

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

In re EFFEXOR XR ANTITRUST
LITIGATION

This Document Relates To:
All Indirect Purchaser Class Actions

Civil Action No. 3:11-cv-05661 (PGS)(JBD)

Master Docket No. 3:11-cv-05479 (PGS)
(JBD)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement” or “Settlement Agreement”) is entered as of April 24, 2024, between A. F. of L. – A.G.C. Building Trades Welfare Plan, IBEW - NECA Local 505 Health & Welfare Plan, Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana, New Mexico United Food And Commercial Workers Union’s And Employers’ Health And Welfare Trust Fund, Painters District Council No. 30 Health and Welfare Fund, Plumbers and Pipefitters Local 572 Health and Welfare Fund, City of Providence, Rhode Island, Sergeants Benevolent Association Health and Welfare Fund, and Patricia Sutter, individually and on behalf of the Indirect Purchaser Class defined below (collectively “Indirect Purchaser Plaintiffs”) and Wyeth—a/k/a Wyeth LLC, f/k/a Wyeth, Inc., f/k/a American Home Products; Wyeth Pharmaceuticals, Inc.; Wyeth-Whitehall Pharmaceuticals; and Wyeth Pharmaceuticals Company (collectively, “Wyeth” and, together with the Indirect Purchaser Plaintiffs, the “Parties”). This Settlement Agreement is intended to, and upon occurrence of the Effective Date (as defined in Paragraph 6 below) will fully, finally, and forever resolve, compromise, discharge, and settle the claims of the Indirect Purchaser Plaintiffs against Wyeth in the above-captioned litigation, subject to the terms below (the “Settlement”). Nothing in this Settlement Agreement relates to or may be construed as relating to the Indirect Purchaser Plaintiffs’ claims against defendants Teva Pharmaceuticals USA, Inc. or Teva Pharmaceutical

Industries Ltd. (collectively, “Teva”).

WHEREAS, several similar class-action complaints were filed in this District on behalf of indirect purchasers of Effexor XR and/or its AB-rated generic equivalents, alleging Wyeth engaged in an anticompetitive scheme to prevent and delay the approval and marketing of generic versions of Effexor XR by (i) fraudulently procuring three patents for extended release formulations of venlafaxine hydrochloride; (ii) wrongfully listing those patents in the Food and Drug Administration (“FDA”) Orange Book as covering Effexor XR; (iii) engaging in serial sham litigation to block and delay multiple generic companies; (iv) entering into a horizontal market-allocation and price-fixing agreement with generic manufacturer Teva; and (v) negotiating settlements with subsequent generic applicants to preserve and protect Wyeth’s monopoly and market-division agreement with first-filer Teva. The complaints alleged the scheme caused Indirect Purchaser Plaintiffs to pay supra-competitive prices for Effexor XR and its AB-rated generic equivalents, in violation of state antitrust and consumer-protection laws and laws pertaining to unjust enrichment; and

WHEREAS, the indirect purchaser class cases filed in this District were consolidated before the United States District Court for the District of New Jersey (collectively, the “Court”) and captioned *In re Effexor XR Antitrust Litigation*, No. 11-cv-05661 (the “Indirect Purchaser Class Action”); and

WHEREAS, Wyeth denies all of Indirect Purchaser Plaintiffs’ allegations, has not conceded or admitted any liability, has not conceded or admitted the propriety of certification of any class for any purposes other than settlement, has not conceded that any conduct challenged by Indirect Purchaser Plaintiffs caused any damage at all, and has asserted a number of purported defenses to Indirect Purchaser Plaintiffs’ claims; and

WHEREAS, on December 14, 2011, the Court appointed an Executive Committee (hereinafter "EC") and Chair of the Executive Committee (hereinafter "Lead Counsel") to lead the prosecution of the indirect purchaser claims; and

WHEREAS, Lead Counsel has concluded, after extensive fact discovery and investigation, as well as consultation with experts, and after carefully considering the circumstances of the Indirect Purchaser Class Action, including the claims asserted and the possible legal and factual defenses thereto, that it would be in the best interests of the Indirect Purchaser Plaintiffs to enter into this Settlement Agreement in order to avoid the uncertainties of litigation, particularly complex litigation such as this, and to ensure a benefit to the Indirect Purchaser Class, and, further, that Lead Counsel consider the Settlement set forth herein to be fair, reasonable, and adequate compensation, and in the best interests of the Indirect Purchaser Class; and

WHEREAS, Indirect Purchaser Plaintiffs and Wyeth agree that neither this Settlement Agreement, nor the Settlement it embodies, nor any actions taken in furtherance of either the Settlement Agreement or the Settlement shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Wyeth or of the truth of any of the claims or allegations alleged in the Indirect Purchaser Class Action, or a waiver of any defenses thereto; and

WHEREAS, Wyeth has concluded, despite its belief that it is not liable for the claims asserted and that it has good defenses thereto, that it would be in its best interests to enter into this Settlement Agreement to avoid the uncertainties of litigation, and thereby avoid the risks inherent in complex litigation, and to finally put to rest the Indirect Purchaser Class Action as to Wyeth; and

WHEREAS, Wyeth's counsel agree to refrain from contacting or communicating with any

putative member of the Indirect Purchaser Class, and/or attempting to effectuate any individual settlement of Released Claims (as defined in Paragraph 12(a)) with any putative member of the Indirect Purchaser Class, regarding the subject matter of this litigation or the settlement thereof, without first conferring with Lead Counsel; and

WHEREAS, Lead Counsel and the EC, on behalf of the Indirect Purchaser Plaintiffs, and Wyeth have engaged in arm's-length settlement negotiations, including with the assistance of a mediator, and have reached this Settlement Agreement, subject to Court approval, which embodies all of the terms and conditions of the Settlement between Indirect Purchaser Plaintiffs and Wyeth.

NOW THEREFORE, it is agreed by the undersigned, on behalf of Wyeth and the Indirect Purchaser Plaintiffs, that all claims of the Indirect Purchaser Plaintiffs and the Indirect Purchaser Class against Wyeth be settled, compromised, and dismissed with prejudice and, except as hereinafter provided, without costs as to Wyeth or Indirect Purchaser Plaintiffs, subject to the approval of the Court, on the following terms and conditions:

1. **Settlement on behalf of the Indirect Purchaser Plaintiffs and the Indirect Purchaser Class.**

This settlement is on behalf of the Indirect Purchaser Plaintiffs and all "Class Members" of the Indirect Purchaser Class defined as follows: All persons or entities in Arizona, California, Florida, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, West Virginia, and Wisconsin (the "Class States") who purchased, paid, and/or provided reimbursement for Effexor XR or AB-rated generic versions of Effexor XR for consumption by themselves, their families, or their members, employees, insureds, participants or beneficiaries, from June 14, 2008 through May 31, 2011 (the "Class Period"). For purposes of the Indirect Purchaser Class definition, persons or entities "purchased" Effexor XR or its generic

versions if they paid or reimbursed some or all of the purchase price.

The following persons or entities are excluded from the Indirect Purchaser Class:

- a. Wyeth and Teva and their respective subsidiaries and affiliates;
- b. State and local governments to the extent their claims may be asserted under applicable state law only by the state Attorney General, or are otherwise prohibited by applicable law from being asserted by private counsel on a contingent fee basis;
- c. all persons or entities who purchased Effexor XR or its generic equivalent for purposes of resale or directly from Wyeth, Teva, or their affiliates;
- d. fully insured health plans (*i.e.*, Plans that purchased insurance from another third-party payor covering 100% of the Plan's reimbursement obligations to its members);
- e. pharmaceutical benefit managers; and
- f. the judges in this case and any members of their immediate families.

2. Reasonable Best Efforts to Carry Out This Settlement.

Lead Counsel and Wyeth agree to support approval of this Settlement Agreement before the Court and to undertake their reasonable best efforts, including undertaking all actions contemplated by and any steps necessary to effectuate this Settlement Agreement, to carry out the terms of this Settlement Agreement, and to secure the prompt, complete, and final dismissal with prejudice of all claims against Wyeth in the Indirect Purchaser Class Action. This includes Wyeth serving notice on those entities required to receive notice under 28 U.S.C. § 1715.

3. Motion for Preliminary Approval of the Settlement.

Within fourteen days of the execution of this Settlement Agreement, Lead Counsel for the Indirect Purchaser Plaintiffs shall file with the Court an unopposed motion for preliminary approval of the Settlement. That motion shall request the entry of a preliminary approval order substantially in the form of Exhibit A hereto (the "Preliminary Approval Order"), providing for:

(i) the preliminary approval of the Settlement set forth in this Settlement Agreement because it is in the range of what is fair, reasonable, and adequate, and in the best interests of the Indirect Purchaser Class; (ii) preliminary approval of the plan for allocation of the Settlement Fund (“Allocation Plan”); (iii) approval of the notice and proposed notice plan; (iv) a schedule for providing Wyeth and the Court with a complete list of any indirect purchaser who opts out or seeks exclusion from the Indirect Purchaser Class and for a hearing by the Court after the notice period has expired to approve the Settlement and to consider Lead Counsel’s applications for attorneys’ fees, reimbursement of costs and expenses, and service awards as set forth in this Settlement Agreement (“Fairness Hearing”); (v) a stay of all proceedings in the Indirect Purchaser Class Action against Wyeth until such time as the Court renders a final decision regarding approval of the Settlement; (vi) certification of the Indirect Purchaser Class, as defined in Paragraph 1, for purposes of settlement; (vii) appointment of a notice and claims administrator; and (viii) appointment of an escrow agent. After the Court preliminarily approves the Settlement, Indirect Purchaser Plaintiffs shall, per the Preliminary Approval Order, provide Indirect Purchaser Class members with notice of the Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure substantially in the form approved by the Court. Lead Counsel will recommend notice to Class Members according to the notice plan submitted by the claims and notice administrator, which shall provide for the best notice practicable to the Class, including notice by publication to consumers and individual notice to third-party payor Class Members that can be identified with reasonable effort.

4. Class Certification.

Indirect Purchaser Plaintiffs shall seek Court certification of the Indirect Purchaser Class for purposes of the proposed Settlement, concurrently with their motion for preliminary approval. Wyeth will not oppose certification of the Indirect Purchaser Class for purposes of the Settlement

only. Neither this Settlement Agreement nor any other Settlement-related document shall constitute, be construed as, or be deemed to be evidence of or an admission or concession by Wyeth as to whether any class, in this case or others, may be certified for purposes of litigation and trial.

5. Motion for Final Approval and Entry of Final Judgment.

If the Court certifies the Indirect Purchaser Class for purposes of settlement and preliminarily approves the Settlement, Indirect Purchaser Plaintiffs shall submit a motion for final approval of this Settlement, after appropriate notice to the Indirect Purchaser Class, and shall seek entry of a “Final Judgment and Order” substantially in the form preliminarily approved by the Court, with any necessary additional findings of fact and conclusions of law:

a. finding this Settlement Agreement and its terms to be fair, reasonable, and adequate as to Indirect Purchaser Plaintiffs and the members of the Indirect Purchaser Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure, and directing its consummation pursuant to the terms of the Settlement Agreement;

b. providing for payment of reasonable attorneys’ fees and, in addition to reasonable attorneys’ fees, reimbursement of the costs and expenses from the Settlement Fund (as defined in Paragraph 7);

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

d. directing that upon the Effective Date, the Indirect Purchaser Class Action be dismissed as to Wyeth with prejudice;

e. reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including the provisions of this Paragraph 5, the administration and consummation of this

Settlement, the award of attorneys' fees and reimbursement of costs and expenses, and the payment of service awards to each of the named Indirect Purchaser Plaintiffs, if allowed by the Court; and

f. directing that the judgment of dismissal of the Indirect Purchaser Class Action against Wyeth shall be final and appealable pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, there being no just reason for delay.

6. Finality of Settlement.

This Settlement Agreement shall become final upon the occurrence of the following (the "Effective Date"):

a. neither Wyeth nor the Indirect Purchaser Plaintiffs have availed themselves of their respective rights to cancel and terminate the Settlement under Paragraphs 15 or 17 hereof;

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

c. entry, as provided for in Paragraph 5 herein, is made of the Final Judgment and Order;
and

d. the time for appeal from the District Court's approval of this Settlement as described in subparagraph 6(b) hereof and entry of the Final Judgment and Order as described in subparagraph 6(c) hereof has expired or, if appealed, either such appeal has been dismissed before resolution by the appellate court or approval of this Settlement and the Final Judgment and Order has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

7. Settlement Fund.

The "Settlement Fund Amount" shall be twenty-five million five hundred thousand dollars (\$25,500,000.00). Subject to the terms and conditions of this Settlement Agreement and an escrow agreement to be entered into by Lead Counsel, within twenty (20) business days after the District

Court grants preliminary approval to the Settlement, and provided that Lead Counsel notifies Wyeth of the establishment and identity of the Escrow Account within fourteen (14) calendar days before said payment is due, Wyeth shall deposit the Settlement Fund Amount into the Escrow Account held and administered by the Escrow Agent. Should Lead Counsel fail to notify Wyeth of the establishment and identity of the Escrow Account within fourteen (14) calendar days before said payment is due, Wyeth shall deposit the Settlement Fund Amount into the Escrow Account within fourteen (14) calendar days of receiving such notification. The Settlement Fund Amount deposited by Wyeth into the Escrow Account and any accrued interest or earnings after deposit shall become part of and shall be referred to as the "Settlement Fund." Except as provided for in Paragraph 10 and 11, no disbursements shall be made to Indirect Purchaser Plaintiffs or members of the Indirect Purchaser Class until the Effective Date. The Settlement Fund shall be used solely for the benefit of the Indirect Purchaser Class, which does not include those who opt out of that Class. Once the above payments are made, as well as any payments under Paragraph 18 below, Wyeth and the Released Parties (as defined in Paragraph 12) shall have no further monetary obligations of any kind to Indirect Purchaser Plaintiffs, members of the Indirect Purchaser Class, or Lead Counsel under the terms and conditions of the Settlement. Wyeth and the Released Parties shall have no responsibility for, interest in, or liability whatsoever concerning the investment decisions or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent. Wyeth and the Released Parties shall have no responsibility for, interest in, or liability whatsoever for any aspect of the Allocation Plan or the implementation of that Plan. The Escrow Agent shall not distribute the Settlement Fund except as provided in the Settlement Agreement or by an order of the Court.

8. Qualified Settlement Fund.

The Parties agree to treat the Settlement Fund as being at all times a Qualified Settlement

Fund within the meaning of Treas. Reg. § 1.468B-1, and to that end, the Parties shall cooperate and shall not take a position in any filing or before any tax authority inconsistent with such treatment. In addition, Lead Counsel shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 8, including the relation-back election (as defined in Treas. Reg. § 1.468B-1G)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Lead Counsel to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner consistent with the Settlement Fund being a "Qualified Settlement Fund" within the meaning of Treasury Regulation § 1.468B-1. Lead Counsel shall timely and properly file all information and other tax returns necessary or advisable with respect to the Settlement Funds (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)(1)). Such returns shall reflect that all taxes (including any estimated taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund. Wyeth and the Released Parties shall not be responsible for and shall have no liability with respect to, the filing or payment of any taxes, interest, penalties, costs, distributions, or expenses connected to the Settlement Fund.

9. Full Satisfaction; Limitation of Interest and Liability.

Members of the Indirect Purchaser Class shall look solely to the Settlement Fund for settlement and satisfaction against Wyeth of all Released Claims as defined in Paragraph 12 herein, including any costs, fees, or expenses of any of the Indirect Purchaser Plaintiffs or their attorneys, experts, advisors, agents, and representatives, including with respect to the negotiation, execution, and performance of their obligations under this Settlement Agreement. In the event the Settlement becomes final under Paragraph 6 herein, the Settlement Fund will fully satisfy all Released Claims

as defined in Paragraph 12 herein. Except as provided by order of the Court, no member of the Indirect Purchaser Class shall have any interest in the Settlement Fund, or any portion thereof. Wyeth and the Released Parties shall not be responsible for, and shall have no liability with respect to, disbursements from the Settlement Fund according to any Court-approved Allocation Plan.

10. Reimbursement of Settlement Administration Costs, Fees, and Expenses

Indirect Purchaser Plaintiffs and Lead Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all costs, fees, and expenses relating to the administration of this Settlement, including, but not limited to, the costs of notice of this Settlement to Indirect Purchaser Class members, administration of the Settlement Fund, escrow administration, and taxes. Wyeth and the Released Parties shall not otherwise be responsible for, and shall have no liability with respect to, any costs, fees, or expenses of any of Indirect Purchaser Plaintiffs' respective attorneys, experts, advisors, agents, and representatives relating to Settlement administration, or for any costs, fees, or expenses for notice (other than the notice Wyeth is required by the Class Action Fairness Act to send to the states' attorneys general), Settlement administration, or other costs of implementing this Settlement. All such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund. Once Preliminary Approval is obtained, and prior to the Effective Date, Lead Counsel may, without an order of Court so directing, withdraw up to two million dollars (\$2,000,000) for notice and notice-related expenses, and no amount paid for notice or needed to pay accrued expenses shall be refundable to Wyeth in the event this Settlement Agreement is terminated or does not become effective.

11. Attorneys' Fees, Costs and Expenses, and Service Awards to the Named Plaintiffs.

Lead Counsel may seek attorneys' fees of up to 34% of the Settlement Fund (including interest thereon), plus the reimbursement of reasonable costs and expenses incurred in the prosecution of the Indirect Purchaser Class Action, and a service award for each of the named

Indirect Purchaser Plaintiffs. Any such attorneys' fees, expenses, costs, and service awards approved by the Court shall be payable solely out of the Settlement Fund upon the entry of an order approving Lead Counsel's application, and, except as provided in Paragraph 18 of this Settlement Agreement, Indirect Purchaser Plaintiffs, members of the Indirect Purchaser Class, and their respective counsel shall not otherwise seek payment of any attorneys' fees, expenses, costs, or service awards from Wyeth in the Indirect Purchaser Class Action. Wyeth and the Released Parties (as defined in Paragraph 12 hereof) shall not have any responsibility for, and no liability whatsoever with respect to, any payment or disbursement of attorneys' fees, expenses, costs, or service awards, any allocation of attorneys' fees, expenses, costs, or service awards among counsel and/or Indirect Purchaser Plaintiffs, or with respect to any allocation of attorneys' fees, expenses, costs, or service awards to any other person or entity who may assert any claim thereto. Lead Counsel shall allocate any such fee and expense award among indirect purchaser counsel.

12. Release and Covenant Not to Sue.

(a) Upon the occurrence of the Effective Date as defined in Paragraph 6 hereof, and in consideration for the Settlement Fund Amount described in this Settlement Agreement, Indirect Purchaser Plaintiffs and the Indirect Purchaser Class—except those who requested exclusion from the Indirect Purchaser Class and whose request was approved by the Court—on behalf of themselves and their respective past and present parents, subsidiaries, and affiliates, general and limited partners, officers, directors, employees, agents, attorneys, servants, predecessors, successors, heirs, executors, administrators, and representatives (the "Releasing Parties"), shall release and forever discharge, and covenant not to sue Wyeth and its respective past, present, and future parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, general partners, limited partners, officers, directors, management, supervisory boards, insurers, employees, agents, servants, trustees, associates, attorneys, and any of their legal representatives (and the

predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing) (the “Released Parties”), with respect to any and all past, present, or future liabilities, claims, demands, obligations, suits, damages, penalties, levies, executions, judgments, debts, charges, actions, or causes of action, at law or in equity, whether class, individual, or otherwise in nature, and whether known or unknown, arising out of or relating to any conduct, events, or transactions, prior to the date of preliminary approval of this Settlement Agreement, (a) alleged, or which reasonably could have been alleged, in the Indirect Purchaser Class Action concerning the alleged anticompetitive scheme to prevent and delay approval and market entry of AB-rated generic equivalents of Effexor XR, or (b) concerning end-payor purchases of Effexor XR and/or its AB-rated generic equivalents in the Class States and arising under the Sherman Act, 15 U.S.C. §§ 1 & 2, *et seq.*, or any other federal or state statute or common-law doctrine relating to antitrust or consumer protection (collectively, the “Released Claims”). Upon the Effective Date, the Releasing Parties will be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any forum whatsoever, including any court of law or equity, arbitration tribunal, or administrative forum, asserting the Released Claims against the Released Parties.

(b) In addition, Indirect Purchaser Plaintiffs, on behalf of themselves and all other Releasing Parties, hereby expressly waive, release, and forever discharge, upon the Settlement becoming final, any provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which reads:

Section 1542. General Release; extent. 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;

or by any law of any state or territory of the United States or other jurisdiction, or principle of

common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. The Releasing Parties may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are the subject matter of this Paragraph 12, but each Releasing Party hereby expressly waives and fully, finally, and forever settles, releases, and discharges, upon this Settlement becoming final, any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

(c) **Reservation of Claims.** The Releasing Parties intend by this Settlement Agreement to release only Wyeth and the Released Parties with respect to the Released Claims. The Releasing Parties specifically do not intend this Settlement Agreement, or any part hereof or any other aspect of the proposed Settlement Agreement, to compromise or otherwise affect in any way any rights the Releasing Parties have or may have against any other person, firm, association, company, or corporation whatsoever, including Teva. The release set forth in this Paragraph 12 is not intended to and shall not release any claims other than the Released Claims.

(d) This Settlement is not intended to and does not release claims arising in the ordinary course of business between the Releasing Parties and the Released Parties that are unrelated to the allegations in the Indirect Purchaser Class Action, such as claims under Article 2 of the Uniform Commercial Code (pertaining to Sales), the laws of negligence or product liability or implied warranty, breach of contract, breach of express warranty, or personal injury.

13. Stay of Proceedings.

Pending Court approval of the Settlement embodied in this Settlement Agreement, the Parties agree to stay any and all proceedings against Wyeth in the Indirect Purchaser Class Action

other than those incident to the settlement process and agree to extensions of time with respect to any court filings necessary to effectuate such stays.

14. Claim Forms.

Indirect Purchaser Plaintiffs and Lead Counsel will ensure that each claim form contains a copy of the release set forth in Paragraph 12 hereof. A claim form shall be signed by each member of the Indirect Purchaser Class or its, his, or her authorized representative as a precondition to receiving any portion of the Settlement Fund. Electronic signatures shall satisfy the signature requirement set forth in this Paragraph.

15. Effect of Disapproval or Material Modification.

If the Court (i) does not enter the Final Judgment and Order in substantially the form provided for in this Settlement Agreement or, as a result of objections to the proposed Settlement Agreement or otherwise, there is material modification to the terms of the Settlement, or (ii) enters the Final Judgment and Order and appellate review is sought, and on such review, the Final Judgment and Order is set aside or the Settlement is affirmed with material modification, then this Settlement Agreement and the Settlement shall be terminated immediately upon the election of either Wyeth or Lead Counsel by providing written notice to the Parties designated to receive such notice hereunder in accordance with Paragraph 24 hereof within 10 business days following the occurrence of any such event. An Order by the Court awarding attorneys' fees, costs, expenses, and/or service awards from the Settlement Fund in any amount lower than requested by Lead Counsel pursuant to this Settlement Agreement shall not be deemed a material modification of all or a part of the terms of this Settlement Agreement or the Final Judgment and Order and shall not give rise to any right of termination. A modification or reversal on appeal of any amount of Lead Counsel's costs and expenses awarded by the Court from the Settlement Fund shall not be deemed a material modification of all or a part of the terms of this Settlement Agreement or the Final

Judgment and Order and shall not give rise to any right of termination.

16. Opt-Outs.

The Class Notice plan shall provide that any Indirect Purchaser Class Member's request for exclusion or "opt-out" shall be in writing and shall be signed by the member of the Class who is opting-out, or by its, his, or her authorized representative. Indirect Purchaser Class Members shall not be permitted to exclude other Indirect Purchaser Class Members. Moreover, group or class-wide exclusions shall not be permitted. Any request for exclusion by a purported authorized agent or representative of an Indirect Purchaser Class Member must be accompanied by proof of the representative's legal authority and authorization to act and request exclusion on behalf of each Indirect Purchaser Class Member they seek to opt out. In addition, third-party payors seeking exclusion must submit with their opt-out request all data reflecting their purchases of, and payments for, branded and generic Effexor XR to enable the parties to make a full assessment in connection with the Opt-Out Threshold referred to in the following Paragraph 17. Consumer identities shall not be made public as part of the exclusion process. Identifying information shall be kept confidential and, absent a consumer's consent, Lead Counsel shall file under seal any opt-out requests.

17. Opt-Out Threshold.

As set forth in a separate Confidential Supplement to this Settlement Agreement, between counsel for Wyeth and Indirect Purchaser Plaintiffs ("Confidential Supplement"), Wyeth shall have the discretion to terminate the Settlement if a threshold percentage of potential members of the third-party payors in the Class exclude themselves as provided in Paragraph 16. The Confidential Supplement will be provided to the Court, *in camera*, upon request.

18. Set-Aside Fund.

In the event Wyeth resolves the claims of any third-party payors who opt out of the Indirect

Purchaser Class, Wyeth shall, contemporaneously with the date on which Wyeth makes payment pursuant to any such settlement agreement, place into an interest-bearing escrow account to be established by Lead Counsel (the "Set-Aside Fund"), 12% of the amount of the settlement with the member(s) or opt out(s) (the "Set-Aside Fund Amount"). The Indirect Purchaser Class intends for this amount to cover a portion of Indirect Purchaser Class Counsel attorneys' fees, costs and expenses, and plan to file a motion requesting that the Court award some or all the Set-Aside Fund Amount to Indirect Purchaser counsel as attorneys' fees, costs, and expenses. Any such sum awarded by the Court shall be in addition to any attorneys' fees, costs, and expenses awarded in this Action or under other provisions of this Settlement. Wyeth shall inform Lead Counsel of the amount of any offers made to, and accepted by, third-party payor opt outs of the Indirect Purchaser Class within five (5) days of the acceptance of the offer. The amount of any such attorneys' fees, costs, and expenses awarded to Class Counsel from the Set-Aside Fund shall be determined by the Court. Any Set-Aside Funds, including interest accrued in the Set-Aside Fund, not awarded to Class Counsel shall be returned to Wyeth.

19. Effect of Termination.

In the event the Settlement is terminated pursuant to Paragraphs 15 or 17, or for any reason does not become final under the terms of Paragraph 6 hereof, then (a) this Settlement Agreement shall be of no force or effect; (b) the Parties will be returned to the status quo that existed immediately before the date of execution of this Settlement Agreement; (c) any amount of the Settlement Fund attributable to this Settlement, including any and all interest earned thereon, but less the costs actually paid or incurred for notice of the Settlement, settlement administration, escrow administration, and taxes paid on the Settlement Fund, shall be paid to Wyeth within the later of (i) 10 business-days' notice of termination to Lead Counsel as provided for in Paragraph 24 hereof or (ii) Indirect Purchaser Plaintiffs' receipt of wire instructions and any related

verifications from Wyeth; and (d) any release pursuant to Paragraph 12 above shall be of no force or effect.

20. Preservation of Rights.

The Parties hereto agree that this Settlement Agreement, whether or not it shall become final the terms of Paragraph 6 hereof, and any and all negotiations, documents, and discussions associated with it, shall be without prejudice to the rights of any party; shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by Wyeth, or of the truth of any of the claims or allegations contained in the complaint or any other pleading or document in the Indirect Purchaser Class Action; and evidence thereof shall not be discoverable, admissible, or otherwise used indirectly, in any way (except in accordance with the terms of this Settlement; and provided that the provisions of this Settlement Agreement can be used by the Parties to enforce the provisions of the Settlement Agreement), whether in the Indirect Purchaser Class Action or in any other action or proceeding. The Parties expressly reserve all of their rights if the Settlement does not become final in accordance with the terms of this Settlement Agreement. Upon the Settlement becoming final, nothing in this Paragraph shall prevent Wyeth from asserting any release or using this Settlement Agreement to offset or dispute any liability to any other parties.

21. Resumption of Litigation.

The Parties agree, subject to approval of the Court, that in the event the Settlement Agreement is not approved by the Court, the Settlement Agreement is terminated pursuant to Paragraphs 15 or 17, the Settlement does not become final pursuant to Paragraph 6, or Wyeth does not perform under Paragraph 7 herein, litigation of the Indirect Purchaser Class Action against Wyeth will resume in a reasonable manner to be approved by the Court upon joint application by the Parties hereto.

22. Confidentiality.

Unless Wyeth and Lead Counsel agree otherwise, the fact of settlement of the Indirect Purchaser Class Action and the terms of this Settlement Agreement shall remain confidential until Indirect Purchaser Plaintiffs move for preliminary approval of the Settlement, except that the Court and any other parties may be informed of the fact of settlement. However, this provision does not apply to statements made in judicial filings necessary to obtain preliminary Court approval of the Settlement. Additionally, Indirect Purchaser Plaintiffs, their counsel, and other agents for or representatives of Indirect Purchaser Plaintiffs and of the Indirect Purchaser Class, as well as Wyeth, its counsel, and other agents for or representatives of Wyeth, shall abide by the terms of the Discovery Confidentiality Order approved and entered by the Court on August 23, 2013 (ECF No. 244) (the “Confidentiality Order”).

23. Binding Effect.

This Settlement Agreement shall be binding upon, and inure to the benefit of, the Parties hereto, the Released Parties, the Releasing Parties, and the successors and assigns of each of them. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Indirect Purchaser Plaintiffs and Lead Counsel shall be binding upon all members of the Indirect Purchaser Class—except those who requested and were granted exclusion therefrom—and the Releasing Parties and their respective successors and assigns.

24. Notice.

Any and all notices, requests, consents, directives, or communications by any party intended for any other party shall be in writing and shall, unless expressly provided otherwise herein, be given personally, or by express courier, or by electronic transmission (such as e-mail) followed by postage prepaid mail, to the following persons, and shall be addressed as follows:

To Indirect Purchaser Plaintiffs and the Indirect Purchaser Class:

James E. Cecchi
Carella Byrne Cecchi Brody & Agnello, P.C.
5 Becker Farm Rd.
Roseland, NJ 07068
973-994-1700
jcecchi@carellabyrne.com

To Wyeth:

Raj Gandesha
WHITE & CASE LLP
1221 Avenue of the Americas
New York, New York 10020
rgandesha@whitecase.com

Any of the Parties may, from time to time, change the address to which such notices, requests, consents, directives, or communications are to be delivered, by giving the other Parties prior written notice of the changed address, in the manner provided above, ten (10) calendar days before the change is effective.

25. Discovery.

Wyeth shall not oppose a motion to be filed by Indirect Purchaser Plaintiffs after Preliminary Approval to lift the stay of discovery in the Indirect Purchaser Class Action. If and when the Court lifts the stay of discovery in the Indirect Purchaser Class Action, Wyeth shall, within 30 days of the lifting of the stay, identify the additional custodian(s) to be added for forecasting and pricing materials (as discussed in Kathryn Swisher's December 20, 2019 letter) and within 90 days of that disclosure, (a) produce to Indirect Purchaser Plaintiffs any additional documents, and (b) produce certifications pursuant to Federal Rule of Evidence 803(6), 1003, and 901, 902(11), 902(12), 902(13), or 902(14) concerning the authenticity and admissibility of documents and data produced or created by Wyeth no later than 45 days before the close of fact discovery. If required by the Court, Wyeth shall also provide a custodian of records, or other witness testimony, at trial to lay a foundation for the admission of any documents or data produced

or created by Wyeth. Wyeth, no later than 45 days before the close of fact discovery, shall produce a Rule 30(b)(6) witness or witnesses in response to a Rule 30(b)(6) deposition notice by Plaintiffs as to matters relating to the operative complaint in the Indirect Purchaser Class Action, subject to the Parties meeting and conferring about the scope of such 30(b)(6) deposition(s). As to any additional documents or data that Indirect Purchaser Plaintiffs request that Wyeth produce, or any current or former Wyeth employees whom Indirect Purchaser Plaintiffs seek to depose, Wyeth shall not use the fact of this Settlement Agreement or the Settlement it embodies to try to oppose or preclude or restrict such document requests or depositions in any way, but Wyeth otherwise preserves all other objections it may have to such discovery. As to former employees, if requested by Indirect Purchaser Plaintiffs, Wyeth shall provide information reasonably accessible to it concerning the present location and contact information for such former employees. Wyeth shall, within 90 days of the lifting of the stay of discovery, elect whether it is asserting privilege or work product as to any matter alleged in the operative complaint. If Wyeth elects not to assert privilege, Wyeth shall identify with specificity those matters as to which it is not asserting privilege. Wyeth thereafter shall not change its position regarding such assertion or waiver of privilege without the written consent of Lead Counsel or as ordered by the Court. In the event a dispute arises concerning Wyeth's performance under this Paragraph, the Parties agree to meet and confer in good faith to resolve the issue. If, after meeting and conferring, the dispute remains unresolved, the Parties may present the issues to the Court to resolve the dispute. Such disputes may be raised and submitted to the Court regardless of whether the Effective Date has passed.

26. Integrated Agreement.

This Settlement Agreement (including any exhibits hereto) contains an entire, complete, and integrated statement of each and every term and provision agreed to, by and among the Parties. This Settlement Agreement shall not be modified in any respect except by a writing executed by

agency, regulatory body, or any other body or authority, present or future, by Wyeth including, without limitation, that Wyeth has engaged in any conduct or practices that violates any antitrust statute or other law. This Settlement Agreement shall not be admissible for any purpose except in an action to enforce its terms.

31. Class Action Fairness Act.

Wyeth, at its sole expense, shall submit all materials required to be sent to appropriate Federal and State officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

32. Execution in Counterparts.

This Settlement Agreement may be executed in counterparts. Signatures transmitted by facsimile or other electronic means shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this agreement.

33. Authority.

Each of the Indirect Purchaser Plaintiffs and Wyeth represents and warrants that it is authorized to enter into this Settlement Agreement, that it has authorized its counsel to enter into the Settlement Agreement on its behalf, and that it intends this Settlement Agreement to be a valid and binding obligation, enforceable in accordance with its terms.

34. Knowledge and Understanding of the Settlement Agreement's Terms.

Each of the Indirect Purchaser Plaintiffs and Wyeth warrants that it has read this Settlement Agreement, has had the opportunity to consult counsel about this Settlement Agreement, understands the Settlement Agreement's terms, and freely and knowingly enters into this Settlement Agreement.

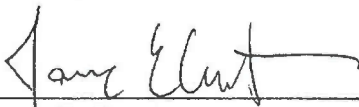
IN WITNESS WHEREOF, each of the signatories represents that they are authorized to execute this Settlement Agreement on behalf of the party for whom they have signed, has agreed on behalf of their respective party to be bound by its terms, and has entered into this Settlement

Agreement with full authority on behalf of the party or parties for whom they have signed as of

April 24, 2024.

By: 
Raj Gandesha, Esquire
WHITE & CASE, LLP
1221 Avenue of Americas
New York, NY 10020-1095

Counsel for Wyeth

By: 
James E. Cecchi
**CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO**
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(973) 994-1700

*Chair of Indirect Purchaser Plaintiffs'
Executive Committee*

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*Indirect Purchaser Plaintiffs' Executive
Committee*

EXHIBIT A TO SETTLEMENT AGREEMENT

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

In re EFFEXOR XR ANTITRUST
LITIGATION

This Document Relates To:
All Indirect Purchaser Class Actions

Civil Action No. 11-05661 (PGS)
(JBD)

Master Docket No. 3:11-cv-05479
(PGS) (JBD)

**ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS-ACTION SETTLEMENT**

WHEREAS, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(3), and 23(e), the parties seek entry of an order, *inter alia*, preliminarily approving the class Settlement of this Action (“Settlement”) pursuant to the terms and provisions of the Settlement Agreement dated April 24, 2024, with attached exhibit (“Settlement Agreement”); preliminarily certifying the Indirect Purchaser Class for settlement purposes only; directing Notice to the Settlement Class pursuant to the proposed Notice Plan; preliminarily appointing the Settlement Class Representatives, Class Counsel, Claims Administrator, and Escrow Agent; directing the timing and procedures for any objections to, and requests for exclusion from, the Settlement; setting forth other procedures, filings and deadlines; and scheduling the Fairness Hearing; and

WHEREAS, the Court has read and considered the Settlement Agreement and its exhibit, and Plaintiffs' Unopposed Motion for Preliminary Approval;

NOW, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms used in this Order shall have the same meanings as set forth in the Settlement Agreement attached hereto as Exhibit A. The motion for preliminary approval (ECF No. ____) is **GRANTED**.

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d), and venue is proper in this District.

3. The Court has personal jurisdiction over the Plaintiffs,¹ Settlement Class Members, and Defendants Wyeth—a/k/a Wyeth LLC, f/k/a Wyeth, Inc., f/k/a American Home Products; Wyeth Pharmaceuticals, Inc.; Wyeth-Whitehall Pharmaceuticals; and Wyeth Pharmaceuticals Company (collectively, “Wyeth” and, together with the Indirect Purchaser Plaintiffs, the “Parties”).

¹ Plaintiffs are A. F. of L. – A.G.C. Building Trades Welfare Plan, IBEW - NECA Local 505 Health & Welfare Plan, Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana, New Mexico United Food And Commercial Workers Union's And Employers' Health And Welfare Trust Fund, Painters District Council No. 30 Health and Welfare Fund, Plumbers and Pipefitters Local 572 Health and Welfare Fund, City of Providence, Rhode Island, Sergeants Benevolent Association Health and Welfare Fund, and Patricia Sutter (collectively, “Indirect Purchaser Plaintiffs”).

Preliminary Certification of the Settlement Class

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies, for settlement purposes only, the following Settlement Class:

All persons or entities in Arizona, California, Florida, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, West Virginia, and Wisconsin (the “Class States”) who purchased, paid, and/or provided reimbursement for Effexor XR or AB-rated generic versions of Effexor XR for consumption by themselves, their families, or their members, employees, insureds, participants or beneficiaries, from June 14, 2008 through May 31, 2011 (the “Class Period”).²

For purposes of this definition, persons or entities “purchased” Effexor XR or its generic versions if they paid or reimbursed some or all of the purchase price.

5. Excluded from the Indirect Purchaser Settlement Class are (a) Wyeth, Teva Pharmaceuticals USA, Inc., and Teva Pharmaceutical Industries Ltd., and their respective subsidiaries and affiliates; (b) State and local governments to the extent their claims may be asserted under applicable state law only by the state Attorney General, or are otherwise prohibited by applicable law from being asserted by private counsel on a contingent fee basis; (c) all persons or entities who purchased Effexor XR or its generic equivalent for purposes of resale or directly from Wyeth, Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries

² Hereinafter, the “Indirect Purchaser Settlement Class” or the “Settlement Class.”

Ltd., or their affiliates; (d) fully insured health plans (*i.e.*, Plans that purchased insurance from another third-party payor covering 100% of the Plan's reimbursement obligations to its members); (e) pharmaceutical benefit managers; and (f) the judges in this case and any members of their immediate families.

6. Under Rule 23(a)(1), the Court determines that the Settlement Class is so numerous that joinder of all members is impracticable. Thousands of indirect purchasers paid or reimbursed for all or part of the purchase price of Effexor XR during the Class Period. This is sufficient to establish numerosity and to establish the impracticality of joinder requirement of Rule 23 (a)(1).

7. Under Rule 23(a)(2), the Court determines that the Settlement Class presents questions of law or fact common to the Settlement Class, including common questions regarding whether Wyeth willfully obtained and maintained monopoly power in the market for Effexor XR and its generic equivalents; whether Wyeth and Teva engaged in anticompetitive conduct; whether that conduct delayed generic entry; and whether that conduct led to overcharges for branded and generic Effexor XR.

8. The Court preliminarily appoints the Indirect Purchaser Plaintiffs as Settlement Class Representatives for the following reasons:

- (a) The Indirect Purchaser Plaintiffs allege, on behalf of the Settlement Class, the same manner of injury from the same course of conduct of

which they complain themselves, and they assert on their own behalf the same legal theories they assert for the Settlement Class as a whole. The Court therefore determines that, for purposes of the Settlement Class, the Indirect Purchaser Plaintiffs' claims are typical of the claims of the proposed Settlement Class within the meaning of Rule 23(a)(3); and

- (b) Pursuant to Rule 23(a)(4), the Court determines that the Indirect Purchaser Plaintiffs have and will continue to fairly and adequately protect the interests of the Settlement Class. The Indirect Purchaser Plaintiffs' interests do not conflict with the interests of absent Settlement Class members. All members of the Settlement Class share a common interest in proving the alleged anticompetitive conduct, and all Settlement Class members share a common interest in recovering damages from Defendants. Moreover, like the group of Indirect Purchaser Plaintiffs, the Settlement Class is made up of business entities and individual consumers, and any member of the Settlement Class that wishes to opt out will be given an opportunity to do so. Furthermore, the Indirect Purchaser Plaintiffs' Counsel are well qualified to represent the Settlement Class in this case, given their

experience in prior cases and the vigor with which they have prosecuted this Action for over a decade.

9. The Court determines that the Class is ascertainable under the standards established by the Third Circuit. The class definition consists of objective criteria and the Class can be ascertained through a reliable and administratively feasible methodology.

10. Pursuant to Rule 23(b)(3), the Court determines that common questions of law and fact predominate over questions affecting only individual members of the Settlement Class. The issues in this Action are subject to generalized proof, and thus applicable to the Settlement Class as a whole, and such issues predominate over those issues that are subject only to individualized proof.

11. Also pursuant to Rule 23(b)(3), the Court determines that a class action is superior to other available methods for the fair and efficient adjudication of this Action. The Court believes it is desirable, for purposes of judicial and litigation efficiency, to concentrate in a single action the claims of the Indirect Purchaser Settlement Class. The Court also believes there are few manageability problems presented by a case such as this, particularly given the Settlement preliminarily approved in this Order. *See Sullivan v. DB Invs., Inc.*, 667 F. 3d 273,

302-03 (3d Cir. 2011) (noting that a settlement class eliminates manageability concerns because there will be no trial).

12. Pursuant to Rules 23(c)(1)(B) and 23(g), the Court having considered the factors provided in Rule 23(g)(1)(A), the Court preliminarily appoints the law firms of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. as Lead Class Counsel and Wexler Boley & Elgersma LLP, Motley Rice LLC, Dugan Law Firm, APLC, Spector, Roseman & Kodroff, P.C., Quantum Legal, LLC, and Miller Law LLC as Class Counsel for the Settlement Class.

Preliminary Approval of the Proposed Settlement

13. At preliminary approval, a court evaluates whether the proposed settlement is within the range of possible approval and free of obvious deficiencies or reasons to doubt its fairness. *Easterday v. USPack Logistics LLC*, No. 15-cv-7559, 2023 WL 4398491, at *5 (D.N.J. July 6, 2023).

14. The Court finds that the Settlement has no obvious shortcomings and is within the range of possible approval.

15. The Court also finds that the Settlement Agreement has been reached as a result of extensive, arm's-length negotiations of disputed claims, including through the use and assistance of an experienced third-party neutral mediator, and that the proposed Settlement is not the result of any collusion.

16. In addition, the Court finds that the proceedings that occurred before the Parties entered into the Settlement Agreement afforded counsel the opportunity to adequately assess the claims and defenses in the Action, the relative positions, strengths, weaknesses, risks, and benefits to each Party, and as such, to negotiate a Settlement Agreement that is fair, reasonable, and adequate, and which reflects those considerations.

17. The Court thus preliminarily approves the Settlement Agreement, and all its terms, as fair, reasonable, and adequate under Rule 23, and in the best interests of the Indirect Purchaser Settlement Class, subject to further consideration at the Fairness Hearing.

18. The Court also preliminarily approves the proposed Plan of Allocation as fair, reasonable, and adequate.

19. The Court appoints Citibank, N.A. as Escrow Agent for the purpose of administering the Escrow Account holding the Settlement Fund. All expenses incurred by the Escrow Agent must be reasonable and shall be payable solely from the Settlement Fund.

Approval of the Plan of Notice to the Settlement Class

20. The proposed Notice Plan includes, *inter alia*, notice by publication to consumers, direct mail notice to third-party payors who can be identified through reasonable effort, and the establishment of a Settlement website. Decl. of James E.

Cecchi in Supp. of Mot. for Preliminary Approval of Class-Action Settlement (“Cecchi Decl.”), Ex. H (Pang Decl.); Ex. C to Pang Decl. (Proposed Notice Plan).

21. The proposed Notice Plan is reasonably calculated to apprise the Settlement Class of the pendency of the Action; the certification of the Settlement Class for settlement purposes only; the terms of the Settlement, its benefits, and the Release of Claims; the Settlement Class Members’ rights, including the right to, and the deadlines and procedures for, requesting exclusion from the Settlement or objecting to the Settlement; Class Counsel’s application for fees, costs, and expenses and the application for Settlement Class Representative service awards; the deadline, procedures, and requirements for submitting a claim pursuant to the Settlement’s terms; the time, place, and right to appear at the Fairness Hearing; and other pertinent information about the Settlement.

22. The Court finds that this Notice Plan satisfies the requirements of Rule 23(e) and due process, is otherwise fair and reasonable, and constitutes the best notice practicable under the circumstances. Accordingly, the Court approves, and directs the implementation of, the Notice Plan.

23. The Court also approves the form and content of the Settlement Class Notices and the TPP and Consumer Claim Forms. Cecchi Decl., Exs. C – F. The Parties may make non-material modifications to the Settlement Class Notices and

Claim Forms prior to mailing and publication if they jointly agree any such changes are appropriate.

24. The Court appoints A.B. Data, Ltd. as the Settlement Claims Administrator (“Claims Administrator”). All expenses incurred by the Claims Administrator must be reasonable and shall be payable solely from the Settlement Fund. Class Counsel may, without an order of Court so directing, withdraw up to two million dollars (\$2,000,000) for notice and notice-related expenses.

25. The Claims Administrator is directed to perform all settlement administration duties set forth in, and pursuant to the terms and time periods of, the Settlement Agreement, including implementing and maintaining the Settlement website, implementing the Notice Plan, processing and reviewing timely submitted and proper Claims for Reimbursement under the Settlement’s terms, and submitting any declarations and other materials to counsel and the Court, as well as any other duties required under the Settlement Agreement.

26. Wyeth shall comply with its obligation to give notice under the Class Action Fairness Act (“CAFA”), 28 U.S.C. §1711, *et seq.*

27. A hearing on final approval (the “Fairness Hearing”) shall be held before this Court at [] on [], at the United States District Court for the District of New Jersey, Clarkson S. Fisher Building & U. S. Courthouse, 402 East State Street, Room 2020, Trenton, New Jersey. At the

Fairness Hearing, the Court will consider, *inter alia*: (a) the fairness, reasonableness, and adequacy of the Settlement and whether the Settlement should be finally approved; (b) whether the Court should approve the proposed Plan of Allocation of the Settlement Fund among members of the Indirect Purchaser Class; (c) whether the Court should approve awards of attorneys' fees and reimbursement of costs and expenses to Class Counsel; (d) whether service awards should be awarded to the Indirect Purchaser Plaintiffs; and (e) whether entry of a Final Judgment and Order terminating the litigation between Indirect Purchaser Plaintiffs and Wyeth should be entered. The Fairness Hearing may be rescheduled or continued; in that event, the Court will furnish all counsel with appropriate notice. Class Counsel shall be responsible for communicating any such notice promptly to the Indirect Purchaser Class by posting a conspicuous notice on the following website of the Claims Administrator: www.XXXXXX.com.

28. Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail, by first-class mail postmarked no later than forty-five (45) days after the date on which the Claims Administrator mails the Settlement Notice, a written request for exclusion ("Request for Exclusion") to the Claims Administrator at the address specified in the Class Notice. To be effective, the Request for Exclusion must be timely and must:

- (a) Identify the case name and number;

- (b) Include the Settlement Class Member's full name, address, and telephone number;
- (c) Be signed by the Settlement Class Members who is opting out, or by its, his, or her authorized representative;
- (d) For any request for exclusion by a purported authorized agent or representative of a Settlement Class Member, the request must be accompanied by proof of the representative's legal authority and authorization to act and request exclusion on behalf of the Settlement Class Member;
- (e) Specifically and unambiguously state the desire to be excluded from the Settlement Class in *In re Effexor XR Antitrust Litigation*, No. 3:11-cv-05479; and
- (f) For any third-party payor Settlement Class Member seeking exclusion, it must include all data reflecting their purchases of, and payments for, branded and generic Effexor XR.

29. Group or class-wide exclusions shall not be permitted.

30. Any Settlement Class Member who fails to submit a timely and complete Request for Exclusion sent to the proper addressee shall remain in the Settlement Class and shall be subject to and bound by all determinations, orders,

and judgments in the Action concerning the Settlement, including but not limited to the Released Claims set forth in the Settlement Agreement.

31. Consumer identities shall not be made public as part of the exclusion process. Identifying information shall be kept confidential and, absent a consumer's consent, any opt-out requests shall be filed under seal.

32. Any Settlement Class Member who has not submitted a Request for Exclusion may object to the fairness of the Settlement Agreement and/or the requested amount of Class Counsel's fees, costs, and expenses and/or Settlement Class Representative service awards.

- (a) To object, a Settlement Class Member must either: (i) file the objection, together with any supporting briefs and/or documents, with the Court in person or via the Court's electronic filing system within forty-five (45) days of the Notice Date; or (ii) mail, via first-class mail postmarked within forty-five (45) days of the Notice Date, the objection, together with any supporting briefs and/or documents, to each of the following: (a) the Clerk's Office of the United States District Court, District of New Jersey, Clarkson S. Fisher Building & U.S. Courthouse, Room 2020, 402 East State Street, Trenton, New Jersey 08608; (b) James E. Cecchi, Esq., Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., 5 Becker Farm Road, 3rd Floor,

Roseland, New Jersey 07068, on behalf of Class Counsel; and (c) Raj Gandesha, Esq., White & Case, LLP, 1221 Avenue of Americas, New York, NY 10020-1095, on behalf of Wyeth.

- (b) Any objecting Settlement Class Member must include the following with their objection: (i) the objector's full name, address, and telephone number; (ii) documentation establishing that the objector is a Settlement Class Member; (iii) a written statement of all grounds for the objection, accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection; (v) the name, address, and telephone number of any counsel representing said objector; (vi) a statement of whether the objecting Settlement Class Member intends to appear at the Fairness Hearing, either with or without counsel, and the identities of any counsel who will appear on behalf of the Settlement Class Member at the Fairness Hearing; (vii) the following statement followed by the objector's signature: "I declare under penalty of perjury under the laws of the United States of America that [insert objector name] is a member of the Class."; and (viii) a list of all other objections submitted by the objector, or the objector's counsel, to any class-action settlements submitted in any

court in the United States in the previous five (5) years, including the full case name, the jurisdiction in which it was filed and the docket number. If the Settlement Class Member or their counsel has not objected to any other class-action settlement in the United States in the previous five (5) years, they shall affirmatively so state in their objection.

- (c) Individual consumers who do not want their identities to be put on the public record as part of the objection process may send their objection only to the Claims Administrator, who will redact (or “blackout”) such consumers’ names, addresses, and telephone numbers and then provide such redacted versions to the Court for filing on the public court docket. The Claims Administrator will also send copies of the original, unredacted objections to the Clerk of the Court, Class Counsel, and Pfizer’s counsel. Appropriate steps must be taken to keep the identifying information confidential.
- (d) The Clerk’s Office shall file on the public docket all objections other than those sent only to the Claims Administrator pursuant to section 32(c) above.
- (e) Subject to the approval of the Court, any Settlement Class Member who has properly filed a timely objection may appear, in person or by

counsel, at the Fairness Hearing to explain why the proposed Settlement should not be approved as fair, reasonable, and adequate, or to object to any motion for award of Class Counsel's fees, costs, and expenses or Settlement Class Representative service awards. In order to appear, any Settlement Class Member must, no later than the objection deadline, file with the Clerk of the Court and serve upon all counsel designated in the Class Notice, a Notice of Intention to Appear at the Fairness Hearing. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence and the identity of all witnesses that the objecting Settlement Class Member (or the objecting Settlement Class Member's counsel) intends to present to the Court in connection with the Fairness Hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in accordance with the deadline and other requirements set forth in this Order and the Class Notice shall be deemed to have waived any right to appear, in person or by counsel, at the Fairness Hearing. Any lawyer representing a Class Member for the purpose of making comments or objections must also file a Notice of Appearance with the Court using the Court's Case Management/Electronic Case Files (CM/ECF) System.

- (f) Any Settlement Class Member who has not properly filed a timely objection in accordance with the deadline and requirements set forth in this Order and the Class Notice shall be deemed to have waived any objections to the Settlement and any adjudication or review of the Settlement Agreement and/or its approval by appeal or otherwise.

33. In the event the Settlement is not granted final approval by the Court, or for any reason the Parties fail to obtain a Final Judgment and Order as contemplated in the Settlement Agreement, or the Settlement is terminated pursuant to its terms for any reason, the following shall apply:

- (a) All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, and shall not be admissible or discoverable in this or any other proceeding, judicial or otherwise;
- (b) All of the Parties' respective pre-Settlement claims, defenses, and procedural rights will be preserved, and the parties will be restored to their positions *status quo ante*;
- (c) Nothing contained in this Order is, or may be construed as, any admission or concession by or against Wyeth, the Released Parties, or Indirect Purchaser Plaintiffs of any allegation, claim, defense, or point of fact or law in connection with this Action;

- (d) The Settlement terms may not be used as evidence in this or any other proceeding, judicial or otherwise; and
- (e) The preliminary certification of the Settlement Class pursuant to this Order shall be vacated automatically, and the Action shall proceed as though the Settlement Class had never been preliminarily certified.

34. All proceedings in the Action between the Indirect Purchaser Plaintiffs and Wyeth are hereby stayed until such time as the Court renders a final decision regarding the approval of the Settlement and, if the Court approves the Settlement, enters Final Judgment and Order, and dismisses such Action as to Wyeth with prejudice.

35. Pending the Fairness Hearing and the Court's decision whether to grant final approval of the Settlement, no Settlement Class Member—including those Settlement Class Members who filed Requests for Exclusion from the Settlement which have not yet been reviewed and approved by the Court at the Fairness Hearing—shall directly, representatively, or in any other capacity commence, prosecute, continue to prosecute, or participate in, against any of the Released Parties, any action or proceeding in any court or tribunal (judicial, administrative, or otherwise) asserting any of the matters, claims, or causes of action that are to be released in the Settlement Agreement. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is

necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action.

36. Pending the Fairness Hearing and any further determination thereof, this Court shall maintain continuing jurisdiction over these Settlement proceedings.

37. Based on the foregoing, the Court sets forth the following schedule for the Fairness Hearing and the actions preceding it. If any deadline set forth in this Order falls on a weekend or federal holiday, then such deadline shall be extended to the next business day. These deadlines may be extended by order of the Court, for good cause shown, without further notice to the Class. Settlement Class Members must check the Settlement website regularly for updates and further details regarding this Settlement:

<u>Event</u>	<u>Deadline for Compliance</u>
Date for Fairness Hearing	120 days after entry of the Preliminary Approval Order
Mailing of Notice	No later than 30 calendar days after entry of Preliminary Approval Order (the "Notice Date")
Publication of Summary Notice	No later than 30 calendar days after entry of the Preliminary Approval Order
Filing deadline for objections	No later than 45 calendar days after the Notice Date

Filing deadline for requests for exclusion	No later than 45 calendar days after the Notice Date
Deadline for filing Claim Forms	No later than 120 calendar days after entry of the Preliminary Approval Order
Date for Indirect Purchaser Plaintiffs to file motion for final approval of the Settlement, the Plan of Allocation, and application for attorneys' fees, reimbursement of costs and expenses, and Settlement Class Representative service awards	35 calendar days prior to the Fairness Hearing
Date for Indirect Purchaser Plaintiffs to file reply in further support of motion for final approval of the Settlement, the Plan of Allocation, and application for attorneys' fees, reimbursement of costs and expenses, and Settlement Class Representative service awards	7 calendar days prior to the Fairness Hearing

SO ORDERED:

Date: _____, 2024

Hon. Peter G. Sheridan,
United States District Judge