

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

IN RE LOESTRIN 24 FE ANTITRUST LITIGATION
THIS DOCUMENT RELATES TO: Third-Party Payor Actions

MDL No. 2472

Master File No.
1:13-md-2472-WES-PAS

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Settlement Agreement”) is made and entered into on January 30, 2020, by and between Defendants, Allergan, plc; Warner Chilcott Co., LLC f/k/a Warner Chilcott Co., Inc.; Warner Chilcott (US), LLC; Warner Chilcott Sales (US), LLC; Warner Chilcott plc n/k/a Allergan WC Ireland Holdings Ltd.; Warner Chilcott Holdings Co. III, Ltd.; Warner Chilcott Corp.; Warner Chilcott Laboratories Ireland Limited; Warner Chilcott Limited; Watson Laboratories, Inc.; and Watson Pharmaceuticals, Inc. (collectively “Defendants”), and Co-Lead Counsel for the Third-Party Payor Class Plaintiffs acting pursuant to the Court’s Order, dated September 17, 2019, on behalf of Plaintiffs City of Providence, A.F.of L. - A.C.G. Building Trades Welfare Plan, Allied Services Division Welfare Fund, Electrical Workers 242 and 294 Health & Welfare Fund, Fraternal Order of Police, Fort Lauderdale Lodge 31, Insurance Trust Fund, Laborers International Union of North America, Local 35 Health Care Fund, Painters District Council No. 30 Health & Welfare Fund, Teamsters Local 237 Welfare Benefits Fund, United Food and Commercial Workers Local 1776 & Participating Employers Health and Welfare Fund, including all affiliates, subsidiaries, and members for the foregoing entities, and on behalf of the certified Class defined in Doc. #1274 (collectively “Plaintiffs” or the “TPP Class”).

WHEREAS, the parties acknowledge that the United States District Court for the District of Rhode Island (the “Court”) has jurisdiction over the above-captioned action (the “TPP Action”), each of the parties hereto, and all putative members of the TPP Class for all manifestations of this case, including this Settlement;

WHEREAS, Plaintiffs alleged that Defendants violated federal antitrust and numerous state antitrust, unjust enrichment, and consumer protection laws by engaging in a course of conduct to delay and impair generic competition and maintain a monopoly in respect of Loestrin 24 Fe, Minastrin 24 Fe, or Lo Loestrin Fe, including as detailed in the End-Payor Plaintiffs’ Second Amended Consolidated Class Action Complaint dated May 9, 2016, [Doc. #165], expert reports, and other papers filed with the Court, and by means of alleged: (i) “*Walker Process*” patent fraud; (ii) “sham” patent litigation and/or “sham” patent enforcement; (iii) “sham” and/or fraudulent listing of patents in the Orange Book; (iv) “reverse payments” made or conspiracies related to patent settlement agreements with generic manufacturers; (v) “product hopping,” from one brand drug to another brand drug, such as “hard switches” and/or “soft switches”; and (vi) the manufacture, use, sale, pricing, and/or marketing practices, including false statements and other allegedly illegal tactics to increase market share and/or violate anti-kickback laws, related to the foregoing drugs.

WHEREAS, TPP Plaintiffs and other members of the TPP Class allegedly incurred significant damages as a result;

WHEREAS, Defendants deny each and every one of Plaintiffs’ allegations of unlawful conduct, 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 of the claims or allegations alleged by the TPP Class or a waiver of any defenses thereto;

WHEREAS, arm's-length settlement negotiations have taken place between counsel for Plaintiffs and Defendants, including with the assistance of a neutral mediator, and this Settlement Agreement, which embodies all of the terms and conditions of the settlement between Defendants and Plaintiffs, both individually and on behalf of the TPP Class (the "Settlement"), has been reached, subject to the final approval of the Court;

WHEREAS, Plaintiffs' counsel has concluded, after extensive fact and expert discovery, investigation of the facts, preparing this case for trial, and after carefully considering the circumstances of the TPP Action, including the claims asserted, and the possible legal and factual defenses thereto, that it would be in the best interests of the TPP 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 TPP Class, and, further, that Plaintiffs' counsel consider the Settlement set forth herein to be fair, reasonable, and adequate compensation, and in the best interests of the TPP Class;

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; and

NOW THEREFORE, it is agreed by the undersigned, on behalf of Defendants, Plaintiffs,

and the TPP Class, that all claims of Plaintiffs and the TPP Class against Defendants be settled, compromised, and dismissed with prejudice and, except as hereinafter provided, without costs as to Defendants or Plaintiffs, subject to the approval of the Court, on the following terms and conditions:

1. Class Definition. This settlement is on behalf of the Plaintiffs and the certified class (“TPP Class”) defined as follows:

All Third-Party Payor entities in the United States and its territories that indirectly purchased, paid and/or provided reimbursement for some or all of the purchase price for Loestrin 24 Fe and/or its AB-rated generic equivalents in any form, and/or Minastrin 24 Fe and/or its AB-rated generic equivalents in any form, for consumption by their members, employees, insureds, participants, or beneficiaries, other than for resale, during the period September 1, 2009 through September 17, 2019. For purposes of the Class definition, entities “purchased” Loestrin 24 Fe, Minastrin 24 Fe, or their generic equivalents if they indirectly purchased, paid and/or reimbursed for some or all of the purchase price.

Expressly excluded from the TPP Class are the following entities:

- a. Defendants and their subsidiaries, or affiliates;
- b. All federal or state governmental entities, excluding cities, towns or municipalities with self-funded prescription drug plans;
- c. All entities who purchased Loestrin 24 Fe or its AB-rated generic equivalent, and/or Minastrin 24 Fe or its AB-rated generic equivalent, for purposes of resale or directly from Defendants or their affiliates;
- d. Fully insured health plans (i.e., Plans that purchased insurance from another TPP covering 100% of the Plan’s reimbursement obligations to its members); and
- e. Pharmacy Benefit Managers.

2. 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.

3. Motion for Preliminary Approval. 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 TPP Class; (ii) preliminary approval of the Plan of Allocation of the Settlement Fund; (iii) approval of the notice and proposed notice plan; (iv) 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, reimbursement of costs and expenses, and incentive awards as set forth in this Settlement Agreement; (v) a stay of all proceedings in the TPP Action against Defendants until such time as the Court renders a final decision regarding the approval of the Settlement as described below in paragraph 15; and (vi) approval of an escrow agreement regarding the Settlement consideration described below in paragraph 6. After the Court preliminarily approves the Settlement, Plaintiffs shall, in accordance with the Preliminary Approval Order, provide TPP Class members with notice of the Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure substantially in the form attached hereto as Exhibit B. Plaintiffs’ counsel will recommend notice to the Class according to the Notice Plan submitted by the Claims and Notice Administrator which shall provide for the best notice practicable, including direct mail to those members of the class who can be reasonably identified.

4. Motion for Final Approval and Entry of Final Judgment. If the Court preliminarily approves the Settlement, Plaintiffs shall submit a motion for final approval of this Settlement by the Court, after appropriate notice to the TPP Class, and shall seek entry of a Final

Order and Judgment substantially in the form attached hereto as Exhibit C, with any additional findings of fact and conclusions of law (the “Final Order and Judgment”):

(a) finding this Settlement Agreement and its terms to be a fair, reasonable, and adequate settlement as to TPP Plaintiffs and the members of the TPP 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 the costs and expenses from the Settlement Fund (as defined below);

(c) providing for payment solely from the Settlement Fund of incentive awards to the named TPP Plaintiffs in addition to whatever monies they will receive from the Settlement Fund pursuant to a Court-approved Plan of Allocation;

(d) directing that the TPP Action be dismissed with prejudice as to Defendants and, except as provided for herein, without attorney’s fees recoverable under 15 U.S.C. §15(a) or similar state statutes or costs;

(e) reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including the provisions of this paragraph, the administration and consummation of this Settlement, the award of attorneys’ fees and reimbursement of costs and expenses, and the payment of incentive awards to each of the named TPP Plaintiffs, if allowed by the Court; and

(f) directing that the judgment of dismissal of all TPP Class claims against Defendants shall be final and appealable pursuant to Fed. R. Civ. P. 54(b), there being no just reason for delay.

5. Finality of Settlement. This Settlement Agreement shall become final upon the occurrence 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 4 herein, is made of the Final Order and Judgment of dismissal with prejudice against the TPP Plaintiffs and the members of the TPP Class; and

(c) the time for appeal from the Court's approval of this Settlement and entry of the Final Order and Judgment 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 Order and Judgment 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.

6. Settlement Fund. Subject to the terms and conditions of this Settlement Agreement and the Escrow Agreement (as defined below), within thirty (30) days after entry by the Court of the Preliminary Approval Order without material change, Defendants shall deposit the Settlement Fund Amount (as defined in this Paragraph) into an escrow account (the "Escrow Account") held and administered by Bank Leumi USA (the "Escrow Agent"). The Settlement Fund Amount shall be \$62,500,000.00. The Settlement Fund Amount deposited by Defendants into the Escrow Account and any accrued interest after deposit shall become part of and shall be referred to as the "Settlement Fund." In the event that Defendants resolve the claims of any opt-out ("Opt-out TPP") from the TPP Class following execution of this Settlement, Defendants shall contemporaneously with the execution of that settlement agreement place into an interest-bearing

account to be established by Plaintiffs' Lead Counsel an amount equal to 10% of the settlement amount (the "Set Aside Fund"). The parties agree that this amount is intended to cover a portion of the Opt-out TPP's share of TPP Class Counsel's attorneys' fees, costs, or expenses. Defendants shall inform Lead Counsel for the TPP Class of the amount of any private offers made to, and accepted by, Opt-out TPP within five (5) days of the acceptance of the offer by the Opt-out TPP. The amount of any such attorneys' fees, costs, and expenses awarded to Class Counsel from the Set Aside Fund shall be determined by the Court. Any Set Aside Funds not awarded to Class Counsel shall be re-deposited into the Settlement Fund.

7. **No Injunctive Relief.** This Settlement does not include any provision for injunctive relief, and Plaintiffs waive any such claim as to any of the matters released or discharged in paragraph 12.

8. **Full Satisfaction; Limitation of Interest and Liability.** Members of the TPP Class shall look solely to the Settlement Fund and the Set Aside Fund for settlement and satisfaction against Defendants of any and all Released Claims as defined in paragraph 12 herein, including any costs, fees, or expenses of their attorneys, experts, advisors, agents, and representatives, including with respect to the negotiation, execution, and performance of their obligations under this Settlement Agreement. In the event that the Settlement becomes final pursuant to paragraph 5 herein, the Settlement Fund and Set Aside Fund will fully satisfy any and all Released Claims as defined in paragraph 12 herein. Except as provided by order of the Court, no member of the TPP Class shall have any interest in the Settlement Fund, the Set Aside Fund, or any portion thereof. Defendants shall have no liability with respect to disbursements from the Settlement Fund or Set Aside Fund pursuant to any Court-approved plan of allocation. It is expressly understood that any settlement agreement entered into between Defendants and Health

Care Services Corporation (“HCSC”) is not part of this Settlement, and that any payments in any settlement agreement between Defendants and HCSC will not in any way reduce the payments made to the TPP Class or to the TPP Plaintiffs pursuant to this Settlement.

9. Reimbursement of Costs and Expenses. Plaintiffs and their counsel will be reimbursed and indemnified solely out of the Settlement Fund and Set Aside Fund for all costs, fees, and expenses including, but not limited to, the costs of notice of this Settlement to TPP Class members, administration of the Settlement Fund, escrow administration, and taxes. 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 (other than the notice Defendants are required by the Class Action Fairness Act to send to the states’ attorneys’ general), 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 and the Set Aside Fund.

10. Disbursement of the Settlement Fund. If this Settlement Agreement becomes final pursuant to the provisions of paragraph 5 herein, the Settlement Fund shall be distributed to TPP Class members as ordered by the Court. Prior to the Settlement becoming final pursuant to the provisions of paragraph 5, disbursements for the costs and expenses of the notice to the TPP Class and for administration of the Settlement Fund, up to \$1,000,000.00, may be made from the Settlement Fund only upon written notice from Co-Lead Counsel for the TPP Class to the Escrow Agent in the manner provided in the Escrow Agreement, with a copy provided to counsel for Defendants. Defendants shall have no liability or 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.

11. Attorneys' Fees and Incentive Awards to the Named Plaintiffs. Class counsel intend to seek, solely from the Settlement Fund and Set Aside Fund, attorneys' fees not to exceed 33 1/3 % of the Settlement Fund plus the reimbursement of reasonable costs and expenses incurred in the prosecution of the TPP Class Action against Defendants plus interest thereon, and an incentive award of ten thousand dollars (\$10,000.00) for each of the nine (9) named Plaintiffs. Defendants agree not to take any position with respect to the application by Class Counsel for attorneys' fees, reimbursement of expenses and costs, and the incentive awards set forth above. Any attorneys' fees, expenses, costs, and incentive awards approved by the Court shall be payable solely out of the Settlement Fund and the Set Aside Fund and Plaintiffs, members of the TPP Class, and their respective counsel shall not seek payment of any attorneys' fees, expenses, costs, or incentive awards from Defendants in this action, or in any other action related to the Released Claims (as defined in paragraph 12 hereof), from any source other than the Settlement Fund and Set Aside Fund, except as provided for in paragraph 11. The Released Parties (as defined in paragraph 12 hereof) shall not have any 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 TPP Plaintiffs and/or the TPP Class, 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.

12. Releases.

(a) Upon this Settlement Agreement becoming final in accordance with paragraph 5 hereof, TPP Plaintiffs and the TPP Class, except those who have requested

exclusion from the Class and such request has been approved by the Court, shall unconditionally, fully and finally release and forever discharge all Defendants, any 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, or any other representatives thereof (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (the “Released Parties”) from any and all manner of claims, rights, debts, obligations, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, including costs, expenses, penalties and attorneys’ fees, accrued in whole or in part, in law or equity, that TPP Plaintiffs or any member or members of the TPP 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, ever had, now has, or hereafter can, shall or may have, indirectly, representatively, derivatively or in any other capacity, arising out of or relating in any way to any claim under federal or state laws that was alleged or could have been alleged by TPPs in the TPP Action, prior to the date of this Settlement, including but not limited to:

- (1) The allegations and claims in End-Payor Plaintiffs’ Second Amended Consolidated Class Action Complaint dated May 9, 2016 [Doc. #165] or

any prior complaints filed by Plaintiffs in the TPP Action, and any expert reports, or other documents filed with the Court;

(2) the alleged delay or impairment to the entry of generic Loestrin 24 Fe, Minastrin 24 Fe, or Lo Loestrin Fe;

(3) the alleged conduct with respect to the procurement, maintenance, and enforcement of United States Patent Number 5,552,394, including but not limited to claims of *Walker Process* fraud, sham or fraudulent patent listings in the Orange Book, and sham patent litigations;

(4) the alleged “reverse payment” or conspiracies related to the patent settlements;

(5) the alleged “product hopping,” from one brand drug to another brand drug, such as “hard switches” and/or “soft switches”; and

(6) the manufacture, sale, pricing, marketing or distribution of Loestrin 24 Fe, Minastrin 24 Fe, or Lo Loestrin Fe, or their generic equivalents except as provided for in paragraph 13 herein (the “Released Claims”).

For the avoidance of doubt, this Release does not include any claims that could have been brought on behalf of consumer plaintiffs. Releasors hereby covenant and agree that each shall not sue or otherwise seek to establish or impose liability against any Released Party based, in whole or in part, on any of the Released Claims.

(b) In addition, TPP Plaintiffs on behalf of themselves and all other Releasors, hereby expressly waive, release and forever discharge, upon the Settlement becoming final, any and all provisions, rights and benefits conferred on them 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. TPP Plaintiffs and members of the TPP Class 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, but each TPP Plaintiff and member of the TPP Class 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 TPP Plaintiff and member of the TPP Class 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.

(c) Upon this Settlement Agreement becoming final in accordance with paragraph 5 hereof, all Defendants shall unconditionally, fully and finally release and forever discharge all members of the TPP Class and their counsel, any 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, or any other representatives thereof (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (the “TPP Released Parties”) from any and all manner of claims, rights, debts, obligations, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, including costs, expenses, penalties and attorneys’ fees, accrued in whole or in part, in law or equity, that Defendants or any (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 “Defendant Releasers”), whether or not they, ever had, now has, or hereafter can, shall or may have, indirectly, representatively, derivatively or in any other capacity, arising out of or relating in any way to any claim under federal or state laws that was alleged or could have been alleged in the TPP Action, prior to the date of this Settlement.

13. Reservation of Claims. This settlement is not intended to and does not release claims 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, or other claims unrelated to the allegations in the TPP Class Action.

14. Exclusions. In the event that the opt-outs from the TPP Class exceed a certain percentage of the Settling Defendants’ relevant sales (in dollars) to the TPP Class during the Class Period, then the Settling Defendants shall have the unilateral right in their sole discretion, within ten (10) business days after the Court’s decision to withdraw from and terminate the Agreement.

The relevant percentage thresholds referenced herein shall be set forth in a separate Supplemental Agreement to file filed under seal and reviewed in camera. Within ten (10) business days after the end of the period to object to the proposed settlement, Co-Lead Counsel for Plaintiffs will cause copies of all objections to be provided to counsel for Defendants.

15. Stay of Proceedings. Pending Court approval of the Settlement embodied in this Settlement Agreement, the parties agree to stay any and all proceedings against Defendants in the TPP 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.

16. Effect of Disapproval. If the Court declines to finally approve this Settlement, or if the Court does not enter the Final Order and Judgment in substantially the form provided for in paragraph 5, or if the Court enters the Final Order and Judgment and appellate review is sought, and on such review, the Final Order and Judgment is set aside or is affirmed with material modification, then this Settlement Agreement and the Settlement, with the exception of the parties' obligations under paragraph 10 herein which shall remain in full force and effect, shall be terminated upon the election of any of the Defendants or Co-Lead Counsel for Plaintiffs (Marvin A. Miller, Steve D. Shadowen, Sharon K. Robertson, and Michael Buchman) by providing written notice to the parties designated to receive such notice hereunder in accordance with paragraph 23 hereof and the Escrow Agent within ten (10) business days following the occurrence of any such event. An Order by the Court awarding attorneys' fees, costs, expenses, and/or incentive awards from the Settlement Fund (and Adjustment Fund) or the Set Aside Fund in any amount lower than requested by Plaintiffs' counsel pursuant to this Settlement Agreement (including paragraph 11) shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or the Final Order and Judgment and shall not give rise to any right of termination. A modification

or reversal on appeal of any amount of Plaintiffs' counsel's fees, costs, and expenses awarded by the Court from the Settlement Fund and Adjustment 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 Order and Judgment and shall not give rise to any right of termination.

17. Termination. In the event that the Settlement is terminated pursuant to paragraph 14 or paragraph 16 hereof, then (a) this Settlement Agreement, shall be of no force or effect, (b) any amount of the Settlement Fund attributable to this Settlement, including any and all interest earned thereon, but less the costs expended for notice of the Settlement, settlement administration, escrow administration, and taxes paid on 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 16 hereof, and (c) any release pursuant to paragraph 12 above shall be of no force or effect.

18. 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 be without prejudice to the rights of any party; 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 in accordance with the terms of this Settlement); and that the provisions of this Settlement Agreement can be used by the parties to enforce the provisions of the Settlement Agreement), whether in the TPP 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 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.

19. Resumption of Litigation. The parties agree, subject to approval of the Court, that in the event that the Settlement Agreement is not approved by the Court or the Settlement does not become final pursuant to paragraph 5 and Defendants do not perform under paragraph 6 herein, litigation of the TPP Class Action against Defendants will resume in a reasonable manner to be approved by the Court upon joint application by the parties hereto.

20. Confidentiality. The terms of this Settlement Agreement shall remain confidential until Plaintiffs move for preliminary approval of the Settlement, except that the Court and any other parties may be informed of the fact of settlement. However, this provision does not apply to statements made in judicial filings necessary to obtain preliminary Court approval of the Settlement, and Defendants shall be entitled to make such disclosures of the Settlement Agreement as they, in their sole discretion, determine are appropriate under the law.

21. 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 TPP Plaintiffs and their counsel shall be binding upon all members of the TPP Class and the Releasers and their respective successors and assigns.

22. Names of Parties. The undersigned counsel for TPP Plaintiffs warrant that all of their named TPP clients in the TPP Class Action are parties to this Settlement Agreement even if one or more of them is mistakenly identified in this Settlement Agreement by an incorrect name.

23. 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 electronic transmission (such as e-mail) followed by postage prepaid mail, to the following persons, and shall be addressed as follows:

To Plaintiffs and the TPP Class:

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To Defendants:

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(212) 819-8520
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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.

24. 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.

25. 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.

26. 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.

27. Choice of Law. All terms of this Settlement Agreement shall be governed by and interpreted according to federal common law without regard to its choice of law or conflict of laws principles.

28. Consent to Jurisdiction. Defendants and each member of the TPP Class who did not timely and properly seek exclusion from the TPP Class which has been approved by the Court hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for District of Rhode Island for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement. 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.

29. No Admission of Liability. 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 violates any antitrust, consumer protection, or unjust

enrichment statute or any 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 paragraphs 3-4 hereof.


30. Execution in Counterparts. This Settlement Agreement may be executed in counterparts. Signatures transmitted by facsimile or other electronic means 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 as of January 30, 2020.


Marvin A. Miller
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Co-Lead Counsel for the TPP Class

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