UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: RANBAXY GENERIC DRUG APPLICATION ANTITRUST LITIGATION	MDL No. 2878
THIS DOCUMENT RELATES TO: All End-Payor Actions	Master File No. 19-md-02878-NMG

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into on April 8, 2022 by and between plaintiffs United Food and Commercial Workers Health and Welfare Fund of Northeastern Pennsylvania, Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana, and HMO Louisiana., Inc. ("Plaintiffs"), individually and on behalf of the End Payor Classes (defined below) (who, together with Plaintiffs are referred to collectively as the "End-Payor Classes"), by and through Lowey Dannenberg, P.C. attorneys Gerald Lawrence and Renee Nolan, and The Dugan Law Firm APLC attorneys James Dugan, David Scalia, and TerriAnne Benedetto, in their capacity as attorneys and lead class counsel ("Lead Class Counsel") for the End Payor Classes in *In re: Ranbaxy Generic Drug Application Antitrust Litigation*, Master File No. 19-md-02878-NMG (D. Mass.) (the "Action"), and defendants, Sun Pharmaceutical Industries Ltd. and Ranbaxy, Inc. ("Ranbaxy")[1], by and through Kirkland & Ellis LLP attorneys Jay P. Lefkowitz and Devora W. Allon. This Settlement Agreement is intended to, and upon occurrence of the Effective Date will, fully, finally, and forever resolve, compromise, discharge, and settle the claims of the End Payor Classes in this Action as to Ranbaxy (including

[1] Sun acquired Ranbaxy in 2015 and thereby became responsible for Ranbaxy's liabilities.

all of Ranbaxy's related and/or affiliated individuals and entities, past, present, and future, as defined in ¶8 below), subject to the terms and conditions set forth herein. The Settlement Agreement resolves those claims brought in the Action on behalf of the End Payor Classes against Ranbaxy only, and does not resolve, compromise, discharge, or settle any claims of Plaintiffs or the End Payor Classes against any other entity.

RECITATIONS

WHEREAS, on November 6, 2018, United Food and Commercial Workers Health and Welfare Fund of Northeastern Pennsylvania commenced the First End Payor Action[2] on behalf of members of the End Payor Classes ("Class Members"), alleging that Ranbaxy engaged in a scheme in violation of the federal racketeering and state antitrust and consumer protection laws to unlawfully delay entry of generic substitutes for brand Diovan, Nexium, and Valcyte, resulting in overcharges paid by Class Members;

WHEREAS, the Judicial Panel on Multidistrict Litigation transferred into the Action for coordinated or consolidated pretrial proceedings three direct purchaser actions[3] and the First End Payor Action, *see In re Ranbaxy Generic Drug Application Antitrust Litig.*, 355 F. Supp. 3d 1382 (U.S. Jud. Pan. Mult. Lit. 2019);

[2] The "First End Payor Action" means *United Food and Commercial Workers Health and Welfare Fund of Northeastern Pennsylvania v. Ranbaxy Inc., et al.*, No. 18-cv-04807 (ECF No. 1) (E.D. Pa., filed November 6, 2018.).

[3] *Meijer, Inc. v. Ranbaxy, et al.*, No. 15-cv-11828 (D. Mass.), *Meijer, Inc. v. Ranbaxy, et al.*, No. 18-cv-12129 (D. Mass.), and *César Castillo, Inc. v. Ranbaxy Inc., et al.*, No. 18-cv-06126 (E.D.N.Y.) (the "CCI Action"). The CCI Action was dismissed on May 14, 2020. See Stip. of Dismissal without Prejudice, No. 19-md-2878 (D. Mass.), ECF No. 216.

WHEREAS, Louisiana Health Services & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana and HMO Louisiana, Inc. filed the Related End Payor Action[4] on behalf of End Payor Classes on February 13, 2019;

WHEREAS, on April 16, 2019, the Court ordered that the End Payor Actions be consolidated with each other and coordinated to the extent reasonably practicable with the direct purchaser actions, *see In re Ranbaxy Generic Drug Application Antitrust Litig*., No. 19-MD-02878-NMG, (ECF No. 16) (D. Mass. April 16, 2019);

WHEREAS, on April 19, 2019, the Consolidated End-Payor Class Action Complaint and Jury Demand was filed in this Action, *see In re Ranbaxy Generic Drug Application Antitrust Litig*., No. 19-MD-02878-NMG, (ECF No. 22) (D. Mass.);

WHEREAS, on November 27, 2019, the Court issued an order denying the defendants' motion to dismiss the complaint filed on behalf of the End Payor Classes, *see In re Ranbaxy Generic Drug Application Antitrust Litig*., No. 19-MD-02878-NMG, 2019 WL 6341298 (D. Mass. Nov. 27, 2019);

WHEREAS, on May 8, 2020, the Court issued an order dismissing with prejudice Plaintiffs' claims under the consumer protection laws of California and West Virginia, *see In re Ranbaxy Generic Drug Application Antitrust Litig.*, No. 19-MD-02878-NMG, 2020 WL 2308839 (D. Mass. May 8, 2020);

WHEREAS, on March 3, 2021, a Second Amended Consolidated End-Payor Class Action Complaint and Jury Demand (the "Second Amended Class Complaint") was filed on

[4] The "Related End Payor Action" means *Louisiana Health Services and Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana, et al. v. Ranbaxy Inc., et al*., No. 19-cv-10274 (ECF No. 1) (D. Mass., filed Feb. 13, 2019). The Related End Payor Action and First End Payor Action are collectively referred to as the "End Payor Actions."

behalf of the End Payor Classes, *see In re Ranbaxy Generic Drug Application Antitrust Litig*., C.A. No. 19-md-02878-NMG (ECF No. 338) (D. Mass. March 3, 2021);

WHEREAS, on May 14, 2021, the Court issued a memorandum and order on Plaintiffs' motions for class certification pursuant to Federal Rule of Civil Procedure 23 certifying the End Payor Classes, as defined in Paragraph 1 below, *see In re Ranbaxy Generic Drug Application Antitrust Litig*., 338 F.R.D. 294 (D. Mass. 2021); and subsequently entered an order approving the form and manner of notice, appointing a notice administrator, and formally appointing class representatives and Lead Class Counsel, *see In re Ranbaxy Generic Drug Application Antitrust Litig*., No. 19-MD-02878-NMG (ECF No. 487) (D. Mass. Oct. 26, 2021);

WHEREAS, on November 5, 2021, the claims administrator for the End Payor Classes sent notice to the Class Members advising them of the Court's class certification order and providing a procedure for opting out of the class;

WHEREAS, on November 15 and 16, 2021, Ranbaxy, Lead Class Counsel, and class counsel for the class in the direct purchaser actions participated in a mediation with and through Kenneth Feinberg, but did not reach any resolution;

WHEREAS, on November 22, 2021, the Court issued an order on cross-motions for summary judgment, *see In re Ranbaxy Generic Drug Application Antitrust Litig*., No. 19-MD-02878-NMG, 2021 WL 5493675 (D. Mass. Nov. 22, 2021);

WHEREAS, on December 21, 2021, the Court issued an oral order on the parties' *Daubert* motions, *see In re Ranbaxy Generic Drug Application Antitrust Litig*., No. 19-MD-02878-NMG, (ECF No. 572-2) (D. Mass. Dec 21, 2021) (transcript of Dec. 21, 2021 hearing);

WHEREAS, Ranbaxy denies each and every one of the allegations asserted in the current pending and prior complaints on behalf of the End Payor Classes, has neither conceded nor

admitted any liability, and has asserted a number of defenses to the claims of the End Payor Classes;

WHEREAS, Ranbaxy 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 and to resolve all claims asserted on behalf of the End-Payor Classes in this Action solely to avoid the uncertainties and additional costs of further litigation and thereby give more attention to the growth of the business;

WHEREAS, after substantial factual and expert discovery, including with respect to the claims asserted in Plaintiffs' complaints in this Action and the legal and factual defenses thereto asserted by Ranbaxy, Lead Class Counsel believe that it would be in the best interests of the End Payor Classes to enter into this Settlement Agreement with Ranbaxy to avoid the uncertainties of litigation against Ranbaxy and to assure a benefit to the End Payor Classes;

WHEREAS, Lead Class Counsel, on behalf of Plaintiffs and the End Payor Classes, and counsel for Ranbaxy, all of whom are highly experienced in pharmaceutical antitrust litigation and settlement, engaged in arm's-length settlement negotiations and have reached this Settlement Agreement with the assistance of Kenneth Feinberg, subject to Court approval, which embodies all of the terms and conditions of the Settlement between Plaintiffs, both individually and on behalf of the End Payor Classes, and Ranbaxy;

WHEREAS, Plaintiffs and Ranbaxy 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 Ranbaxy (or by any of Ranbaxy's related and/or affiliated individuals and entities, past, present, and future, as

defined in ¶8 below) or of the truth of Plaintiffs' claims or allegations or a waiver of any defenses thereto or an admission that any such defense lacks merit;

WHEREAS, Plaintiffs and Ranbaxy agree that neither 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 lack of merit in or of the absence of the truth of Plaintiffs' claims or allegations; and

WHEREAS, Lead Class Counsel have concluded that the Settlement is fair, reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23 and is in the best interests of the End Payor Classes;

NOW THEREFORE, in view of the foregoing and the representations, warranties, and covenants contained herein, and intending to be legally bound hereby, it is agreed by the undersigned, on behalf of Plaintiffs and the End Payor Classes and Ranbaxy that this Action and all claims of Plaintiffs and the End Payor Classes be fully, finally, and forever settled, compromised, discharged, and dismissed with prejudice as to Ranbaxy, with each party bearing its own costs, subject to the approval of the Court, on the following terms and conditions:

1. **End Payor Classes**. The Court has previously certified the following End Payor Classes, which Ranbaxy shall not challenge for purposes of this Settlement:

> All persons or entities in the United States and its territories that indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of Diovan and/or AB-rated generic versions of Diovan from any of the Defendants or any brand or generic manufacturer at any time during the class period September 28, 2012, through and until the anticompetitive effects of the Defendants' conduct cease;
>
> All persons or entities in the United States and its territories that indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of Valcyte and/or AB-rated generic versions of Valcyte from any of the Defendants or any brand or generic

manufacturer, other than for resale, at any time during the class period August 1, 2014, through and until the anticompetitive effects of the Defendants' conduct cease;

All persons or entities in the United States and its territories that indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of AB-rated generic versions of Nexium from any of the Defendants or any brand or generic manufacturer, other than for resale, at any time during the class period May 27, 2014, through and until the anticompetitive effects of the Defendants' conduct cease;

All persons or entities in the Indirect Purchaser States[5] that indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of Diovan and/or AB-rated generic versions of Diovan from any of the Defendants or any brand or generic manufacturer, other than for resale, at any time during the class period September 28, 2012, through and until the anticompetitive effects of the Defendants' conduct cease;

All persons or entities in the Indirect Purchaser States that indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of Valcyte and/or AB-rated generic versions of Valcyte from any of the Defendants or any brand or generic manufacturer, other than for resale, at any time during the class period August 1, 2014, through and until the anticompetitive effects of the Defendants' conduct cease;

All persons or entities in the Indirect Purchaser States that indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of AB-rated generic versions of Nexium from any of the Defendants or any brand or generic manufacturer, other than for resale, at any time during the class period May 27, 2014, through and until the anticompetitive effects of the Defendants' conduct cease.

Excluded from all six End Payor Classes are: (a) natural person consumers; (b) Defendants, their officers, directors, management, employees, subsidiaries, and affiliates; (c) all federal and state governmental entities except for cities, towns, municipalities, or counties with self-funded prescription drug plans; (d) all persons or entities who purchased Diovan, Nexium, Valcyte, or their AB-rated generic versions for purposes of resale from any of the Defendants or any brand or generic manufacturer; (e) fully insured health plans (i.e., health plans that purchased insurance covering 100% of their

[5] The Indirect Purchaser States are: Arizona, California, the District of Columbia, Florida, Hawaii, Iowa, Massachusetts, Maine, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, South Dakota, Vermont, West Virginia, and Wisconsin.

reimbursement obligation to members); and (f) pharmacy benefit managers.[6]

2. **Reasonable Best Efforts to Effectuate This Settlement**. Plaintiffs, Lead Class Counsel, and Ranbaxy agree to recommend approval of this Settlement to 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, to carry out the terms of this Settlement Agreement and to secure the prompt, complete, and final dismissal with prejudice of claims in this Action against Ranbaxy. This includes Ranbaxy's serving notice of this Settlement on the appropriate federal and state officials under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715.

3. **Motion for Preliminary Approval of the Settlement.** As soon as possible and in no event later than twenty (20) business days after the date of execution of this Settlement Agreement (or earlier if required by the Court), Plaintiffs and the End Payor Classes shall submit to the Court, and Ranbaxy shall support, a motion seeking entry of an order preliminarily approving the Settlement substantially in the form of **Exhibit A** hereto (the "Preliminary Approval Order"):

a. Preliminarily approving the Settlement set forth in this Settlement Agreement as fair, reasonable, and adequate and in the best interests of End Payor Classes, pursuant to Federal Rule of Civil Procedure 23;

[6] Also excluded from the End-Payor Classes is Central Painting & Sandblasting, Inc, Accusoft, and Klick USA. Inc to the extent that they submitted a valid request for exclusion before the December 20, 2021 deadline pursuant to the class notice sent on November 5, 2021. *See In re Ranbaxy Generic Drug Application Antitrust Litig.*, No. 19-MD-02878-NMG, (ECF No. 549-1) (D. Mass. Feb. 28, 2022).

b. Staying all proceedings in this Action on behalf of Plaintiffs and the End Payor Classes against Ranbaxy, except those proceedings provided for or required by this Settlement Agreement;

c. Approving the form and manner of notice, which provides for dissemination of notice, substantially in the form of **Exhibit B** hereto, by U.S. mail and, where possible, email to all Class Members, except pursuant to CAFA. Ranbaxy shall serve notices as required under CAFA within ten (10) business days from the date Plaintiffs file the Settlement Documents with the Court. Ranbaxy shall bear any costs associated with such CAFA notices and contemporaneously provide Lead Class Counsel with copies of any such notices;

d. Appointing a settlement administrator and escrow agent; and

e. Setting a final settlement schedule and date for a fairness hearing by the Court after the notice period has expired to approve the Settlement, proposed allocation plan, Lead Class Counsel's application for an award of attorneys' fees and reimbursement of expenses, and Plaintiffs' application for Service Awards.

4. **Motion for Final Approval and Entry of Final Judgment**. If the Court preliminarily approves this Settlement, Plaintiffs and the End Payor Classes shall submit, and Ranbaxy shall support, a motion for final approval of this Settlement by the Court (the "Final Approval Motion"), within sixty (60) days after the Court enters the Preliminary Approval Order, and after notice has been disseminated to the End Payor Classes pursuant to the

Preliminary Approval Order. The Final Approval Motion shall seek entry of an order and final judgment ("Final Approval Order") substantially in the form of **Exhibit C** hereto:

a. Finding this Settlement Agreement and its terms to be a fair, reasonable, and adequate settlement as to Plaintiffs and the End Payor Classes within the meaning of Federal Rule of Civil Procedure 23 and directing its consummation pursuant to its terms;

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

c. Finding that the proposed allocation plan, which allocates the Settlement Fund (net of Court-approved attorneys' fees, expenses, and settlement administration costs) is fair and efficient;

d. Finding that all Class Members shall be bound by this Settlement Agreement, including the release provisions and covenant not to sue set forth in this Settlement Agreement;

e. Incorporating the releases set forth in Paragraphs 8 and 9, below, and forever barring the Releasors from asserting any Released Claims against any of the Ranbaxy Releasees as defined below;

f. Retaining exclusive jurisdiction over the Settlement and this Settlement Agreement, including the administration and consummation of this Settlement; and

g. Directing that all claims by and on behalf of Plaintiffs and the End Payor Classes be dismissed with prejudice as to Ranbaxy only and, except as

provided for herein, with prejudice and without costs or attorneys' fees recoverable under 18 U.S.C. § 1964 and/or the state antitrust and consumer protection statutes.[7]

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

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

b. The Court enters an order finally approving the Settlement substantially in the form attached hereto as the Final Approval Order **(Exhibit C)**, entering a final judgment of dismissal with prejudice as to Ranbaxy only against Plaintiffs and the End Payor Classes;

c. The time for appeal from the Court's signing of the Final Approval Order has expired or, if the Final Approval Order is appealed, it 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 Approval Order may be taken and such affirmance has become no longer subject to further appeal or review; and

[7] The state antitrust statutes are: Arizona Rev. Stat. §§ 44-1403, et seq., Cal. Bus. & Prof. Code §§ 16700, et seq., D.C. Code §§ 28-4503, et seq., Fla. Stat. §§ 542, et seq., Haw. Rev. Stat. § 480, et seq., Iowa Code § 553.5 et seq., Mass. G.L. c. 93A, et seq., Me. Rev. Stat. Ann. 10, §§ 1101, et seq., Mich. Comp. Laws Ann. §§ 445.771, et seq., Minn. Stat. §§ 325d.49, et seq., and Minn. Stat. § 8.31, et seq., Neb. Code Ann. §§ 59-801, et seq., Nev. Rev. Stat. Ann. §§ 598A.210, et seq., N.H. Rev. Stat. Ann. §§ 356, et seq., N.M. Stat. Ann. §§ 57-1-2, et seq., N.C. Gen. Stat. §§ 75-2.1, et seq., N.D. Cent. Code §§ 51-08.1-01, et seq., Or. Rev. Stat. §§ 646.705, et seq., S.D. Codified Laws §§ 37-1-3.2, et seq., Vt. Stat. Ann. 9, §§ 2453, et seq., W.Va. Code §§ 47-18-1, et seq., Wis. Stat. §§ 133.01, et seq. The state consumer protection statutes are: Cal. Civ. Code §§ 1750, et seq. and Cal. Bus. & Prof. Code §§ 17200, et seq., Fla. Stat. §§ 501.201, et seq., Mass. G.L. c. 93A, et seq., 5 Me. Rev. Stat. §§ 205A, et seq., Mich. Stat. §§ 445.901, et seq., Minn. Stat. §§ 325d.43, et. seq., Minn. Stat. §§ 325f.69, et seq., and Minn. Stat. §§ 8.31, et seq., Vernon's Missouri Stat. §§ 407.010, et seq., Neb. Rev. Stat. §§ 59-1601, et seq., Nev. Rev. Stat. §§ 598.0903, et seq., N.M. Stat. §§ 57-12-1, et seq., N.C. Gen. Stat. §§ 75-1.1, et seq., N.D. Cent. Code §§ 51-15-01, et seq., 73 Pa. Stat. §§ 201-1, et seq., S.D. Code Laws §§ 37-24-1, et seq., Vt. Stat. Ann. 9 §§ 2451, et seq., and W.Va. Code §§ 46A-6-101, et seq.

d. The Settlement is not terminated pursuant to Paragraph 13, below.

6. **Settlement Payment**. The total "Settlement Payment" is one hundred forty-five million dollars ($145,000,000 USD). The Settlement Payment will be made by Ranbaxy as follows:

a. within ninety (90) business days following entry of the Preliminary Approval Order of the Settlement without material change and upon receipt from Lead Class Counsel of wiring instructions on the recipient's letterhead that include the bank name and ABA routing number, account name, and account number, and a signed Form W-9 reflecting a valid taxpayer identification number for the qualified settlement account in which the funds are to be deposited (the "Settlement Fund"), Ranbaxy shall pay the Settlement Payment.

b. The Settlement Fund shall be held in escrow (the "Escrow Account"), subject to the terms and conditions of an escrow agreement in the form of **Exhibit D** hereto (the "Escrow Agreement") and in accordance with the provisions of Paragraph 7 below, pending finality of this Settlement Agreement pursuant to Paragraph 5 above.

c. The total payment that Ranbaxy will pay for this Settlement shall be the Settlement Payment only. No portion of the Settlement Payment shall constitute, or shall be construed as constituting, a payment in lieu of treble damages, fines, penalties, punitive damages or forfeitures.

d. The Settlement Payment shall be made directly by Ranbaxy to the Escrow Account.

7. **The Settlement Fund.**

(a) Before the Court issues the Final Approval Order, disbursements for expenses associated with providing notice of the Settlement to the Class and 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 Ranbaxy plus interest earned (net of any taxes paid on such interest), minus Administration Expenses reasonably paid or incurred up to two hundred and twenty five thousand dollars ($225,000). Court approval shall not be required for disbursements or distributions of Administration Expenses for amounts (in the aggregate) of less than two hundred and twenty five thousand dollars ($225,000). 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 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 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. Ranbaxy 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. Ranbaxy shall have no responsibility whatsoever

for the allocation or distribution of the Settlement Fund and shall not be responsible for disputes relating to the amount, allocation, or distribution of any fees or expenses. Further, after making the Settlement Payment, Ranbaxy shall not be liable for any additional payments, including without limitation any damages, fines, penalties, punitive damages, or forfeitures, to the Plaintiffs, Lead Class Counsel, or the End Payor Classes pursuant to this Settlement Agreement.

(d) Ranbaxy shall have no right of reimbursement or repayment from the Settlement Fund except as set forth in Paragraphs 7(a) and 13.

(e) Plaintiffs and Lead Class Counsel shall be reimbursed, paid, and indemnified solely out of the Settlement Fund for all expenses. Ranbaxy shall not be liable for any costs, attorneys' fees, other fees, or expenses of any of Plaintiffs' or the End Payor Classes' respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

(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.

8. **Releases.**

(a) In exchange for the Settlement Payment, upon the occurrence of the Effective Date, Plaintiffs and all members of the End Payor Classes, whether or not they choose to make a claim upon or participate in the Settlement Fund, on behalf of themselves and their respective past, present, and future parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, and general or limited partners, as well as their past, present, and future respective officers, directors, employees, trustees, insurers, agents, associates, attorneys, and any other representatives thereof, and predecessors, heirs, executors, administrators, successors, and assigns of each of the

foregoing, and as assignee or representative of any other entity (the "Plaintiff Releasors") will dismiss Ranbaxy, its past, present, and future parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, and general or limited partners, as well as their past, present, and future respective officers, directors, employees, trustees, insurers, agents, associates, attorneys, and any other representatives thereof, and the predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing (the "Ranbaxy Releasees") from this Action with prejudice, and release and forever discharge the Ranbaxy Releasees from all claims, rights, debts, obligations, demands, actions, suits, causes of action, liabilities, including costs, expenses, penalties, and attorneys' fees, or damages (known or unknown), whenever incurred, asserted against Ranbaxy in the Second Amended Class Complaint, or that could have been asserted in this Action, based on the allegations made, regardless of legal theory (collectively, the "Released Claims").

(b) For the avoidance of doubt, the scope of the Released Claims does not extend to (1) claims alleged in *In re: Generic Pharmaceuticals Pricing Antitrust Litig.*, C.A. No. 16-md-2724 (E.D. Pa.)[8]; (2) claims alleged in *In re: Lipitor Antitrust Litig.*, C.A. No. 12-cv-2389 (D.N.J.); and (3) any claim that both (a) does not relate to direct purchase of brand or generic Diovan between September 2012 and December 2014; brand or generic Nexium between May 2014 and December 2015; and/or brand or generic Valcyte between August 2014 and February 2016, and (b) that is not contained in, is not based on, does not relate to, and does not arise out of the facts or circumstances alleged in the Second Amended Class Complaint.

[8] The carveout in Paragraph 8(b)(1) shall include claims brought in *America's 1st Choice of South Carolina, Inc., et al. v. Actavis Elizabeth, LLC, et al.*, No. 190702094 (Phila. CCP), *Blue Cross and Blue Shield of North Carolina, et al. v. Actavis Elizabeth, LLC, et al.*, No. 200500347 (Phila. CCP), and *AmeriHealth Caritas Health Plan, et al. v. Actavis Elizabeth, LLC, et al.*, No. 211000688 (Phila. CCP) that are similar in nature to the claims alleged in the *Generics* MDL.

(c) Plaintiffs and the End Payor Classes hereby covenant and agree that, after the Effective Date, each shall not sue or otherwise seek to establish or impose liability against the Ranbaxy Releasees based, in whole or in part, on any of the Released Claims. The Plaintiff Releasors are releasing claims (upon final Court approval) only against the Ranbaxy Releasees.

9. **California Civil Code § 1542.** Each of the Plaintiff Releasors expressly waives all rights under California Civil Code § 1542 with respect to the Released Claims to the extent, if any, it would otherwise apply to the Released Claims which provides:

> 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.

10. **Reservation of Claims.** No party other than the Ranbaxy Releasees is intended to be, or is, included within the scope of the release contained herein.

11. **Full Satisfaction; Limitation of Interest and Liability.** Class Members shall look solely to the Settlement Fund for settlement and satisfaction against Ranbaxy of all claims that are released hereunder. Except as provided by order of the Court, no member of the End Payor Classes shall have any interest in the Settlement Fund or any portion thereof. Plaintiffs and Lead Class Counsel or any other counsel acting on Plaintiffs' behalf will be paid solely out of the Settlement Fund for any costs and expenses relating to this Action.

12. **Attorneys' Fees and Costs; Service Awards.**

(a) Lead Class Counsel shall file a motion for approval of the Fee and Expense Award ("Motion for Fee and Expense Award") within sixty (60) days after the Court has granted preliminary approval of the Settlement, and sufficiently before the Court's fairness hearing on the Settlement. Lead Class Counsel shall be paid solely out of the Settlement Fund for all such fees and expenses. Plaintiffs, Class Members, and their respective counsel shall not seek

payment of any attorneys' fees or costs from Ranbaxy in this Action, or in any other action related to the Released Claims set forth above, from any source other than the Settlement Fund, and will not seek that payment prior to the Effective Date and only after the total Settlement Payment has been made.

(b) Plaintiffs may make an application to the Court for an award in connection with their representation of the End Payor Classes in this litigation, which amount constitutes the Service Awards, after the Court has granted preliminary approval of the Settlement but sufficiently before the Court's fairness hearing on the Settlement. Plaintiffs shall be paid solely out of the Settlement Fund for all such fees and expenses. Plaintiffs shall not seek any Service Awards from the Ranbaxy Releasees in this Action, or in any other action related to the Released Claims set forth above, from any source other than the Settlement Fund, and will not seek that payment prior to the Effective Date and only after the total Settlement Payment has been made.

(c) The procedures for and the allowance or disallowance by the Court of the Motion for Fee and Expense Award or the Service Awards 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. Any order or proceeding relating to the Motion for Fee and Expense Award or the Service Awards, or any appeal from any such order, shall not operate to terminate or cancel this Agreement or 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 Settlement Payment.

13. **Termination.** Ranbaxy and Plaintiffs shall each have the option to terminate the Settlement and have the Settlement Payment refunded to Ranbaxy if the Court declines to grant final approval to the Settlement. Ranbaxy shall have the option to terminate the Settlement and

have the Settlement Payment refunded to Ranbaxy pursuant to the terms of a confidential supplemental agreement described in Paragraph 14. If for any reason the Settlement does not become final in accordance with the terms of the Settlement Agreement, then (i) this Settlement Agreement shall be of no force or effect; (ii) all funds paid to the Settlement Fund by Ranbaxy, plus interest (net of any taxes paid on such interest), minus the actual costs of notice and claims administration up to two hundred and twenty five thousand dollars ($225,000), shall be returned to Ranbaxy as soon as practicable after the Escrow Agent receives notice of termination; (iii) any release pursuant to Paragraph 8 or 9 shall be of no force or effect; (iv) Ranbaxy and Plaintiffs shall be restored to their respective positions in the Action as of March 22, 2022, with all of their respective legal claims and defenses preserved as they existed on that date; (v) any judgment or order entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*, and (vi) the litigation of this Action will resume in a reasonable manner and on a reasonable timetable to be approved by the Court.

14. **Opt-Outs.**

(a) Class Members were previously afforded the opportunity to opt out of the End Payor Classes. The parties agree that there is no need for an additional opt-out period and shall each oppose any effort to impose an additional opportunity to opt out of this Settlement. Should the Court order an additional opt-out period, then, within ten (10) calendar days after the Court-ordered deadline by which Class Members may opt out, Lead Class Counsel shall serve on counsel for Ranbaxy a list of all opt outs that timely submitted notices of intent to opt out.

(b) Ranbaxy shall have the option to terminate this Agreement if the Opt-Out Percentage exceeds a percentage set forth in a confidential supplemental agreement between Plaintiffs and Ranbaxy, which can be made available to the Court for *in camera* review upon request.

(c) Any disputes regarding the application of any aspect of this Paragraph 14, including the calculation of the Opt-Out Percentage, shall be resolved by the Court, with Plaintiffs, Ranbaxy, and the opt-outs all having the opportunity to be heard.

15. **Taxes Paid by Settlement Fund.**

(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 Court-approved settlement administrator ("Settlement Administrator") 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 Settlement Administrator to make any tax payments, including interest and penalties, for income earned by the Settlement Fund. Lead Class Counsel shall also be solely responsible for directing the Settlement Administrator to withhold any amount of payments from the Settlement Fund as may be necessary or appropriate to satisfy any tax-related obligations. 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. Ranbaxy 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 (minus Administration Expenses) is returned to Ranbaxy. Other than as specifically set forth herein, Ranbaxy shall have no responsibility for the payment of taxes or tax-related expenses. If, for any reason, for any period of time, Ranbaxy is required to pay taxes on income earned by the Settlement Fund, the

Escrow Agent shall, upon written instructions from Ranbaxy with notice to Lead Class Counsel, timely issue payment from the Settlement Fund to enable the payment of all taxes (state, federal, or other, including to any foreign jurisdiction) 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 Settlement 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 Account 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 Account being a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B.

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

17. **Integrated Agreement.** This Settlement Agreement, together with exhibits hereto and the documents incorporated herein by reference, contains 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 supersedes 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 signatories hereto.

18. **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.

19. **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.

20. **Intended Beneficiaries.** No provision of this Settlement Agreement will provide any rights to, or be enforceable by, any person or entity that is not Plaintiffs, Lead Class Counsel, a member of the End Payor Classes, or Ranbaxy. Neither Plaintiffs nor Lead Class Counsel may assign or otherwise convey any right to enforce or dispute any provision of this Settlement Agreement.

21. **Choice of Law.** All terms of this Settlement Agreement shall be governed by and interpreted according to Massachusetts law, without regard to any otherwise applicable choice-of-law principle

22. **Consent to Jurisdiction.** Ranbaxy and each member of the End Payor Classes hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Massachusetts 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.

23. **Representations and Warranties.** The signatories hereto represent and warrant that they each have 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.

24. **Stay of Proceedings.** Pending Court approval of the Settlement embodied in this Settlement Agreement, Plaintiffs agree to support any motion by Ranbaxy to stay any and all proceedings against Ranbaxy in this Action other than those incident to the settlement process and to grant extensions of time with respect to any court filings necessary to effectuate such stays.

25. **No Admission.** Nothing in this Settlement Agreement, nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement, 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: (a) by Ranbaxy, including, without limitation, that Ranbaxy engaged in any conduct or practices that violate any antitrust statute, any racketeering statute, or any other law, statute, or regulation; or (b) by Plaintiffs, including, without limitation, that any allegation made by them in the Action is without merit.

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

Jay P. Lefkowitz, P.C.
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Telephone: 212-446-4970
Email: lefkowitz@kirkland.com

Devora W. Allon. P.C.
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Telephone: 212-446-5967
Email: devora.allon@kirkland.com

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

Gerald Lawrence
Renee A. Nolan
LOWEY DANNENBERG, P.C.
One Tower Bridge
100 Front Street, Suite 520
West Conshohocken, PA 19428
Tel: (215) 399-4770
glawrence@lowey.com
rnolan@lowey.com

James R. Dugan, II
David S. Scalia
TerriAnne Benedetto
THE DUGAN LAW FIRM, APLC

One Canal Place – Suite 1000
365 Canal Street
New Orleans, LA 70130
(504) 648-0180
jdugan@dugan-lawfirm.com
dscalia@dugan-lawfirm.com
tbenedetto@dugan-lawfirm.com

27. **Execution in Counterparts.** This Settlement Agreement may be executed in counterparts. Signatures transmitted by electronic means shall be considered valid signatures as of the date signed.

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

Dated: April 8, 2022

Jay P. Lefkowitz, P.C.
Devora W. Allon, P.C.
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Tel: (212) 446-4970
lefkowitz@kirkland.com
devora.allon@kirkland.com

Counsel for Ranbaxy

Gerald Lawrence
Renee A. Nolan
LOWEY DANNENBERG, P.C.
One Tower Bridge
100 Front Street, Suite 520
West Conshohocken, PA 19428
Tel: (215) 399-4770
glawrence@lowey.com
rnolan@lowey.com
Counsel for Plaintiff United Food and Commercial Workers of Northeastern Pennsylvania and the End Payor Classes

James R. Dugan, II
David S. Scalia
TerriAnne Benedetto
THE DUGAN LAW FIRM, APLC
One Canal Place – Suite 1000
365 Canal Street
New Orleans, LA 70130

One Canal Place – Suite 1000
365 Canal Street
New Orleans, LA 70130
(504) 648-0180
jdugan@dugan-lawfirm.com
dscalia@dugan-lawfirm.com
tbenedetto@dugan-lawfirm.com

27. **Execution in Counterparts.** This Settlement Agreement may be executed in counterparts. Signatures transmitted by electronic means shall be considered valid signatures as of the date signed.

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

Dated: April 8, 2022

Jay P. Lefkowitz, P.C.
Devora W. Allon, P.C.
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Tel: (212) 446-4970
lefkowitz@kirkland.com
devora.allon@kirkland.com

Counsel for Ranbaxy

Gerald Lawrence
Renee A. Nolan
LOWEY DANNENBERG, P.C.
One Tower Bridge
100 Front Street, Suite 520
West Conshohocken, PA 19428
Tel: (215) 399-4770
glawrence@lowey.com
rnolan@lowey.com
Counsel for Plaintiff United Food and Commercial Workers Health and Welfare Fund of Northeastern Pennsylvania and the End Payor Classes

James R. Dugan, II
David S. Scalia
TerriAnne Benedetto
THE DUGAN LAW FIRM, APLC
One Canal Place – Suite 1000
365 Canal Street
New Orleans, LA 70130

(504) 648-0180
jdugan@dugan-lawfirm.com
dscalia@dugan-lawfirm.com
tbenedetto@dugan-lawfirm.com

Counsel for Plaintiff Louisiana Health Service and Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana, and HMO Louisiana., Inc. and the End Payor Classes