

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:
GENERIC PHARMACEUTICALS PRICING
ANTITRUST LITIGATION

MDL 2724
16-md-2724
HON. CYNTHIA M. RUFÉ

THIS DOCUMENT RELATES TO:

INDIRECT RESELLER PLAINTIFF ACTIONS

West Val Pharmacy et al. v. Actavis et al.

CIVIL ACTIONS:

17-cv-3822 / 16-PP-27243

West Val Pharmacy et al. v. Actavis et al.

18-cv-2533

Reliable Pharmacy et al. v. Actavis et al.

19-cv-6044

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this 23rd day of February, 2022 (“Execution Date”), by Breckenridge Pharmaceutical, Inc. (“Breckenridge”) and the Indirect Reseller Class Representatives (“IRPs” or “Independent Pharmacy & Hospital Plaintiffs”), both individually and on behalf of classes of independent pharmacies and hospitals that indirectly purchased generic drugs from Breckenridge (the “Settlement Classes”), as more particularly defined in Paragraph 13 below.

WHEREAS Independent Pharmacy & Hospital Plaintiffs are prosecuting the above-captioned actions, *West Val Pharmacy et al. v. Actavis et al.* (No. 17-cv-3822), *West Val Pharmacy et al. v. Actavis et al.* (No. 18-cv-2533), and *Reliable Pharmacy et al. v. Actavis et al.* (No. 19-cv-6044) (“Actions”), within the above-captioned *In re Generic Pharmaceuticals Pricing*

Antitrust Litigation, No. 16-md-2724 (E.D. Pa.) (“MDL Litigation”), on their own behalf and on behalf of the Settlement Classes;

WHEREAS, Independent Pharmacy & Hospital Plaintiffs allege that they were injured as a result of Breckenridge’s presumed participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate markets and customers for Drugs at Issue (as defined in Paragraph 7) in violation of Section 1 of the Sherman Act and various state antitrust, unfair competition, unjust enrichment, and consumer protection laws as set forth in the Independent Pharmacy & Hospital Plaintiffs’ Class Action Complaints filed in one or both of the Actions (“Complaints”);

WHEREAS, Breckenridge denies the IRPs’ allegations and has asserted defenses to IRP claims in the Actions;

WHEREAS, arm’s-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for Breckenridge, and this Agreement has been reached as a result of those negotiations;

WHEREAS, IRPs, through Settlement Class Counsel, have conducted an investigation into the facts and the law regarding the Actions and have concluded that resolving the claims against Breckenridge, according to the terms set forth below, is in the best interests of IRPs and the Settlement Classes for various reasons, including reasonable arguments presented by Breckenridge against the strength of the allegations against it contained in the Complaints, the fact that resolving these claims pursuant to this Agreement eliminates the costs and risks of pursuing claims against Breckenridge, and the payment of the Settlement Amount and the value of the Cooperation that Breckenridge has agreed to provide pursuant to this Agreement; and

WHEREAS, Breckenridge, despite its belief that it is not liable for the claims asserted and its belief that it has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Breckenridge with respect to Drugs at Issue based on the allegations in the Actions, as more particularly set out below.

NOW, THEREFORE, in consideration of the agreements and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Actions be settled, and dismissed on the merits with prejudice as to the Releasees and, except as hereinafter provided, without costs as to IRPs, the Settlement Classes, or Breckenridge, subject to the approval of the Court, on the following terms and conditions:

A. Definitions.

1. **“Class Representatives”** means those Settlement Class Members, as defined in Paragraph 15, below, who are named as plaintiffs in the Complaints.

2. **“Cooperation”** shall refer to those provisions set forth below in Paragraphs 34–43.

3. **“Cooperation Materials”** means any information, testimony, Documents (as defined below), or other material provided by Breckenridge under the terms of this Agreement.

4. **“Defendant”** means any party named as a defendant in the Actions at any time up to and including the date when the Court has entered a final order certifying the Settlement Classes described in Paragraph 13 and approving this Agreement under Federal Rule of Civil Procedure (“Rule”) 23(e).

5. **“Document”** is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 34(a), including, without limitation, electronically stored information. A draft or nonidentical copy is a separate Document within the meaning of this term.

6. **“State Damages Jurisdictions”** means Alabama, Arizona, California, Connecticut, the District of Columbia, Delaware, Florida, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.

7. **“Hospitals”** shall include facilities that provide inpatient medical treatment with overnight accommodations as well as urgent-care clinics.

8. **“Drugs at Issue”** means any formulation of any drug that is the subject of any allegation set forth in MDL No. 2724, *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, No. 16-md-2724 (E.D. Pa.).

9. **“Opt-Out Deadline”** means the deadline set by the Court for the timely submission of requests by Settlement Class Members to be excluded from the Settlement Classes.

10. **“Released Claims”** means the Claims described in Paragraphs 24–25.

11. **“Releasees”** shall refer to (i) Breckenridge; (ii) all of Breckenridge’s past and present direct and indirect parents, subsidiary companies, affiliates, and divisions, including their respective predecessors, successors, and assigns; and (iii) each and all of the present and former principals, partners, officers, directors, supervisors, employees, agents, stockholders, members, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the persons and entities listed in (i) and (ii). “Releasees” does not include any defendant in the MDL Litigation other than Breckenridge.

12. **“Releasers”** shall refer to the Class Representatives and the Settlement Class Members, as defined in Paragraph 13 below, and to their past and present officers, directors, supervisors, employees, agents, members, attorneys, parents, subsidiaries, divisions, affiliates,

principals, partners, insurers and all other persons, partnerships, or corporations with whom any of the former have been, or are now, affiliated and the predecessors, successors, heirs, executors, administrators, and assigns of any of the foregoing.

13. **“Settlement Class”** is defined as:

All dispensers of drugs (including hospitals and independent pharmacies) in the United States and its territories that purchased one or more of the Drugs at Issue directly from distributor Defendants AmerisourceBergen Corp., Cardinal, Red Oak, Harvard, H.D. Smith, McKesson, Morris & Dickson, or WBAD or their subsidiaries; and all dispensers of drugs (including hospitals and independent pharmacies) in the State Damages Jurisdictions that purchased one or more of the Drugs at Issue from any source other than the manufacturer Defendants from January 1, 2010 through the present.

This class excludes:

- (a) Defendants, their officers, directors, management, employees, subsidiaries, and affiliates;
- (b) entities owned in part by judges or justices involved in this action or any members of their immediate families;
- (c) all pharmacies owned or operated by publicly traded companies; and
- (d) all hospitals owned or operated by government entities.

14. **“Settlement Class Counsel”** shall refer to the attorneys and law firm:

Jonathan W. Cuneo
Peter Gil-Montllor

CUNEO GILBERT & LaDUCA, LLP
Suite 200
4725 Wisconsin Avenue, NW
Washington, DC 20016

15. **“Settlement Class Member”** means each member of the Settlement Classes who has not timely elected to be excluded from the Settlement Classes.

16. **“Settlement Amount”** shall be \$1,000,000.00, and the **“Settlement Fund”** shall be the Settlement Amount plus any income or accrued interest earned on that amount as set forth in Paragraph 27.

B. Approval of this Agreement and Dismissal of Claims Against Breckenridge.

18. IRPs and Breckenridge shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Court’s approval for the establishment of procedures (including the giving of class notice under Rules 23(c) and (e)) to secure the complete and final dismissal with prejudice of the Actions as to the Releasees only.

19. Within thirty (30) days after the execution of this Agreement, IRPs shall submit to the Court a motion seeking preliminary approval of this Agreement (“Preliminary Approval Motion”). The Preliminary Approval Motion shall include (i) the proposed form of an order preliminarily approving this Agreement and (ii) a proposed form of order and final judgment that shall include at least the terms set forth in Paragraph 21 below. The text of the foregoing items (i) and (ii) shall be agreed upon by IRPs and Breckenridge before the submission of the Motion.

20. IRPs, at a time to be decided in their sole discretion, and subject to Breckenridge’s review and comment, shall submit to the Court a motion for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to all Settlement Class Members identified by IRPs (“Notice Motion”). To mitigate the costs of notice, IRPs shall endeavor, if practicable, to disseminate notice of this settlement with notice of any other settlements reached in the MDL Litigation. The claims administrator shall be Gilardi & Co. The Notice Motion shall include a proposed form of, method for, and date of dissemination of notice. Breckenridge will be given an opportunity to review the proposed notice form, and IRPs will in good faith consider any comments or proposed edits from Breckenridge.

21. IRPs shall seek, and Breckenridge will not object unreasonably to, the entry of an order and final judgment in the Actions, the text of which IRPs and Breckenridge shall agree upon in advance. The terms of that proposed order and final judgment will include, at a minimum, the substance of the following provisions:

(a) certifying the Settlement Classes described in Paragraph 13, pursuant to Rule 23, solely for purposes of this settlement as Settlement Classes for the Actions;

(b) as to the Actions, approving finally this settlement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 and directing its consummation according to its terms;

(c) directing that all Releasors shall, by operation of law, be deemed to have released all Releasees from the Released Claims;

(d) as to Breckenridge, directing that the Actions be dismissed with prejudice and, except as provided for in this Agreement, without costs;

(e) reserving exclusive jurisdiction over the settlement and this Agreement, including the interpretation, administration, and consummation of this settlement, to the United States District Court for the Eastern District of Pennsylvania;

(f) determining under Rule 54(b) that there is no just reason for delay and directing that the judgment of dismissal in the Actions as to Breckenridge shall be final; and

(g) providing that (i) the Court's certification of the Settlement Classes is without prejudice to, or waiver of, the rights of any Defendant, including Breckenridge, to contest certification of any other class proposed in the MDL Litigation; (ii) the Court's findings in the Order shall have no effect on the Court's ruling on any motion to certify any class in the MDL Litigation or on the Court's rulings concerning any Defendant's motion; and (iii) no party may cite

or refer to the Court's approval of the Settlement Classes as persuasive or binding authority with respect to any motion to certify any such class or any Defendant's motion.

22. This Agreement shall become final when (i) the Court has entered a final order certifying the Settlement Classes described in Paragraph 13 and approving this Agreement under Rule 23(e) and has entered a final judgment dismissing the Actions with prejudice as to Breckenridge and without costs other than those provided for in this Agreement and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to Breckenridge described in (i) above has expired or, if appealed, approval of this Agreement and the final judgment in the Actions as to Breckenridge has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review and no other motion or pleading is pending in any court. It is agreed that the provisions of Rule 60 shall not be taken into account in determining the above-stated times. On the date that IRPs and Breckenridge have executed this Agreement, IRPs and Breckenridge shall be bound by its terms, and this Agreement shall not be rescinded except in accordance with Paragraphs 27(h) or 43 of this Agreement.

23. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, Documents, or discussions associated with them (including Cooperation Materials produced pursuant to Paragraphs 34–42), shall be deemed or construed to be an admission by Breckenridge or evidence of any violation of any federal, state, or local law of any jurisdiction in the United States or of any liability or wrongdoing whatsoever by Breckenridge, or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the MDL Litigation, and evidence thereof shall not be discoverable or used in any way, whether in the MDL Litigation or any other arbitration, action, or proceeding whatsoever against

Breckenridge. Neither this Agreement nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by Breckenridge, shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action, arbitration, or proceeding, except in a proceeding to enforce this Agreement or to defend against the assertion of Released Claims, or as otherwise required by law. Nothing in this Paragraph shall prevent IRPs from using and/or introducing into evidence Cooperation Materials produced pursuant to Section F, subject to the terms of the Protective Order and the limitations in those paragraphs, against any other Defendants in the MDL Litigation, or to develop and promulgate a plan of allocation and distribution. Notwithstanding any other provision of this Agreement, the parties and their counsel further agree that this Agreement and any of its terms and provisions, and any and all negotiations, documents, and discussions associated with them and any other statements made by counsel for Breckenridge in connection with or as part of this settlement, shall be governed by Federal Rule of Evidence 408. Nothing in this paragraph shall be construed to limit the use of this Agreement to enforce its terms.

C. Release, Discharge, and Covenant Not to Sue.

24. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final, as set out in Paragraph 22 of this Agreement, and in consideration of payment of the Settlement Amount, as specified in Paragraph 26 of this Agreement, into the Settlement Fund, and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, and causes of action, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively, or in any other capacity), under any federal, state, or local law of any jurisdiction in the United States and from any and all

claims, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively, or in any other capacity), that Releasors, or each of them, ever had, now have, or hereafter can, shall, or may ever have on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to (i) any conduct alleged in the Complaints and/or (ii) any act or omission of the Releasees (or any of them) concerning Drugs at Issue, including, but not limited to, any conduct and causes of action alleged or asserted or that could have been alleged or asserted in any class action or other complaint filed in the Actions (“Released Claims”), provided, however, that nothing herein shall release: (1) any claims made by Direct Purchaser Plaintiffs or Direct Action Plaintiffs regarding purchases of Drugs at Issue; (2) any claims made by End-Payor Plaintiffs relating to purchases by consumers of one or more Drugs at Issue; (3) any claims made by any State, State agency, or instrumentality or political subdivision of a State as to government purchases and/or penalties; (4) claims involving any negligence, personal injury, breach of contract, failure to deliver lost goods, damaged or delayed goods, product defect, securities, or similar claims relating to Drugs at Issue; (5) claims concerning any drug other than Drugs at Issue; (6) claims under laws other than those of the United States and the states thereof relating to purchases of Drugs at Issue made by any Releasor outside of the United States; (7) claims for damages under the state or local laws of any jurisdiction other than a State Damages Jurisdiction; and (8) claims under the federal, state, or local laws of any jurisdiction other than an Indirect Purchaser in the State Damages Jurisdictions. Releasors shall not, after the date of this Agreement, seek to establish liability against any Releasee as to, in whole or in part,

any of the Released Claims or conduct at issue in the Released Claims unless this Agreement is, for any reason, not finally approved or terminated.

25. In addition to the provisions of Paragraph 24 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, as set out in Paragraph 22 of this Agreement, any and all provisions, rights, and benefits as to their claims concerning Drugs at Issue conferred by § 1542 of the California Civil Code, which states:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party;

or by any equivalent law or statute of any state or territory of the United States, or principle of common law that is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those that he, she, or it knows or believes to be true with respect to the claims that are released pursuant to the provisions of Paragraph 24 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or noncontingent claim that Breckenridge and IRPs have agreed to release pursuant to Paragraph 24, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount.

26. Subject to the provisions hereof, and in full, complete, and final settlement of the Actions as provided herein, Breckenridge shall pay or cause to be paid the Settlement Amount of US\$1,000,000.00. The Settlement Amount shall be paid in U.S. dollars into an escrow account to be administered in accordance with the provisions of Paragraph 27 of this Agreement (“Escrow Account”) within thirty (30) days following the later of (i) entry of an order preliminarily

approving this Agreement and (ii) the date Breckenridge is provided with the account number, account name, and wiring-transfer information for the Escrow Account.

27. Escrow Account.

(a) The Escrow Account will be established at Huntington National Bank, with such Bank serving as escrow agent (“Escrow Agent”) subject to escrow instructions regarding investment types and reinvestment of income and proceeds mutually acceptable to Settlement Class Counsel and Breckenridge, such escrow to be administered by the Escrow Agent under the Court’s continuing supervision and control.

(b) The Escrow Agent shall cause the funds deposited in the Escrow Account to be invested in short-term instruments backed by the full faith and credit of the United States Government or fully insured in writing by the United States Government, or money market funds rated Aaa and AAA, respectively, by Moody’s Investors Service and Standard & Poor’s, invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then-current market rates. Breckenridge shall bear no risk related to the management and investment of the Settlement Fund.

(c) All funds held in the Escrow Account shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.

(d) IRPs and Breckenridge agree to treat the Settlement Fund as being at all times a qualified settlement fund within the meaning of Treasury Regulations § 1.468B-1. In addition, Settlement Class Counsel shall timely make such elections as necessary or advisable to

carry out the provisions of this Paragraph 27, including the relation-back election (as defined in Treasury Regulations § 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 Settlement Class Counsel 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 Agreement shall be interpreted in a manner that is consistent with the Settlement Amount being a “Qualified Settlement Fund” within the meaning of Treasury Regulations § 1.468B-1.

(e) For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the administrator of the Settlement Fund shall be Settlement Class Counsel. Settlement Class Counsel shall timely and properly file all information and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Regulations § 1.468B-2(k) (1)). Such returns (as well as the election described in Paragraph 27(d) above) shall be consistent with Paragraph 27(d) and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest, or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 27(f) hereof.

(f) All (i) taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Breckenridge or any other Releasee with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a qualified settlement fund for federal or state income tax purposes (“Taxes”) and (ii) expenses and costs incurred in connection with the operation and implementation of Paragraphs 27(d) through

27(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in Paragraph 27(e) (“Tax Expenses”)) shall be paid out of the Settlement Fund.

(g) Neither Breckenridge nor any other Releasee nor their respective counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l)(2)). Breckenridge shall not be responsible or have any liability therefor. IRPs and Breckenridge agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of Paragraphs 27(d) through 27(f).

(h) If this Agreement does not receive final Court approval, including final approval of the Settlement Classes as defined in Paragraph 13, or if the Actions are not certified as a class action for settlement purposes, then all amounts paid by Breckenridge into the Settlement Fund (other than costs expended or incurred in accordance with Paragraphs 27 and 29) shall be returned to Breckenridge from the Escrow Account by the Escrow Agent, along with any interest accrued thereon, within thirty (30) calendar days of the Court’s final determination denying final approval of the Agreement and/or Settlement Classes.

28. Exclusions from the Settlement Classes.

Subject to Court approval, any person or entity seeking exclusion from the Settlement Classes must timely file a written request for exclusion by the Opt-Out Deadline. Any person or entity that files such a request shall be excluded from the Settlement Classes and shall have no rights with respect to this settlement. Subject to Court approval, a request for exclusion that does not comply with all of the provisions set forth in the applicable Court-approved notice of settlement to be disseminated to the members of the Settlement Classes will be invalid, and the person(s) or entity(ies) serving such an invalid request shall be deemed Settlement Class Member(s) and shall be bound by the Settlement Agreement upon final approval. Settlement Class Counsel shall, within ten (10) business days of the Opt-Out Deadline, provide Breckenridge with a list and copies of all opt-out requests it receives in the Actions and shall file with the Court a list of all Settlement Class Members who timely and validly opted out of the settlement.

(a) Subject to Court approval, any member of the Settlement Classes who submits a valid and timely request for exclusion from the Settlement Classes will not be a Settlement Class Member and shall not be bound by the terms of this Agreement. Breckenridge reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether any excluded member of the Settlement Classes is an indirect purchaser of Drugs at Issue or has standing to bring any claim against Breckenridge.

(b) Subject to Court approval, in the written request for exclusion, the member of the Settlement Classes must state his, her, or its full name, street address, and telephone number. Further, the member of the Settlement Classes must include a statement in the written request for exclusion explaining why he, she, or it wishes to be excluded from the Settlement Classes. Any member of the Settlement Classes that submits a written request for exclusion may also identify

the number, the dollar volume, and information sufficient to show the purchases of Drugs at Issue and the prices paid as requested in the notice to the Settlement Classes as provided in Paragraph 20.

(c) Breckenridge or Settlement Class Counsel may dispute an exclusion request, and the parties shall, if possible, resolve the disputed exclusion request by agreement and shall inform the Court of their position and, if necessary, obtain a ruling thereon within thirty (30) days of the Opt-Out Deadline.

(d) Within ten (10) business days following the sooner of the Opt-Out Deadline and, if applicable, the 30-day exclusion request dispute period described in subparagraph (c) of this paragraph, and in accordance with the terms of this paragraph, or as soon thereafter as practicable, the parties shall determine the total number of persons or entities excluded from the Settlement Classes pursuant to the terms of this paragraph. Breckenridge shall, in its sole discretion, have the option to rescind this Agreement in its entirety if a specified number of potential members of the Settlement Classes opt out of the Settlement Class, as set forth in a confidential letter that shall be filed with the Court under seal. Breckenridge expressly reserves all rights and defenses if this Agreement does not become final.

29. Payment of Expenses.

(a) Breckenridge agrees to permit a reasonable amount of the Settlement Fund, not to exceed \$250,000, to be used toward notice to the Settlement Classes. The notice and administration expenses are not recoverable if this settlement does not become final or is terminated to the extent such funds have actually been expended or incurred for notice and administration costs. Other than as set forth in Paragraphs 27 and 29, Breckenridge shall not be liable for any of the costs or expenses of the litigation of the Actions, including attorneys' fees, fees and expenses of expert witnesses and consultants, and costs and expenses associated with

discovery, motion practice, hearings before the Court or Special Master, appeals, trials, or the negotiation of other settlements, or for class administration and costs.

(b) To mitigate the costs of notice and administration, IRPs shall use their best efforts, if practicable, to disseminate notice with any other settlements reached with other defendants in the MDL Litigation and to apportion the costs of notice and administration on a pro rata basis across the applicable settlements.

E. The Settlement Fund.

30. Releasors shall look solely to the Settlement Fund for settlement and satisfaction against the Releasees of all Released Claims and shall have no other recovery against Breckenridge or any Releasees for any Released Claims.

31. After this Agreement becomes final within the meaning of Paragraph 22, the Settlement Fund shall be distributed in accordance with a plan to be submitted to the Court at the appropriate time by Settlement Class Counsel, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration except as expressly otherwise provided in Paragraph 29 of this Agreement.

32. IRPs and Settlement Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses and costs as provided by Court Order. Breckenridge and the other Releasees shall not be liable for any costs, fees, or expenses of any of IRPs or the Settlement Classes' 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.

33. Settlement Class Counsel's Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards for Class Representatives.

(a) Settlement Class Counsel may, at a time to be determined in its sole discretion after preliminary approval, submit an application or applications to the Court ("Fee and Expense Application") for (i) an award of attorneys' fees plus (ii) reimbursement of past expenses and anticipated expenses incurred in connection with prosecuting the Actions and incentive awards, plus interest on such attorneys' fees, costs, and expenses at the same rate and for the same period as earned by the Settlement Fund (until paid), as may be awarded by the Court ("Fee and Expense Award"). Settlement Class Counsel reserves the right to make additional applications for Court approval of fees and expenses incurred and reasonable incentive awards, but in no event shall Breckenridge or any other Releasees be responsible to pay any such additional fees and expenses except to the extent they are paid out of the Settlement Fund.

(b) Subject to Court approval, IRPs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees and past, current, or future litigation expenses and incentive awards. Attorneys' fees and expenses awarded by the Court shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or award of expenses is reduced or reversed, or in the event the Agreement is rescinded or terminated pursuant to Paragraph 27(h) or Paragraph 50.

(c) The procedure for and the allowance or disallowance by the Court of the application by Settlement Class Counsel for attorneys' fees, costs, and expenses and incentive awards for class representatives to be paid out of the Settlement Fund is not part of this Agreement and is 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 affect the finality of the final approval of the settlement.

(d) Neither Breckenridge nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Settlement Class Counsel and/or IRPs of any Fee and Expense Award in the Actions.

(e) Neither Breckenridge nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Settlement Class Counsel, IRPs, and/or any other person who may assert some claim thereto of any Fee and Expense Award that the Court may make in the Actions.

F. Cooperation.

34. In return for the release and discharge provided herein, Breckenridge agrees to pay the Settlement Amount and further agrees to use its best efforts to provide satisfactory and timely Cooperation, as set forth specifically in Paragraphs 34–42 below, until the later of the entry of the final judgment or judgments with respect to all Defendants in the Actions or dismissal with prejudice of those defendants and when such judgments or dismissal becomes “final” as set forth in Paragraph 22. Cooperation will take place consistent with the timing set forth specifically below, and in a manner that is in compliance with Breckenridge's obligations to government entities. Breckenridge shall not be required to produce any Documents protected by the work product doctrine, attorney–client privilege, common-interest privilege, joint-defense privilege, or any other

applicable doctrine or privilege; or disclosure of which is prohibited by any relevant law (including, but not limited to, foreign laws), government entities, or court order (“Protected Documents”).

35. Continued Productions. In the event that Breckenridge produces Documents, or provides declarations or written responses to discovery to any party or nonparty in the actions in the MDL Litigation, concerning or relating to the IRP Actions (“Relevant Production”), Breckenridge shall produce all such Documents, declarations, or written discovery responses to IRPs contemporaneously with making the Relevant Production to the extent such Documents, declarations, or written discovery responses have not previously been produced by Breckenridge to IRPs. In addition, Breckenridge shall provide the IRPs with all cooperation it provides pursuant to any settlement agreement with the State Attorneys General, the Direct Purchaser Plaintiffs, and the End-Payor Plaintiffs. Breckenridge will use reasonable best efforts to complete the production of any preexisting transactional data already requested as of the date of this Agreement. To the extent that such cooperation includes any attorney proffer, witness interviews, or depositions of witnesses in addition to those already provided for in Paragraph 34, Settlement Class Counsel shall be permitted to attend and/or participate in such attorney proffer, witness interviews, or depositions. All such additional Cooperation shall be coordinated, to the extent reasonably practicable, between Settlement Class Counsel and counsel for the State Attorneys General, the Direct Purchaser Plaintiffs, the End-Payor Plaintiffs, and the Direct Action Plaintiffs, or such other party whom such cooperation is provided pursuant to a settlement agreement. IRPs’ receipt of, or participation in, cooperation provided by Breckenridge shall not in any way limit IRPs’ entitlement to receive Cooperation as set forth in this Section F, including, but not limited to, attorney proffers, witness interviews, and depositions.

36. Depositions. This Agreement does not restrict Settlement Class Counsel from attending and/or participating in any deposition in the MDL Litigation. Settlement Class Counsel may attend and/or participate in any depositions of Breckenridge's witnesses. In the event IRPs have settled with all Defendants in an Action, IRPs will forgo participating in depositions of Breckenridge witnesses scheduled by other plaintiff groups in that Action provided that if (1) this Agreement does not receive Final Approval or (2) any other settlement in that Action does not receive final approval, then IRPs may, at a later date, take depositions of any Breckenridge witnesses who were previously deposed in that Action, subject to the limitations of this Paragraph and the provisions of any pertinent Court Order governing depositions. Subject to the foregoing, nothing herein shall alter, limit, or otherwise affect rights of IRPs to take depositions of Breckenridge employees subject to Paragraph 33(a) of this Agreement.

37. Authentication. In addition to its Cooperation obligations set forth herein, Breckenridge agrees to produce through affidavit(s) and/or declaration(s), in Settlement Class Counsel's discretion, representatives qualified to authenticate, establish as business records, or otherwise establish any other necessary foundation for admission into evidence of any Documents or transactional data produced or to be produced by Breckenridge. Settlement Class Counsel agrees to use its best efforts to obtain stipulations that would avoid the need to call Breckenridge witnesses at trial for the purpose of obtaining such evidentiary foundations.

38. IRPs and Settlement Class Counsel agree they will not use the information provided by Breckenridge or the Releasees or their representatives under this Section for any purpose other than the prosecution of the Actions, provided they do not employ such information against Breckenridge, and will not use it beyond what is reasonably necessary for the prosecution of the Actions or as otherwise required by law. IRPs can, however, use such information if it is otherwise

available. All Documents and other information provided pursuant to this Agreement will be deemed “Highly Confidential,” as said designation is defined in the Protective Order entered in the MDL Litigation. IRPs shall certify destruction and/or deletion of all Cooperation Materials and information if the Settlement Classes are not certified, if the Actions are finally resolved in their entirety, or if the Agreement is terminated by IRPs in accordance with this Agreement. All Cooperation shall be coordinated so as to avoid all unnecessary duplication and expense, shall otherwise be reasonable, and shall not impose undue burden and expense on Breckenridge.

39. Breckenridge’s obligations to provide Cooperation shall not be affected by the releases set forth in this Settlement Agreement. Unless this Agreement is rescinded, disapproved, or otherwise fails to take effect, Breckenridge’s obligations to provide Cooperation under this Agreement shall continue only until otherwise ordered by the Court, or the date that final judgment has been entered in all Actions against all Defendants. For purposes of this Paragraph, the term “final” shall have the same meaning set forth in Paragraph 22.

40. In the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Classes as defined in Paragraph 13, or in the event that it is terminated by either party under any provision herein, the parties agree that neither IRPs nor Settlement Class Counsel shall be permitted to introduce into evidence against Breckenridge, at any hearing or trial, or in support of any motion, opposition, or other pleading in the Actions or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Actions, any Documents provided by Breckenridge and/or the other Releasees, their counsel, or any individual made available by Breckenridge pursuant to Cooperation (as opposed to from any other source or pursuant to a court order), or any other material provided by Breckenridge as part of the Cooperation. This limitation shall not apply to any discovery of

Breckenridge which Settlement Class Counsel participates in as part of the MDL Litigation. Notwithstanding anything contained herein, IRPs and the Settlement Classes are not relinquishing any rights to pursue discovery against Breckenridge in the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Classes as defined in Paragraph 22, or in the event that it is terminated by either party under any provision herein.

41. Breckenridge and other Releasees need not respond to formal discovery requests from IRPs or otherwise participate in the Actions during the pendency of this Agreement, with the exception of the Cooperation provisions set forth in Paragraphs 34–42. Other than to enforce the terms of this Agreement, neither Breckenridge nor IRPs shall file motions against the other, in the Actions, during the pendency of this Agreement.

42. If Settlement Class Counsel believes that Breckenridge or any current or former employee, officer, or director of Breckenridge has materially failed to cooperate under the terms of this Agreement, Settlement Class Counsel may seek an Order from the Court compelling such Cooperation. Nothing in this provision shall limit in any way Breckenridge’s ability to defend the level of Cooperation it has provided or to defend its compliance with the terms of the Cooperation provisions in this Agreement.

G. Rescission If This Agreement Is Not Approved or Final Judgment Is Not Entered.

43. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify the Settlement Classes in accordance with the specific Settlement Class definitions set forth in this Agreement, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 22 of this Agreement, or if the Court enters the final judgment and appellate review is sought and, on such review, such final judgment is not affirmed in its entirety, then Breckenridge and IRPs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. Written notice of the exercise

of any such right to rescind shall be made according to the terms of Paragraph 60. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees and expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

44. In the event that this Agreement does not become final as set forth in Paragraph 22, or this Agreement otherwise is terminated pursuant to Paragraph 43, then this Agreement shall be of no force or effect and any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to Breckenridge less only disbursements made in accordance with Paragraphs 27 and 29 of this Agreement. Breckenridge expressly reserves all rights and defenses if this Agreement does not become final.

45. Further, and in any event, IRPs and Breckenridge agree that this Agreement, whether or not it shall become final, and any and all negotiations, Documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of (i) any violation of any statute or law or of any liability or wrongdoing whatsoever by Breckenridge, or the other Releasees, to be used against Breckenridge, or of (ii) the truth of any of the claims or allegations contained in the Complaints or any other pleading filed in the MDL Litigation, to be used against Breckenridge, and evidence thereof shall not be discoverable or used in any way, whether in the MDL Litigation or in any other action or proceeding, against Breckenridge. Nothing in this Paragraph shall prevent IRPs from using Cooperation Materials produced by Breckenridge against any other defendants in any actions in the MDL Litigation.

46. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the relevant claims with respect to each Releasee as provided in this Agreement.

47. The parties to this Agreement contemplate and agree that prior to final approval of the settlement as provided for in Paragraphs 18–22 hereof, appropriate notice (1) of the settlement and (2) of a hearing at which the Court will consider the approval of this Agreement will be given to the Settlement Classes.

H. Miscellaneous.

53. Breckenridge shall submit all materials required to be sent to appropriate federal and state officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

54. This Agreement does not settle or compromise any claim by IRPs or any Settlement Class Member asserted in the Complaints or, if amended, any subsequent complaint against any Defendant or alleged coconspirator other than Breckenridge and the other Releasees. All rights against such other Defendants or alleged coconspirators are specifically reserved by IRPs and the Settlement Classes. All rights of any Settlement Class Member against any and all former, current, or future Defendants or coconspirators or any other person other than Breckenridge and the other Releasees for sales made by Breckenridge and Breckenridge's alleged illegal conduct are specifically reserved by IRPs and Settlement Class Members. Breckenridge's sales to the class and its alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Actions as a basis for damage claims and shall be part of any joint and several liability claims against other current or future Defendants in the Actions or other persons or entities other than Breckenridge and the other Releasees. Breckenridge shall not be responsible for any payment to IRPs other than the amount specifically agreed to in Paragraph 26 of this Agreement.

55. The United States District Court for the Eastern District of Pennsylvania shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and

agreement by IRPs and Breckenridge, including challenges to the reasonableness of any party's actions required by this Agreement. This Agreement shall be governed by and interpreted according to the substantive laws of the state of Pennsylvania without regard to its choice of law or conflict of laws principles. Breckenridge will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction.

56. This Agreement constitutes the entire, complete, and integrated agreement among IRPs and Breckenridge pertaining to the settlement of the Actions against Breckenridge and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations, and discussions, either oral or written, between IRPs and Breckenridge in connection herewith. This Agreement may not be modified or amended except in writing executed by IRPs and Breckenridge and approved by the Court.

57. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of IRPs and Breckenridge. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by IRPs or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasers. The Releasees (other than Breckenridge entities that are parties hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

58. This Agreement may be executed in counterparts by IRPs and Breckenridge, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

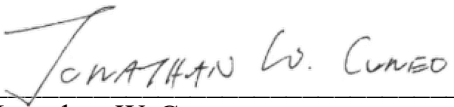
59. Neither IRPs nor Breckenridge shall be considered the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

60. Where this Agreement requires either party to provide notice or any other communication or Document to the other, such notice shall be in writing, and such notice, communication, or Document shall be provided by electronic mail or by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

61. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement subject to Court approval.

[signature pages follow]

Dated: February 25, 2022

A handwritten signature in black ink that reads "Jonathan W. Cuneo". The signature is written in a cursive style with a large initial 'J'.

Jonathan W. Cuneo

Peter Gil-Montllor

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Lead Counsel and Settlement Class Counsel

for the Indirect Reseller Plaintiffs

Dated: February 23, 2022



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