

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

In re Neurontin Antitrust Litigation

Master File No. 02-1390

THIS DOCUMENT RELATES TO:

Civil Action No. 02-1830

Civil Action No. 02-2731

LOUISIANA WHOLESALE DRUG
COMPANY, INC., MEIJER, INC. and
MEIJER DISTRIBUTION, INC., on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

PFIZER, INC. and WARNER-LAMBERT
CO.,

Defendants.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Settlement Agreement”) is made and entered into on April 17, 2014, by and between defendants Pfizer Inc. and Warner-Lambert Co. (collectively, “Defendants” or “Pfizer”), and plaintiffs Louisiana Wholesale Drug Company, Inc. (“LWD”), Meijer, Inc., and Meijer Distribution, Inc. (together, “Meijer”, and, with LWD, collectively, “Plaintiffs”) and the Class (as defined herein) in the class action, In re Neurontin Antitrust Litigation, Master Civil Action No. 02-1390 (FSH) (the “Class Action”). The “Class” is defined as follows:

All persons or entities in the United States that purchased Neurontin from Pfizer at any time during the period of December 11, 2002 through August 31, 2008 and who have purchased generic gabapentin. Excluded from the Class are Defendants and each of their respective parents, employees, subsidiaries, affiliates, and franchisees, and all government entities.

Also excluded from the Class are:

CVS Pharmacy Inc., Caremark, L.L.C., Rite Aid Corporation, Rite Aid HDQTRS Corp., Walgreen Co., American Sales Company, Inc., HEB Grocery Company LP, Safeway Inc., SuperValu, Inc., and The Kroger Co., in their own right as direct purchasers of Neurontin from Pfizer, and as assignees limited to their purchases of Neurontin from Class members.

WHEREAS, Plaintiffs have alleged that Defendants maintained and enhanced their monopoly power with respect to gabapentin anhydrous, a drug approved by the FDA for the treatment of epilepsy, in violation of the Sherman Act, 15 U.S.C. § 2, by, *inter alia*, maintaining their exclusivity for Neurontin, their branded gabapentin product, and thus delaying generic competition, through a multi-faceted overall scheme that included illegal off-label promotion, manipulation of the patent application process, violation of Hatch-Waxman Act procedures, repeated filing and maintenance of sham patent suits, and perpetration of fraud on the courts hearing those cases, and that Plaintiffs and other members of the Class incurred significant damages as a result;

WHEREAS, Defendants deny each and every one of Plaintiffs' allegations of unlawful or wrongful conduct, and deny that any conduct challenged by Plaintiffs caused any damage whatsoever, and have asserted a number of defenses to Plaintiffs' claims;

WHEREAS, Plaintiffs and Defendants agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Defendants or of the truth of any claim or allegation or a waiver

of any defenses thereto;

WHEREAS, arms'-length settlement negotiations have taken place between counsel for Plaintiffs and Defendants, and this Settlement Agreement, which embodies all of the terms and conditions of the settlement between Defendants and Plaintiffs (the "Settlement"), both individually and on behalf of the Class, has been reached, subject to the final approval of the United States District Court for the District of New Jersey (the "Court");

WHEREAS, Plaintiffs' counsel have concluded, after extensive discovery and investigation of the facts, and after carefully considering the circumstances of the Class Action, including the claims asserted in the complaints filed in these actions, and the possible legal and factual defenses thereto, that it would be in the best interests of the Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation, particularly complex litigation such as this, and to assure a benefit to the Class, and, further, that Plaintiffs' counsel consider the Settlement set forth herein to be fair, reasonable, and adequate and in the best interests of the Class; and

WHEREAS, Defendants have concluded, despite their belief that they are not liable for the claims asserted and that they have good defenses thereto, that it would be in their best interests to enter into this Settlement Agreement to avoid the uncertainties of litigation, and thereby avoid the risks inherent in complex litigation;

NOW THEREFORE, it is agreed by the undersigned, on behalf of Defendants, the Plaintiffs and the Class, that the Class Action and all claims of Plaintiffs and the Class be settled, compromised and dismissed with prejudice and, except as hereinafter provided, without costs as to Plaintiffs, the Class or Defendants, subject to the approval of the Court, on the following terms

and conditions:

1. **Reasonable Best Efforts to Effectuate This Settlement.** Counsel for the undersigned agree to recommend approval of this Settlement by the Court and to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to secure approval and to carry out the terms of this Settlement.

2. **Motion for Preliminary Approval.** Promptly following the execution of this Settlement Agreement by all parties hereto, Plaintiffs shall file with the Court a motion for preliminary approval of the Settlement. The motion for preliminary approval shall request the entry of a preliminary approval order substantially in the form of Exhibit A hereto (the “Preliminary Approval Order”), including: (i) the preliminary approval of the Settlement set forth in this Settlement Agreement as fair, reasonable and adequate and in the best interests of the Class; (ii) approval of the notice plan; (iii) a schedule for a hearing by the Court after the notice period has expired to approve the Settlement and to consider Plaintiffs’ counsel’s applications for attorneys’ fees and expenses and incentive awards as set forth in this Settlement Agreement; and (iv) a stay of all proceedings in the Class Action until such time as the Court renders a final decision regarding the approval of the Settlement. In the event that the Court preliminarily approves the Settlement, Plaintiffs shall, in accord with the Preliminary Approval Order, provide Class members with notice of the Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure in the form attached hereto as Exhibit B-1 and short-form notice of the Settlement for publication in the form attached hereto as Exhibit B-2. Plaintiffs’ counsel will recommend notice to the Class by means of (i) direct mail and (ii) publication in an industry

trade publication.

3. **Motion for Final Approval and Entry of Final Judgment.** If the Court preliminarily approves this Settlement Agreement, Plaintiffs shall submit a motion for final approval of this Settlement by the Court, after appropriate notice to the Class, and shall seek entry of a Final Judgment and Order substantially in the form attached hereto as Exhibit C (the “Final Judgment and Order”):

- a. finding this Settlement Agreement and its terms as being a fair, reasonable and adequate settlement as to Plaintiffs and the Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms;
- b. providing for payment of reasonable attorneys’ fees and reimbursement of costs and expenses from the Settlement Fund (as defined below) as described herein;
- c. providing for payment solely from the Settlement Fund of an incentive payment to Plaintiffs in the Class Action in addition to whatever monies they will receive from the Settlement Fund pursuant to a Court-approved plan of allocation;
- d. directing that the Class Action be dismissed with prejudice and, except as provided for herein, without costs;
- e. reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including the administration and consummation of this Settlement and the award of attorneys’ fees and reimbursement of expenses, and the payment of incentive awards to LWD and Meijer, if allowed by the Court; and
- f. directing that the judgment of dismissal shall be final and appealable.

4. **Finality of Settlement.** This Settlement Agreement shall become final upon the occurrence of all of the following:

- a. it is approved by the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure;

- b. entry, as provided for in paragraph 3 herein, is made of the Final Judgment and Order of dismissal with prejudice against Plaintiffs and the members of the Class; and
- c. the time for appeal from the Court's approval of this Settlement as described in subparagraph 4(a) hereof and entry of the Final Judgment and Order as described in subparagraph 4(b) hereof has expired or, if appealed, either such appeal shall have been dismissed prior to resolution by the Court or approval of this Settlement and the Final Judgment and Order 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.

5. **Settlement Fund.**

(a) Subject to the terms and conditions of this Settlement Agreement and the Escrow Agreement (as defined below), and in full, complete and final settlement of the Class Action, within twenty (20) business days after (1) receipt by Defendants of fully-executed copies of this Settlement Agreement and the Escrow Agreement and (2) entry by the Court of the Preliminary Approval Order without material change, Defendants shall deposit the Settlement Fund Amount (as defined below) into an escrow account (the "Escrow Account") held and administered by UBS AG, New York Branch (the "Escrow Agent"). The Settlement Fund Amount shall be an amount equal to the sum of One Hundred Ninety Million and no/100 Dollars (\$190,000,000.00) (the "Settlement Amount") plus the total amount of interest on the Settlement Amount at a rate of one percent (1%) per annum from March 14, 2014 to the date such amount is deposited in the Escrow Account (the "Interest Amount"). The Settlement Fund Amount deposited by Defendants into the Escrow Account shall be referred to as the "Settlement Fund."

(b) The Escrow Account shall be established and administered pursuant to the Escrow Agreement attached hereto as Exhibit D (the "Escrow Agreement"). It is intended that the Escrow Account be treated as a "qualified settlement fund" for federal income

tax purposes pursuant to Treas. Reg. § 1.468B-1 and that any taxes due as a result of income earned by the Settlement Fund will be paid from the Settlement Fund. Except as otherwise expressly permitted by paragraph 3(d)(4) of the Escrow Agreement, the Escrow Agent shall disburse funds from the Escrow Account only pursuant to and consistent with the express terms of this Settlement Agreement, the Preliminary Approval Order, the Final Judgment and Order, the Escrow Agreement, and as expressly authorized by any other applicable order of the Court. Interest earned by the Settlement Fund shall be for the benefit of the Class, less any tax imposed on such interest. The Settlement Fund shall be available for distributions to members of the Class upon the Settlement becoming final pursuant to paragraph 4 of this Settlement Agreement, subject to deductions for payments of: (1) reasonable attorneys' fees, costs and expenses approved by the Court (and any interest awarded thereon); (2) any Court-approved incentive award to Plaintiffs in the Class Action; (3) taxes payable on the Settlement Fund; and (4) any and all administrative and notice expenses associated with this litigation or the Settlement. The total consideration that Defendants will pay for this Settlement shall be the Settlement Fund Amount, which includes, without limitation, any amount payable as attorneys' fees, expenses and costs of Plaintiffs and the Class, any Court-approved incentive award to Plaintiffs, any taxes payable on the Settlement Fund, and payment of any and all administrative and notice expenses associated with this litigation or Settlement. No portion of the Settlement consideration shall constitute, or shall be construed as constituting, a payment in lieu of treble damages, fines, penalties, punitive damages or forfeitures.

6. **Full Satisfaction; Limitation of Interest and Liability.** Members of the Class shall look solely to the Settlement Fund for settlement and satisfaction against Defendants

of all claims that are released hereunder. Certain entities have opted out of the Class (the “Opt-outs”) and have asserted claims against Defendants at least in part based upon purported assignments to them by Class Members (the “Assigned Claims”). Copies of the opt-out letters on behalf of the Opt-outs are attached hereto as Exhibit E and Exhibit F. This Settlement Agreement does not affect or release the Assigned Claims as they have been asserted by the Opt-outs. However, only those particular entities that have been identified as the assignees shall have the right to pursue the Assigned Claims against Defendants. In the event that the Settlement becomes final pursuant to paragraph 4 herein, the Settlement Fund will fully satisfy any and all Released Claims as defined in paragraph 10 herein. Except as provided by order of the Court, no Class member shall have any interest in the Settlement Fund or any portion thereof. Defendants shall have no liability with respect to disbursements from the Settlement Fund pursuant to any Court-approved plan of allocation.

7. **Reimbursement of Costs, Fees and Expenses.** Plaintiffs and their counsel will be reimbursed and indemnified solely out of the Settlement Fund for all costs, fees and expenses including, but not limited to, the costs of notice of this Settlement to Class members and administration of the Settlement Fund. Defendants shall not be liable for any costs, fees or expenses of any of Plaintiffs’ respective attorneys, experts, advisors, agents and representatives, or for any costs, fees or expenses for notice, administration or other costs of implementing this Settlement, but all such costs, fees and expenses as approved by the Court shall be paid out of the Settlement Fund.

8. **Disbursement of the Settlement Fund.** If this Settlement Agreement becomes final pursuant to the provisions of paragraph 4 herein, the Settlement Fund shall be

distributed to Class members as ordered by the Court. Prior to the Settlement becoming final pursuant to the provisions of paragraph 4, disbursements for the costs and expenses of Class notice and for administration of the Settlement Fund, up to \$50,000.00, may be made from the Settlement Fund only upon written notice from the Plaintiffs' Co-Lead Counsel to the Escrow Agent in the manner provided in the Escrow Agreement. Defendants shall have no liability or (except as otherwise provided in this paragraph 8 and in the Escrow Agreement) responsibility with respect to disbursements from or administration of the Settlement Fund. To the extent that there is any ambiguity or inconsistency concerning disbursements when this Settlement Agreement and the Escrow Agreement are read together, the terms of this Settlement Agreement shall control.

9. **Attorneys' Fees, Expenses and Costs.** Class counsel intend to seek, solely from the Settlement Fund, attorneys' fees of 33⅓% of the Settlement Fund plus the reimbursement of reasonable costs and expenses incurred in the prosecution of this action plus interest thereon, and an incentive award of \$100,000.00 for each of LWD and Meijer in the Class Action. Defendants agree to take no position with respect to the application by Class counsel for the attorneys' fees, expense payments and incentive award set forth above. Defendants agree, subject to any order of the Court, that Class counsel will be paid any Court-approved attorneys' fees and expenses and any Court-approved incentive award within five (5) business days after this Settlement becomes final pursuant to paragraph 4 of this Settlement Agreement. Any attorneys' fees, expenses, costs and incentive awards approved by the Court shall be payable solely out of the Settlement Fund, and Plaintiffs, members of the Class, and their respective counsel shall not seek payment of any attorneys' fees, expenses, costs or incentive awards from

any source other than the Settlement Fund. The Released Parties (as defined in paragraph 10 hereof) shall have no responsibility for, and no liability whatsoever with respect to, any payment or disbursement of attorneys' fees, expenses, costs or incentive awards, any allocation of attorneys' fees, expenses, costs or incentive awards among Class counsel and/or Plaintiffs, or with respect to any allocation of attorneys' fees, expenses, costs or incentive awards to any other person or entity who may assert any claim thereto.

10. **Releases.**

(a) Upon this Settlement Agreement becoming final in accordance with paragraph 4 hereof, Defendants and their past, present and future parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, officers, directors, management, supervisory boards, insurers, general or limited partners, employees, agents, trustees, associates, attorneys and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (the "Released Parties") are and shall be unconditionally, fully and finally released and forever discharged from all manner of claims, debts, obligations, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, accrued in whole or in part, in law or equity, that Plaintiffs or any member or members of the Class (including any of their past, present or future officers, directors, insurers, general or limited partners, divisions, stockholders, agents, attorneys, employees, legal representatives, trustees, parents, associates, affiliates, joint ventures, subsidiaries, heirs, executors, administrators, predecessors, successors and assigns, acting in their capacity as such) (the "Releasers"), whether or not they object to the Settlement and whether or

not they make a claim upon or participate in the Settlement Fund, ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, arising out of or relating in any way to any conduct alleged or asserted in any complaints that Plaintiffs filed in this Class Action, relating to any alleged delay in the marketing, sale, manufacture, pricing, or purchase of, or the enforcement of intellectual property related to Neurontin or its generic equivalents, prior to the date hereof, except as provided for in paragraph 11 herein (the “Released Claims”).

(b) In addition, Plaintiffs and each Class member, on behalf of themselves and all other Releasers, hereby expressly waive, release and forever discharge, upon the Settlement becoming final, any and all provisions, rights and benefits conferred by § 1542 of the California Civil Code, which reads:

Section 1542. General Release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor;

or by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each Class member may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of this paragraph 10, but each Class member hereby expressly waives and fully, finally and forever settles, releases and discharges, upon this Settlement becoming final, any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

Each Class member also hereby expressly waives and fully, finally and forever settles, releases and discharges any and all claims it may have against any Released Party under § 17200, *et seq*, of the California Business and Professions Code or any similar comparable or equivalent provision of the law of any other state or territory of the United States or other jurisdiction, which claims are expressly incorporated into the definition of Released Claims.

11. **Reservation of Claims.** The releases set forth in paragraph 10 hereof shall not release any claims between Plaintiffs, Class members and the Released Parties concerning product liability, breach of contract, breach of warranty or personal injury.

12. **Stay of Proceedings.** Pending Court approval of the Settlement embodied in this Settlement Agreement, the parties agree to stay any and all proceedings in the Class Action other than those incident to the settlement process, and agree to extensions of time with respect to any court filings necessary to effectuate such stays.

13. **Effect of Disapproval.** If the Court declines to finally approve this Settlement, or if such approval is set aside on appeal or materially modified, or if the Court does not enter the Final Judgment and Order in substantially the form provided for in paragraph 3 and Exhibit C, or if the Court enters the Final Judgment and Order and appellate review is sought, and on such review, the Final Judgment and Order is not affirmed or is affirmed with material modification, then this Settlement Agreement and the Settlement shall be terminated upon the election of any of Defendants or Co-Lead Counsel for the Class (Garwin Gerstein & Fisher LLP and Kaplan Fox & Kilsheimer LLP) by providing written notice to the parties designated to receive such notice hereunder in accordance with paragraph 19 hereof and the Escrow Agent within ten (10) business days following the occurrence of any such event. A modification or

reversal on appeal of any amount of Class counsel's fees and expenses awarded by the Court from the Settlement Fund, or the amount of incentive awards from the Settlement Fund to Plaintiffs in the Class Action, shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or the Final Judgment and Order and shall not give rise to any right of termination.

14. **Termination.** In the event that the Settlement is terminated pursuant to paragraph 13, or for any reason does not become final in accordance with the terms of paragraph 4 hereof, then (a) this Settlement Agreement shall be of no force or effect, except for payment of previously-incurred notice and administrative fees and costs from the Settlement Fund, and any taxes due on interest earned by the Settlement Fund, (b) any amount of the Settlement Fund, including any and all interest earned thereon, but less the previously-incurred costs for notice and administrative fees and costs, and taxes due on interest earned by the Settlement Fund, shall be paid to Defendants, as soon as practicable after the Escrow Agent receives notice of termination as provided for in paragraph 13 hereof, and (c) any release pursuant to paragraph 10 above shall be of no force or effect.

15. **Preservation of Rights.** The parties hereto agree that this Settlement 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 any violation of any statute or law, of any liability or wrongdoing by Defendants, or of the truth of any of the claims or allegations contained in the complaint or any other pleading or document; and evidence thereof shall not be discoverable, admissible, or otherwise used directly or indirectly, in any way (except that the provisions of this Settlement Agreement can be used by

the parties to enforce the provisions of the Settlement Agreement), whether in the Class Action or in any other action or proceeding. The parties expressly reserve all of their rights if the Settlement does not become final in accordance with the terms of paragraph 4 of this Settlement Agreement. Upon the Settlement becoming final, nothing in this paragraph shall prevent Defendants from asserting any release or using this Settlement Agreement to offset any liability to any other parties.

16. **Resumption of Litigation.** The parties agree that in the event that the Settlement Agreement is not approved by the Court or the Settlement does not become final pursuant to paragraph 4, litigation of the Class Action will resume in a reasonable manner to be approved by the Court upon joint application by the parties hereto.

17. **Confidentiality.** The Settlement Agreement shall be confidential, and neither Plaintiffs nor any counsel or other agent for or representative of Plaintiffs or the Class will make or cause to be made any statement or comment regarding this Settlement to anyone other than Plaintiffs, Class Members and their attorneys, until after the earlier to occur of (a) the filing of the motion for preliminary approval of the Settlement with the Court, and (b) any public disclosures by Defendants regarding this litigation or its settlement. Defendants shall be entitled to make such disclosures of the Settlement Agreement as they, in their sole discretion, determine are appropriate.

18. **Binding Effect.** This Settlement Agreement shall be binding upon, and inure to the benefit of, the parties hereto, the Released Parties, the Releasers, and the successors and assigns of each of them. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Plaintiffs and their counsel shall be binding upon all

members of the Class and the Releasers and their respective successors and assigns

19. **Notice.** Any and all notices, requests, consents, directives, or communications by any party intended for any other party shall be in writing and shall, unless expressly provided otherwise herein, be given personally, or by express courier, or by facsimile transmission followed by postage prepaid mail, to the following persons, and shall be addressed as follows:

To Plaintiffs and the Class:

Bruce E. Gerstein, Esq.
Garwin Gerstein & Fisher, LLP
1501 Broadway, Suite 1416
New York, NY 10036
Tel.: (212) 398-0055
Fax: (212) 764-6620

Richard J. Kilsheimer, Esq.
Kaplan Fox & Kilsheimer LLP
850 Third Avenue, 14th Fl.
New York, NY 10022
Tel.: (212) 687-1980
Fax: (212) 687-7714

Co-Lead Counsel for Plaintiffs and the Class

To Defendants:

Aidan Synnott, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Tel: (212) 373-3000
Fax: (212) 757-3990

Beth A. Wilkinson, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
2001 K Street, NW
Washington, D.C. 20006-1047
Tel: (202) 223-7300

Fax: (202) 223-7420

Counsel for Defendants

with a copy to:

Karl Buch, Esq.
Pfizer Inc.
235 E. 42nd Street
New York, NY 10017

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

20. **Integrated Agreement.** This Settlement Agreement (including the exhibits hereto) contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties. This Settlement Agreement shall not be modified in any respect except by a writing executed by all the parties hereto.

21. **Independent Settlement.** This Settlement of the Class Action is entirely independent of all other cases and is not conditioned on approval by any other plaintiff or settlement of any other case.

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

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

to be construed against the drafter hereof.

24. **Choice of Law.** All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of New Jersey without regard to its choice of law or conflict of laws principles.

25. **Consent to Jurisdiction.** Defendants and each member of the Class hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of New Jersey, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement. Notwithstanding anything in this paragraph 25 to the contrary, nothing in this paragraph 25 shall prohibit (a) the assertion in any forum in which a claim is brought that any release herein is a defense, in whole or in part, to such claim or (b) in the event that such a defense is asserted in such forum, the determination of its merits in that forum.

26. **No Admission.** Nothing in this Settlement Agreement shall be construed as an admission in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority, present or future, by Defendants including, without limitation, that Defendants have engaged in any conduct or practices that violate any antitrust statute or other law. This Settlement Agreement shall not be admissible for any purpose except in an action to enforce its terms or as otherwise provided in paragraph 25 hereof.


27. **Execution in Counterparts.** This Settlement Agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement

Agreement and filed with the Court.

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

GARWIN GERSTEIN & FISHER LLP

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

By: 
Bruce E. Gerstein
1501 Broadway, Suite 1416
New York, NY 10036
Tel: (212) 398-0055
*Co-Lead Counsel for Plaintiffs
and the Class*

By: _____
Aidan Synnott
1285 Avenue of the Americas
New York, NY 10019
Tel: (212) 373-3000

Beth A. Wilkinson
2001 K Street, NW
Washington, D.C. 20006
Tel: (202) 223-7300
Counsel for Defendants

KAPLAN FOX & KILSHEIMER LLP

DRINKER BIDDLE & REATH LLP

By: _____
Richard J. Kilsheimer
Robert N. Kaplan
850 Third Avenue, 14th Fl.
New York, NY 10022
Tel.: (212) 687-1980
*Co-Lead Counsel for Plaintiffs
and the Class*

By: _____
Michael C. Zogby
500 Campus Drive
Florham Park, NJ 07932
Tel.: (973) 549-7000
Counsel for Defendants

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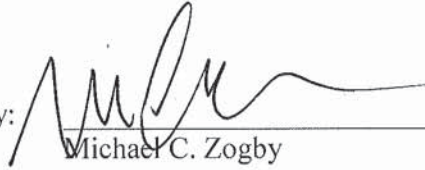
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