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

IN RE ALLERGAN GENERIC DRUG
PRICING SECURITIES LITIGATION

Case No. 2:16-cv-09449 (KSH)
(CLW)

**MEMORANDUM OF LAW IN
SUPPORT OF LEAD
PLAINTIFFS' MOTION FOR
APPROVAL OF
DISTRIBUTION PLAN**

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Court-appointed Lead Plaintiffs, Sjunde AP-Fonden (“AP7”) and Union Asset Management Holding AG (“Union” and, together with AP7, “Lead Plaintiffs”), respectfully move for entry of the proposed Order Approving Distribution Plan (“Class Distribution Order”) for the proceeds of the Settlement in the above-captioned securities class action (“Action”). The proposed Distribution Plan is included in the accompanying Declaration of Adam D. Walter (“Walter Declaration” or “Walter Decl.”), submitted on behalf of the Court-authorized Claims Administrator, A.B. Data Ltd.’s Class Action Administration Company (“A.B. Data”).¹

The Class Distribution Order will, upon being entered by the Court, permit A.B. Data to conduct the Initial Distribution of the Settlement proceeds to eligible Claimants. Among other things, the Class Distribution Order will: (i) approve A.B. Data’s administrative determinations accepting and rejecting Claims submitted in connection with the Settlement; (ii) direct the Initial Distribution of the Net Settlement Fund to Claimants whose Claims are accepted by A.B. Data as valid and approved by the Court (“Authorized Claimants”), while maintaining a Reserve for any tax liability and claims administration-related contingencies that may arise

¹ Unless otherwise indicated in this memorandum, all terms with initial capitalization shall have the meanings ascribed to them in the Walter Declaration or in the Stipulation and Agreement of Settlement dated as of July 8, 2021 (ECF No. 223-1) (“Stipulation”). The Settlement is contained in the Stipulation.

following the Initial Distribution; and (iii) approve A.B. Data's fees and expenses incurred and estimated to be incurred in the administration of the Settlement and the Initial Distribution.

Under the Stipulation, Defendants have no role in or responsibility for the administration of the Settlement Fund or processing of Claims, including determinations as to the validity of Claims or the distribution of the Net Settlement Fund. *See* Stipulation ¶¶ 18, 22, 24; *see also* Notice ¶ 46 and Notice App. A ¶ 1. Nevertheless, Lead Counsel have provided Defendants' Counsel with a copy of these motion papers and Defendants take no position on this motion.

I. BACKGROUND

This Action was settled for \$130 million in cash. On November 22, 2021, the Court entered its Judgment Approving Class Action Settlement (ECF No. 238) approving the \$130 million Settlement of this Action. On the same date, the Court entered its Order Approving Plan of Allocation of Net Settlement Fund (ECF No. 236). The Settlement's "Effective Date" under paragraph 32 of the Stipulation has now occurred, and accordingly the Net Settlement Fund may be distributed to Authorized Claimants. In accordance with paragraph 27 of the Stipulation, Lead Plaintiffs respectfully request that the Court enter the Class Distribution Order and approve the Distribution Plan.

In accordance with the Court’s Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement (ECF No. 228) (“Preliminary Approval Order”), A.B. Data mailed the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys’ Fees and Litigation Expenses (“Notice”) and the Proof of Claim and Release Form (“Claim Form” and, collectively with the Notice, the “Notice Packet”) to potential Class Members, brokers, and other nominees. Walter Decl. ¶ 2. A.B. Data has disseminated 1,079,334 Notice Packets to potential Class Members, brokers and other nominees. *Id.* ¶ 4. The Notice informed Class Members that if they wished to be eligible to participate in the distribution of the Net Settlement Fund, they were required to submit a properly executed Claim Form postmarked no later than December 27, 2021. *Id.* ¶ 7.

II. CLAIMS ADMINISTRATION

As set forth in the Walter Declaration, through July 6, 2023, A.B. Data received and processed 515,505 Claims. Walter Decl. ¶ 7. All Claims received through July 6, 2023, have been fully processed in accordance with the Stipulation and the Court-approved Plan of Allocation included in the Notice (*see id.*), and A.B. Data has worked with Claimants to help them perfect their Claims in order to be eligible to receive a distribution from the Settlement. *See id.* ¶¶ 19-32. Many of the Claims received were initially deficient or ineligible for one or more reasons,

including being incomplete, not signed, not properly documented, or otherwise deficient, which required substantial follow-up work by A.B. Data. *Id.* ¶¶ 19, 22.

If A.B. Data determined a Claim to be defective or ineligible, A.B. Data sent a letter if the Claimant or filer submitted a paper Claim or a Claim online via the Settlement Website or an email if the Claimant or filer submitted an electronic Claim to the Claimant or filer, as applicable, describing the defect(s) or condition(s) of ineligibility in the Claim and the steps necessary to cure any curable defect(s) in the Claim (“Deficiency Notices”). *Id.* ¶¶ 20, 22. The Deficiency Notices advised the Claimant or filer that the appropriate information or documentary evidence to complete the Claim had to be sent within 20 days from the date of the Deficiency Notice or A.B. Data would recommend the Claim for rejection to the extent the deficiency or condition of ineligibility was not cured. *Id.* ¶¶ 20, 23. Example Deficiency Notices are attached as Exhibits A, B, and C to the Walter Declaration.

Of the 515,505 Claims that are the subject of this motion, A.B. Data has determined that 306,901 Claims are acceptable in whole or in part, and that 208,604 Claims should be rejected because they are ineligible for payment from the Net Settlement Fund. Walter Decl. ¶¶ 33-36. Lead Plaintiffs respectfully request that the Court approve A.B. Data’s administrative determinations accepting and rejecting Claims as stated in the Walter Declaration.

A. Disputed Claims

A.B. Data carefully reviewed Claimants' and filers' responses to the Deficiency Notices and worked with them to resolve deficiencies where possible. *Id.* ¶¶ 21, 26. Consistent with paragraph 25(e) of the Stipulation, the Deficiency Notices specifically advised the Claimant or filer of their right, within 20 days after the mailing or emailing of the Deficiency Notice, to contest the rejection of their Claim and request Court review of A.B. Data's administrative determination of their Claim. *Id.* ¶¶ 20, 23, and Exhibits A and B.

With respect to the fully processed Claims, A.B. Data received twenty-three (23) requests for Court review of its administrative determinations. *Id.* ¶ 28. To resolve these disputes without necessitating the Court's intervention, A.B. Data contacted the Claimants requesting Court review and attempted to answer all questions, fully explain A.B. Data's administrative determination with respect to the Claim, and facilitate the submission of missing information or documentation where applicable. *Id.* As a result of these efforts, nineteen (19) Claimants resolved their deficiencies in their Claims and three (3) Claimants withdrew their requests for Court review after receiving further explanation of the reasons for A.B. Data's determination. *Id.* Currently, one (1) Claim remains disputed and is being submitted to the Court for resolution ("Disputed Claim"). *Id.*

Exhibit D of the Walter Declaration contains the one Disputed Claim with its supporting documentation and sets forth the reasons for A.B. Data's rejection of the Disputed Claim. *Id.* For privacy reasons, the documents included in Exhibit D have been redacted to remove personal information such as street addresses, email addresses, telephone numbers, account numbers, Taxpayer ID, Social Security, or Social Insurance Numbers, plus all financial and transactional information not related to the Claimants' transactions in Allergan plc common or preferred stock and/or Actavis plc common or preferred stock purchased/acquired during the Class Period. A.B. Data recommends the Disputed Claim for rejection due to the fact that the Claimant did not purchase/acquire any of the eligible securities during the Class Period. *Id.* Lead Counsel have reviewed the Disputed Claim and A.B. Data's determination and concur that the Disputed Claims should be rejected for the reasons set forth in the Walter Declaration.

B. Late Claims and Final Cut-Off Date

The 515,505 Claims received through July 6, 2023, include 96,769 Claims that were postmarked or received after December 27, 2021, the Court-approved Claim submission deadline. *Id.* ¶¶ 29, 35. Those late Claims have been fully processed, and 51,097 of them are, but for their late submission, otherwise eligible to participate in the Settlement. *Id.* Although these 51,097 Claims were late, they were received while the processing of timely Claims was ongoing. *Id.* Due to the

amount of time needed to process the timely Claims received, the processing of these late Claims did not delay the completion of the Claims administration process or the distribution of the Net Settlement Fund. *Id.* ¶ 29. The Court has discretion to accept Claims received after the Claim submission deadline. *See* Preliminary Approval Order ¶ 11; Notice ¶ 48. Lead Plaintiffs respectfully submit that, when the equities are balanced, it would be unfair to prevent an otherwise eligible Claim from participating in the distribution of the Net Settlement Fund solely because it was received after the Court-approved Claim submission deadline if it was submitted while timely Claims were still being processed.

To facilitate the efficient distribution of the Net Settlement Fund, however, there must be a final cut-off date after which no other Claims may be accepted. Accordingly, Lead Plaintiffs respectfully request that the Court order that any *new* late Claims and any requested adjustments to previously submitted Claims that would result in an increased Recognized Claim Amount received after July 6, 2023, shall be barred (*see also* Walter Decl. ¶ 39(f)) – subject to the proviso that if Lead Counsel later determine that an additional distribution is not cost-effective (*see* Walter Decl. ¶ 39(e)), then any post-July 6, 2023 Claimants may, at the discretion of Lead Counsel, and to the extent possible after paying remaining administrative fees and expenses owed, be paid on their new or adjusted Claims on a *pro rata* basis

so as to bring them into parity with other Authorized Claimants who have cashed their distribution checks.

III. FEES AND EXPENSES OF CLAIMS ADMINISTRATOR

The Court-authorized Claims Administrator for the Settlement, A.B. Data, was responsible for, among other things, disseminating notice of the Settlement to the Class, creating and maintaining a website and toll-free telephone helpline, processing Claims, and allocating and distributing the Net Settlement Fund to Authorized Claimants. Walter Decl. ¶ 2. A.B. Data's fees and expenses for its work performed through May 31, 2023, are \$2,358,226.87, and its estimated fees and expenses for work to be performed in connection with the Initial Distribution are \$291,137.72, which together total \$2,649,364.59. *Id.* ¶ 38. Should A.B. Data's estimate of fees and expenses to conduct the Initial Distribution of the Net Settlement Fund exceed the actual cost, the excess will be returned to the Net Settlement Fund and will be available for subsequent distribution to Authorized Claimants. *Id.* To date, A.B. Data has received payment in the amount of \$2,192,066.69 for its fees and expenses. *Id.* Accordingly, there is an outstanding balance of \$457,297.90 payable to A.B. Data, which amount includes the estimated fees and expenses to conduct the Initial Distribution. *Id.* Lead Counsel reviewed A.B. Data's invoices and respectfully request on behalf of Lead Plaintiffs that the Court approve all of A.B. Data's fees and expenses.

IV. DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUND

A. Initial Distribution of the Net Settlement Fund

Under the proposed Distribution Plan, A.B. Data will distribute 90% of the Net Settlement Fund after deducting (i) all payments previously allowed, (ii) payments approved by the Court on this motion, and (iii) any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees (i.e., the Initial Distribution). *See* Walter Decl. ¶ 39(a). In the Initial Distribution, A.B. Data will calculate award amounts for all Authorized Claimants as if the entire Net Settlement Fund were to be distributed now. *Id.* ¶ 39(a)(1). A.B. Data will first determine each Authorized Claimant's *pro rata* share of the total Net Settlement Fund based on the Claimant's Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants. *Id.* A.B. Data will eliminate from the Initial Distribution any Authorized Claimant whose *pro rata* share calculates to less than \$10.00, as these Claimants will not receive any payment from the Net Settlement Fund and will be so notified by A.B. Data. *Id.* ¶ 39(a)(2). A.B. Data will then recalculate the *pro rata* share of the Net Settlement Fund for Authorized Claimants who would have received \$10.00 or more based on the amount of the Authorized Claimant's Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants who would have received \$10.00 or more. *Id.* ¶ 39(a)(3). This *pro rata* share is the Authorized Claimant's Distribution Amount. *Id.* Authorized Claimants whose

Distribution Amount calculates to less than \$200.00 will be paid their full Distribution Amount in the Initial Distribution (“Claims Paid in Full”). *Id.* ¶ 39(a)(4). These Authorized Claimants will receive no additional funds in subsequent distributions. *Id.* After deducting the payments to the Claims Paid in Full, 90% of the remaining balance of the Net Settlement Fund will be distributed *pro rata* to Authorized Claimants whose Distribution Amount calculates to \$200.00 or more. *Id.* ¶ 39(a)(5). The remaining 10% of the Net Settlement Fund will be held in the reserve (“Reserve”) to address any tax liability and claims administration-related contingencies that may arise following the Initial Distribution. *Id.* To the extent the Reserve is not depleted, the remainder will be distributed in the Second Distribution. *Id.*

To encourage Authorized Claimants to cash their checks promptly, Lead Plaintiffs propose that all distribution checks bear the notation, “CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE].” *Id.* ¶ 39(b). Authorized Claimants who do not cash their checks within the time allotted or on the conditions stated in paragraph 39(b) of the Walter Declaration will irrevocably forfeit all recovery from the Settlement, and the funds allocated to these stale-dated checks will be available to be redistributed to other Authorized Claimants in a subsequent distribution, as described below. *Id.* ¶ 39(c).

B. Additional Distribution(s) of the Net Settlement Fund

After A.B. Data has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks, but not earlier than seven (7) months after the Initial Distribution, A.B. Data will, after consulting with Lead Counsel, conduct the Second Distribution of the Net Settlement Fund. *Id.* ¶ 39(d). In the Second Distribution, any amount remaining in the Net Settlement Fund, after deducting any unpaid fees and expenses incurred, will be distributed to all Authorized Claimants (other than Claims Paid in Full) who cashed their Initial Distribution checks and would receive at least \$10.00 from the Second Distribution based on their *pro rata* share of the remaining funds. *Id.* If any funds remain in the Net Settlement Fund after the Second Distribution, and if cost-effective, subsequent distributions will take place at six-month intervals. *Id.* When Lead Counsel, in consultation with A.B. Data, determine that a further distribution is not cost-effective, if sufficient funds remain to warrant the processing of Claims received after July 6, 2023, A.B. Data will process those Claims. *Id.* ¶ 39(e). Any of these Claims that are otherwise valid, as well as any earlier received Claims for which an upward adjustment was received after July 6, 2023, may be paid in accordance with paragraph 39(f) of the Walter Declaration. *Id.* If any funds remain in the Net Settlement Fund after payment of these Claims and any unpaid fees or expenses, Lead Counsel propose that such remaining funds be contributed to the National

Consumer Law Center (“NCLC”). Lead Counsel propose that the NCLC be designated as the “non-sectarian, not-for-profit 501(c)(3) organization to be recommended by Lead Counsel” referenced in the Court-approved Plan of Allocation. *See* Notice App. A ¶ 20.

NCLC is a non-profit, non-partisan organization originally launched and initially funded by the federal government, but sustained for more than half a century by the support of a diverse network of private foundations, sponsors, and individual donors and is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. *See Financials*, National Consumer Law Center, nclc.org/about-us/financials/ (last visited July 13, 2023). “For over 50 years, NCLC has worked to build and strengthen a national community of consumer attorneys, advocates, and activists, while fighting for better laws, rules, and regulations to protect vulnerable consumers and expand economic opportunity.” *See History*, National Consumer Law Center, nclc.org/about-us/history/ (last visited July 13, 2023). “NCLC uses its unmatched expertise in consumer law to protect consumers from exploitation and expand access to fair credit by advocating for laws, rules, and regulations that benefit real people: those with low incomes, older people, students, people of color, and others who have been abused, deceived, discriminated against, or left behind in our economy.” *See About Us*, National Consumer Law Center, nclc.org/about-us/ (last visited July 13, 2023). Federal courts have approved NCLC as a *cy pres* recipient of residual

balances of net settlement funds in other settlements. *See, e.g., In re Luckin Coffee Inc. Sec. Litig.*, 2023 WL 3483762, at *3 (S.D.N.Y. Apr. 21, 2023); *In re Signet Jewelers Ltd. Sec. Litig.*, 2021 WL 5357468, at *2 (S.D.N.Y. Nov. 16, 2021); *In re Nu Skin Enters., Inc., Sec. Litig.*, No. 14-cv-00033-JNP-BCW, ECF Nos. 152-154 (D. Utah Aug. 30, 2018); *Perkins v. Am. Nat'l Ins. Co.*, 2012 WL 2839788, at *5 (M.D. Ga. July 10, 2012) (“The Court is also satisfied that The National Consumer Law Center’s mission, reputation and established track record will ensure that it will be a good steward of the grant award made to it.”).

V. RELEASE OF CLAIMS

In order to allow the full and final distribution of the Net Settlement Fund, it is necessary to (i) bar any further claims against the Net Settlement Fund beyond the amounts allocated to Authorized Claimants, and (ii) provide that all persons involved in any aspect of Claims processing, or who are involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, be released and discharged from all claims arising out of that involvement. *See* Stipulation ¶ 29; Notice App. A ¶ 21. Accordingly, Lead Plaintiffs respectfully request that the Court release and discharge all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted in connection with the Settlement, or who are otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund from all claims arising

out of that involvement, and bar all Class Members and other Claimants, whether or not they receive payment from the Net Settlement Fund, from making any further claims against the Net Settlement Fund, Lead Plaintiffs, Plaintiffs' Counsel, Lead Plaintiffs' damages expert, the Claims Administrator, the Escrow Agent or any other agent retained by Lead Plaintiffs or Lead Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund, or any other person released under the Settlement beyond the amounts allocated to Authorized Claimants.

Courts have repeatedly approved similar releases in connection with the distribution of settlement proceeds. *See, e.g., Fernandez v. Knight Cap. Grp., Inc.*, 2016 WL 7468089, at *3 (D.N.J. June 16, 2016) ("The administration of the Settlement and the proposed distribution of the Net Settlement Fund comply with the terms of the Stipulation and the Plan of Allocation and, therefore, all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the claims submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, are released and discharged from any and all claims arising out of such involvement, and all Class Members, whether or not they have claimed against, they received, or they are to receive payment from the Net Settlement Fund, are barred from making any further claims against the Net Settlement Fund or Lead Plaintiff, Counsel for

Lead Plaintiff, the Claims Administrator, the escrow agent or any other agent retained by Lead Plaintiff or Lead Plaintiff's Counsel, and are bound by all of the terms of the Stipulation, including the terms of the Final Judgment, and will be barred from bringing any action against the Released Parties concerning the Released Claims or in connection with the administration of the Settlement, or to claim against the Net Settlement Fund for any amount greater than that allocated to such Class Member as a result of its submission of a valid proof of claim.”); *In re Commvault Sys., Inc. Sec. Litig.*, Civil Action No. 14-5628 (PGS)(LHG) (D.N.J. July 10, 2020), ECF No. 138 at 8 (approving substantially similar language in order authorizing distribution of settlement proceeds); *Mylan Pharms., Inc. v. Warner Chilcott Pub. Ltd. Co.*, 2015 WL 12839121, at *1-2 (E.D. Pa. Jan. 21, 2015) (same); *In re Linerboard Antitrust Litig.*, 2008 WL 4542669, at *1 (E.D. Pa. Oct. 3, 2008) (same).

VI. CONCLUSION

For the foregoing reasons, Lead Plaintiffs respectfully request that the Court grant their Motion for Approval of Distribution Plan and enter the [Proposed] Order Approving Distribution Plan.

Dated: August 28, 2023

Respectfully submitted,

s/ James E. Cecchi

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CERTIFICATION OF SERVICE

I hereby certify that on August 28, 2023, I caused a true and correct copy of the foregoing Memorandum of Law in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan to be electronically filed with the Clerk of the Court using the ECF system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: August 28, 2023

s/ James E. Cecchi

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