. 23(e) (“The claims . . . of a certified class – or a class proposed to be certified for purposes of settlement – may be settled . . . only with the court’s approval.”). The procedure for review of a proposed class action settlement is a well-established two-step process. *See Anderson Living Tr. v. Energen Res. Corp.*, No. CV 13-909 WJ/CG, 2021 WL 1686491, at *2 (D.N.M. Apr. 29, 2021), *report and recommendation adopted*, No. CV 13-909 WJ/CG, 2021 WL 1686492 (D.N.M. Apr. 29, 2021); *Manual for Complex Litigation* (“*Manual*”), § 13.14 (4th ed. 2004). First, the court conducts a preliminary approval analysis to determine if there is any reason not to notify the class or proceed with the proposed settlement. *Anderson Living Tr.*, 2021 WL 1686491, at *2. Second, following preliminary approval, the class is notified and provided an opportunity to be heard at a final fairness hearing, at which the court considers the merits of the settlement to determine if it should be finally approved. *See id.*; *accord*, 4 William B. Rubenstein, *Newberg on Class Actions*, § 13.10 (5th ed. 2021).

Through this Preliminary Approval Motion, Plaintiffs request the Court take the first step in this two-step process: granting preliminary approval. Preliminary approval should be granted if “the proposed settlement was ‘neither illegal nor collusive and is within the range of possible approval.’” *Id.*; *see Anderson Living Tr.*, 2021 WL 1686491, at *2. Courts refer to the final approval factors to determine whether a proposed settlement should be *preliminarily* approved. *Id.* (citing *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002) and *In re Integra Realty Res., Inc.*, 354 F.3d 1246, 1266 (10th Cir. 2004)).

B. Standards for Preliminary Approval of a Proposed Settlement

Under Rule 23(e)(1) of the Federal Rules of Civil Procedure, the inquiry at preliminary approval is whether the Court “will likely be able to: (i) approve the proposal under Rule 23(e)(2); and

(ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B). Rule 23(e)(2) provides that a class action settlement may be approved by the court “only after a hearing and only on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). In deciding whether to approve a class action settlement, courts should consider 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).

Additionally, in deciding whether a settlement is “fair, reasonable, and adequate,” courts in the Tenth Circuit traditionally consider whether:

- (1) the settlement was fairly and honestly negotiated, (2) serious legal and factual questions placed the litigation’s outcome in doubt, (3) the immediate recovery was more valuable than the mere possibility of a more favorable outcome after further litigation, and (4) the parties believed the settlement was fair and reasonable.

Anderson Living Tr., 2021 WL 1686491, at *2 (citing *Rutter & Wilbanks Corp.*, 314 F.3d at 1188 and *In re Integra Realty Res., Inc.*, 354 F.3d at 1266). The Tenth Circuit’s additional factors overlap with the Rule 23(e)(2) factors, with “[t]he fourth [] factor [being] the only factor that does not directly overlap with the Rule 23(e)(2) factors.” *Cisneros v. EP Wrap-It Insulation, LLC*, No. CV 19-500 GBW/GJF, 2022 WL 2304146, at *11 (D.N.M. June 27, 2022). As a result, courts in this District primarily consider the Rule 23(e)(2) factors and separately discuss only the Tenth Circuit’s fourth factor. *See, e.g., id.* As

discussed below, each of the proposed Settlements (totaling, together, \$651 million in cash) easily satisfies each of the Rule 23(e)(2) and Tenth Circuit factors. Accordingly, Plaintiffs request that the Court grant preliminary approval of the Settlements.

C. The Settlements Satisfy the Rule 23(e)(2) Factors

1. Proposed Settlement Class Representatives and Settlement Class Counsel Have Adequately Represented the Classes

Under this factor, the Court should consider that “the nature and amount of discovery in this or other cases, or the actual outcomes of other cases, may indicate whether counsel negotiating on behalf of the class had an adequate information base.” Fed. R. Civ. P. 23 advisory committee’s notes (2018). Here, the breadth and volume of the work performed by the proposed Settlement Class Representatives and Settlement Class Counsel cannot be understated.

Cases in the ACH Opioids Litigation resolved by the Settlement Agreements have been litigated between the Settling Parties in numerous federal and state *fora* for nearly eight years. Ex. 7, Burns Dec. at ¶¶ 4-6. Proposed Settlement Class Representatives and Settlement Class Counsel have responded to multiple rounds of motion practice, including appeals of both dispositive and non-dispositive rulings. *Id.* at ¶ 7. The proposed Settlement Class Representatives have produced millions of pages of documents and have been deposed. *Id.* Proposed Settlement Class Counsel have reviewed voluminous discovery and taken depositions of representatives of certain of the Settling Defendants and third parties. *Id.* Further, proposed Settlement Class Representatives and Settlement Class Counsel have retained and worked closely with over a dozen experts in preparing the underlying cases for trial. *Id.* Finally, the Settlement Agreements are the product of over two years of negotiations, mediated by one or more experienced mediators. *Id.* at ¶ 10.

Collectively, the proposed Settlement Class Counsel (John W. (“Don”) Barrett, Warren Tavares Burns, Steven A. Martino, Robert A. Clifford, Charles J. LaDuca, and Stephen B. Farmer) have significant experience prosecuting complex class actions, including RICO and antitrust class

actions, in this district and circuit and throughout the country. *Id.* at ¶ 5. Courts around the country recognize the expertise and ability of proposed Settlement Class Counsel to effectively litigate complex class actions.⁷

In deciding adequacy of representation, “courts consider whether: (1) the named plaintiffs and their counsel have any conflicts of interest with other class members; and (2) the named plaintiffs and their counsel have prosecuted the action vigorously on behalf of the class.” *Cisneros*, 2022 WL 2304146, at *4 (internal citations omitted). Here, no conflicts exist, and the collective tenacity and sophistication of proposed Settlement Class Counsel was instrumental in achieving the substantial settlements, which will provide over \$651 million and significant and immediate relief to the proposed Settlement Classes. Therefore, proposed Settlement Class Counsel have provided adequate representation to the certified Classes.

2. The Proposed Settlements Were Negotiated at Arm’s Length

The second factor under Rule 23(e)(2)(B) overlaps with the first factor considered by courts in the Tenth Circuit and assesses whether the settlement was fairly and honestly negotiated. *See Lowery v. City of Albuquerque*, No. CIV 09-0457 JB/WDS, 2013 WL 1010384, at *36 (D.N.M. Feb. 27, 2013); *Anderson Living Tr. v. Energen Res. Corp.*, No. CV 13-909 WJ/CG, 2021 WL 3076910, at *3 (D.N.M. July 21, 2021). Settlements reached after real negotiations through representation by experienced counsel well-versed in the legal and factual issues of the case support a finding of fair and honest negotiation. *See, e.g., Montgomery v. Cont’l Intermodal Grp.-Trucking LLC*, No. 19-940 GJF, 2021 WL

⁷ *See, e.g., In re Insulin Pricing Litig.*, No. 3:17-CV-699-BRMLHG, 2020 WL 5642002, at *7 (D.N.J. Sept. 22, 2020) (recognizing that Mr. Barrett has “substantial experience litigating complex commercial disputes including class action and antitrust matters”); *Kjessler v. Zaappaa, Inc.*, No. 4:17-CV-3064, 2018 WL 8755737, at *5 (S.D. Tex. Aug. 31, 2018) (recognizing that “Mr. Burns and his firm have significant experience in anti[t]rust class actions”); *Buttonwood Tree Value Partners, L.P. v. Sweeney*, No. SA-CV-1000537-CJCMLGX, 2014 WL 12586788, at *3 (C.D. Cal. May 15, 2014) (agreeing with class counsel that the Cuneo Gilbert & Laduca firm has significant “experience with securities fraud class actions”).

1339305, at *9 (D.N.M. Apr. 9, 2021); *Acevedo v. Sw. Airlines Co.*, No. 1:16-CV-00024-MV-LF, 2019 WL 6712298, at *2 (D.N.M. Dec. 10, 2019), *report and recommendation adopted*, No. 1:16-CV-00024-MV-LF, 2020 WL 85132 (D.N.M. Jan. 7, 2020); *Lowery*, 2013 WL 1010384, at *36; *Anderson Living Tr*, 2021 WL 3076910, at *3.

“[T]here is a presumption in favor of a finding that negotiations were fair when they were conducted before a third-party mediator.” *Cisneros*, 2022 WL 2304146, at *5. An experienced mediator’s involvement “in the settlement negotiations strongly supports a finding that they were conducted at arm’s-length and without collusion.” *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 576 (S.D.N.Y. 2008); *see also D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (noting that a “mediator’s involvement in ... settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure”).

Here, the Settlements are the product of arm’s-length negotiations between the Settling Parties, advised by their sophisticated counsel, who possessed more than sufficient evidence and knowledge to allow them to make informed decisions about the strengths and weaknesses of their respective cases. Ex. 7, Burns Dec. at ¶ 10. During mediation, the relevant legal issues were fully presented for the Settling Parties to effectively evaluate liability and damages. *Id.* As a result, the Settling Parties were well prepared for the serious negotiations that led to the Settlement Agreements and were well informed of the respective parties’ arguments. *See Montgomery*, 2021 WL 1339305, at *9; *Acevedo*, 2019 WL 6712298, at *2; *Lowery*, 2013 WL 1010384, at *36; *Anderson Living Tr*, 2021 WL 3076910, at *3.

Moreover, the Settlement negotiations were conducted under the direct supervision of Fouad Kurdi, a highly experienced and well-respected mediator with highly relevant experience settling disputes associated with the *In re National Opiate Prescription Litigation*. *Id.* at ¶ 10. The negotiations with the Settling Distributors began with another mediator, Judge Sidney Schenkier, a former federal

magistrate judge, who then worked together with Mr. Kurdi to bring the Settling Distributor negotiations to a conclusion. Settlement negotiations between Plaintiffs and the various Settling Defendants spanned a period of over two years, during which the parties to each mediation provided multiple presentations to each other and Plaintiffs met over a dozen times in person with different groups of Settling Defendants to facilitate discussions. *Id.* Accordingly, the Settlements achieved here should be presumed to be the result of arm's-length, fair, and honest negotiations. *See Cisneros*, 2022 WL 2304146, at *5.

3. The Proposed Settlements Are Adequate in Light of the Costs, Risks, and Delay of Trial and Appeal

“Although it is not the role of the Court at this stage of the litigation to evaluate the merits . . . it is clear that the parties could reasonably conclude that there are serious questions of law and fact that exist such that they could significantly impact the case if it were litigated.” *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693-94 (D. Colo. 2006) (citation and internal quotations omitted). As strongly as the Settling Parties feel about the merits of their positions, each side recognizes that serious questions of law and fact exist in this case.

In assessing the Settlement Agreements, the Court should also balance the benefits afforded to the certified Settlement Classes, including the immediacy and certainty of a recovery, against the significant costs, risks, and delay of proceeding with the Litigation. *See* Rule 23(e)(2)(C)(i). This third factor is based on the premise that the Settlement Classes “[are] better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted.” *See Acevedo*, 2019 WL 6712298, at *3 (citing *McNeely v. Nat'l Mobile Health Care, LLC*, No. CIV-07-933-M, 2008 WL 4816510, at *13 (W.D. Okla. Oct. 27, 2008)). This consideration largely overlaps with the second (“whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt”) and third factors (“whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive

litigation”) traditionally considered by courts in the Tenth Circuit. *Chavez Rodriguez v. Hermes Landscaping, Inc.*, No. 17-2142-JWB-KGG, 2020 WL 3288059, at *2-3 (D. Kan. June 18, 2020); *see Cisneros*, 2022 WL 2304146, at *5 (explaining that all but the Tenth Circuit’s fourth factor overlap with Rule 23’s factors). Thus, courts consider these factors to be “subsumed under Rule 23’s requirement.” *Chavez Rodriguez*, 2020 WL 3288059, at *2-3; *see, e.g., Cisneros*, 2022 WL 2304146, at *5 (incorporating analysis of Rule 23 factors by reference into analysis of Tenth Circuit factors).

a. Serious Legal and Factual Questions Placed the Litigation’s Outcome in Doubt

The presence of serious legal and factual questions concerning the outcome of the ACH Opioids Litigation weighs heavily in favor of settlement, as “settlement outweighs the mere possibility of future relief after protracted and expensive litigation.” *See Montgomery*, 2021 WL 1339305, at *6; *In re Qwest Commc’ns Int’l, Inc. Sec. Litig.*, 625 F. Supp. 2d 1133, 1138 (D. Colo. 2009). “Although it is not the role of the Court at this stage of the litigation to evaluate the merits, ‘it is clear that the parties could reasonably conclude that there are serious questions of law and fact that exist such that they could significantly impact the case if it were litigated.’” *See Montgomery*, 2021 WL 1339305, at *9 (quoting *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693-94 (D. Colo. 2006)). The presence of questions of law and fact “tips the balance in favor of settlement because settlement, creates a certainty of some recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation.” *McNeely, LLC*, 2008 WL 4816510, at *13; *see also Tennille v. W. Union Co.*, 785 F.3d 422, 435 (10th Cir. 2015) (affirming final approval of settlement where “serious disputed legal issues” rendered “the outcome of th[e] litigation . . . uncertain and further litigation would have been costly”).

The current proposed Settlements notwithstanding, there remain numerous factual and legal issues on which the Settling Parties still intensely disagree. Settling Defendants deny that they have engaged in any wrongdoing as alleged by Plaintiffs, deny any liability whatsoever for any of the claims alleged by Plaintiffs, and deny that Plaintiffs have suffered any injuries or damages. Conversely,

Plaintiffs have advanced numerous complex legal and factual issues under federal RICO statutes and various state laws in other *fora*.

The issues on which the Settling Parties disagree are many, but include: (1) whether any of the Settling Defendants engaged in conduct that would give rise to any liability under the federal RICO statutes; (2) whether the Settling Defendants have valid defenses to any such claims of liability; (3) the amount of damages suffered by reason of the Settling Defendants' alleged wrongdoing, as well as the methodology for estimating any such damages; (4) whether the Court may properly certify a class for purposes of litigation; and (5) whether the Settling Defendants had other meritorious defenses to the alleged claims. Although the proposed Settlement Class Representatives believe their claims would be borne out by the evidence presented at trial, they recognize that there are significant hurdles to proving liability or even proceeding to trial. Had the parties not reached the Settlement Agreements, the Court or a jury would ultimately be required to decide these issues, placing the litigation's ultimate outcome in doubt.

b. Immediate Recovery Is More Valuable than the Mere Possibility of a More Favorable Outcome After Further Litigation

Considering the risks associated with continued litigation, as discussed above, the immediate, substantial relief offered by the Settlements “outweigh an uncertain result several years in the future.” *Montgomery*, 2021 WL 1339305, at *10; *see id.* at *6 (“[I]t has been held proper “to take the bird in the hand instead of a prospective flock in the bush.”); *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1244 (D.N.M. 2012) (“[t]o most people, a dollar today is worth a great deal more than a dollar ten years from now”) (quoting *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 284 (7th Cir. 2002)).

The ACH Opioids Litigation has been pending for nearly eight years. Ex. 7, Burns Dec. at ¶¶ 4-6. The Settling Parties and courts in this and other jurisdictions will likely expend significant additional time, resources, and costs to proceed to trial, and the inevitable appeals will likely extend years into the future. *See Acevedo*, 2019 WL 6712298, at *3 (“Many more months and significant costs

would be required for the parties and Court to complete the pretrial proceedings[.] ... In short, the ultimate resolution of this action on the merits (and in turn, compensation to Settlement Class Members) via trial and appeal is indefinite at best.”); *Chavez Rodriguez*, 2020 WL 3288059, at *3 (observing that “the costs and time of moving forward in litigation would be substantial”); *Lucas*, 234 F.R.D. at 694 (“If this case were to be litigated, in all probability it would be many years before it was resolved.”). Considering the complex legal and factual issues associated with continued litigation, there is an undeniable and substantial risk that, after years of continued litigation, the proposed Settlement Classes could receive an amount significantly less than the over \$651 million provided by the Settlement Agreements, or nothing at all, for their claims against the Settling Defendants.

“By contrast, the proposed settlement agreement[s] provide the class[es] with substantial, guaranteed relief” now and in the future. *Acevedo*, 2019 WL 6712298, at *3 (D.N.M. Dec. 10, 2019) (quoting *Lucas*, 234 F.R.D. at 694 and citing *McNeely*, 2008 WL 4816510, at *13 (finding that the class “is better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted.”)). “[The] immediate recovery in this case outweighs the time and costs inherent in complex [] litigation, especially when the prospect is some recovery versus no recovery.” *In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 691 (D. Colo. 2014); *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 625 (D. Colo. Aug. 10, 1976); *accord Tennille v. W. Union Co.*, No. 09-cv-00938-JLK-KMT, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014), *appeal dismissed*, 809 F.3d 555 (10th Cir. 2015). Thus, the recoveries under the Settlement Agreements, particularly when viewed in the context of the risks, costs, delay, and the uncertainties of further proceedings, weighs in favor of preliminary approval of the Settlements.

4. The Proposed Methodology for Distributing Relief is Effective

The proposed distribution method for these common-fund settlements will be highly effective. The proposed Notice and Claims Administrator, A.B. Data, will provide direct notice by

email or First-Class Mail to all Settlement Class Members identified through reasonable efforts and appearing on a list of over 5,800 hospitals providing emergency services. *See* Ex. 5, Schachter Dec. at ¶ 6. The proposed Notice and Claims Administrator will also conduct targeted notice through relevant media. *Id.* at ¶¶ 9-14. In addition, a case-designated website will be created where settlement-related and other key documents will be posted, including the Settlement Agreements, Notices, Proofs of Claim (Claim Forms), and Preliminary Approval Orders. *Id.* at ¶ 15.

Plaintiffs propose a fair and orderly claims administration process in which Settlement Class Members who wish to participate in one or more of the Settlements will complete and submit Proofs of Claim in accordance with the instructions contained therein. *See id.* ¶¶ 15-18; Plan of Allocation, attached to Ex. 1, Distributors Settlement Agreement, as associated Exhibit C. The Settlement Administrator will distribute the Net Settlement Funds to Authorized Claimants under a Court-approved Plan of Allocation. *See* Plan of Allocation, attached to Ex. 1, Distributors Settlement Agreement, as associated Exhibit C. The Plan of Allocation proposed here was prepared with information provided by Plaintiffs' experts, in consultation with the proposed Special Master, the Hon. Thomas Hogan, and is consistent with the ACH plans of allocation developed in the Purdue Pharma bankruptcy proceedings (Case No. 19-23649), and utilized thereafter in the Mallinckrodt, plc (Case No. 20-12522) and Endo (Case No. 22-22549) bankruptcy proceedings. Therefore, Plaintiffs' proposed methodology for distributing relief is effective.

5. Attorneys' Fees and Expenses

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). The Notice provides that Settlement Class Counsel will apply to the Court for an award of attorneys' fees in an amount up to one-third of the Settlement Amounts, plus payment of Plaintiffs' counsel's expenses incurred in connection with the

underlying litigation, plus interest earned on these amounts at the same rate as earned by the Settlement Funds.

Settlement Class Counsel's anticipated fee request is well within the range that other courts in this District and the Tenth Circuit have approved in complex class actions. *See, e.g., Cisneros*, 2022 WL 2304146, at *8 (approving attorneys' fees amounting to "one-third of the gross settlement amount" and explaining that "a contingent fee of one-third of the settlement amount in a class action is standard in this Court and other district courts in the Tenth Circuit."); *Anderson Living Tr.*, 2021 WL 3076910, at *7, *9 (approving attorneys' fees "constituting 40% of the settlement fund"); *Montgomery*, 2021 WL 1339305, at *7 (approving of attorney' fees amounting to "approximately 31.47% of the settlement fund"); *Acevedo*, 2019 WL 6712298, at *4 (approving attorneys' fees amounting to "33.33% of the gross recovery"); *In re Thornburg Mortg., Inc.*, 912 F. Supp. 2d at 1257 ("Fees in the range of 30-40% of any amount recovered are common in complex and other cases taken on a contingency fee basis.").

6. The Settling Parties Have No Additional Agreement

Rule 23(e)(2)(C)(iv) requires the disclosure of any other agreements. Plaintiffs do not have any additional agreements with any of the Settling Defendants.

7. Settlement Class Members Are Treated Equitably

The final factor, Rule 23(e)(2)(D), looks at whether certified Settlement Class Members are treated equitably. As reflected in the Plan of Allocation, attached to Ex. 1, Distributors Settlement Agreement, as associated Exhibit C, Settlement Class Members are treated equitably here. The Plan of Allocation provides all Settlement Class Members the opportunity to submit a claim for an expedited Quick Pay amount. *See, e.g., Plan of Allocation, Ex. 1, Distributors Settlement Agreement, attached as Exhibit C thereto, at 3.* In the alternative, all Settlement Class Members may elect to participate in a more detailed damages calculation and allocation process utilizing objective factors

detailed in the Plan of Allocation for one or more Settlements. *Id.* at 3-4. The Plan of Allocation does not discriminate among Settlement Class Members, treating all Settlement Class Members fairly.

8. The Settlements Satisfy the Remaining Factor Considered by Courts in the Tenth Circuit

The final, additional factor courts in the Tenth Circuit consider is “the judgment of the parties that the settlement is fair and reasonable.” *Cisneros*, 2022 WL 2304146, at *11. “Under this factor, ‘the recommendation of a settlement by experienced plaintiffs['] counsel is entitled to great weight.’” *Id.* (internal citations omitted).

Proposed Settlement Class Counsel—all senior attorneys at law firms with considerable experience in complex class actions—only agreed to settle the ACH Opioids Litigation after extensive investigation and rigorous arm’s-length negotiations. *Ex. 7, Burns Dec. at ¶ 10.* Additionally, as noted above, proposed Settlement Class Representatives and Settlement Class Counsel have compared the substantial recovery the certified Settlement Classes will receive from the Settlements against the risks, delays, and uncertainties of continued litigation and appeals. Proposed Settlement Class Representatives and Settlement Class Counsel believe the Settlements are fair, adequate, and reasonable and should be approved. The Settling Defendants likewise believe that the Settlement to which each is a party should be approved. Because the above factors weigh in favor of the Settlements, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlements.

III. THE PROPOSED FORM AND METHOD OF PROVIDING NOTICE TO THE SETTLEMENT CLASSES ARE APPROPRIATE

A. The Court Should Preliminarily Approve the Proposed Notice of Settlements

Rule 23(c)(2)(B) requires that notice in a Rule 23(b)(3) class action constitute “the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). In terms of content, a settlement notice need only be “reasonably calculated, under all of the circumstances, to apprise [the] interested parties of the

pendency of the [settlement proposed] and [to] afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950); *see also, e.g., Fager v. Centurylink Commc’ns, LLC*, No. 14-CV-00870 JCH/KK, 2015 WL 13298517, at *6 (D.N.M. June 25, 2015), *aff’d sub nom. Fager v. CenturyLink Commc’ns, LLC*, 854 F.3d 1167 (10th Cir. 2016). “The hallmark of the notice inquiry . . . is reasonableness.” *Lucas*, 234 F.R.D. at 696.

Plaintiffs have submitted to the Court for approval the Long Form Notice and Summary Notice that will be provided to the certified Settlement Classes. In accordance with Rule 23(c)(2)(B), the proposed Notice will fully inform Settlement Class Members about the underlying litigation, the proposed Settlement Agreements, and the facts they need to make informed decisions about their rights and options in connection with the Settlement Agreements. Specifically, the Notice clearly describes: (i) the nature of each of the (proposed) Settlements and the (proposed) Plan of Allocation; (ii) the nature and extent of the release of claims; (iii) Settlement Class Counsel’s intent to request attorneys’ fees, and expenses; (iv) the method for submitting a Proof of Claim for each Settlement; (v) the procedure and timing for objecting to the Settlements; (vi) the date, time, and place of the Final Fairness Hearing; and (vii) ways to receive additional information about this Litigation and the proposed Settlements. The Notices also provide Settlement Class Members with a toll-free telephone number, email address, and a Settlement website where Settlement Class Members may obtain additional information. Thus, the Notices are reasonably calculated to apprise the interested parties of the pendency of the Settlements and afford them a fair opportunity to object. As such, the form and manner of the proposed Notice meets the requirements of both Rule 23 and due process. The Court should approve the Notices and the manner through which they will be delivered and communicated to the certified Settlement Classes.

B. Appointment of A.B. Data and Cherry Bekaert Advisory LLC as the Notice and Claims Administrators Is Proper

Plaintiff and proposed Settlement Class Representatives request that the Court appoint A.B. Data and Cherry Bekaert Advisory LLC (“Cherry Bekaert”) to serve as the Notice and Claims Administrator with respect to the Settlements, which includes providing notice of the Settlements and administering the claims process and distribution of the Net Settlement Funds. A.B. Data is a highly experienced and well-qualified notice and claims administrator. *See* Exhibit 5, Schachter Dec. Proposed Settlement Class Counsel have worked favorably with A.B. Data and are confident in A.B. Data’s ability to continue the successful administration of notice and the Settlements for this Litigation.

As detailed in the Plan of Allocation, Cherry Bekaert developed the Acute Care Hospital Allocation Model and Algorithm to permit the computation of Settlement Class Member damages and subsequent allocation under the Settlement Agreements (the “Model”). *See, e.g.*, Plan of Allocation, Ex. 1, Distributors Settlement Agreement, attached as Exhibit C thereto, at 3. The Model was first approved and utilized to determine acute care hospital claimant allocations in Purdue Pharma, Mallinckrodt, plc, and Endo bankruptcy proceedings. *Id.* Cherry Bekaert will utilize the Model in these proceedings to analyze and process Settlement Class Member claims, as detailed in the Plan of Allocation. *Id.* at 3-5.

C. Appointment of the Hon. Thomas Hogan (Ret.) as Special Master Is Proper

Plaintiff and proposed Settlement Class Representatives request that the Court appoint the Hon. Thomas Hogan (Ret.) as Special Master to oversee the allocation process. Retired Judge Hogan is a former Circuit Judge for Cook County, Illinois. He is a highly respected and experienced mediator and arbitrator. Ex. 7, Burns Dec. at ¶ 11. Retired Judge Hogan will oversee and administer the Plan of Allocation, including determining the Allocated Amounts due to Settlement Class Members (in cooperation with Cherry Bekaert) and resolving any questions or disputes regarding the same. *See, e.g.*, Ex. 1, Distributors Settlement Agreement, at 7. Judge Hogan has performed the same function while

serving as the Hospital Trustee in the Purdue Pharma, Mallinckrodt, plc, and Endo bankruptcy proceedings.

D. Appointment of Pinnacle Bank as Escrow Agent Is Proper

The Settling Parties request the Court appoint Pinnacle Bank as Escrow Agent. Pinnacle Bank is a well-known and highly respected bank providing consumers, corporations, governments, and institutions with a broad range of financial services. Proposed Settlement Class Counsel in this case have worked favorably with Pinnacle Bank in the past. Based on Pinnacle Bank’s experience and familiarity with performing the services of an escrow agent, proposed Settlement Class Counsel are confident Pinnacle Bank will properly perform the duties of Escrow Agent as ordered by the Court.

E. Establishment of the Respective Escrow Accounts as “Qualified Settlement Funds” Is Proper.

As set forth in the Settlement Agreements⁸ and the attached escrow agreements, Exhibits 9, 10, 11, and 12, deposited funds qualify as “qualified settlement funds” within the meaning of Treasury Regulations 26 CFR § 1.468B-1. The Escrow Accounts have been established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event (or related series of events) that has occurred and that has given rise to at least one claim asserting liability arising out of tort, breach of contract, or violation of law in accordance with 26 CFR § 1.468B-1(c)(2)(ii). Moreover, each Escrow Account’s assets are physically segregated from the other assets of the transferor (and related persons) in accordance with § 1.468B-1(c)(3).

F. Proposed Schedule of Settlement Events

If the Court grants preliminary approval of the proposed Settlements, the Settling Parties respectfully submit the following proposed procedural schedule, as detailed in the proposed Preliminary Approval Orders:

⁸ Section IV.C of the Distributors Settlement Agreement; Section IV.C of the Janssen Settlement Agreement; Section IV.E of the Teva Settlement Agreement; and Section IV.D of the Allergan Settlement Agreement.

DATE / DAYS (days are calendar days unless otherwise specified)	EVENT
, 2024	Plaintiffs file Motion for Preliminary Approval of Settlements
, 2024 (10 days after the Settlement Agreements are filed with the Court)	Settling Defendants provide Class Action Fairness Act Notice to State Attorneys General
, 2024	Hearing on Preliminary Approval of the Settlements [Date and Time TBD by Court]
No later than 21 days following entry of the Preliminary Approval Order	Settlements Notice Program Begins (“Notice Date”)
30 days after Notice Date	Plaintiffs file Motion for Final Approval of Settlements, Attorneys’ Fees, Expenses, and Service Awards
45 days after Notice Date	Deadline for Settlement Class Members to submit Opt-Outs to the Notice Administrator, Interim Settlement Class Counsel, and Settling Defendants (“Opt-Out Deadline”)
45 days after Notice Date	Objection Deadline and Deadline for State Attorneys General to file Comments/Objections
7 days after Opt-Out Deadline	Deadline for Notice and Claims Administrators to provide Opt-Out Report to Settling Defendants and Interim Settlement Class Counsel
15 business days after receipt of Opt-Out Report	Deadline for Settling Defendants to exercise Walk-Away Right
75 days after Notice Date	Plaintiffs file Response to Objections for Final Approval of Settlements, Attorneys’ Fees, Expenses, and Service Awards
, 2025	Fairness Hearing on Final Approval of Settlements, Attorneys’ Fees, Expenses, and Service Awards [Date and Time TBD by Court, provided that the Fairness Hearing shall not be scheduled any earlier than the later of: (1) one hundred twenty (120) days following the Motion for Preliminary Approval; (2) five (5) days following the deadline for Settling Defendants to exercise their Walk-Away Right; or (3) no earlier than ninety (90) days following the entry of the Preliminary Approval Order.]

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant Plaintiffs’ motion for preliminary approval and enter the agreed proposed Preliminary Approval Orders, attached as Exhibit F to each of the Settlement Agreements and submitted in Word format herewith, that will:

1. provisionally certify the Settlement Classes for settlement purposes only;
2. preliminarily approve the Settlement Agreements;
3. appoint Plaintiff and other specified Acute Care Hospitals as Settlement Class Representatives for each of the Settlement Classes;
4. appoint John W. (“Don”) Barrett, Warren Tavares Burns, Steven A. Martino, Robert A. Clifford, Charles J. LaDuca, and Stephen B. Farmer as Interim Settlement Class Counsel for each of the Settlement Classes;
5. approve the form and manner of the proposed Notice to the Settlement Classes;
6. appoint A.B. Data and Cherry Bekaert Advisory, LLC as Notice and Claims Administrators;
7. appoint the Hon. Thomas Hogan (Ret.) as Special Master;
8. appoint Pinnacle Bank as Custodian/Escrow Agent;
9. establish the respective Escrow Accounts as Qualified Settlement Funds;
10. set a Hearing on Final Approval of Settlements, Attorneys’ Fees, Litigation Expenses, and Notice and Administrative Costs (“Final Fairness Hearing”) and associated deadlines in anticipation of that hearing;
11. grant a stay of all proceedings in any forum brought by Releasers as to the Settling Defendants, as specified in the Settlement Agreements, and directing Settlement Class Representatives to file motions to sever and stay the Other Actions brought by the Settlement Class Representatives as against the Settling Defendants, to the extent not already filed; and
12. enjoin all Settlement Class Members from filing or prosecuting any new proceedings for Released Claims, as specified in the Settlement Agreements, unless and until the Settlement Class Member has timely and validly excluded itself from the Settlement

Classes, beginning as of the date the exclusion becomes effective.

Dated: October 25, 2024

Respectfully submitted,

/s/ Warren T. Burns

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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2024, a true and correct copy of the foregoing document was electronically filed with the Clerk of Court and served to all counsel of record via the Court's CM/ECF system.

/s/ Warren T. Burns

Warren T. Burns