

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: LIPITOR ANTITRUST
LITIGATION

MDL No. 2332

This document relates to:

Master Docket No. 3:12-cv-2389 (PGS/DEA)

Direct Purchaser Class Actions

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into on February 7, 2024, by and between Pfizer Inc., Pfizer Manufacturing Ireland, Warner-Lambert Co., and Warner-Lambert Co. LLC (collectively or individually, “Pfizer”), by and through their counsel White & Case LLP, and Drogueria Betances, LLC, Professional Drug Company, Inc., Rochester Drug Co-Operative, Inc., Stephen L. LaFrance Holdings, Inc., and Value Drug Company (collectively, “Named Plaintiffs” or “Plaintiffs”), individually and on behalf of the Direct Purchaser Class (as defined in Paragraph 1 below, the “Direct Purchaser Class” or “Class”), by and through Berger Montague PC, Garwin Gerstein & Fisher LLP, and Hagens Berman Sobol Shapiro LLP in their capacity as interim lead counsel for the Direct Purchaser Class (“Lead Class Counsel”) in the above-captioned litigation. This Settlement Agreement is intended to, and upon occurrence of the Effective Date will, fully, finally, and forever resolve, compromise, discharge, and settle all the claims of the Direct Purchaser Class in the above-captioned litigation, subject to the terms and conditions set forth herein.

WHEREAS, Named Plaintiffs each filed lawsuits on behalf of the Direct Purchaser Class alleging that Pfizer violated Sections 1 and 2 of the Sherman Act through an overarching anticompetitive scheme, and that Pfizer and Ranbaxy Inc., Ranbaxy Laboratories Limited, and

Ranbaxy Pharmaceuticals, Inc. (collectively, “Ranbaxy”) (Pfizer and Ranbaxy are, together, “Defendants”) violated Sections 1 and 2 of the Sherman Act by entering into an agreement in restraint of trade in violation of the Sherman Act, 15 U.S.C. § 1, and engaging in a conspiracy to monopolize the market in violation of the Sherman Act 15 U.S.C. § 2, with respect to brand and generic Lipitor (atorvastatin) tablets;

WHEREAS, Named Plaintiffs’ claims were consolidated under the caption *In re: Lipitor Antitrust Litigation*, Master Docket No. 3:12-cv-2389 (PGS/DEA), before the United States District Court for the District of New Jersey (the “Court”) as a putative class action on behalf of the Direct Purchaser Class, as defined in Paragraph 1 below (the “Direct Purchaser Class Action” or the “Action”);

WHEREAS, Pfizer denies each and every one of the allegations asserted in the current pending and prior complaints on behalf of the Direct Purchaser Class, and does not concede or admit any liability, and the Direct Purchaser Class and Pfizer agree that neither this Settlement Agreement nor the settlement it embodies (the “Settlement”) nor any actions taken in furtherance of either the Settlement Agreement or the Settlement shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Pfizer, or of the truth of any of claims or allegations asserted on behalf of the Direct Purchaser Class or a waiver of any defenses thereto;

WHEREAS, Lead Class Counsel have concluded, after investigation of the facts and carefully considering the circumstances of the Direct Purchaser Class Action, including the claims asserted in this Action, and the possible and asserted legal and factual defenses thereto, that it would be in the best interests of the Direct Purchaser Class to enter into this Settlement Agreement to avoid the uncertainties of litigation, particularly complex litigation such as this, and to assure a

benefit to the Direct Purchaser Class and further, that Lead Class Counsel considers the Settlement set forth in this Settlement Agreement to be fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23 and in the best interests of the Direct Purchaser Class;

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

WHEREAS, Lead Class Counsel, on behalf of themselves and the Direct Purchaser Class, on the one hand, and counsel for Pfizer on the other, have engaged in arm's-length settlement negotiations, and have reached this Settlement Agreement, subject to Court approval, which embodies all of the terms and conditions of the settlement between the Named Plaintiffs, both individually and on behalf of the Direct Purchaser Class, and Pfizer;

NOW THEREFORE, it is agreed by the undersigned, on behalf of Named Plaintiffs and the Direct Purchaser Class, on the one hand, and Pfizer, on the other, that the Direct Purchaser Class Action and all claims of Named Plaintiffs and the Direct Purchaser Class be settled, compromised, discharged and dismissed with prejudice as to Pfizer (and, except as hereinafter provided, without any costs being assessed to Named Plaintiffs, the Direct Purchaser Class, or Pfizer), subject to Court approval, on the following terms and conditions:

1. **Direct Purchaser Class.** This settlement is on behalf of the Named Plaintiffs and all "Class Members" of the Direct Purchaser Class (the "Class" or "Direct Purchaser Class") defined as follows:

All persons or entities in the United States and its territories who purchased Lipitor or its AB-rated bioequivalent generic products

directly from any of Defendants at any time during the period June 28, 2011 through May 28, 2012 (the “Class Period”).

Excluded from the proposed Class are the Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, all federal governmental entities, and all persons or entities that (i) purchased Lipitor directly from Pfizer for the first time during the Class Period after November 30, 2011, but did not purchase generic Lipitor directly from Ranbaxy during the Class Period; and (ii) all persons or entities that purchased Lipitor directly from Pfizer after November 30, 2011 that did not also purchase generic Lipitor after November 30, 2011.

Also excluded from the Class for purposes of this Settlement Agreement are the following entities: CVS Pharmacy, Inc. (which includes Caremark), Rite Aid Corporation, Rite Aid Hdqtrs. Corp., Walgreen Co. (which includes Kerr Drug), The Kroger Co. (which includes Peytons), Safeway Inc., SuperValu Inc., Meijer, Inc. and Meijer Distribution, Inc., Giant Eagle, Inc., and H-E-B L.P. (“Retailer Plaintiffs”).

2. **Reasonable Best Efforts to Effectuate This Settlement.** Counsel for Named Plaintiffs and Pfizer agree to recommend approval of this Settlement Agreement to the Court and to undertake their reasonable best efforts, including undertaking all actions contemplated by and steps necessary to effectuate this Settlement Agreement, to carry out the terms of this Settlement Agreement and to secure the prompt, complete, and final dismissal with prejudice of all claims against Pfizer in the Direct Purchaser Class Action. This includes Pfizer serving notice on those entities required to receive notice pursuant to 28 U.S.C. § 1715 in accordance with the timing set forth therein.

3. **Motion for Preliminary Approval of the Settlement.** Within ten (10) days of the execution of this Settlement Agreement, Named Plaintiffs shall submit to the Court—and Pfizer shall support—a motion (the “Motion”) requesting entry of an order preliminarily approving the settlement, and authorizing dissemination of notice to the Direct Purchaser Class (the “Preliminary Approval Order”) substantially in the form of Exhibit A hereto.

The Motion shall:

- a. request preliminary approval of the Settlement set forth in this Settlement Agreement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23, and in the best interests of the Direct Purchaser Class;
- b. request a schedule for a hearing by the Court after the notice period has expired to approve the Settlement and to consider Lead Class Counsel's applications for attorneys' fees, reimbursement of costs and expenses, and service awards as set forth in this Settlement Agreement;
- c. request a stay of all proceedings against Pfizer in the Direct Purchaser Class Action until such time as the Court renders a final decision regarding the approval of the Settlement as described below, except those proceedings provided for or required by this Settlement Agreement;
- d. seek approval of an escrow agreement regarding the Settlement consideration described below;
- e. seek approval for notice to the Class by means of direct first-class United States mail notice in the form substantially in the form attached hereto as Exhibit B; and
- f. include a proposed form of order, which includes such provisions as are typical in such orders, including a finding that the proposed plan of notice complies with Fed. R. Civ. P. 23 and the requirements of due process, and a provision that if preliminary or final approval of the settlement is not obtained, the settlement is null and void and the parties will revert to their positions *ex ante* without prejudice to their rights, claims, or defenses; and
- g. seek certification of the Direct Purchaser Class as defined in Paragraph 1 for purposes of settlement.

4. **Class Certification.**

Named Plaintiffs shall seek Court approval of the certification of the Direct Purchaser Class in connection with the proposed Settlement only, concurrently with their Preliminary Approval Motion. Pfizer shall not oppose. Neither this Settlement Agreement, nor any other Settlement-related document, nor anything contained herein or therein or contemplated hereby or thereby, nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein or in any other Settlement-related document, shall constitute, be construed as, or be deemed to be evidence of or an admission or concession by Pfizer as to whether any class, in this case or others, may be certified for purposes of litigation and trial.

5. **Motion for Final Approval and Entry of Final Judgment.** If the Court preliminarily approves this Settlement Agreement, Named Plaintiffs shall submit—and Pfizer shall support—a motion for final approval by the Court of this Settlement Agreement (“Final Approval Motion”) after notice has been disseminated to the Class pursuant to the Preliminary Approval Order. The Final Approval Motion shall be submitted to the Court no later than 14 days before the date of the final Fairness Hearing set by the Court in its Preliminary Approval Order and shall seek entry of a final judgment and order (“Final Judgment and Order”) substantially in the form attached hereto as Exhibit C:

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

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

this Settlement Agreement;

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

d. incorporating the release set forth in Paragraphs 13 and 14 of this Settlement Agreement, and forever barring the Releasers from asserting any Released Claims against any of the Releasees as defined below;

e. providing for the payment of reasonable attorneys' fees and reimbursement of expenses solely from the Settlement Fund;

f. providing for payment solely from the Settlement Fund of a service award in the amount of \$100,000 to each of the Named Plaintiffs, in addition to whatever monies each of the Named Plaintiffs may receive from the Settlement Fund pursuant to a Court-approved plan of allocation;

g. directing that the Direct Purchaser Class Action be dismissed with prejudice as to Pfizer and, except as provided for herein, without costs or attorney's fees recoverable under 15 U.S.C. § 15(a);

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

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

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

a. The Settlement is not terminated pursuant to Paragraphs 15 or 17 below;

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

c. The Court enters an order finally approving the Settlement substantially in the form attached hereto as the Final Judgment and Order, entering a final judgment of dismissal with prejudice against Named Plaintiffs and the Class Members; and

d. The time for appeal from the Court's signing of the Final Judgment and Order as described in subparagraph 6(b) and entry of the Final Judgment and Order as described in subparagraph 6(c) has expired or, if appealed, either such appeal has been resolved by agreement and withdrawn by the appealing party, or it has been affirmed by the court of last resort to which an appeal of such Final Judgment and Order may be taken.

7. **Settlement Payment.** The "Settlement Amount" shall be Ninety-Three Million Dollars and no/100 (\$93,000,000.00). Subject to the terms and conditions of this Settlement Agreement and an escrow agreement to be entered into by Class Counsel, and in full, complete, and final settlement of the Direct Purchaser Class Action: (a) within ten (10) calendar days after entry of the Preliminary Approval Order, provided that Lead Class Counsel has notified Pfizer of the establishment and identity of an escrow account (the "Escrow Account") and has provided to Pfizer all information required to process payment no later than fourteen (14) calendar days before such payment is due, Pfizer shall deposit Twenty-Three Million, Two-Hundred and Fifty Thousand Dollars and no/100 (\$23, 250,000.00) into the Escrow Account subject to the terms and conditions of the escrow agreement attached hereto as Exhibit D (the "Escrow Agreement"); and (b) the remainder of the Settlement Amount (\$69,750,000.00) shall be deposited on or before fifteen (15) calendar days prior to the District Court's fairness hearing regarding final approval of the Settlement. Payment shall be made by wire transfer pursuant to instructions from Lead Class

Counsel. Pfizer shall not pay any additional amount at any time, whether for wire transfer fees or bank fees of any kind associated with the wire transfer of funds, interest, notice, administration, costs, attorneys' fees, or otherwise, into the Escrow Account. The total consideration that Pfizer will pay for this Settlement shall be the Settlement Amount only (once paid, the "Settlement Fund").

8. **Discovery.** Pfizer shall not oppose a motion to be filed by Plaintiffs after Preliminary Approval to lift the stay of discovery in the Action. If and when the Court lifts the stay of discovery in the Action, Pfizer shall (a) produce to Plaintiffs the "substantial completion" (and corresponding privilege logs) covered under ECF No. 899 (Oct. 1, 2019 Further Amended Scheduling Order) within 90 days of the lifting of the stay; and (b) produce certifications pursuant to Federal Rule of Evidence 902(11) concerning the authenticity and admissibility of documents and data produced or created by Pfizer no later than 45 days before the close of fact discovery and, if required by the Court, provide a custodian of records, or other witness testimony, at trial to lay a foundation for the admission of any documents or data produced or created by Pfizer. Pfizer, no later than 45 days before the close of fact discovery, shall produce a Rule 30(b)(6) witness or witnesses in response to a Rule 30(b)(6) deposition notice by Plaintiffs as to matters relating to the operative complaint in the Direct Purchaser Class Action, subject to the parties meeting and conferring about the scope of such a 30(b)(6) deposition. As to any additional documents or data that Plaintiffs request that Pfizer produce, or any current or former Pfizer employees whom Plaintiffs seek to depose, Pfizer shall not use the fact of this Settlement Agreement or the Settlement it embodies to try to oppose or preclude or restrict such document requests or depositions in any way, but Pfizer otherwise preserves all other objections it may have to such discovery. As to former employees, if requested by Plaintiffs, Pfizer shall provide information

reasonably accessible to it concerning the present location and contact information for such former employees. Pfizer shall, within 90 days of the lifting of the stay, elect whether it is asserting privilege or work product as to any matter alleged in the operative complaint. If Pfizer elects not to assert privilege, Pfizer shall identify with specificity those matters as to which it is not asserting privilege. Pfizer thereafter shall not change its position regarding such assertion or waiver of privilege without the written consent of Lead Class Counsel or as ordered by the Court. In the event a dispute arises concerning Pfizer's performance under this paragraph, the parties agree to meet and confer in good faith to resolve the issue. If, after meeting-and-conferring, the dispute remains unresolved, the Parties may present the issue to the Court to resolve the dispute. Such disputes may be raised and submitted to the Court regardless of whether the Effective Date has passed.

9. **The Settlement Fund.**

a. Before the Court issues the Final Judgment and Order, disbursements for expenses associated with providing notice of the Settlement to the Class, expenses associated with administering the Settlement, and any payments and expenses incurred in connection with taxation matters relating to the Settlement and this Settlement Agreement (collectively, "Administration Expenses") may be made from the Settlement Fund. In the event the Agreement is disapproved, terminated, or otherwise fails to become effective, the Settlement Fund shall be refunded to Pfizer plus interest earned (net of any taxes paid on such interest), minus half the actual costs of class notice and claims administration. Court approval shall not be required for disbursements or distributions of Administration Expenses for amounts (in the aggregate) of less than \$75,000. Otherwise, no disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court.

b. At all times prior to the Effective Date, the Settlement Fund shall be invested as set forth in Paragraph 3 of the Escrow Agreement, in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit. After the Effective Date, the Settlement Fund shall be invested pursuant to Paragraph 3 of the Escrow Agreement as directed in writing by Lead Class Counsel. All interest and dividends earned on the Settlement Fund shall become and remain part of the Settlement Fund. Any losses on the Settlement Fund shall be borne by the Settlement Fund and shall not be recoverable from Pfizer. Pfizer shall have no liability, obligation, or responsibility of any kind in connection with the investment, disbursement, or other oversight of the Settlement Fund.

c. After the Effective Date, the Settlement Fund shall be distributed in accordance with the Court-approved plan for such distribution. After making the payment of the Settlement Amount described in Paragraph 7 above, Pfizer shall have no responsibility whatsoever for the allocation or distribution of the Settlement Fund and shall not be responsible for any disputes relating to the amount, allocation, or distribution of any fees, costs or awards. Further, after making the payment of the Settlement Amount described in Paragraph 7 above, Pfizer shall not be liable for any additional payments to the Direct Purchaser Class or Lead Class Counsel or any other Counsel for the Named Plaintiffs or the Class pursuant to this Settlement Agreement.

d. Pfizer shall have no right of reimbursement or repayment from the Settlement Fund except as set forth in Paragraphs 15 or 18 hereof.

e. Named Plaintiffs and their counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses. Pfizer shall not be liable for any costs, attorneys’

fees, other fees, or expenses of any of Named Plaintiffs or the Direct Purchaser Class's respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

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

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

11. **Full Satisfaction; Limitation of Interest and Liability.** Class Members shall look solely to the Settlement Fund for settlement and satisfaction against Pfizer of all claims that are released hereunder.

12. **Attorneys' Fees, Expenses and Costs.**

a. Lead Class Counsel intend to seek, solely from the Settlement Fund, attorneys' fees of up to one-third of the Settlement Fund (including interest accrued thereon) and the reimbursement of reasonable costs and expenses incurred in the prosecution of the Action, and service awards to the Named Plaintiffs ("Fee and Expense Award"). Any motion for attorneys' fees, costs and expenses ("Motion for Fee and Expense Award") shall be filed no fewer than fourteen (14) days before the deadline for Class members to opt out or object to the Settlement. Any award of service awards, attorneys' fees, costs and expenses by the Court shall be paid solely out of the Settlement Fund as ordered by the Court. In no event shall any Fee and Expense Award be paid before the Final Approval Date. Named Plaintiffs, Class Members, and their respective counsel, shall not seek payment of any attorneys' fees, expenses, costs, or service awards from Pfizer in this action, or in any other action related to the released claims set forth in Paragraphs 13

and 14 hereof, from any source other than the Settlement Fund.

b. The procedures for and the allowance or disallowance by the Court of any motion or application for attorneys' fees, costs and expenses to be paid out of the Settlement Fund are not part of this Agreement and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. Notwithstanding any right of termination in Paragraph 15, 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, provide a basis to terminate or cancel this Agreement, affect or delay the finality of the judgment approving settlement, or affect or delay the payment of the Fee and Expense Award as provided in Paragraph 12(a).

13. Release and Covenant Not to Sue.

a. **Direct Purchaser Class Release.** Upon the occurrence of the Effective Date in accordance with Paragraph 6 hereof, and in consideration for the Settlement Amount described in this Settlement Agreement, Direct Purchaser Plaintiffs and the Direct Purchaser Class, on behalf of themselves and their respective past and present parents, subsidiaries, and affiliates, as well as the past and present general and limited partners, officers, directors, employees, agents, attorneys, servants, predecessors, successors, heirs, executors, administrators, and representatives of all Class Members (the "Direct Purchaser Class Releasers"), shall release and forever discharge, and covenant not to sue Pfizer and its respective past, present, and future parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, general partners, limited partners, officers, directors, management, supervisory boards, insurers, employees, agents, servants, trustees, associates, attorneys and any of their legal representatives, or any other representatives thereof (and the predecessors, successors, heirs, executors, administrators, and assigns of each of the

foregoing) (the “Pfizer Releasees”), with respect to, in connection with, or relating to any and all past, present, or future liabilities, claims, demands, obligations, suits, damages, penalties, levies, executions, judgments, debts, charges, actions, or causes of action, at law or in equity, whether class, individual, or otherwise in nature, and whether known or unknown, arising out of or relating to any conduct, events, or transactions up to the date of this Settlement Agreement, (a) alleged, or which could reasonably have been alleged, in the Direct Purchaser Class Action, (b) concerning purchases of Lipitor and/or its generic equivalents and arising under the Sherman Act, 15 U.S.C. §§ 1 & 2, *et seq.*, any state or federal RICO statutes, or any other federal or state statute or common law doctrine relating to antitrust, fraud, unfair competition, unjust enrichment, or consumer protection, or (c) the sale, marketing, or distribution of Lipitor or generic Lipitor except as provided for in Paragraph 13(c) and 14 herein (the “Released Claims”). Upon the Effective Date, the Direct Purchaser Class Releasees will be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any forum whatsoever, including any court of law or equity, arbitration tribunal, or administrative forum, asserting the Released Claims against the Pfizer Releasees. Upon entry of the Final Judgment and Order approving this Settlement, and in consideration of the promises set forth in this Settlement Agreement, including payment of the Settlement Amount, the Direct Purchaser Plaintiffs and Direct Purchaser Class shall dismiss the Direct Purchaser Class Action with prejudice as to Pfizer.

In addition, Direct Purchaser Plaintiffs, on behalf of themselves and all other Releasing Parties, hereby expressly waive, release and forever discharge, upon the Settlement becoming final, any and all provisions, rights and benefits conferred by Section 1542 of the California Civil Code, which reads:

Section 1542. General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know

or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party;

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 Section 1542 of the California Civil Code. The Direct Purchaser Releasors 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 13, but each Direct Purchaser Releasor 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 Direct Purchaser Releasor also hereby expressly waives and fully, finally and forever settles, releases and discharges any and all claims it may have against any Pfizer Releasee under Section 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.

b. **Defendants' Release.** Upon the occurrence of the Effective Date and in consideration of the Releases and Covenants specified in Paragraph 13.a. above, Pfizer on behalf of itself and its respective past, present, and future parents, subsidiaries, associates, affiliates, officers, directors, employees, insurers, general or limited partners, divisions, agents, attorneys, servants, trustees, joint ventures, heirs, executors, administrators, representatives (and the parents', subsidiaries', and affiliates' past and present officers, directors, employees, agents, attorneys,

servants, and representatives), and their predecessors, successors, heirs, executors, administrators, and representatives (collectively, the “Pfizer Releasers”), hereby release and forever discharge, and covenant not to sue, Direct Purchaser Class Members 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, attorneys, servants, representatives (and the parents’, subsidiaries’, and affiliates’ past, present, and future officers, directors, employees, agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors, administrators and representatives of each of the foregoing (collectively, the “Direct Purchaser Class Releasees”) from all claims, debts, obligations, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys’ fees, under federal or state laws, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, contingent or non-contingent, in law or equity, asserted in connection with the Action or that should have been asserted in the Action as compulsory counterclaims arising out of the alleged conduct that is the subject matter of Paragraph 13.

c. **Reservation of Claims.** The Releasing Parties intend by this Settlement Agreement to release only the Pfizer Releasees and the Direct Purchaser Class Releasees with respect to the Released Claims. The Direct Purchaser Releasers specifically do not intend this Settlement Agreement, or any part hereof or any other aspect of the proposed Settlement Agreement, to compromise or otherwise affect in any way any rights the Direct Purchaser Releasers have or may have against any other person, firm, association, or corporation whatsoever. The release set forth above in this Paragraph 13 is not intended to and shall not release any claims other than the Released Claims.

14. **Additional Reservation of Claims.** The intent of this Settlement is to effect a complete and total resolution of this Action to the extent of the claims of the Direct Purchaser Class against Pfizer, as well as any compulsory counterclaims of Pfizer, relating to the allegations in this Action that were or should have been asserted, but is not intended to release any claims (1) arising in the ordinary course of business between any Direct Purchaser Class member and Pfizer arising under Article 2 of the Uniform Commercial Code (pertaining to sales), the laws of negligence or product liability or implied warranty, breach of contract, breach of express warranty, or personal injury; (2) unrelated to purchases of Lipitor or generic Lipitor; or (3) arising out of or in any way relating to the alleged horizontal price-fixing agreements between Pfizer and other manufacturers of generic pharmaceutical products that are alleged in *In re Generic Pharmaceuticals Pricing Antitrust Litig.*, MDL No. 2724, 16-MD-2724 (E.D. Pa.).

15. **Termination - Effect of Disapproval.**

a. Pfizer and Plaintiffs shall have the option to terminate the Settlement and have their Settlement Payment refunded if the Court declines to grant preliminary or final approval to the Direct Purchaser Class Settlement. If for any reason the Settlement does not become final in accordance with the terms of Paragraph 6 of this Settlement Agreement, then (i) this Settlement Agreement shall be of no force or effect; (ii) all funds paid by Pfizer into the Settlement Fund, plus interest (net of any taxes paid on such interest), minus half the actual costs of class notice and claims administration, shall be returned to Pfizer as set forth in Paragraph 18; (iii) any release pursuant to Paragraphs 13 and 14 above shall be of no force or effect; and (iv) the parties agree, subject to the Court's approval, that litigation of the Direct Purchaser Class Action by the Named Plaintiffs and the Direct Purchaser Class will resume, in a reasonable manner and on a reasonable timetable to be approved by the Court.

b. For the avoidance of doubt, any order of the Court that (i) narrows or does not approve the scope of the release and covenant not to sue contemplated by this settlement; (ii) purports to impose additional material obligations on Pfizer; or (iii) declines to enter a final judgment that meets the minimum requirements set forth in Paragraph 5 of this Agreement, or any order on review or appeal that would have the foregoing effects, except as otherwise agreed to in writing by Pfizer and Named Plaintiffs, constitutes a failure to grant preliminary or final approval of this Agreement and confers on Pfizer and Named Plaintiffs the right to terminate provided by this Paragraph.

c. A modification or reversal on appeal of any amount of the Fee and Expense Award shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such Final Judgment and Order and shall not give rise to any right of termination.

16. Contingency in the Event the Settlement is Not Approved for Reasons Other Than Fairness or a Lipitor Direct Purchaser Requests Exclusion from the Direct Purchaser Class.

a. In the event the Settlement is disapproved by the Court or on appeal (including because the Court does not certify the Direct Purchaser Class for purposes of settlement) for any reason other than the Settlement is not fair, reasonable or adequate, Pfizer agrees to offer, as soon as practical, each entity falling within the definition of Direct Purchaser Class (as defined in Paragraph 1) ("Lipitor Direct Purchaser") at least its *pro rata* share of the Settlement Fund Amount (as defined below in Paragraph 16(e)), net of all known assignments to the Retailer Plaintiffs, after conferring with Lead Class Counsel in exchange for a release substantively equivalent to the one set out in Paragraphs 13 and 14, above.

b. If the Settlement is approved by the Court and becomes final as defined in Paragraph 6, and one or more Lipitor Direct Purchaser(s) had properly excluded itself (themselves) from the Direct Purchaser Class (other than a Retailer Plaintiff) prior to the expiration of the opt-out period prescribed by the Court, the Settlement Fund (as discussed in Paragraph 7) will be reduced by the amount of the *pro rata* share for that Lipitor Direct Purchaser, net of all known assignments to the Retailer Plaintiffs (as defined below, in Paragraph 16(e)). Nothing herein will preclude a Lipitor Direct Purchaser(s) who has sought exclusion from the Direct Purchaser Class from seeking leave of court to rescind its (their) decision to exclude itself (themselves) from the Direct Purchaser Class until such time the Settlement becomes final pursuant to Paragraph 6. Nothing precludes Class Counsel or counsel for Pfizer from contacting such Lipitor Direct Purchaser(s) concerning its (their) decision(s) to opt out of the Class. A decision by one or more Lipitor Direct Purchasers to opt out of the Direct Purchaser Class will have no impact on the validity and enforceability of this Settlement Agreement as to the remaining members of the Direct Purchaser Class, including the release provisions in Paragraphs 13 and 14.

c. Any offer to an individual Lipitor Direct Purchaser under Paragraph 16(a) shall be expressly subject to the condition that the Lipitor Direct Purchaser(s) receiving the offer(s) submit to the jurisdiction of the United States District Court for the District of New Jersey regarding the issue of its obligation to pay its proportionate share of the Direct Purchaser Class Counsel's attorneys' fees, costs and expenses, and service awards. Each Lipitor Direct Purchaser that chooses to accept an offer from Pfizer shall be given written notice by Pfizer (the content of which is to be agreed to by Lead Class Counsel) of Lead Class Counsel's intent to apply for Direct Purchaser Class Counsel's attorneys' fees, costs, expenses, and service awards and to seek the awards out of the escrowed funds (described below), and an opportunity to respond to the

application. Defendants shall inform Lead Class Counsel of any subsequent private offers made to, and accepted by, Lipitor Direct Purchasers within five (5) days of the acceptance of the offer by the Lipitor Direct Purchaser.

d. For any offer accepted by a Lipitor Direct Purchaser under Paragraph 16(a), Pfizer agrees to place 40% of the accepted offer into escrow to cover the Lipitor Direct Purchaser's proportionate share of Direct Purchaser Class Counsel's attorneys' fees, costs and expenses, and service awards. The amount of any such attorneys' fees, costs, expenses, and service awards awarded shall be determined by the Court. Any funds placed into escrow pursuant to this provision that exceed the amount of attorneys' fees, costs, expenses, and/or incentive awards awarded by the Court shall be paid out to the Lipitor Direct Purchaser.

e. The amount of each Lipitor Direct Purchaser's *pro rata* share of the Settlement Fund Amount shall be based on a schedule prepared by Dr. Jeffrey J. Leitzinger ("Dr. Leitzinger"), which Direct Purchaser Class Counsel represents is based on Pfizer's sales of brand Lipitor and Ranbaxy's sales of generic Lipitor and data related to the Retailer Plaintiffs' assignments available to the Plaintiffs at the time of this Settlement Agreement.

f. The parties will use their best efforts to implement this Paragraph 16.

17. **Opt-Outs.** Class Notice shall provide that the opt-out shall be in writing and shall be signed by the member of the Class who is opting-out. In the event of any opt outs from the Class prior to final approval of the Settlement, the Settlement Amount will be reduced in proportion to the opt-out Class Members' *pro rata* share of aggregate brand and generic Lipitor purchases of Class Members. Further, Pfizer shall have the option in its sole discretion to terminate the Settlement Agreement in the event that Class Members representing in the aggregate more than a certain percentage of total brand and generic Lipitor purchases (as set forth in a confidential side

letter that, with the Court's permission, will not be filed with the Court or, alternatively, will not be filed publicly) opt out of the Class following the preliminary approval of the Settlement. All pro rata shares shall be calculated by Dr. Leitzinger, the expert economist for the Direct Purchaser Class.

18. **Effect of Termination.** If this Settlement Agreement is terminated pursuant to the provisions of Paragraphs 15 or 17 above, or for any reason does not become final in accordance with the terms of Paragraph 6 hereof, the Escrow Agent (as defined in the Escrow Agreement) shall return the Settlement Fund to Pfizer, plus interest (net of any taxes paid on such interest), minus half the actual costs of class notice and claims administration. Subject only to expiration of any time deposit investment(s) not to exceed ninety (90) days, the Escrow Agent shall disburse the Net Settlement Fund to Pfizer in accordance with this Paragraph within fifteen (15) business days after receipt of either (i) written notice signed by Pfizer's counsel or Lead Class Counsel stating that this Settlement Fund has been terminated; or (ii) any order of the Court so directing. Any remaining portion of the Net Settlement Fund invested in time deposits not to exceed ninety (90) days shall be disbursed within ten (10) days after the expiration of such investments. If the Settlement Agreement is terminated pursuant to Paragraphs 15 or 17 above, any obligations pursuant to this Settlement Agreement (other than disbursement of the Net Settlement Fund to Pfizer as set forth above) shall cease immediately and the releases set forth in Paragraphs 13 and 14 shall be null and void.

19. **Stay of Proceedings.** Pending Court approval of the Settlement embodied in this Settlement Agreement, the Parties agree to stay any and all proceedings against Pfizer in the Direct Purchaser 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. Nothing herein alters

the provisions of Paragraph 8, above,

20. **Claim Forms.** Direct Purchaser Plaintiffs and Lead Class Counsel will ensure that each claim form contains a copy of the release set forth in Paragraphs 13 and 14 hereof. A claim form shall be signed by each member of the Direct Purchaser Class or its authorized representative as a precondition to receiving any portion of the Settlement Fund.

21. **Preservation of Rights.** The parties hereto agree that this Settlement Agreement, whether it becomes final or not, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party (except to the extent provided herein), shall not be deemed or construed to be an admission or evidence of any violation of any statute or law (or lack thereof), of any liability or wrongdoing by Pfizer (or lack thereof), or of the truth (or lack thereof) of any of the claims or allegations contained in the Complaints or any other pleading or document, and evidence thereof shall not be discoverable or used directly or indirectly, in any way (other than to effectuate or enforce the terms of this Settlement Agreement). The parties expressly reserve all of their rights if the Settlement does not become final in accordance with the terms of this Settlement Agreement.

22. **Confidentiality.** The fact of settlement of the Direct Purchaser Class Action and the terms of this Settlement Agreement shall remain confidential until Direct Purchaser Plaintiffs move for preliminary approval of the Settlement, except that the Court and any other parties may be informed of the fact of settlement, unless Pfizer and Lead Class Counsel agree otherwise. Direct Purchaser Plaintiffs' Counsel and Pfizer agree that they will not, at any time, make public statements (which includes press releases, communication to the press or other media, statements in the Internet, speeches, or other communications in public fora) concerning the Settlement, the Direct Purchaser Class Action, the litigation of the Direct Purchaser Class Action, or the Parties,

witnesses, or counsel involved in the Direct Purchaser Class Action, apart from their mutually agreed public relations statements, with the exceptions that (i) the Parties shall have the right to disclose the Settlement to comply with their financial, legal, reporting, and securities obligations, and (ii) the Parties shall have the right to take actions to enforce the Settlement to the extent necessary; and (iii) Counsel for the Direct Purchaser Class shall have the right to post the Settlement Agreement and relating filings on their websites and note the same. Additionally, Direct Purchaser Plaintiffs, their counsel and other agents for or representatives of Direct Purchaser Plaintiffs and of the Direct Purchaser Class, as well as Pfizer, its counsel, and other agents for or representatives of Pfizer, shall abide by the terms of the Discovery Confidentiality Order approved and entered by the Court on February 25, 2013 (ECF No. 346), and as amended on January 25, 2019 (ECF No. 840) (the “Confidentiality Order”). Any obligation to abide by the Confidentiality Order shall survive beyond the Effective Date of this Settlement Agreement

23. Taxes.

a. The parties intend that any taxes due as a result of income earned by the Settlement Fund will be paid from the Settlement Fund. Lead Class Counsel shall be solely responsible for directing the Escrow Agent to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Fund. Further, Lead Class Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Settlement Fund. Lead Class Counsel shall be entitled to direct the Escrow Agent to pay from the Escrow Account customary and reasonable tax expenses, including professional fees and expenses incurred in connection with carrying out the Escrow Agent’s or tax preparer’s responsibilities as set forth in this Paragraph. Pfizer shall have no responsibility to make any tax filings related to the Settlement, this Settlement

Agreement, or the Settlement Fund, and shall have no responsibility to pay taxes on any income earned by the Settlement Fund, or to pay taxes with respect thereto unless the settlement is not consummated and the Settlement Fund or the Net Settlement Fund is returned to Pfizer. Other than as specifically set forth herein, Pfizer shall have no responsibility for the payment of taxes or tax-related expenses. If, for any reason, for any period of time, Pfizer is required to pay taxes on income earned by the Settlement Fund, the Escrow Agent shall, upon written instructions from Pfizer with notice to Lead Class Counsel, timely pay to Pfizer sufficient monies from the Settlement Fund to enable it to pay all taxes (state, federal, or other) on income earned by the Settlement Fund.

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

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

to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Escrow Accounts being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1.

24. **Binding Effect.** This Settlement Agreement shall be binding upon, and inure to the benefit of, the parties hereto and to the Releasees. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Named Plaintiffs and Lead Class Counsel shall be binding upon all Class Members.

25. **Integrated Agreement.** The documents incorporated herein by reference, contain an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties hereto with respect to the transactions contemplated by this Agreement, and supersede all prior agreements or understandings, whether written or oral, between or among any of the parties hereto with respect to the subject matter hereof. This Settlement Agreement shall not be modified in any respect except by a writing executed by all of the parties hereto.

26. **Independent Settlement.** This Settlement of the Direct Purchaser Class Action is not conditioned on approval by any other direct purchaser or settlement of any other case. This Settlement of the Direct Purchaser Class Action is not conditioned on the disposition of the claims of any other plaintiff or proposed class of plaintiffs.

27. **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.

28. **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.

29. **Choice of Law.** All terms of this Settlement Agreement shall be governed by federal common law.

30. **Consent to Jurisdiction.** Pfizer and each Class Member hereby irrevocably submits 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, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein. Nothing in this paragraph shall prohibit (a) the assertion in any forum in which a claim is brought that any release herein is a defense, in whole or in part, to such claim; or (b) in the event that such a defense is asserted in such forum, the determination of its merits in that forum.

31. **Representations and Warranties.** Each party hereto represents and warrants to each other party hereto that it has the requisite authority (or in the case of natural persons, the legal capacity) to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby.

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

other law.

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

Raj Gandesha
WHITE & CASE LLP
1221 Avenue of the Americas
New York, New York 10020
rgandesha@whitecase.com

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

Bruce E. Gerstein
GARWIN GERSTEIN & FISHER, LLP
Wall Street Plaza
88 Pine Street, 10th Floor
New York, NY 10005
bgerstein@garwingerstein.com

David F. Sorensen
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1818 Market Street, Suite 3600
Philadelphia, PA 19103
dsorensen@bm.net

Thomas M. Sobol
HAGENS BERMAN SOBOL SHAPIRO LLP
1 Faneuil Hall Sq., 5th Floor
Boston, MA 02109
tom@hbsslaw.com

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

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

of executing this Settlement Agreement.

By: 

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By: _____
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*Interim Lead Counsel for Direct Purchaser
Class Plaintiffs and the Class*

of executing this Settlement Agreement.

By: _____


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*Counsel for Pfizer Inc., Pfizer
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Class Plaintiffs and the Class*