

## **CLASS ACTION SETTLEMENT AGREEMENT**

This Agreement (“Agreement” or “Settlement Agreement” or “Settlement”) is entered into by and among: (i) Monique Bell, Tree Anderson, and Melissa Conklin (“Named Plaintiffs”); (ii) the Settlement Class (as defined herein); and (iii) Defendant CVS Pharmacy, Inc. (“Defendant” or “CVS”). The Settlement Class and the Named Plaintiffs are collectively referred to as “Plaintiffs” unless otherwise noted. Plaintiffs and Defendant are collectively referred to herein as the “Parties.” Capitalized terms used herein are defined in Section 2 of this Agreement or indicated in parentheses elsewhere in this Agreement. This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

### **1. RECITALS**

A. On December 11, 2021, Named Plaintiff Monique Bell filed the original putative class action complaint in the United States District Court for the Eastern District of New York, and this matter was assigned case number 21-cv-06850 (the “Action”) (ECF No. 1).

B. On February 14, 2022, Defendant filed an answer to Named Plaintiff Bell’s operative putative class action complaint, in which it asserted 15 affirmative defenses. (ECF No. 14).

C. On April 7, 2022, Defendant filed two letters seeking a pre-motion conference regarding its anticipated motion for judgment on the pleadings (ECF No. 26) and requesting adjournment of the Court’s Initial Scheduling Conference (ECF No. 27). On April 12, 2022, Named Plaintiff Bell filed two letters in opposition to the above-referenced letters. (ECF Nos. 28, 29).

D. On April 13, 2022, the Court denied Defendant’s request for a pre-motion

conference and directed the parties to agree on a briefing schedule in anticipation of Defendant's motion for judgment on the pleadings. Furthermore, on April 13, 2022, the Court also denied Defendant's letter to adjourn the Court's Initial Scheduling Conference.

E. On May 10, 2022, Named Plaintiff Bell and Defendant, by and through their counsel of record, attended an in-person hearing before Judge Peggy Kuo to discuss the Parties' anticipated motion for judgment on the pleadings and discovery schedule. During the hearing, the Parties also discussed the prospect of settlement and agreed to participate in a settlement conference before the Court on August 23, 2022. Since that time, the Parties continued to engage in informal settlement discussions.

F. On May 18, 2022, Defendant served, and subsequently filed, its motion for judgment on the pleadings (ECF Nos. 37, 41-43). On June 17, 2022, Named Plaintiff Bell filed her opposition to Defendant's motion (ECF No. 44), and Defendant filed its reply in further support of its motion on July 1, 2022 (ECF No. 45).

G. On May 20, 2022, Named Plaintiff Bell and Defendant filed, and the Court adopted, a joint confidentiality order (ECF Nos. 39-40). Throughout that time, the Parties continued to engage in settlement discussions, including exchanging information on issues such as the size and scope of the putative class and Named Plaintiff Bell's use of Defendant's Products (as defined herein). To that end, the Parties agreed in July 2022 to participate in a private mediation before The Honorable Frank Maas (Ret.) of JAMS New York, an experienced class action mediator.

H. In the weeks leading up to the mediation, the Parties were in regular communication with each other and with Judge Maas, as the Parties sought to crystallize the disputed issues, produce focal information and data, and narrow potential frameworks for resolution. During this period and in connection with the mediation proceedings, Defendant

provided counsel for Plaintiffs (“Class Counsel”) with detailed transactional data regarding Defendant’s sales of the Products (as defined herein); the Parties exchanged briefing on the key facts, legal issues, litigation risks, and potential settlement structures; and the Parties supplemented that briefing with extensive telephonic correspondence mediated by Judge Maas and in-person meetings in order to clarify the Parties’ positions in advance of the mediation. This permitted the Parties to competently assess the strengths and weakness of their claims and defenses and their relative negotiating positions.

I. On September 28, 2022, the Parties attended a full-day mediation before Judge Maas in JAMS New York. While the Parties engaged in good-faith arms’ length negotiations, they failed to reach an agreement. However, the mediation culminated in a mediator’s proposal on October 4, 2022, that the Parties later accepted. After accepting the mediator’s proposal, the Parties continued to negotiate all of the material terms of the class action settlement and executed a term sheet. (ECF No. 48).

J. During the mediation, Class Counsel noted the existence of additional plaintiffs, who purchased other CVS-branded maximum strength lidocaine products, which they intended to add to this suit. Defendant agreed to permit Named Plaintiff Bell to file her First Amended Complaint, which was filed on April 21, 2023, naming Named Plaintiffs Tree Anderson and Melissa Conklin (ECF No. 53-1). The Parties also agreed to stay all non-settlement deadlines (ECF No. 53).

K. At all times, Defendant has denied and continues to deny any wrongdoing whatsoever and has denied and continues to deny that it committed, or threatened or attempted to commit, any wrongful act or violation of law or duty alleged in the Action. Defendant believes that the claims asserted in the Action do not have merit and that Defendant would have prevailed

at summary judgment or trial. Nonetheless, taking into account the uncertainty and risks inherent in any litigation, Defendant has concluded it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it will not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of Defendant, or any of the Released Parties (as defined herein), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever or with respect to the certifiability of a litigation class.

L. Plaintiffs believe that the claims asserted in the Action against Defendant have merit and that they would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiffs and Class Counsel recognize that Defendant has raised factual and legal defenses that present a risk that Plaintiffs may not prevail. Plaintiffs and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendant through class certification, summary judgment, trial, and any subsequent appeals. Plaintiffs and Class Counsel also have taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiffs and Class Counsel believe it is desirable that the Released Claims (as defined herein) be fully and finally compromised, settled, and resolved with prejudice. Based on its evaluation, Class Counsel has concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among  
Named Plaintiffs, the Settlement Class, and Defendant, by and through their undersigned counsel,

that, subject to final approval of the Court, after a hearing or hearings as provided for in this Settlement Agreement, and in consideration of the benefits flowing to the Parties from the Agreement set forth herein, the Action and the Released Claims will be finally and fully compromised, settled, and released, and the Action will be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

## **2. DEFINITIONS**

As used in this Settlement Agreement and the attached exhibits (which are an integral part of the Settlement and are incorporated in their entirety by reference), the following terms shall have the meanings set forth below, unless this Settlement specifically provides otherwise. Other capitalized terms in this Settlement but not defined in this section shall have the meanings ascribed to them elsewhere in this Agreement.

**2.1 “Administration Expenses”** means reasonable fees and expenses incurred by the Settlement Administrator for all tasks the Settlement Administrator performs in furtherance of the notice and administration of the Settlement, except as otherwise noted herein. The Administration expenses will be paid by Defendant separate and apart from the Settlement Sum.

**2.2 “Application”** means the application to be filed by Class Counsel in this Action by which they will seek an award of attorneys’ fees, Class Representative Service Awards, and reimbursement of expenses they incurred prosecuting this Action.

**2.3 “Attorneys’ Fees and Expenses” or “Fee Award”** means such funds as may be awarded by the Court based on the Settlement described herein to compensate Class Counsel as determined by the Court and described more particularly in Section 7 of this Settlement. This award will also include a reimbursement of expenses incurred by Class Counsel arising from their representation in the Action, and disbursements incurred by them and their experts, staff,

and consultants in connection with the Action. Class Counsel will not request, and will not accept, a Fee Award in excess of \$1,140,000.00. The Fee Award will be paid out of the Settlement Sum.

**2.4 “Benefit”** means the cash payment available to a Claimant who files a Valid Claim under this Agreement. The specific Benefit paid is subject to review, validation, and adjustments by the Settlement Administrator based upon the terms and conditions of this Agreement.

**2.5 “Benefit Payments”** are the payments issued for Valid Claims as determined by the Settlement Administrator and in accordance with this Agreement.

**2.6 “Claim”** means a request for relief pursuant to this Settlement submitted by Settlement Class Members on a Claim Form filed with the Settlement Administrator in accordance with the terms of this Settlement. One Claim is allowed per Settlement Class Member.

**2.7 “Claim Form”** means the proposed claim form in substantially the form attached hereto as Exhibit A to be used by Settlement Class Members to make a Claim under the Settlement (described at Section 4, below), which form is to be approved by the Court and to be posted online in accordance with Section 8 of this Settlement.

**2.8 “Claimant”** means a Settlement Class Member who files a Claim seeking a Benefit under this Agreement.

**2.9 “Claims Deadline”** means the date by which a Claim Form must be postmarked (if sent by mail) or received (if submitted electronically) to be considered timely and shall be no later than 90 days after the Notice Date. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Class Notice Program and the Claim Form.

**2.10 “Class Counsel”** means the law firms Bursor & Fisher, P.A. and Gucovschi Rozenshteyn, PLLC.

**2.11 “Class Notice Program” or “Notice Program”** means the Court-approved notice, detailed in Section 8, and consists of the: (i) Direct Notice; (ii) Long-Form Notice (iii) Publication Notice; and (iv) Settlement Website.

**2.12 “Class Period”** means the period of December 11, 2017 through and including the date of entry of the Preliminary Approval Order.

**2.13 “Class Representatives”** means Named Plaintiffs Monique Bell, Tree Anderson, and Melissa Conklin.

**2.14 “Class Representative Service Awards”** means any award sought by Application and approved by the Court that is payable to the Class Representatives, up to a maximum total amount of three thousand dollars and zero cents (\$3,000.00) per Class Representative to compensate the Class Representatives for their efforts in bringing the Action and achieving the benefits of this Settlement on behalf of the Settlement Class.

**2.15 “Court”** means the United States District Court for the Eastern District of New York.

**2.16 “Defendant” or “CVS”** means CVS Pharmacy, Inc.

**2.17 “Defendant’s Counsel”** means the law firm of Benesch, Friedlander, Coplan & Aronoff LLP.

**2.18 “Direct Notice”** means the email notice, substantially in the form attached hereto as Exhibit C-1 and detailed in Section 8.1, that will be sent to Defendant’s loyalty program members for which an email address is readily available in Defendant’s records.

**2.19 “Effective Date”** means one business day after the last of the following dates: (a)

all Parties have executed this Settlement; (b) the Court has entered the Final Approval Order finally certifying the Settlement Class, finally approving the Agreement, and dismissing the Action with prejudice as to Named Plaintiffs' and Settlement Class Members' claims against Defendant; and (c) the date on which the time to appeal or to seek permission to appeal from the Court's approval of the Settlement Agreement has expired or, if appealed, approval of the Settlement Agreement has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review, or upon the denial of a writ of certiorari to review the order and final judgment from any court, thus making the Final Approval Order a final, non-appealable judgment.

**2.20 "Fairness Hearing" or "Final Approval Hearing"** means the final hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement in accordance with applicable jurisprudence, to be held after notice has been provided to the Settlement Class in accordance with this Settlement, and where the Court will: (a) determine whether to grant final approval to the certification of the Settlement Class; (b) determine whether to designate Named Plaintiffs as the representatives of the Settlement Class; (c) determine whether to designate Class Counsel as counsel for the Settlement Class; (d) determine whether to grant final approval to the Settlement; (e) rule on Class Counsel's Application for Attorneys' Fees and Expenses and Class Representative Service Awards; and (f) consider whether to enter the Final Approval Order.

**2.21 "Final Approval Order"** means an order to be entered by the Court granting, among other things, final approval of the Settlement and entry of final judgment with respect thereto.

**2.22 "Labeling"** means the display of written, printed, or graphic matter upon the



outside packaging of Product(s).

**2.23 “Long-Form Notice”** means the notice substantially in the form attached as Exhibit B, to be posted on the Settlement Website.

**2.24 “Media Plan”** means the Settlement Administrator’s plan to disseminate the Publication Notice to Settlement Class Members, which will be designed to achieve no less than 70% reach to Settlement Class Members and will be designed to comport with due process requirements, Fed. R. Civ. P. 23, and any governing local rules, standing orders, or judicial requirements.

**2.25 “Motion for Preliminary Approval of Settlement”** means the motion, to be filed by Plaintiffs, seeking entry by the Court of the Preliminary Approval Order, and includes all supporting papers. This Motion shall be provided to counsel for Defendant no fewer than 7 days prior to filing.

**2.26 “Motion for Final Approval of Settlement”** means the motion, to be filed by Plaintiffs, seeking entry by the Court of the Final Approval Order, and includes all supporting papers. This Motion shall be provided to counsel for Defendant no fewer than 7 days prior to filing.

**2.27 “Named Plaintiffs”** means the named Plaintiffs in this Action: Monique Bell, Tree Anderson, and Melissa Conklin.

**2.28 “Notice Date”** means the date by which the Class Notice Program must be effectuated pursuant to Section 8 of this Agreement, which is to be thirty-five (35) days after the entry of the Preliminary Approval Order.

**2.29 “Opt-Out / Objection Deadline”** means the date by which Settlement Class Members must mail their written request for exclusion or objection to the Settlement, meeting

the requirements detailed at Section 9. The postmark date shall constitute evidence of the date of mailing for these purposes. This deadline shall be no later than 45 days after the Notice Date.

**2.30 “Parties”** (or **“Party”** individually) means Plaintiffs and Defendant.

**2.31 “Plaintiffs”** (or **“Plaintiff”** individually) means Named Plaintiffs and Settlement Class Members.

**2.32 “Preliminary Approval Order”** means the Order preliminarily approving the Settlement Agreement, conditionally certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class using the Class Notice Program detailed in Section 8, which is substantially in the form attached hereto as Exhibit D.

**2.33 “Product”** and/or **“Products”** means all CVS-branded “maximum strength” lidocaine patches, creams, roll-ons, and spray products, including, but not limited to, the products listed in the First Amended Complaint (ECF No. 53-1). The Products include the following SKU numbers: 376649, 405343, 977934, 328522, 405623, 250483, 385037, 249024, 235554, 383998, 238921, 197229, 450467, 371271, 188721, 256563, 196728, 256518, 384034, 234274, 834344, 388642.

**2.34 “Proof of Purchase”** means a receipt or other documentation which reasonably establishes the fact of purchase of the Product during the Class Period in the United States.

**2.35 “Publication Notice”** means the proposed short form notice, in substantially the form attached as Exhibit C-2 hereto, to be approved by the Court and to be published in accordance with the Media Plan.

**2.36 “Releases”** means the release of all claims contained in Section 12 of this Agreement.

**2.37 “Released Claims”** are defined in Section 12.

**2.38 “Released Parties”** means CVS Pharmacy, Inc., and its current, former, and future parents, predecessors, successors, affiliates, assigns, subsidiaries, divisions, or related corporate entities, employees, officers, directors, shareholders, equity holders, consultants, assigns, suppliers, manufacturers, agents, independent contractors, trustees, administrators, executors, insurers, attorneys, customers, wholesalers, retailers, vendors, distributors, and dealers, and each and all of their respective current, future, and former managers, members, directors, officers, consultants, affiliated entities and corporations, subsidiaries, divisions, franchisees, partners, joint venturers, agents, investors, creditors, insurers, attorneys, employees, representatives, successors, licensees, customers, and assigns. For the avoidance of doubt, Released Parties shall include all persons or entities in the stream of commerce for the marketing, sale, and/or distribution of the Products.

**2.39 “Releasing Parties”** means Plaintiffs, all Settlement Class Members, Class Counsel, and any person claiming by or through him/her/it, including any Person claiming to be his/her/its spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee or affiliate.

**2.40 “Settlement Administrator”** means Kroll Settlement Administration, who has been selected jointly by the Parties and approved by the Court to perform the duties set forth in this Agreement.

**2.41 “Settlement Class” or “Settlement Class Members”** means all persons who purchased Products in the United States during the Class Period. Excluded from the Settlement Class are: (a) all persons who purchased or acquired the Products for resale; (b) Defendant and its employees, principals, affiliated entities, legal representatives, successors, and assigns; (c) any

person who makes a valid, timely opt-out request; (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof), and (e) the judges to whom this Action is assigned and any members of his/her/their immediate family.

**2.42 “Settlement Sum”** means the maximum of three million eight hundred thousand dollars and zero cents (\$3,800,000) that Defendant will make available to resolve the Action. The Settlement Sum represents Defendant’s all-inclusive, sole, exclusive, and full payment for all monetary consideration of any kind whatever to Plaintiffs, Class Representatives, Settlement Class Members, and Class Counsel, including the total amount of monetary relief available to Settlement Class Members for payment of all Valid Claims, for Class Representative Service Awards, and for Class Counsel’s Fee Award. The Settlement Sum does not include reasonable Administration Expenses. Defendant shall not, under any circumstances, be obligated to pay any other additional amounts beyond the Settlement Sum and the Administration Expenses. Defendant need not segregate funds or otherwise create special accounts to hold the Settlement Sum and will not relinquish control of any money until payments are due as set forth in the Settlement Agreement. The Parties agree that any and all undistributed funds—that is, funds not used to pay the Valid Claims, awarded Class Representative Incentive Awards, and the awarded Fee Award—will remain with Defendant and uncashed checks will promptly revert to Defendant. The Settlement Sum amount and structure are material terms of this Agreement.

**2.43 “Settlement Website”** means a website to be established, operated, and maintained by the Settlement Administrator, utilizing the URL [lidocainesettlement.com](http://lidocainesettlement.com), for purposes of providing notice and otherwise making available to the Settlement Class Members the documents, information, and online claims submission process referenced in Section 8.3, below.

**2.44 “Unit”** means a single unit sold of the Product.

**2.45 “Valid Claim”** means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the directions accompanying the Claim Form and the provisions of the Settlement; (b) accurately, fully and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claims Deadline, or, if submitted online, is submitted by 11:59 p.m. EST on the Claims Deadline; and (e) determined to be valid by the Settlement Administrator.

**3. PRELIMINARY APPROVAL AND CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

**3.1** The Parties agree that the Action may be certified as a class action in accordance with the terms of this Agreement, with the understanding of all Parties that should this Agreement fail to become effective or is not fully implemented in accordance with its terms, no class shall be deemed certified unless and until Named Plaintiffs prevail on a motion for class certification, and without prejudice to Defendant’s right to contest class certification in that event. If the Settlement is not approved or this Agreement fails to be fully implemented for any reason, Defendant reserves all rights to object to any subsequent motion to certify a class in this or any other lawsuit, and no representation or concession made in connection with the Settlement or this Agreement shall be admissible or considered law of the case or an admission by Defendant or to have any kind of preclusive effect against Defendant or to give rise to any form of estoppel or waiver by Defendant in these actions or any other proceeding.

**3.2** Defendant expressly denies any and all liability and/or wrongdoing with respect to any and all of the claims alleged in this lawsuit and any similar lawsuits and enters into this Settlement solely to compromise a disputed claim. Accordingly, any references to the alleged

business practices or actions of Defendant or any Released Party in this Settlement or the related Court hearings and processes shall raise no inference or admission respecting the propriety of those business practices or any other business practices of Defendant. If this Agreement is deemed void or the Effective Date does not occur for any reason, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Action on all procedural, evidentiary, and factual grounds, including, without limitation, the ability to challenge on any grounds whether any class can be certified and to assert any and all defenses or privileges. The Class Representatives and Class Counsel agree that Defendant retains and reserves all these rights and agree not to take a position to the contrary.

**3.3** As soon as practicable after the execution of this Agreement, Plaintiffs shall file in the Action this Agreement and a Motion for Preliminary Approval seeking entry of the Preliminary Approval Order substantially in the form of Exhibit D, which order by its terms shall accomplish all of the following: (i) preliminarily approve the Settlement as fair, reasonable, and adequate; (ii) conditionally certify the Settlement Class for the purpose of effectuating the Settlement; (iii) preliminarily designate Named Plaintiffs Monique Bell, Tree Anderson, and Melissa Conklin as the Class Representatives of the Settlement Class; (iv) preliminarily designate Class Counsel as counsel for the Settlement Class; (iv) approve the Settlement Administrator and instruct the Settlement Administrator to perform its functions in accordance with the terms of this Agreement and the Preliminary Approval Order; and (v) approve the form, contents, and method of the Class Notice Program, as detailed in Section 8 of this Agreement.

**4. SETTLEMENT CONSIDERATION AND PROCEDURES FOR PROVIDING BENEFITS TO SETTLEMENT CLASS MEMBERS**

**4.1 Benefit Available to Settlement Class Members**

In order to qualify for a Benefit, Settlement Class Members must timely submit a

completed and valid Claim Form, which shall be substantially the form attached hereto as Exhibit A. This can be done on the Settlement Website or by mail, submitted by or postmarked by the Claims Deadline. In consideration for the Settlement and Releases given herein and subject to the rights, terms, and conditions of this Agreement, Defendant will make available the Settlement Sum to pay Valid Claims subject to Section 4.4.

Settlement Class Members will be able to choose between two mutually exclusive Benefit options.

- (a) Settlement Class Members who elect to fill out the Claim Form and who do not provide valid Proof of Purchase(s) may recover four dollars and fifty cents (\$4.50) per Unit, limited to up to three (3) total Units (the “Simple Claim”); or
- (b) Settlement Class Members who elect to fill out the Claim Form and who provide valid Proof of Purchase(s) dated within the Class Period may recover four dollars and fifty cents (\$4.50) for each Unit included in the Proof of Purchase(s), without limitation (the “Proof Claim”).

For the avoidance of doubt, a Settlement Class Member may file a Claim Form electing either option, but not both. If no proof or inadequate proof is submitted along with a Proof Claim, but the claim is otherwise a Valid Claim, it will be treated as a Simple Claim and subject to the Unit limitations therein. No single Proof of Purchase can support a Proof Claim for more than one Settlement Class Member.

#### **4.2 Claim Form Requirements**

The Settlement Administrator shall validate that all sections of the Claim Form are complete and that the Settlement Class Member provided and certified the truth and accuracy of the following information under the penalty of perjury, including by signing the Claim Form

physically or by e-signature, or the Claim will not be considered a Valid Claim by the Settlement Administrator. The absence of any of the following information, or the provision of incorrect information, will result in the rejection of the Claim:

- (a) The Settlement Class Member's name and mailing address;
- (b) The Settlement Class Member's email address (unless the Settlement Class Member requests a claim form by mail, in which case an email address is optional);
- (c) The name of the Product(s) purchased, the store name where the Product(s) were purchased, and the number of Units purchased during the Class Period;
- (d) For Proof Claims, valid Proof of Purchase(s);
- (e) That the claimed purchases were not made for purposes of resale;
- (f) The payment preference of the Settlement Class Member (*i.e.*, via check or electronic payment); and
- (g) A security code or control number provided by the Settlement Administrator at the time the Class Member requests a Claim Form on the Settlement Website (if the Settlement Class Member requests a Claim Form by mail).

#### **4.3 Claim Submission**

At the election of the Settlement Class Member, the Settlement Administrator shall accept Claim Forms submitted on paper via United States First Class Mail or online at the Settlement Website. Claim Forms must be either postmarked (if sent by mail) or received (if submitted electronically) by the Settlement Administrator by no later than the Claims Deadline. Claim Forms postmarked or submitted online after that date will not be considered Valid Claims, but any such Settlement Class Member submitting a late Claim Form shall nevertheless be bound



by all of the terms in this Agreement, including the terms of the Final Approval Order and the Releases in this Agreement, and shall be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Parties concerning any Released Claims.

#### **4.4 Only Valid Claims Paid; No Unclaimed Property Rights**

The Settlement Sum will be used to pay the Benefit Payments as determined by the Settlement Administrator subject to the number of Valid Claims and other adjustments pursuant to the terms and conditions of this Agreement. Notwithstanding anything to the contrary, Defendant, through the Settlement Sum, shall pay Valid Claims only. This Agreement does not create any vested property interest or unclaimed property rights for Settlement Class Members who do not file Valid Claims.

#### **4.5 Invalid Claims**

Any Settlement Class Member who fails to submit a timely, accurate, completed Valid Claim, or who otherwise submits a Claim Form determined to be invalid for any reason, shall not be entitled to receive a Benefit Payment, but shall otherwise be bound by all of the terms in this Agreement, including the terms of the Final Approval Order and the Releases in this Agreement, and shall be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Parties concerning any Released Claims.

#### **4.6 Cap and Proportionate Reduction**

The actual amount paid to Settlement Class Members will depend upon the number of Valid Claims. If the total amount to be paid as a result of Valid Claims exceeds the amount of the Settlement Sum that remains after the payment of Class Representative Service Awards, and Class Counsel's Fee Award, then the Benefit payable to each Claimant shall be proportionately

reduced, such that Defendant's maximum liability under this Agreement shall not exceed the Settlement Sum.

**5. THE SETTLEMENT ADMINISTRATOR**

**5.1** The Parties shall jointly ask the Court to approve a Settlement Administrator. The Settlement Administrator shall, subject to the supervision of the Court, administer the relief provided by this Agreement by processing Claim Forms in a rational, responsive, cost-effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices, and such records will be made available to Class Counsel, Defendant's Counsel, and the Parties promptly upon request. The foregoing notwithstanding, the Class List (as defined herein) will be kept confidential and will not be shared with Plaintiffs or any Settlement Class Member.

**5.2** Defendant will pay all Administration Expenses, except as otherwise set forth in this Agreement, and shall pay such expenses separate and apart from the Settlement Sum. Defendant shall not be obligated to compute, estimate, or pay any taxes on behalf of Plaintiffs, any Settlement Class Member, Class Counsel, or the Settlement Administrator. The Settlement Administrator will invoice Defendant directly as agreed upon between the Settlement Administrator and Defendant. The Settlement Administrator will complete and provide to Defendant any W9 forms necessary for Defendant to pay for the Administration Expenses.

**5.3** Defendant shall not be responsible for any cost that may be incurred by, on behalf of, or at the direction of, Plaintiffs or Class Counsel in: (a) responding to inquiries about the Agreement, the Settlement, or the Action; or (b) posting the Publication Notice on Class Counsel's website, should that occur subject to the mutual agreement of the Parties.

**5.4** The Settlement Administrator will track Claim Forms with unique security identifiers or control numbers issued to Persons who seek to file a Claim. For Claim Forms that are submitted online, the Settlement Class Member shall have the opportunity to upload Proof of Purchase image files (*e.g.*, jpg, tif, pdf), to preview and confirm information entered in the Claim Form prior to submitting the claim, and to print a page immediately after the Claim Form has been submitted showing the information entered, the names of image file(s) uploaded, and the date and time the Claim Form was received.

**5.5** The Settlement Administrator shall be responsible for, among other things, implementing the Class Notice Program, processing Claim Forms, and administering the Settlement Website, toll-free telephone support line, objection process, and claims process described herein (including receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests to opt-out from the Settlement Class). The Settlement Administrator will use mutually agreed upon security procedures and standards to prevent the filing and payment of false or fraudulent claims, and to pay only Valid Claims. The Settlement Administrator and Parties shall have the right to audit claims, and the Settlement Administrator may request additional information from Claimants.

**5.6** The Settlement Administrator will determine whether Claims are Valid Claims and issue Benefit Payments based upon the terms and conditions of the Agreement or may reject Claims which are invalid or evidence waste, fraud, or abuse. The determination of validity of claims shall occur, if feasible, at least 7 days prior to the Final Approval Hearing. Should the Settlement Administrator need additional time, the Parties agree to work together in good faith to determine how much additional time is necessary to validate claims. The Settlement Administrator shall approve or deny all claims after consultation with Class Counsel and

Defendant's Counsel. Neither Plaintiffs nor Defendant, nor their counsel, shall have any liability whatsoever for any act or omission of the Settlement Administrator, including the denial of Claims. The Settlement Administrator shall not receive any incentive for denying claims.

**5.7** The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall promptly and on a weekly basis provide Class Counsel and Defendant's Counsel with information concerning notice, administration, and implementation of the Agreement. Without limiting the foregoing, the Settlement Administrator shall:

- (a) promptly forward, upon request, to Defendant's Counsel and Class Counsel, copies of all documents and other materials relating to the administration of the Settlement;
- (b) cause notice, pursuant to 28 U.S.C. § 1715, to be served not later than ten (10) days after this Agreement is filed with the Court, on the Attorneys General of each U.S. State in which Settlement Class members reside, the Attorney General of the United States, and other required government officials, as required by law;
- (c) receive requests from Settlement Class Members to opt out from or object to the Settlement Class and promptly provide to Class Counsel and Defendant's Counsel a copy thereof upon receipt. If the Settlement Administrator receives any opt-out requests or objections from Settlement Class Members after the Opt-Out / Objection Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

- (d) provide reports and summaries on a weekly basis throughout the Claim Period to Class Counsel and Defendant's Counsel, including and without limitation, reports regarding the number of Claim Forms received;
- (e) employ reasonable procedures to screen Claims Forms for waste, fraud, and abuse and shall reject a Claim Form, or any part of a Claim for a payment reflected therein, where the Settlement Administrator determines that there is evidence of waste, fraud, or abuse. The Settlement Administrator will review each Claim Form and ensure that each is complete, properly substantiated, and, based on the substantiation, determine the appropriate benefit to be paid, if any, in accordance with the terms of this Agreement. The Settlement Administrator is empowered to pay legitimate and Valid Claims only;
- (f) prepare a declaration attesting to the implementation of and compliance with the Class Notice Program requirements set forth below and identifying all opt-outs and/or objectors. Such declaration shall be provided to Defendant's Counsel and Class Counsel for filing with the Court no later than seven (7) days prior to the filing of the Motion for Final Approval;
- (g) distribute Benefit Payments for payment of Valid Claims. Defendant is obligated to pay Valid Claims only. To the extent that a Benefit Payment is made by check, as opposed to other forms of payment that may be available to Settlement Class Members, such checks shall bear in the legend that they expire if not negotiated within 150 days of their date of

issue. Benefit Payment checks issued to a Settlement Class Member not cashed within 150 days after the date of issue shall be void. Any undistributed or unclaimed monies from the Settlement Sum and any monies remaining as a result of uncashed checks shall remain with (and, for uncashed checks, promptly revert to) Defendant; and

- (h) Obtain any and all tax documents needed to process or may any payments required as a result of this Agreement.

## **6. FUNDING & DISTRIBUTION OF THE SETTLEMENT SUM**

**6.1** As described herein, the Settlement Sum shall be used to provide the exclusive recovery and relief for the Settlement Class, any Fee Award, and any Class Representative Incentive Awards. The Settlement Sum and the Administration Expenses shall be the sole and exclusive monetary contribution or consideration paid or provided by Defendant under this Settlement Agreement and Defendant shall not, under any circumstances, be obligated to pay any other additional amounts beyond the Settlement Sum and the Administration Expense. Any part of the Settlement Sum that is not used for Valid Claims, the Fee Award, and the Class Representative Incentive Awards shall remain with Defendant, including any uncashed checks.

**6.2** From the Settlement Sum, Defendant, within 35 days after the Effective Date, shall fund all amounts required by the Settlement Administrator for distribution of: (i) any Benefit Payments to Settlement Class Members who submit Valid Claims, and (ii) any Class Representative Incentive Awards awarded by the Court.

**6.3** The Settlement Administrator shall pay any Benefit Payments to Settlement Class Members who submit Valid Claims within 49 days after the Effective Date. If the Court awards Class Representative Incentive Awards, the Settlement Administrator shall effectuate the

payment as directed by Class Counsel within 49 days of the Effective Date.

**6.4** The funding and payment of any Fee Award is detailed in Section 7.2.

**6.5** The payments made by Defendant to the Settlement Administrator to fund the Settlement, at such times as payments are required by this Agreement, as described herein will be maintained by an escrow agent as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1, *et seq.*, of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account.

**6.6** This Agreement is conditioned on the entry of the Final Approval Order without material modification of this Agreement by the Court. If the Court does not enter the Final Approval Order or if the Effective Date does not occur for any reason, Defendant shall not be obligated to make any payments or provide any monetary or non-monetary relief to Plaintiffs or the Settlement Class Members or any Class Representative Incentive Award. Further, if the Final Approval Order is not entered, Defendant shall not be obligated to pay any Fee Award to Class Counsel. If the Final Approval Order is entered, but the Effective Date does not occur, the payment of the Fee Award will be governed by the stipulated undertaking, a sample of which is attached hereto as Exhibit E.

**7. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS**

**7.1** The Parties agree, subject to Court approval, that the law firms of Bursor & Fisher, P.A. and Gucovschi Rozenshteyn, PLLC shall be appointed Class Counsel, without prejudice to Defendant's right to contest the appointment in the event that this Agreement is not fully implemented in accordance with its terms. If the Settlement is not approved or this Agreement

fails to be implemented, this Agreement and any filings or orders relating thereto shall not constitute admissible evidence and Defendant reserves all rights to object to any subsequent motion to appoint class counsel in these or any other actions.

**7.2** At least 14 days prior to the Opt-Out / Objection Deadline, Class Counsel will submit to the Court an Application seeking a Fee Award which shall not exceed \$1,140,000.00. In addition, Class Representatives may seek a Class Representative Service Award for each Named Plaintiff in the amount of three thousand dollars and zero cents (\$3,000.00) as compensation for their efforts in bringing the Action and achieving the benefits of the Settlement on behalf of the Settlement Class. The Fee Award and Class Representative Service Awards shall be paid from the Settlement Sum.

**7.3** Class Counsel and the Class Representatives, respectively, shall not seek, and will not accept, a Fee Award or Class Representative Service Award in excess of that set forth above, nor will Class Counsel or the Class Representatives appeal the award of any amounts lower than what was sought.

**7.4** Court approval of Class Counsel's Fee Award and Class Representative Service Awards will not be a condition of the Settlement. If the Court denies, in whole or part, Class Counsel's Application for a Fee Award, the remainder of the terms of this Agreement shall remain in effect. In addition, no interest will accrue on such amounts at any time, except as provided in the stipulated undertaking attached as Exhibit E. Neither Class Counsel nor Plaintiffs will request nor will they accept any award inconsistent with these terms.

**7.5** Defendant agrees that it will not object to the amount of Class Counsel's Application for a Fee Award up to the amounts set forth in the preceding paragraphs and will not solicit or encourage others to do so.



7.6 Within 7 business days of the entry of the Final Approval Order, Defendant shall transmit to the Settlement Administrator the amounts awarded by the Court for the Fee Award, provided that Class Counsel first provide signed stipulated undertakings in substantially the form attached as Exhibit E. Within 3 business days thereafter, the Settlement Administrator shall effectuate payment to Class Counsel.

7.7 Class Counsel shall provide the Settlement Administrator with all necessary accounting and tax information, including W-9 forms, with reasonable advance notice to allow Settlement Administrator to make the Fee Award payment as set forth above, as well as the Class Representative Service Awards. Once the Settlement Administrator makes the Fee Award payment as directed in writing by Class Counsel, Defendant shall have no further obligation to pay any additional sums to Class Counsel and shall be held harmless and indemnified by Class Counsel for the division and disbursements of the Fee Award amongst and between Class Counsel.

## **8. NOTICE AND DISSEMINATION TO THE SETTLEMENT CLASS**

The Class Notice Program shall consist of the Direct Notice, Publication Notice, Long-Form Notice, and Settlement Website, defined above and detailed below. No notice other than as set forth herein shall be conducted by the Parties.

The Parties agree that the Class Notice Program shall be in the manner and form agreed upon by the Parties and approved by the Court. Collectively, the Settlement Notice shall in general terms set forth and sufficiently inform the Settlement Class Members of: (a) a short, plain statement of the background of the Action, the Settlement Class certification, and the essential terms of the Settlement; (b) appropriate means for obtaining additional information regarding the Settlement and the Action; (c) appropriate information concerning the procedure for objecting or opting-out from the Settlement, if they should wish to do so; and (d) that any

relief to Settlement Class Members is contingent on the Court's final approval of the Settlement and reaching the Effective Date. The Parties will request that the Court approve the Class Notice Program in the Preliminary Approval Order.

### **8.1 Direct Notice**

No later than fourteen (14) days after the entry of the Preliminary Approval Order, Defendant shall produce an electronic list from its records that includes all of the names and email addresses, to the extent the foregoing exists in Defendant's records, belonging to Persons within the Settlement Class who are members of Defendant's loyalty program, known as the ExtraCare program. This electronic document shall be called the "Class List," and shall be provided to the Settlement Administrator. The Class List, and any information derived therefrom, shall be kept confidential and will be produced subject to the Protective Order entered in the Action, which must be executed by the Settlement Administrator.

Using the information provided from the Class List, the Settlement Administrator shall, within thirty-five (35) days from entry of the Preliminary Approval Order, cause Direct Notice to be disseminated via email only, substantially in the form attached as Exhibit C-1, along with an electronic link to the Claim Form and Settlement Website, to all Settlement Class Members for whom a valid email address is in the Class List. In the event transmission of the email notice results in any "bounce-backs," the Settlement Administrator will resend a second attempt.

### **8.2 Publication Notice**

Similarly, within thirty-five (35) days after the entry of the Preliminary Approval Order, the Settlement Administrator will cause the Publication Notice, substantially in the form of Exhibit C-2, to be published in accordance with the Media Plan. The Media Plan will be implemented on a single occasion. The Parties agree to mutually consider, if necessary,

conducting a supplemental Publication Notice at the expense of Class Counsel, and consent to conducting a second implementation of such supplemental Publication Notice will not be unreasonably withheld.

### **8.3 Settlement Website**

Within thirty-five (35) days after the entry of the Preliminary Approval Order, the Settlement Administrator will establish a Settlement Website that will contain the complaint in the Action, the Motion for Preliminary Approval, the Preliminary Approval Order, the Settlement Agreement, the Direct Notice, the Long-Form Notice, the Publication Notice, and the Claim Form. The Settlement Website will also identify key deadlines (e.g., the Claims Deadline, the Opt-Out Deadline, Objection Deadline, the date of the Final Approval Hearing), and it will direct Settlement Class Members on how to submit Claim Forms and will include a “Frequently Asked Questions” section. Settlement Class Members will be able to submit claims electronically through the Settlement Website.

### **8.4 Toll-Free Telephone Support Line**

Within thirty-five (35) days after the entry of the Preliminary Approval Order, the Settlement Administrator will establish a toll-free telephone support line that will provide Settlement Class Members with general information about the Action and will respond to frequently asked questions about the Action and claim procedure. Should Class Counsel desire to implement a live operator function for the toll-free telephone support line, Class Counsel may request that the Settlement Administrator implement that function at the sole expense of Class Counsel.

### **8.5 Declaration of Compliance**

The Settlement Administrator shall prepare a declaration attesting to compliance with the

Class Notice Program requirements set forth above, detailing the scope of the Media Plan, and providing a statement of the percentage of Settlement Class Members the Class Notice Program reached. Such declaration shall be provided to Defendant's Counsel and Class Counsel no later than seven (7) days prior to the deadline to file the Motion for Final Approval.

## **9. OPT-OUT REQUESTS AND OBJECTIONS**

The Class Notice will advise all Settlement Class Members of their rights to be excluded from the Settlement or to object to the Settlement.

### **9.1 Opt-Out Requests**

(a) Any person who falls within the definition of the Settlement Class but wishes to be excluded from the Settlement may do so by timely mailing a valid opt-out notice, as described in the Class Notice Program, by the Opt-Out / Objection Deadline. Any person who is excluded from the Settlement will not be bound by this Settlement Agreement, will not be eligible to make a claim for any benefit under the terms of this Settlement Agreement, and will not be permitted to object to the Settlement or to intervene in the Action. At least seven (7) calendar days before the deadline to file the Motion for Final Approval, Class Counsel will prepare or cause the Settlement Administrator to prepare a list of the persons who have excluded themselves in a valid and timely manner from the Settlement Class, and Class Counsel will file that list with the Court.

(b) In order to exercise the right to be excluded, a Settlement Class Member must timely send a written request for exclusion to the Settlement Administrator at the address provided in the Class Notice Program, providing: (i) his/her/their name, address, and telephone number; (ii) the name and number of this case; (iii) documents or information sufficient to establish the person's standing as a Settlement Class Member (including the Product purchased and date and

location of purchase); (iv) a statement that he/she/they wishes/wish to be excluded from the Settlement Class; and (v) a signature. No mass or class opt-outs will be permitted.

(c) Any Settlement Class Member who validly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under, or be affected by, this Agreement; (c) gain any rights by virtue of this Agreement; or (d) be entitled to object to any aspect of the Settlement. Except for those Settlement Class Members who timely and properly file a request for exclusion, all other Settlement Class Members will be deemed to be Settlement Class Members for all purposes under the Agreement, and upon the Effective Date, will be bound by its terms.

## **9.2 Objections**

(a) Any person who is a Settlement Class Member and who wishes to object to the Settlement Agreement must timely serve a written objection on the Court and simultaneously with the Settlement Administrator, Defense Counsel, and Class Counsel, at the addresses described in the Class Notice Program, by the Opt-Out / Objection Deadline. Any person who submits both an opt-out request and an objection will be treated as opted out of the Settlement and will not be able to object.

(b) In order to object, the objection must contain: (i) a caption or title that identifies it as “Objection to Class Settlement in *Bell v. CVS Pharmacy, Inc.*”; (ii) contact and address information for the objecting Settlement Class Member; (iii) documents sufficient to establish the person’s standing as a Settlement Class Member (including the Product purchased and date and location of purchase); (iv) the facts supporting the objection; (v) the legal grounds on which the objection is based, including all citations to legal authority and evidence supporting the objection; (vi) the name and contact information of any and all attorneys representing, advising, or in any

way assisting the objecting Settlement Class Member in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the “Objecting Attorneys”), and (vii) the objecting Settlement Class Member’s signature (an attorney signature is not sufficient). If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement within the last five years, then the objection must include a statement identifying each such case by full case caption and amount of payment received. No mass or class objections will be permitted.

(c) Any Settlement Class Member who fails to object to the Settlement in the manner consistent with this Section shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of this Agreement by appeal or other means.

(d) If an objecting person chooses to appear at the Final Approval Hearing, a notice of intention to appear must be filed with the Court no later than the Opt-Out / Objection Deadline. The notice of intention to appear must identify: (i) whether the appearance will be through counsel, (ii) any witnesses the objecting person may call to testify at the Final Approval Hearing; and (iii) all exhibits the objecting person intends to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection. Only Settlement Class Members who submit timely objections including notices of intention to appear may speak at the Final Approval Hearing. If a Settlement Class Member makes an objection through an attorney, the Settlement Class Member will be responsible for his/her/their personal attorney’s fees and costs.

(e) The Parties shall have the right to take discovery without further leave of court consistent with the Federal Rules of Civil Procedure from any person who claims to be a Settlement Class Member who objects to the Settlement. If the person who objects to the Settlement is represented by counsel, the Parties shall also have the right to take discovery consistent with the Federal Rules of Civil Procedure from the Objecting Attorney without further leave of court.

**10. LABEL CHANGE**

**10.1** As part of the consideration of this Agreement, and without admitting that the previous labels had any deceptive aspects to a reasonable consumer or were otherwise actionable, Defendant agrees to have the Labeling changed on the Products to clearly identify that the Products contain the “maximum strength” of lidocaine available over the counter (“OTC”) without a prescription and to remove any language concerning the length of time the Products in patch form will adhere.

**10.2** Nothing in this Agreement requires Defendant to withdraw, change, or otherwise modify labeling, components, packing cases, or advertising of the Products already manufactured, in distribution or storage, and/or stocked in stores.

**10.3** Defendant agrees to implement the changes described in Section 10.1 within 12 months following the Effective Date (the “Label Deadline”). For the avoidance of any doubt, none of the Products’ labels modified pursuant to Section 10.1 shall require review or pre-clearance by Plaintiffs or Class Counsel. Defendant shall maintain complete discretion as it relates to Labeling, notwithstanding its agreement to implement the changes described herein.

**10.4** Nothing in this Agreement shall preclude Defendant from making further changes to any labels or advertising for the Products so long as those changes are not inconsistent with

Section 10.1. Further, nothing in this Agreement shall preclude Defendant from making any changes that Defendant, in its sole discretion, determines to be necessary to, or required to, comply with any law, regulation or administrative guidance, even if such changes are different from those specified in Section 10.1.

## **11. FINAL JUDGMENT AND SETTLEMENT APPROVAL**

This Agreement is subject to and conditioned upon the issuance by the Court of the Final Approval Order that, without material alteration to this Agreement or its exhibits, finally certifies the Settlement Class for the purposes of this Settlement, grants final approval of the Agreement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder. If the Settlement is approved, the Court will enter a judgment dismissing the claims against Defendant with prejudice. The Parties waive any right to appeal or collaterally attack a Final Approval Order entered by the Court that does not materially alter this Agreement.

## **12. RELEASES**

**12.1** Upon the Effective Date and without any further action by the Court or by any Party to this Agreement, the Releasing Parties, for good and sufficient consideration, the receipt and adequacy of which is acknowledged, shall be deemed to, and shall, in fact, have remised, released, and forever discharged any and all Released Claims, which they, or any of them, had or has or may in the future have or claim to have against any of the Released Parties.

**12.2** The Releasing Parties hereby fully release and forever discharge the Released Parties from any and all claims, demands, rights, damages, obligations, suits, debts, liens, contracts, agreements, judgments, expenses, costs, liabilities, and causes of action of every nature



and description, including claims for attorneys' fees, expenses and costs, whether known or unknown, suspected or unsuspected, existing now or arising in the future that: (a) is or are based on, related to, or arise out of, any act, omission, inadequacy, misstatement, representation, harm, matter, cause, or event pertaining to the Products that has occurred at any time from the beginning of time up to and including the entry of the Preliminary Approval Order, (b) arise from or are related in any way to this Action or the marketing, advertising, promoting, or Labeling of the Products, or (c) were or could have been asserted in the Action ("Released Claims").

**12.3** The Releasing Parties also agree to release, waive, and not pursue any claims whatsoever concerning or relating to the Labeling of the Products that arise between the date of the Preliminary Approval Order and the Label Deadline.

**12.4** With respect to any and all Released Claims against any and all Released Parties, the Parties stipulate and agree that each Releasing Party shall have expressly waived the provisions, rights, and benefits of Cal. Civ. Code § 1542 or any federal, state, or foreign law, rule, regulation, or common-law doctrine that is similar, comparable, equivalent, or identical to, or that has the effect in whole or part of, Section 1542 of the California Civil Code, 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." Each of the Releasing Parties shall be deemed to have acknowledged, and by operation of the entry of a Final Approval Order acknowledges, that he/she/they/it is/are aware that he/she/they/it may hereafter discover facts other than or different from those that they know or believe to be true with respect to the

subject matter of the Released Claims, but it is his/her/their/its intention to, and each of them shall be deemed upon the Effective Date to have, waived and fully, finally, and forever settled and released any and all Released Claims, whether known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

**12.5** The Releasing Parties understand and acknowledge the significance of these waivers and any other applicable federal or state statute, case law, rule, or regulation relating to limitations on releases. In connection with such waivers and relinquishment, the Releasing Parties acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally, and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

**12.6** The Final Approval Order shall further provide for and effect the release of the Released Claims by the Releasing Parties, and all actions, causes of action, claims, administrative claims, demands, debts, damages, costs, attorney's fees, obligations, judgments, expenses, compensation, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, that Releasing Parties now have or may have against the Released Parties by reason of any act, omission, harm, matter, cause, or event whatsoever arising out of or relating to the Action, the initiation, prosecution, or settlement of the Action or the claims and defenses asserted in or could have been asserted in the Action.

**12.7** Notwithstanding the above, the Court shall retain jurisdiction over the Parties and

the Agreement with respect to the future performance of the terms of the Agreement, and to assure that all payments and other actions required of any of the Parties by the Settlement are properly made or taken.

**13. REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants to, and agrees with, the other Party as follows:

**13.1** Each Party has had the opportunity to receive, and has received, independent legal advice from his, her, their, or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.

**13.2** Defendant represents and warrants that: (a) it has the requisite corporate power and authority to execute, deliver, and perform the Agreement and to consummate the transactions contemplated hereby; (b) the execution, delivery, and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of Defendant; and (c) the Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid, and binding obligation.

**13.3** Named Plaintiffs represent and warrant that they are entering into the Agreement on behalf of themselves individually and as proposed representatives of the Settlement Class Members, of their own free will and without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court. Named Plaintiffs represent and warrant that they have reviewed the terms of the Agreement in consultation with Class Counsel and believe them to be fair and reasonable, and covenant that they will not file an opt-out request from the Settlement Class or object to the Agreement.

**13.4** Named Plaintiffs represent and warrant that no portion of any claim, right,

demand, action, or cause of action against any of the Released Parties that Named Plaintiffs have or may have arising out of or relating to the Action or pertaining to their purchase and/or use of the Product and/or the design, manufacture, testing, marketing, Labeling, packaging, or sale of the Product otherwise referred to in this Agreement, and no portion of any recovery or settlement to which Named Plaintiffs may be entitled, has been assigned, transferred, or conveyed by or for Named Plaintiffs in any manner, and that no Person other than Named Plaintiffs have any legal or equitable interest in their claims, demands, actions, or causes of action referred to in this Agreement.

**13.5** Named Plaintiffs represent and warrant that to their knowledge, they have no surviving claim or cause of action against any of the Released Parties that is not being released by this Agreement.

**13.6** Class Counsel represent and warrant that they know of no other persons with claims against Defendant that could have been asserted in the Action who are not included in the Settlement Class and whose claims will not be released upon the Effective Date of this Agreement.

**13.7** No Party relies or has relied on any statement, representation, omission, inducement, or promise of the other party (or any officer, agent, employee, representative, or attorney for any other party) in executing this Agreement, or entering the Settlement provided for herein, except as expressly stated in this Agreement.

## **14. MISCELLANEOUS PROVISIONS**

### **14.1 Termination of Agreement**

This Agreement may be terminated at the election of either Party: (a) if the Court fails to approve the Agreement; (b) in the event of any proposed material modification of this Agreement

as a condition to approval of the Settlement, to which the Parties do not mutually agree; (c) if 200 or more persons opt out; or (d) prior to approval of this Agreement by the Court, upon the mutual agreement of the Parties by and through their respective counsel.

#### **14.2 Entire Agreement**

This Agreement, together with the Exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject matter of the Settlement and supersedes all prior negotiations, communications, memoranda, and agreements between the Parties. Neither Plaintiffs nor Defendant are entering into this Agreement in reliance upon any representations, warranties, or inducements other than those contained in this Agreement.

#### **14.3 Change of Time Periods**

The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Class Counsel and Defendant's Counsel, without notice to Class Members, except that the Settlement Administrator shall ensure that such dates are posted on the Settlement Website.

#### **14.4 Extension of Time**

The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

#### **14.5 Media and Contact of Class Members**

Other than public court filings, court-ordered notice to the class, and communications with Settlement Class Members, there shall be no other publication or dissemination of the terms of this Settlement by Named Plaintiffs, Class Counsel, or the Administrator,

including, but not limited to, in the form of press releases or in response to inquiry from any media. For the avoidance of any doubt, nothing in this Agreement prevents the Parties from making any disclosures required to effectuate this Agreement or as required by law, nor does anything in this Agreement prevent Class Counsel from answering any inquiries initiated by Settlement Class Members or communicating with Named Plaintiffs.

#### **14.6 Cooperation**

Defendant, Named Plaintiffs, and their respective counsel agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Agreement. The Parties shall cooperate with the Settlement Administrator to the extent reasonably necessary to assist and facilitate the Settlement Administrator in carrying out its duties and responsibilities.

#### **14.7 Plaintiffs' Authority**

Class Counsel represent and warrant that they are authorized to take all appropriate actions required or permitted to be taken by or on behalf of Named Plaintiffs and, subsequent to an appropriate Court Order, the Settlement Class, in order to effectuate the terms of this Agreement and are also authorized to enter into appropriate modifications or amendments to this Agreement on behalf of Named Plaintiffs and, subsequent to an appropriate Court Order, the Settlement Class Members.

#### **14.8 Governing Law**

This Agreement shall be construed and governed in accordance with the laws of the State of New York, without regard to New York's conflict-of-laws principles.

#### **14.9 Stay Pending Court Approval**

Class Counsel and Defendant's Counsel agree to stay all proceedings, other than those

proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred. If for any reason the Settlement does not receive final, complete, and non-appealable approval, the First Amended Complaint (ECF No. 53-1) will be withdrawn and the Parties shall proceed solely on the basis of the original Complaint (ECF No. 1), and from the point in this Action immediately preceding the signing of this Settlement, including the reinstatement of the briefing on the motion for judgment on the pleadings, (ECF No. 37. 41-43. 44. 45).

#### **14.10 Construing the Agreement**

This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been initially drafted by counsel for only one of the Parties. It is recognized that this Agreement is the result of arm's-length negotiations between the Parties and it is acknowledged that all Parties have contributed substantially to the preparation of this Agreement. Accordingly, the doctrine of *contra proferentum* shall not apply in construing this Agreement, nor shall any other such similar doctrine apply.

#### **14.11 Modifications Suggested by the Court**

If the Court suggests any modifications to the Settlement Agreement or seeks to condition entry of the Preliminary Approval Order or Final Approval Order on modifications to the Agreement, the Parties shall, working in good faith and consistent with the Agreement, endeavor to cure any such deficiencies identified by the Court. However, Defendant shall not be obligated to make any additions or modifications to the Agreement that would affect the Benefits provided to Settlement Class Members, the structure of the Settlement Sum, the cost to or burden on Defendant, or the scope of any of the Released Claims contemplated in this Agreement.

#### **14.12 Evidentiary Preclusion**

The Parties agree that, to the fullest extent permitted by law, neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Released Party or the appropriateness of class certification in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. In addition, any failure of the Court to approve the Settlement and/or any objections or interventions may not be used as evidence in the Action or any other proceeding for any purpose whatsoever. However, the Parties may file the Agreement and/or the Final Approval Order in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

#### **14.13 Effect of Non-Approval**

This Agreement is conditioned on entry of a Final Approval Order without material modification by the Court and reaching the Effective Date. In the event that this Agreement is not approved by the Court in substantially its present form, any Objection to the Settlement is sustained by the Court, or the Effective Date is not reached for any reason, including termination pursuant to paragraph 15.1 above, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties or the Class Members, except as may be required by the stipulated undertaking attached as Exhibit E (which would occur if, and only if, the Final Approval Order is entered, but the Effective



Date is not reached), and shall not be used in this Action or in any other action or proceeding for any purpose, and any order or judgment entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*. In such event, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection with this Agreement shall be without prejudice to any Party or Class Member and shall not be admissible or offered into evidence in any action or proceeding, and shall not be deemed, asserted, or construed to be an admission or confession by any Party or any other person or entity of any fact, matter, or proposition of law, and shall not be used or asserted in any other manner or for any purpose, and all Parties and Class Members shall stand in the same position as if this Agreement and Settlement had not been negotiated, made, or submitted to the Court.

#### **14.14 Signatures**

This Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by email shall be deemed original signatures and shall be binding.

#### **14.15 Notices**

Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by United States First Class Mail and email to:

##### **14.5.1 If to Plaintiffs or Class Counsel:**

Joseph I. Marchese  
Bursor & Fisher, P.A.  
888 Seventh Ave.  
New York, NY 10019

jmarchese@bursor.com

And

Adrian Gucovschi, Esq.  
Gucovschi Rozenshteyn, PLLC  
630 Fifth Avenue, Suite 2000  
New York, NY 10111  
Telephone: (212) 884-4230  
E-Mail: adrian@gr-firm.com

**14.5.2** If to Defendant or Defendant's counsel ("Defendant's Counsel"):

Emily N. Dillingham  
Mark S. Eisen  
Benesch Friedlander Coplan &  
Aronoff LLP  
71 S. Wacker Dr.  
16th Floor  
Chicago, IL 60606  
312-212-4949  
Fax: 312-767-9192  
Email: edillingham@beneschlaw.com  
meisen@beneschlaw.com

**14.16 Good Faith**

The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Agreement.

**14.17 Protective Orders**

All orders, settlement agreements, and designations regarding the confidentiality of documents and information ("Protective Orders") remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders, including the provisions to certify the destruction of "Confidential" documents.

**14.18 Binding on Successors**

This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Plaintiffs, Settlement Class Members, and Defendant.

#### **14.19 Arm's-Length Negotiations**

The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement have been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel.

#### **14.20 Waiver**

The waiver by one Party of any provision or breach of the Agreement shall not be deemed a waiver of any other provision or breach of the Agreement.

#### **14.21 Variance**

In the event of any variance between the terms of this Agreement and any of the Exhibits hereto, the terms of this Agreement shall control and supersede the Exhibit(s).

#### **14.22 Modification or Amendment**

This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the Parties who executed this Agreement or their successors-in-interest.

#### **14.23 Severability**

Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable, if mutually agreed upon by the Parties. In any event, such provision shall, if mutually agreed upon, be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder. The claims-made structure of this Settlement is material term and Defendant represents that it would not have agreed to the Settlement but for the claims-made structure.

#### **14.24 Exhibits**

All Exhibits to this Agreement are material and integral parts hereof, and are incorporated

by reference as if fully rewritten herein.

#### **14.25 Taxes**

No opinion concerning the tax consequences of the Agreement to any Settlement Class Member is given or will be given by Defendant, Defendant's Counsel, or Class Counsel; nor is any Party or their counsel providing any representation or guarantee regarding the tax consequences of the Agreement as to any Settlement Class Member. Each Settlement Class Member is responsible for his/her/their tax reporting and other obligations respecting the Agreement, if any. The Parties and Releasees shall bear no responsibility for tax liabilities. The Settlement Administrator will handle all tax reporting with respect to the Settlement Fund and payments made pursuant to this Settlement and shall report payments pursuant to applicable law.

#### **14.26 No Fine or Penalty**

The Parties agree that no part of any payments by Defendant pursuant to this Agreement constitutes: (i) a fine or penalty under any law; or (ii) a payment to settle any actual or potential liability for a fine or penalty under any law.

#### **14.27 Retain Jurisdiction**

The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the agreements embodied in this Agreement.

#### **14.28 Exclusive Remedy; Permanent Injunction**

Upon issuance of the Final Approval Order: (i) the Agreement shall be the exclusive remedy for any and all Settlement Class Members, except those who have properly requested exclusion (opted out) in accordance with the terms and provisions hereof; (ii) the Released Parties shall not be subject to liability or expense for any of the Released Claims to any

Settlement Class Member(s); (iii) Settlement Class Members who have not opted out shall be permanently barred and enjoined from asserting any Released Claims in any action or from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action based on or relating to any of the Released Claims or the facts and circumstances relating thereto; and (iv) Settlement Class Members who have not opted out shall be permanently barred and precluded from organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending or future action) based on or relating to any of the Released Claims or the facts and circumstances relating thereto. The Parties agree that upon the entry of the Final Approval Order, the Action shall be dismissed with prejudice and judgment shall be entered.

#### **14.29 Enforcement**

The provisions of this Settlement Agreement, and any orders, pleadings, or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely: (a) to enforce the terms and provisions hereof or thereof; (b) to establish payment, or an affirmative defense of preclusion or bar in a subsequent case; (c) in connection with any motion to enjoin, stay, or dismiss any other action; or (d) for approval of the Settlement.

#### **14.30 Support From The Parties**

After a full investigation, discovery, and arm's-length negotiations, the Parties and their counsel agree that they: (a) have independently determined that this Settlement is in the best interest of the Settlement Class; and (b) shall support motions for entry of the Preliminary Approval Order and Final Approval Order, so long as there is no material modification of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed  
by their duly authorized representatives.

Dated this 24<sup>th</sup> day of April, 2023.

**IT IS SO AGREED TO BY THE PARTIES:**

Dated: \_\_\_\_\_, 2023

**MONIQUE BELL**

By: \_\_\_\_\_  
Individually and as representative of the Class

Dated: \_\_\_\_\_, 2023

**TREE ANDERSON**

By: \_\_\_\_\_  
Individually and as representative of the Class

Dated: \_\_\_\_\_, 2023

**MELISSA CONKLIN**

By: \_\_\_\_\_  
Individually and as representative of the Class

Dated: April 24  
\_\_\_\_\_, 2023

**CVS PHARMACY, INC.**

By:  \_\_\_\_\_

Name: **Thomas S. Moffatt**  
~~Vice President and Corporate Secretary~~

Title: \_\_\_\_\_

**IT IS SO STIPULATED BY COUNSEL:**

Dated: \_\_\_\_\_, 2023

**BURSOR & FISHER, P.A.**

By: \_\_\_\_\_  
Joseph I. Marchese  
jmarshese@bursor.com  
888 Seventh Avenue  
New York, NY 10019  
Tel: (646) 837-7410

Dated: \_\_\_\_\_, 2023


**GUCOVSKI ROZENSHTEYN, PLLC**

By: \_\_\_\_\_  
Adrian Gucovski, Esq.  
630 Fifth Avenue, Suite 2000  
New York, NY 10111  
Telephone: (212) 884-4230  
E-Mail: adrian@gr-firm.com

*Attorneys for Plaintiffs and the Settlement Class*

Dated: April 24, 2023

**BENESCH FRIEDLANDER COPLAN &  
ARONOFF LLP**

By:  \_\_\_\_\_  
Mark S. Eisen  
meisen@beneschlaw.com  
71 S. Wacker Dr.  
16th Floor  
Chicago, IL 60606  
312-212-4949  
Fax: 312-767-9192

*Attorneys for Defendant CVS Pharmacy, Inc.*

DocuSign Envelope ID: 84B3F3D3-3789-425B-9821-F7853A3A8B5C

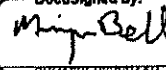
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**IT IS SO AGREED TO BY THE PARTIES:**

Dated: 04/20/, 2023

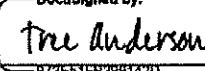
**MONIQUE BELL**

DocuSigned by:  


By: \_\_\_\_\_  
Individually and as representative of the Class

Dated: 4/20, 2023

**TREE ANDERSON**

DocuSigned by:  


By: \_\_\_\_\_  
Individually and as representative of the Class

Dated: 4/20, 2023

**MELISSA CONKLIN**

DocuSigned by:  


By: \_\_\_\_\_  
Individually and as representative of the Class

Dated: \_\_\_\_\_, 2023

**CVS PHARMACY, INC.**

By: \_\_\_\_\_

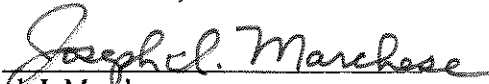
Name: \_\_\_\_\_

Title: \_\_\_\_\_

**IT IS SO STIPULATED BY COUNSEL:**

Dated: April 24, 2023

**BURSOR & FISHER, P.A.**

By:   
Joseph I. Marchese  
jmarshese@bursor.com  
888 Seventh Avenue  
New York, NY 10019



Dated: April 24, 2023

**GUCOVSKI ROZENSHTEYN, PLLC**

By:   
\_\_\_\_\_  
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New York, NY 10111  
Telephone: (212) 884-4230  
E-Mail: adrian@gr-firm.com

*Attorneys for Plaintiffs and the Settlement Class*

Dated: \_\_\_\_\_, 2023

**BENESCH FRIEDLANDER COPLAN &  
ARONOFF LLP**

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