

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

VISTA HEALTHPLAN, INC., *et al.*,

Plaintiffs,

v.

CEPHALON, INC., *et al.*,

Defendants.

Case No. 2:06-cv-1833 (MSG)
Honorable Mitchell S. Goldberg

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT (the “Settlement Agreement”) is submitted to the United States District Court for the Eastern District of Pennsylvania pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to Court approval, this Settlement Agreement is made and entered into as of January 10, 2018, by and between (a) Mylan Inc., (formerly known as Mylan Laboratories Inc.) and Mylan Pharmaceuticals Inc. (collectively “Mylan” or “Mylan Defendants”); (b) consumer plaintiff Shirley Panebianco (“Named Consumer Plaintiff”); and (c) third party payor plaintiffs Vista Healthplan, Inc. (n/k/a Coventry Health Care of Florida, Inc.), District Council 37 Health & Security Plan, Pennsylvania Employees Benefit Trust Fund, and Pennsylvania Turnpike Commission (collectively, “Third Party Payor Plaintiffs” and together with “Named Consumer Plaintiff,” “End-Payor Plaintiffs” or “Plaintiffs”), individually and on behalf of the Classes (as defined in Paragraph 1 below), by and through their court-appointed Interim Co-Lead Class Counsel, Kessler Topaz Meltzer & Check, LLP; Spector, Roseman, Kodroff & Willis, P.C., and Criden & Love, P.A. (collectively “Class Counsel”), in their capacity as Court appointed Interim Co-Lead Class Counsel in the above-captioned consolidated class action (the “Action”) (the Mylan Defendants and Plaintiffs are collectively referred to herein as “Parties”).

WHEREAS, the Parties acknowledge that the United States District Court for the Eastern District of Pennsylvania has jurisdiction over the Action, each of the Parties hereto, and all putative members of the Classes defined herein for all manifestations of this case, including this settlement;

WHEREAS, in Plaintiffs' "Amended Consolidated Class Action Complaint of End-Payers" (the "Amended Complaint") (Docket No. 75), Plaintiffs have alleged, among other things, that the Mylan Defendants violated, *inter alia*, the federal antitrust laws and the antitrust and unfair and deceptive trade practices laws of various states, and have been unjustly enriched by wrongfully delaying the introduction of generic versions of the prescription drug Provigil (active pharmaceutical ingredient modafinil), a drug indicated for the treatment of certain sleep disorders, as detailed in the Amended Complaint and other papers filed with the Court, and that Plaintiffs and other members of the putative Classes suffered significant calculable damages as a result;

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

WHEREAS, Plaintiffs and the Mylan 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 the Mylan Defendants or of the truth of any claim or allegation or a waiver of any defenses thereto;

WHEREAS, arm's-length settlement negotiations have taken place between counsel for Plaintiffs and counsel for the Mylan Defendants for an extended period of months, both with and without the assistance of a court-appointed mediator;

WHEREAS, this Settlement Agreement (including all exhibits hereto and other documents explicitly referenced herein) embodies all of the terms and conditions of the settlement (the “Settlement”) between the Mylan Defendants and Plaintiffs, both individually and on behalf of the proposed Classes, that has been reached, and supersedes any prior or contemporaneous oral or written agreements, subject to final approval of the United States District Court for the Eastern District of Pennsylvania (the “Court”);

WHEREAS, Class Counsel have concluded, after extensive discovery and motion practice, and after carefully considering all of the circumstances of the Action, including the claims asserted in the complaint filed in the Action and the legal and factual defenses thereto, that it would be in the best interests of the Classes to enter into this Settlement Agreement in order to avoid the uncertainties of, and the risks and delays associated with, the outcome of a trial and any subsequent appeals, particularly in complex litigation such as this, and to assure a benefit to the Classes and further, that Class Counsel consider the Settlement to be fair, reasonable and adequate and in the best interests of the Classes; and WHEREAS, the Mylan Defendants have concluded, despite their belief that they are not liable for the claims asserted and that they have good faith defenses thereto, that, without any admission of liability or wrongdoing, it would be in their best interests to enter into this Settlement Agreement to avoid further expense, inconvenience, uncertainties of, and risks and delays associated with, the litigation with Plaintiffs and the Classes, and the distraction of burdensome and protracted litigation and thereby to resolve this controversy; and

WHEREAS, a group of large health insurers have agreed to participate in the Settlement and not exercise their rights to opt-out of the Settlement;

NOW THEREFORE, it is agreed by the Parties, through their respective authorized representatives who have signed below, that the Action and all claims made or that could have been made against the Mylan Defendants by Plaintiffs individually and on behalf of the Classes with respect to the Action that are Released Claims (as defined in Paragraph 12(a) herein) be settled, compromised and dismissed with prejudice, without the award of costs as to Plaintiffs, the Classes or the Mylan Defendants, except as provided herein, subject to the approval of the Court, on the following terms and conditions:

1. **Class Certification.**

(a) Plaintiffs shall seek Court approval of the certification of the State Antitrust/Consumer Protection Class and the State Unjust Enrichment Class, as defined below, for purposes of settlement in light of the proposed Settlement only. The Mylan Defendants will not oppose the Plaintiffs' motion for settlement class certification in connection with the proposed Settlement only. 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 in any other Settlement-related document, shall constitute, be construed as or be deemed to be evidence of or an admission by the Mylan Defendants as to whether any class may be certified for purposes of litigation and trial. The proposed settlement classes (the "Classes") are defined as follows:

I. State Antitrust/Consumer Protection Class

All persons or entities who purchased Provigil and/or its generic equivalent modafinil, intended for consumption by themselves, their families or their members, employees, plan participants, beneficiaries or insureds in Arizona, California, District of Columbia, Florida, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, South Dakota,

Tennessee, Utah, Vermont, West Virginia, and Wisconsin, between June 24, 2006 and the date on which the Court enters the Plaintiffs' proposed Preliminary Approval Order (the "Preliminary Approval Date").

II. State Unjust Enrichment Class

All persons or entities who purchased Provigil and/or its generic equivalent modafinil, intended for consumption by themselves, their families or their members, employees, plan participants, beneficiaries or insureds in Alabama, Arizona, California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin, between June 24, 2006 and the Preliminary Approval Date.

The following persons or entities are excluded from the proposed Classes: (i) The Mylan Defendants and their respective subsidiaries, affiliates and employees; (ii) All governmental entities (except for government funded employee benefit plans); (iii) Insured individuals covered by plans imposing a flat dollar co-pay that was the same dollar amount for generic as for brand drug purchases; (iv) Insured individuals who purchased only generic modafinil (not branded Provigil) pursuant to a fixed co-pay applicable to generic drugs; (v) United Healthcare Services, Inc., including its subsidiaries; and (vi) Fully insured health plans *i.e.* plans that purchased insurance from another third-party payor covering 100% of the plan's reimbursement obligations to its members.

(b) For purposes of defining the Classes, persons and entities "purchased" Provigil and/or its generic equivalent modafinil if they paid or reimbursed for some or all of the purchase price or reimbursed any part of the purchase price paid by their members, employees, insureds, participants or beneficiaries, to the extent they were at risk for the cost of the purchase.

(c) The Parties' stipulation to Court approval of certification of the Classes is for purposes of effectuating the Settlement only, and for no other purpose. The parties retain all of

their respective objections, arguments and/or defenses with respect to class certification should there be no settlement of the Action. If the settlement contemplated by this Settlement Agreement does not obtain Final Approval, no class will be deemed certified as a result of, or pursuant to, this Settlement Agreement. In such event, the Mylan Defendants will not be deemed to have stipulated to certification of any class, and the matter will proceed without prejudice to the ability of any Party thereafter to request or oppose class certification, including challenging, via cross examination or otherwise, any evidentiary presentation submitted in favor of or opposition to class certification.

2. **Reasonable Best Efforts to Effectuate This Settlement.** Counsel for the undersigned agree to recommend approval of this Settlement Agreement by the Court and to undertake reasonable efforts not inconsistent with the provisions of this Settlement Agreement, 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 carry out the terms of this Settlement Agreement.

3. **Settling Health Plans.** A group of health insurers (the “Settling Health Plans”), all members of the Classes, have specifically consented to join in this Settlement and to not exercise their rights to opt-out of the Settlement. The Consents of the Settling health Plans are attached hereto as Exhibit A.

4. **Motion for Preliminary Approval; Notice to Classes.** Plaintiffs, through Class Counsel, shall file with the Court a motion for preliminary approval of the Settlement, which shall contain a proposed preliminary approval order in a form agreed upon by Class Counsel and the Mylan Defendants seeking:

- (a) certification of the Classes (as defined in paragraph 1 above);

(b) preliminary approval of the Settlement as fair, reasonable and adequate within the meaning of Fed. R. Civ. Rule 23;

(c) approval of the notice and proposed notice plan, including a schedule for objections and opt outs;

(d) a stay of all proceedings in the Action by Plaintiffs against the Mylan Defendants until such time as the Court renders a final decision regarding approval of the Settlement;

(e) approval of an escrow agreement regarding the Settlement consideration described herein;

(f) conditional appointment as Class Counsel under Fed. R. Civ. P. Rule 23 of the law firms of Kessler Topaz Meltzer & Check, L.L.P.; Spector Roseman Kodroff & Willis, P.C.; and Criden & Love, P.A. who acted as appointed interim Co-Lead Counsel for the proposed Classes.

In the event that the Court preliminarily approves the Settlement, Class Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure and the preliminary approval order, direct the Claims Administrator, to be approved by the Court, to provide the Classes with settlement notice as approved by the Parties and as ordered by the Court (“Settlement Notice”).

5. **Motion for Final Approval and Entry of Final Judgment.** If the Court preliminarily approves the Settlement and certifies the Classes for purposes of settlement, Plaintiffs, through Class Counsel, shall submit a motion for final approval by the Court, after appropriate notice to the Classes, and shall seek entry of an order and final judgment:

(a) finally certifying the Classes;

(b) finding the Settlement and its terms to be a fair, reasonable and adequate within the meaning of Rule 23(e) of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms;

(c) providing for payment of reasonable attorneys' fees and reimbursement of expenses from the Settlement Fund (as defined in Paragraph 6(a) herein);

(d) providing for payments from the Settlement Fund (as defined in Paragraph 6(a) herein) for the efforts and work of the Plaintiffs, in addition to whatever monies each may receive from the Settlement Fund pursuant to a Court-approved plan of allocation. There is no agreement between the Mylan Defendants and Class Counsel or Plaintiffs with respect to (a) the amount of any incentive award for Plaintiffs that it may seek from the Settlement Fund pursuant to an order of the of the Court, or (b) the Mylan Defendants' position with regard to any such petition for an incentive award. Neither Class Counsel nor the Plaintiffs may seek to terminate this Settlement Agreement on any grounds relating to the amount of the incentive award, including the amount actually awarded by the Court or the Mylan Defendants' position with respect to any petition for such an incentive award;

(e) setting forth the method for allocating the Net Settlement Fund (as defined in Paragraph 8 herein) among members of the Classes;

(f) directing that the claims asserted by Plaintiffs against the Mylan Defendants be dismissed with prejudice and, except as provided for herein, without costs;

(g) approving the release of claims specified herein as binding and effective as to all members of the Classes and permanently barring and enjoining such members of the Classes from asserting any Released Claims (as defined in paragraph 12 herein);

(h) reserving exclusive and continuing jurisdiction over the Settlement and this Settlement Agreement; including the administration, consummation and interpretation of this Settlement and Settlement Agreement, and any award of attorneys' fees;

(i) directing that the judgment of dismissal shall be final and appealable; and

(j) directing that, for a period of five years, the Clerk of the Court shall maintain the record of those members of the Classes who have timely excluded themselves from the Classes and that a copy of such records shall be provided to the Mylan Defendants.

6. **Finality of Settlement.** The Settlement and Settlement Agreement shall become final and effective upon the occurrence of all of the following:

(a) Neither Plaintiffs nor the Mylan Defendants have availed themselves of any right to withdraw from the Settlement pursuant to Paragraphs 14 and 15 hereof, and the time(s) for exercise of such rights of withdrawal have expired;

(b) Both the State Antitrust/Consumer Protection Class and the State Unjust Enrichment Class are certified by the Court as defined herein;

(c) the Settlement is approved by the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure;

(d) an order and final judgment is entered with prejudice, as provided for in Paragraph 4 herein, against Plaintiffs and the members of the Classes who have not timely excluded themselves from the action; and

(e) the time for appeal from the Court's approval of the Settlement as described in (c) hereof and entry of a final judgment as described in (d) hereof has expired or, if appealed, either all such appeals have been dismissed prior to resolution by the appellate court or approval of this Settlement Agreement and final judgment has been affirmed in its entirety by the court of the last

resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review, by certiorari or otherwise.

7. **Settlement Consideration.**

(a) Subject to the provisions hereof, and in full, complete and final settlement of all claims asserted against the Mylan Defendants by Plaintiffs in this Action, on behalf of themselves and the Class Members they represent, the Mylan Defendants shall make a single payment of fourteen million three hundred seventy-seven thousand six hundred dollars (\$14,377,600.00) within fourteen (14) calendar days of the Court's order preliminarily approving the Settlement and a properly completed W-9 form from the Plaintiffs, and a fully executed Escrow Agreement (as defined below) into an escrow account (the "Settlement Fund"), held and administered by an escrow agent to be selected by Class Counsel with consent of the Mylan Defendants, whose agreement shall not be unreasonably withheld, and approval of the Court. The Settlement Fund shall be established and administered pursuant to an escrow agreement in a form satisfactory to Class Counsel (the "Escrow Agreement"). The Settlement Fund is the total amount that the Mylan Defendants will pay under this Settlement Agreement in exchange for the Released Claims (as defined in Paragraph 12(a) herein), including without limitation funds to satisfy claims by Plaintiffs, claims by members of the Classes, attorneys' fees and costs, any Court-approved awards to the Plaintiffs for their roles as Class representatives, and payment of any and all administrative and notice expenses associated with the Action or Settlement. The Mylan Defendants shall have no liability, obligation or responsibility with respect to the investment, disbursement, or other administration or oversight of the Settlement Fund.

(b) It is intended that the Settlement Fund shall be at all times a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1, and that the

“administrator” of the Settlement Fund, within the meaning of Treas. Reg. § 1.468B-2(k), shall comply with all applicable requirements, which shall include, without limitation, (a) preparing a “regulation Section 1.468B-3 Statement” pursuant to Treas. Reg. § 1.468B-3(e) on behalf of Mylan Defendants and providing copies to Mylan Defendants’ Counsel for review and approval; and (b) preparing and timely filing on behalf of the Settlement Fund (i) such income tax and other returns and statements as are required to comply with Treas. Reg. § 1.468B-2 and the other applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”) and (ii) all necessary state, local and foreign tax returns. To that end, the Parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. Interest earned by the Settlement Fund (less any tax imposed upon such interest) shall be for the benefit of the Classes, less reasonable attorneys’ fees and expenses approved by the Court (and any interest awarded thereon), any Court-approved award to Plaintiffs for serving as Class representatives, and payment of any and all administrative and notice expenses associated with the Action or Settlement. Whether or not final approval of this Settlement Agreement occurs and whether or not the Settlement Fund qualifies as a qualified settlement fund within the meaning of Treas. Reg. § 1.468B-1, any taxes or estimated taxes due as a result of income earned by the Settlement Fund, and all related costs and expenses, shall be paid from the Settlement Fund. The Mylan Defendants shall have no liability, obligation or responsibility for any such taxes, costs, expenses, or for any reporting requirements relating thereto. The Parties elect that the Settlement Fund should be treated as a qualified settlement fund from the earliest possible date and agree to make any “relation back” election that may be available.

8. **Class Settlement Expenses.**

All reasonable expenses arising from the administration of Class Notice and the calculation and administration of claims associated with the Settlement shall be paid out of the Settlement Fund. For avoidance of doubt, these reasonable expenses are expected to include, but not necessarily be limited to: the fees and expenses of the Class Notice and the Claims Administrator in connection with providing Class Notice and claim forms to the Classes, responding to inquiries of Class members, receiving and processing requests for exclusion, handling accounting and other administrative and tax services for the Settlement Fund, and distributing the Settlement Amount to members of the Classes.

9. **Allocation of the Settlement Fund.** If the Settlement becomes final pursuant to the provisions of Paragraph 5 herein, the Settlement Fund shall be distributed to Class Counsel and members of the Classes as ordered by the Court from the Net Settlement Fund, which is the amount in the Settlement Fund for distribution for approved claims after reduction for payment of taxes, any payments to the Class representatives and disbursements for such costs and expenses as approved by the Court. Class Counsel shall be responsible for proposing to the Court an appropriate allocation of the Settlement Amount between consumer Class members and Third Party Payor Class members (“Plan of Allocation”). The final allocation will be at the discretion of the Court. The Court need not accept Class Counsel’s proposed allocation in order to approve the Settlement. For the avoidance of doubt, no class member shall be entitled to a distribution from the Settlement Amount until the Settlement becomes Final as contemplated by Paragraph 5 above.

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

11. **Full Satisfaction; Limitation of Interest and Liability.** Plaintiffs and members of the Classes shall look solely to the Settlement Fund for settlement and satisfaction against the Mylan Defendants of all claims that are released herein. Plaintiffs and members of the Classes shall not under any circumstances be entitled to any further compensation from the Mylan Defendants with respect to any claims released herein. In the event that the Settlement becomes final and effective pursuant to Paragraph 5 herein, the Settlement Fund will fully satisfy any and all Released Claims as defined in Paragraph 12(a) herein. Except as provided by order of the Court, no member of the Classes shall have any interest in the Settlement Fund or any portion thereof. The Mylan Defendants shall have no liability with respect to disbursements from the Settlement Fund pursuant to any Court-approved plan of allocation.

12. **Attorneys' Fees, and Reimbursement of Expenses and Costs.** Class Counsel intends to seek, solely from the Settlement Fund, attorneys' fees of up to thirty-three and one-third percent (33 1/3%) of the total Settlement Fund. In addition, Class Counsel intends to seek, from the Settlement Fund, incentive awards to each Plaintiff, and reimbursement of all reasonable costs and expenses incurred in the prosecution of the Action. Plaintiffs and their counsel will be reimbursed and indemnified solely out of the Settlement Fund for all costs, fees and expenses including, but not limited to, the costs of Settlement Notice and administration of the Settlement Fund. Such fees, incentive awards, costs and expenses shall be paid solely from the Settlement Fund immediately upon entry of an order approving such fees, incentive awards and expenses, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof; provided, however, that Class Counsel and Plaintiffs shall make appropriate refunds or repayments plus accrued interest at the same net rate as is earned by the Settlement Amount, if the Settlement is

terminated pursuant to the terms of this Settlement Agreement or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees, expenses or costs is reduced or reversed. Class Counsel and Plaintiffs shall make the appropriate refund or repayment in full no later than thirty (30) days after receiving notice of the termination of the Settlement or the reduction of the award of attorneys' fees, expenses and costs. Class Counsel reserve the right to make a further, later request for additional awards of attorneys' fees and reimbursement of reasonable costs and expenses incurred in the administration of the Settlement. The Mylan Defendants agree not to oppose any request by Class Counsel that the Court order that any attorneys' fees and expenses awarded by the Court shall be disbursed only to the Court-appointed Class Counsel, for allocation at the sole discretion of Class Counsel among the various counsel to the Class that have participated in this litigation. Nothing in this paragraph shall abrogate the provisions of Paragraph 7 ("Class Settlement Expenses") herein. The Mylan Defendants shall not be liable for any other of the costs, fees or expenses of any Plaintiffs, Class members, or of any Class members' or Plaintiffs' attorneys, experts, consultants, advisors, agents and representatives. Any such other costs, fees and expenses as approved by the Court shall be paid out of the Settlement Fund.

13. **Releases.**

(a) Upon the Settlement becoming final and effective in accordance with Paragraph 5 herein, in consideration for the agreements by the Parties and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Mylan Defendants and their past, present and future¹ parents, subsidiaries, divisions, affiliates, stockholders, officers,

¹ For the avoidance of doubt, Cephalon, Inc., Teva Pharmaceutical Industries Ltd., Teva Pharmaceuticals USA, Inc., Barr Pharmaceuticals, Inc., Barr Laboratories, Inc., Ranbaxy Laboratories, Ltd., and Ranbaxy Pharmaceuticals, Inc. (and the predecessors, heirs, executors,

directors, insurers, general or limited partners, employees, agents, attorneys and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (the “Released Parties”) are and shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages and liabilities of any nature whatsoever (whether such claims, demands, actions, suits, causes of action, damages or liabilities arise or are incurred before, during or after the date hereof), including costs, expenses, penalties and attorneys’ fees, known or unknown, suspected or unsuspected, asserted or not asserted, in law or equity, that Plaintiffs or any member or members of the Classes who has (have) not timely excluded itself (themselves) from the Classes (including any of the past, present or future assignees, officers, directors, insurers, general or limited partners, divisions, stockholders, agents, attorneys, employees, legal representatives, trustees, parents, associates, affiliates, subsidiaries, partners, heirs, executors, administrators, purchasers, predecessors, successors and assigns, acting in their capacity as such), whether or not they object to the Settlement and whether or not they make a claim upon or participate in the Settlement Amount, ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, relating to any conduct, events or transactions, prior to the date hereof, alleged or which could have been alleged in this Action, provided only that such conduct or omission occurred or allegedly occurred prior to the Preliminary Approval Date- except as

administrators, successors and assigns of each of the foregoing) are excluded from the definition of future parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, general or limited partners, employees, agents, attorneys and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing). Nothing in this Settlement Agreement dismisses or releases the claims of Plaintiffs and the End-Payor Classes (as defined in paragraph 1 above) against Cephalon, Inc., Teva Pharmaceutical industries Ltd., Teva Pharmaceuticals USA, Inc., Barr Pharmaceuticals, Inc., Barr Laboratories, Inc., Ranbaxy Laboratories, Ltd., and Ranbaxy Pharmaceuticals, Inc.

expressly provided for in this Paragraph 12 (the “Released Claims”). Plaintiffs and each member of the Classes hereby covenant and agree that each shall not initiate, continue, file, prosecute, sue or otherwise seek to establish or impose liability against any Released Parties based, in whole or in part, on any of the Released Claims.

(b) In addition, each Class member hereby expressly waives or releases, upon the Settlement becoming final, any and all provisions, rights and benefits conferred by § 1542 of the California Civil Code, which reads:

Section 1542. General Release Claims Extinguished. 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 any other jurisdiction or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each Class member may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of the Action but each Class member shall be deemed to and hereby expressly waives and fully, finally and forever, settles and releases, upon the Settlement becoming final, any known or unknown, suspected or unsuspected 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. For the avoidance of doubt, each Class member also hereby expressly waives and fully, finally and forever settles and released 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 hereby expressly incorporated into the definition of Released Claims.

14. **Reservation of Claims.** Released Claims shall not include claims arising in the ordinary course of business between Plaintiffs or Class members and the Released Parties concerning the laws of negligence or product liability or implied warranty, breach of warranty or contract, personal or bodily injury, or claims unrelated to the allegations in the Amended Complaint. The Mylan Defendants represent and warrant that they have assumed no contractual obligation that would, in fact or at law, in the event Plaintiffs and the Classes prevailed against any other defendant on the claims made in the Action, obligate the Mylan Defendants to indemnify, pay, contribute to, or be liable over to, or share in a judgment entered in favor of Plaintiffs and the Classes against any other defendant. The Mylan Defendants agree that the Plaintiffs and the Classes justifiably rely upon this representation and warranty and that it is material to Plaintiffs' and the Classes' decision to enter into this settlement Agreement with the Mylan Defendants.

15. **The Mylan Defendants' Right to Terminate or Modify the Agreement.** In the event a specified percentage of all eligible Class members opt-out of the settlement contemplated by this Settlement Agreement (the "Triggering Amount"), the Mylan Defendants have the absolute right, but not the obligation, in their sole discretion and notwithstanding any other provision of this Settlement Agreement, to terminate this Settlement Agreement in its entirety, with each of the Parties bearing their own costs, except for Class Settlement Expenses, or to modify the Settlement Agreement through further negotiations with Class Counsel. If the Mylan Defendants do terminate this Settlement Agreement pursuant to this provision, the Settlement Agreement will be null and void for all purposes and may not be used or introduced in this Action or any other actions or any other actions or proceedings. The Triggering Amount and

how it will be calculated will be detailed in a separate letter agreement between Class Counsel and Mylan's Counsel. That letter will be provided to the Court, *in camera*, if so requested.

16. **Effect of Disapproval.** If the Court declines to finally approve the Settlement, or if such approval is reversed, vacated, or otherwise materially modified on appeal, or if the Court does not enter the final judgment in substantially the form provided for in Paragraph 4, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is reversed, vacated or materially modified, then this Settlement Agreement shall be terminated upon the election of either of (a) Plaintiffs, through Class Counsel, or (b) the Mylan Defendants, acting through their undersigned counsel; provided however that any reversal, vacating or modification on appeal of any amount of fees and expenses awarded by the Court from the Settlement Fund, or any amount of payments to any Plaintiffs, or any determination by the Court to award less than the amount requested in attorneys' fees or costs to Class Counsel or incentive awards to Plaintiffs, or any judicial alteration of the proposed Plan of Allocation, shall not give rise to any right of termination or otherwise serve as a basis for termination of this Settlement Agreement.

17. **Dismissal of the Action as to the Mylan Defendants Only.** Upon this Settlement Agreement becoming final, in accordance with the terms of Paragraph 5 herein, all claims asserted against the Mylan Defendants in the Action by Plaintiffs shall be dismissed with prejudice. No defendant other than the Mylan Defendants is intended to be, or is, included within the scope of the releases contained herein.

18. **Stay of Proceedings.** Pending Court approval of the Settlement embodied in this Settlement Agreement, the Parties agree to stay any and all proceedings against the Mylan

Defendants in the 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.

19. **Termination.** In the event that the Settlement is terminated pursuant to Paragraph 14 or 15 herein, or for any other reason does not become final and effective in accordance with the terms of Paragraph 5 herein, then (a) this Settlement Agreement shall be of no force or effect, (b) any release pursuant to Paragraph 12 shall be of no force or effect, and (c) the Settlement Fund, including any and all interest earned thereon, shall be returned to the Mylan Defendants less only the amount validly disbursed for the costs incurred in giving notice to the Classes and administering the Settlement Fund during the interim period.

20. **Preservation of Rights.** The parties hereto agree that this Settlement Agreement, whether or not it shall become final and effective pursuant to Paragraph 5 herein, and any and all negotiations, documents and discussions associated with it shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by the Mylan Defendants, or of the truth of any of the claims or allegations contained in any complaint or any other pleading or document, and evidence thereof shall not be discoverable, admissible or otherwise used directly or indirectly, in any way by Plaintiffs or the Mylan Defendants, whether in the Action or in any other actions or proceeding. The Parties expressly reserve all of their rights and defenses if the Settlement Agreement does not become final and effective pursuant to Paragraph 5 herein.

21. **Resumption of Litigation.** Notwithstanding any other provision of this agreement, if for any reason the settlement does not obtain final approval, or is invalidated in whole or part on appeal, the litigation between Plaintiffs and the Mylan Defendants will resume where it left off as of March 24, 2015 (without regard to any deadlines that may have passed in

connection with the continuing litigation between Plaintiffs and any other Defendants) and Mylan will not be bound by any rulings litigated by Plaintiffs and any other Defendants after March 24, 2015.

22. **Confidentiality**. Except as otherwise provided herein, the terms of this Settlement Agreement, and its contents, shall remain confidential until Plaintiffs move for preliminary approval of the Settlement. This provision does not apply to statements made in judicial filings necessary to obtain preliminary Court approval of the Settlement. The Parties shall be entitled to make such disclosures of the Settlement Agreement as they, in their sole discretion, determine are required under the law.

23. **Binding Effect**. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties and the Released Parties, including the members of the Classes who do not timely request to be excluded. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Plaintiffs and their counsel shall be binding upon all members of the Classes.

24. **Names of Parties**. The undersigned counsel for Plaintiffs and the Mylan Defendants each warrant that all of their clients in the 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.

25. **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 Class Members:

Kessler Topaz Meltzer & Check, LLP
Joseph Meltzer
280 King of Prussia Road
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and

Criden & Love, P.A.
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Co-Lead Class Counsel

To the Mylan Defendants:

Evan R. Chesler
David R. Marriott
Cravath Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
Counsel for the Mylan Defendants

Any of the Parties may, from time to time, change 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 provided above, ten (10) calendar days before the change is effective.

26. **Integrated Agreement.** This Settlement Agreement (including all exhibits hereto and other documents explicitly referenced herein) contains the entire, complete, and integrated statement of each and every term and provision of the Settlement. This Settlement Agreement

shall not be modified in any respect except by a writing executed by all the undersigned in the representative capacities specified, or others who are authorized to act in such representative capacities.

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 provisions 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, interpreted, and enforced according to the substantive laws of the Commonwealth of Pennsylvania without regard to its choice of law or conflict of laws principles.

30. **Consent to Jurisdiction**. The Mylan Defendants, Plaintiffs and each member of the Classes hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Eastern District of Pennsylvania 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, except that this paragraph shall not prohibit (a) the assertion in the forum in which a claim is brought that the 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 that forum, the determination of its merits in that forum; provided, however, in the event that the Court lacks subject matter jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or

the applicability of this Settlement Agreement, the Mylan Defendants, Plaintiffs and each member of the Classes hereby irrevocably submit to the exclusive jurisdiction of the appropriate State Court sitting in Philadelphia County, Pennsylvania.

31. **Enforcement of Settlement.** Nothing in this Settlement Agreement prevents the Mylan Defendants from enforcing or asserting any release herein, subject to the provisions of Paragraph 12 (“Releases”) herein. Notwithstanding any other provision of this Settlement Agreement, this Settlement Agreement and the releases contained herein may be pleaded as a full and complete defense of any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted with respect to any Released Claims and may be filed, offered and received into evidence and otherwise used for such defense.

32. **Authorization to Act.** The undersigned Counsel represent that they have been and are fully authorized to conduct settlement negotiations on behalf of Plaintiffs or the Mylan Defendants, respectively, and to enter into, and execute, this Settlement Agreement on behalf of their clients, subject to Court approval pursuant to Fed. R. Civ. P. 23(e).

33. **No Admission.** Nothing in this Settlement Agreement shall be construed as an admission in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority, present or future, by the Mylan Defendants or Plaintiffs, or any of them, including without limitation that the Mylan Defendants have engaged in any conduct or practices that violate any antitrust statute or any other law.

34. **Work Product; Cessation of Prosecution Activities.** To the extent permissible under their ethical obligations, Class Counsel agree not to share work product with any individual or entity that elects to opt out of either of the settlement Classes and/or this Settlement

and pursue any claim individually, and will resist efforts by such individual or entity to compel production of Class Counsel's work.

35. **Execution in Counterparts.** This agreement may be executed in counterparts. Facsimile or pdf signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this agreement and filed with the Court.

36. **Class Action Fairness Act Compliance.** To assist the Mylan Defendants in complying with the requirements of 28 U.S.C. § 1715(b)(7), Class Counsel agree to request that the Claims Administrator provide the Mylan Defendants with the number of third-party payor Class members located in each state as identified in a proprietary database maintained by the Claims Administrator. Class Counsel do not know of any databases which would identify the name or number of consumer class members in a specific state.

37. **Press Release.** Mylan will be entitled to issue a press release at its discretion regarding this Settlement Agreement, subject to review and approval by Class Counsel. Approval by Class Counsel will not be unreasonably withheld. Neither side will make any other statements to the media concerning this Settlement Agreement; and both sides will decline to respond to media inquiries concerning this Settlement Agreement other than to refer the media to the press release until such time as final approval has been granted by the Court.

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

For Mylan Inc. and Mylan Pharmaceuticals, Inc.:

David R. Marriott, Esquire


For Shirley Panebianco:

Robert Sink, Esquire

For Vista Healthplan, Inc.:

Kevin Love, Esquire

For District Council 37 Health and Security Plan:



Jeffrey Kodroff, Esquire

For Pennsylvania Employees Benefit Trust Fund:



Jeffrey Kodroff, Esquire

For Pennsylvania Turnpike Commission:

Joseph Meltzer, Esquire