

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

KPH HEALTHCARE SERVICES, INC.
A/K/A KINNEY DRUGS, INC., FWK
HOLDINGS LLC, and CÉSAR CASTILLO,
LLC,

Plaintiff,

v.

MYLAN N.V., MYLAN SPECIALTY L.P.,
and MYLAN PHARMACEUTICALS INC.,

Defendants.

Case No. 20-cv-2065-DDC-TJJ

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Settlement Agreement”) is made and entered into on December 31, 2024, by and between defendants Mylan N.V., Mylan Specialty L.P., and Mylan Pharmaceuticals Inc. (collectively, “Mylan Defendants”), and the direct purchaser class plaintiffs, KPH Healthcare Services, Inc. a/k/a Kinney Drugs Inc. (“KPH”), FWK Holdings LLC (“FWK”), and César Castillo, LLC (“CCI”) (collectively, “Plaintiffs”) (the Mylan Defendants and Plaintiffs together, the “Parties”), individually and on behalf of the proposed Direct Purchaser Class (as defined below), by and through Linda P. Nussbaum of Nussbaum Law Group, P.C. and Michael L. Roberts of Roberts Law Firm US, PC, in their capacity as Interim Co-Lead Counsel for Plaintiffs and the Putative Direct Purchaser Class (“Lead Counsel”).

WHEREAS, Plaintiffs comprise all of the named plaintiffs in *KPH Healthcare Services, Inc., et al. v. Mylan, N.V., et al.*, Civil Action No. 2:20-cv-02065-DDC-TJJ (the “Action”), filed in the United States District Court for the District of Kansas before the Honorable Daniel D. Crabtree;

WHEREAS, the Parties acknowledge that the Court has jurisdiction over the Action, each of the Parties, and all members of the Class (as defined below) for all purposes related to the Action, including this Settlement Agreement;

WHEREAS, Plaintiffs have alleged that the Mylan Defendants engaged in conduct in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2, concerning the EpiPen Auto-Injector,¹ a spring-loaded injector that delivers a pre-measured and pre-loaded amount of epinephrine for the emergency treatment of anaphylaxis, and generic equivalents of the EpiPen, as further identified and delineated in the Consolidated Fourth Amended Class Action Complaint (“Complaint”). ECF No. 128;

WHEREAS, the Mylan Defendants expressly disclaim and deny any wrongdoing or liability related to the allegations in Plaintiffs’ Complaint and the Action and deny any improper conduct or violation of federal antitrust law or any other laws or regulations;

WHEREAS, the Court in the Action ruled on the Mylan Defendants’ Motion to Dismiss on August 8, 2022, granting it in part and denying it in part (ECF No. 241);

WHEREAS, Plaintiffs and the Mylan Defendants have engaged in extensive arm’s-length negotiations concerning settlement of the Action;

WHEREAS, Plaintiffs and the Mylan Defendants 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 constitute, be construed as or be deemed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by

¹ As used herein, “EpiPen” refers collectively to the EpiPen® EpiPen Jr.®, EpiPen 2-Pak®, EpiPen Jr. 2-Pak®, My EpiPen®, EpiPen4Schools®, Never-See-Needle®, and generic versions of those products.

the Mylan Defendants or of the truth or falsity of any claim or allegation alleged in the Action, or a waiver of any defenses thereto;

WHEREAS, Plaintiffs and their counsel have concluded, after extensive fact discovery, and after carefully considering the claims in the Action, including the claims asserted in the Complaint, and the possible and asserted legal and factual defenses thereto, that it would be in the best interests of the Class (as defined below) to settle the claims asserted in the Action against the Mylan Defendants to avoid the uncertainties of litigation, particularly complex litigation such as this, and to assure a certain and immediate benefit to the Class, and further that Lead Counsel consider the Settlement (as defined below) set forth herein to be fair, reasonable, and adequate and in the best interests of Plaintiffs and the Class;

WHEREAS, the Mylan Defendants contend that the claims and allegations of wrongdoing or liability, individually and collectively, by the Plaintiffs and the Class (as defined below) are without merit, but believe that it would be in their best interests to enter into this Settlement Agreement to avoid the burden and expense of further litigation and to finally resolve all claims asserted in the Action;

WHEREAS, the Parties have reached a settlement of the Action (the “Settlement”), all terms and conditions of which are embodied in this Settlement Agreement, subject to the final approval of the Court; and

NOW THEREFORE, Plaintiffs, on behalf of themselves and as representatives of the Direct Purchaser Class (as defined below), and the Mylan Defendants, in consideration of the execution of this Settlement Agreement, the mutual promises contained herein, and the benefits to be received hereunder, hereby agree as follows:

1. **The Class.** The “Direct Purchaser Class” or the “Class” means “All persons and

entities in the United States, its territories, possessions, and the Commonwealth of Puerto Rico, who purchased EpiPen or generic EpiPen directly from Mylan or Teva, for resale, at any time during the period from March 13, 2014 until the date on which the Court enters the Preliminary Approval Order as defined below (the ‘Class Period’). Excluded from the Class are Defendants and their officers, directors, management, employees, predecessors, subsidiaries, and affiliates, and all federal governmental entities.”

2. **Reasonable Best Efforts to Effectuate This Settlement.** Each of the Parties agrees to use its best efforts to obtain approval of the Settlement. Lead Counsel for Plaintiffs and on behalf of the Class agrees to recommend approval of this Settlement by the Court. Each of the Parties agrees to undertake its best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other reasonable steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to secure approval and to carry out the terms of this Settlement, and to secure the prompt, complete, and final dismissal with prejudice of all claims against the Mylan Defendants in the Action.

3. **Motions for Class Certification and Preliminary Approval.**

(a) The Parties will use all best efforts to, by January 15, 2025, finalize and execute this Settlement Agreement and to file a motion from Plaintiffs with the Court seeking entry of an Order (the “Preliminary Approval Order”) requesting: (i) a finding that the Settlement satisfies the requisite standard for preliminary approval as being within the range of fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23; (ii) approval of a notice plan, including appointment of a notice administrator as proposed by Plaintiffs, to provide notice of the Settlement to members of the Class; (iii) appointment of an escrow agent to be proposed by Plaintiffs (the “Escrow Agent”); (iv) a schedule 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, costs, and expenses, as set forth in this Settlement Agreement; (v) certification of the Direct Purchaser Class as defined above for purposes of settlement; and (vi) appointment of Michael L. Roberts of Roberts Law Firm US, PC and Linda P. Nussbaum of Nussbaum Law Group, P.C. as Co-Lead Settlement Class counsel and Bradley T. Wilders of Stueve Siegel Hanson LLP as Settlement Liaison Counsel. The Mylan Defendants will not oppose Plaintiffs' request for certification of the Class for settlement purposes only. The Parties further shall use all best efforts to request that the Court grant preliminary approval by mid-February 2025.

(b) The Mylan Defendants shall not be required to play any role in the preparation and submission of the motions for approval of the Settlement (either preliminary or final approval) other than to state, if requested by the Court or Plaintiffs to do so, that (i) the Settlement negotiations were at arm's length at all times, (ii) negotiations occurred over multiple weeks, (iii) there was no discussion of attorneys' fees, costs, and expenses prior to the Parties reaching agreement on all material terms of the Settlement Agreement, and (iv) there were no commitments to Plaintiffs or to Plaintiffs' Counsel other than what is set forth in this Settlement Agreement. In the event the Court preliminarily approves the Settlement, the Court-approved Settlement Administrator shall, in accord with the Preliminary Approval Order, provide Class members with notice of the Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure in the form and manner approved by the Court ("Class Notice").

(c) This Settlement Agreement, any other Settlement-related document, anything contained herein or therein or contemplated hereby or thereby, and any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein or in any other Settlement-related document, shall not constitute, be construed as or be deemed to be

evidence of or an admission or concession by the Mylan Defendants as to whether any class, in this case or others, may be certified for purposes of litigation and trial.

4. **Notice and Settlement Administration.** A Settlement Administrator shall be recommended by Lead Counsel and subject to Court approval. The Settlement Administrator shall direct notice to the Class defined above. The form of notice are exhibits to this Settlement Agreement and subject to Court approval. The approved notice shall afford Class members an opportunity to object to and opt out of the Settlement Agreement. The Settlement Administrator also shall be responsible for directing notice under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, at the election of the Mylan Defendants. If the Settlement is finally approved, the Settlement process will be administered by the independent Settlement Administrator in accordance with the Plan of Allocation proposed by Plaintiffs and approved by the Court. Apart from the foregoing, the Mylan Defendants will have no involvement in the Notice or allocation process, except that the Mylan Defendants may be required to make reasonable efforts to assist or provide information to the Settlement Administrator.

5. **Motion for Final Approval and Entry of Final Judgment.** If the Court certifies the Class for purposes of settlement and preliminarily approves this Settlement Agreement, Plaintiffs shall submit a motion for final approval of the Settlement Agreement by the Court, after appropriate notice to the Class, and shall seek entry of a final judgment and order (the “Final Judgment and Order”). The Final Judgment and Order that Plaintiffs propose shall:

- a. find that this Settlement Agreement and the terms of the Settlement are fair, reasonable, and adequate as to Plaintiffs and the Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure and direct its consummation pursuant to the terms of this Settlement Agreement;
- b. provide for payment of reasonable attorneys’ fees and reimbursement of costs and expenses from the Settlement Fund (as defined below) as described herein;

- c. direct that Plaintiffs' and Class members' claims against the Mylan Defendants be dismissed with prejudice and, except as provided for in paragraph 13, without costs and without attorney's fees recoverable under 15 U.S.C. § 15(a);
- d. retain exclusive jurisdiction over the Settlement and this Settlement Agreement, including the administration and consummation of this Settlement; and
- e. direct that the judgment of dismissal of all Class claims against the Mylan Defendants shall be final and appealable.

6. **Finality of Settlement.** The Settlement shall become final upon the occurrence of all of the following (the "Effective Date"):

- a. neither the Mylan Defendants nor Plaintiffs have availed themselves of their respective rights to cancel and terminate the Settlement pursuant to paragraphs 19 or 20 hereof;
- b. the Settlement Agreement is approved by the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure;
- c. entry is made of the Final Judgment and Order of dismissal with prejudice against the Plaintiffs and the Class; and
- d. the time for appeal from the Court's approval of this Settlement and entry of the Final Judgment and Order has expired or, if appealed, either such appeal shall have been dismissed prior to resolution by the court or approval of this Settlement or 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. **No Admission.** This Settlement Agreement and all related communications are for settlement purposes only and shall not be construed or deemed to be evidence of an admission or concession by the Released Parties (as defined herein) of any liability or wrongdoing, and shall not be construed or deemed to be evidence of any admission of any liability or wrongdoing or that any person or entity is entitled to relief. The Mylan Defendants deny any improper conduct or violation of federal antitrust law or any other laws or regulations and are settling the Action solely to avoid the burden and expense of further litigation. Nothing in this Settlement Agreement shall

be construed as an admission by the Mylan Defendants in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority, present or future, including, without limitation, that the Mylan Defendants have engaged in any conduct or practices that violate any antitrust statute or other law. This Settlement Agreement shall not be admissible for any purpose except in an action to enforce its terms.

8. **No Concession.** Nothing in this Settlement Agreement shall be construed as a concession by Plaintiffs that the allegations in the Complaint are not true and accurate.

9. **Settlement Amount and Settlement Fund.**

(a) In exchange for the Release as defined herein, the Mylan Defendants shall pay the amount of Seventy-Three Million Five Hundred Thousand Dollars and no/100 (\$73,500,000.00) (the “Settlement Amount”) into a common settlement fund (the “Settlement Fund”). Subject to the terms and conditions of the Parties’ December 27, 2024 binding term sheet and this Settlement Agreement, and in full, complete and final settlement of the claims against the Mylan Defendants in the Action, the Mylan Defendants have deposited the Settlement Amount into an escrow account designated by Plaintiffs for such purpose (the “Escrow Account”) and held and administered by the Escrow Agent. The payments made to the Settlement Fund are compensatory only and not payments made to satisfy any fines, penalties, punitive damages, or prejudgment interest. Nor are such payments “to, or at the direction of, a government or governmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law” within the meaning of Section 162(f) of the Internal Revenue Code of 1986, as amended (the “Code”).

(b) Before the Settlement becomes final, interim disbursements not to exceed

\$250,000 in the aggregate may be made from the Settlement Fund, without Court approval, to pay for any and all expenses associated with providing notice of the Settlement to the Class, expenses associated with administering the Settlement, and any payments and expenses incurred in connection with taxation matters relating to the Settlement and this Settlement Agreement (“Administrative Expenses”),² and such disbursements shall not be refundable to the Mylan Defendants in the event the Settlement is disapproved, terminated, or otherwise fails to become effective.

(c) If this Settlement becomes final, all interest earned less Administrative Expenses will inure to the benefit of the Class.

(d) The Escrow Account shall be established and administered in a form to be agreed upon between the Plaintiffs and the proposed Escrow Agent. The Escrow Account is intended to be a separate taxable entity and intended to qualify as, and the Parties agree to treat the Escrow Account as being at all times, a “qualified settlement fund” for federal income tax purposes within the meaning of Treas. Reg. § 1.468B-1 promulgated under Section 468B of the Code, and any taxes due as a result of income earned by the Settlement Fund will be paid from the Settlement Fund. Except as otherwise expressly permitted, the Escrow Agent shall disburse funds from the Escrow Account only pursuant to and consistent with the express terms of this Settlement Agreement, the Preliminary Approval Order, the Final Judgment and Order, and as expressly

² Administrative Expenses include, but are not limited to, expenses incurred to obtain current and accurate information regarding the identities and addresses of Class Members, costs associated with mailing, emailing, and publication of notice, maintenance of a settlement website, responses to class member inquiries, implementation of the Plan of Allocation, preparing and sending class member distributions and tax documentation, and any other fees and expenses incurred by the Settlement Administrator and Direct Purchaser Plaintiffs’ economist reasonably necessary to effectuate the Plan of Allocation.

authorized by any order of the Court. Lead Counsel shall be solely responsible for directing the Escrow Agent to timely file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Fund. The Mylan Defendants shall have no responsibility to make any tax filings relating to this Settlement Agreement or the Settlement Fund and shall have no responsibility to pay taxes on any income earned by the Settlement Fund, or to pay any taxes with respect thereto unless the Settlement is not consummated and the Settlement Fund is returned to the Mylan Defendants. The Mylan Defendants shall have no responsibility for the payment of taxes or tax-related expenses. If, for any reason, for any period of time, the Mylan Defendants are required to pay taxes on income earned by the Settlement Fund, the Escrow Agent shall, upon written instructions from the Mylan Defendants with notice to Lead Counsel, timely pay to the Mylan Defendants sufficient monies from the Settlement Fund to enable the Mylan Defendants to pay all taxes (state, federal, or other) on income earned by the Settlement Fund.

(e) The Settlement Fund shall be available for distributions to Plaintiffs and members of the Class upon the Settlement becoming final pursuant to paragraph 6 hereto, subject to deductions for payments of: (1) reasonable attorneys' fees, costs and expenses approved by the Court (and any interest awarded thereon); and (2) any and all Administrative Expenses.

(f) All risks related to the investment of the Settlement Fund shall be borne by the Settlement Fund. The Mylan Defendants and Released Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the investment decisions or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent. The Mylan Defendants and Released Parties further shall not be liable for the loss of any portion of the Settlement Fund, nor have any liability, obligation, or responsibility for (a) the payment of claims, taxes (including interest and penalties), legal fees, or any other expenses payable from the Settlement Fund; (b) the

investment of any Settlement Fund assets; or (c) any act, omission, or determination of the Escrow Agent. The Mylan Defendants make no representation to Lead Class Counsel regarding the appropriate tax treatment of the Settlement Fund, income earned on the Settlement Fund, or any distribution taken from the Settlement Fund.

10. **Full and Final Disposition.** The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition and settlement of all Plaintiffs' Released Claims. Having already paid the Settlement Funds into the Escrow Account, the Mylan Defendants shall have no further monetary obligations or monetary liability of any sort or kind to Plaintiffs, members of the Class, or any counsel for Plaintiffs under the terms and conditions of the Settlement, regardless of whatever circumstances may occur (e.g., bankruptcy of the Escrow Agent, theft of the funds, or otherwise). The Settlement Amount paid by the Mylan Defendants will be their sole monetary responsibility under the Settlement Agreement, and Class members who have not timely excluded themselves from the Class shall not look to any of the Released Parties for satisfaction of any and all Plaintiffs' Released Claims. The Mylan Defendants will not be responsible for payment of Administration Expenses, or any out-of-pocket expenses, other than out of the Settlement Amount, as provided herein.

11. **Reimbursement of Costs, Fees and Expenses.** Plaintiffs and their counsel will be reimbursed and indemnified solely out of the Settlement Fund for all costs, fees and expenses including, but not limited to, all Administrative Expenses and reasonable travel costs necessary for the prosecution of the Action. The Mylan Defendants shall not be liable for any costs, fees or expenses of any of Plaintiffs' respective attorneys, experts, advisors, agents and representatives, or for any costs, fees or expenses for notice, administration or other costs of implementing this Settlement. All such costs, fees and expenses shall be paid from the Settlement Fund and, with the

exception of Administrative Expenses of \$250,000 or less in accordance with paragraph 9(b) hereof, shall be approved by the Court.

12. **Disbursement of the Settlement Fund.** If this Settlement Agreement becomes final pursuant to the provisions of paragraph 6 hereof, the Settlement Fund shall be distributed to members of the Class as ordered by the Court. Prior to the Settlement becoming final pursuant to paragraph 6, disbursements for Administrative Expenses may be made from the Settlement Fund only upon written notice from Lead Counsel to the Escrow Agent, with a copy provided to counsel for the Mylan Defendants. The Mylan Defendants shall have no liability or responsibility with respect to disbursements from or administration of the Settlement Fund.

13. **Attorneys' Fees, Expenses and Costs.** Plaintiffs' Counsel intend to seek, solely from the Settlement Fund, attorneys' fees of up to 33 1/3% of the gross Settlement Fund plus the reimbursement of reasonable costs and expenses incurred in the prosecution of the Action against the Mylan Defendants plus interest thereon ("Fee and Expense Award"). Lead Counsel shall file a motion for approval of the Fee and Expense Award after the Court has granted preliminary approval to the Settlement but sufficiently before the deadline set for filing of objections, and the Mylan Defendants agree to take no position with respect to the application by Lead Counsel for a Fee and Expense Award as set forth above. Plaintiffs' Counsel will be paid any Court-approved Fee and Expense Award within seven (7) calendar days after this Settlement becomes final pursuant to paragraph 6 of this Settlement Agreement. Any Fee and Expense Award approved by the Court shall be payable solely out of the Settlement Fund, and Plaintiffs, members of the Class, and their respective counsel shall not seek payment of any attorneys' fees, expenses, or costs from the Mylan Defendants or any source other than the Settlement Fund. The Released Parties (as defined in paragraph 14 hereof) shall have no responsibility for, and no liability whatsoever with

respect to, any payment or disbursement of attorneys' fees, expenses, or costs, any allocation of attorneys' fees, expenses, or costs among Plaintiffs' counsel and/or Plaintiffs, or with respect to any allocation of attorneys' fees, expenses, or costs to any other person or entity who may assert any claim thereto. In no event shall any Fee and Expense Award be paid before the later of the Effective Date and the date on which the Fee and Expense Award is final and the period for any appeal or other review thereof has expired with no appeal being filed. The amount of any Fee and Expense Award is intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement.

14. **Release of the Mylan Defendants.**

(a) In consideration of payment of the Settlement Amount specified in paragraph 9 above, Plaintiffs and each member of the Class, on behalf of themselves and their respective past and present parents, subsidiaries, and affiliates, as well as the past and present general and limited partners, officers, directors, employees, servants, predecessors, successors, heirs, executors, administrators, and representatives of all Class members (the "Releasers"), release and forever discharge (the "Release") the Released Parties³ as follows. The Release shall extend to all claims, duties, demands, actions, causes of action, suits, allegations, rights, obligations, costs, losses, attorneys' fees and costs, liabilities and damages arising in whole or in part from or in connection with acts or omissions of any of the Released Parties, of every kind or

³ The Released Parties are the Mylan Defendants and any of their past, present and future direct or indirect parents, subsidiaries, divisions, sister companies, affiliates, related entities, holding companies, unincorporated business units, vendors, independent contractors, stockholders, officers, directors, insurers, general or limited partners, principals, employees, agents, attorneys and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of the Mylan Defendants and each of the foregoing) (collectively, the "Released Parties").

nature, whether known or unknown, suspected or unsuspected, asserted or unasserted, whether in law or in equity, in tort or contract, or arising under any statute or regulation based upon, arising out of, or relating in any way to any conduct, events, or transactions (a) alleged, or which could reasonably have been alleged, in the Action, including, without limitation, all claims, duties, demands, actions, cause of actions, suits, allegations, rights, obligations, costs, losses, attorneys' fees and costs, liabilities and damages concerning purchases of Nuvigil products (including its generic equivalents), and/or (b) concerning the purchase, sale, marketing, or distribution of EpiPen or generic EpiPen, or Nuvigil or generic Nuvigil products, and arising under the Sherman Act, 15 U.S.C. §§ 1 & 2, *et seq.*, any state or federal RICO statutes, or any other federal or state statute or common law doctrine relating to antitrust, fraud, unfair competition, unjust enrichment, or consumer protection, except for claims relating to the enforcement of the settlement (collectively, the "Released Claims"). However, the Released Claims do not include claims currently asserted against Mylan Inc. and Mylan Specialty L.P. in *In re: EpiPen Direct Purchaser Litigation*, Case No. 0:20-CV-00827 (D. Minn.).

(b) In addition, and in consideration of payment of the Settlement Amount specified in paragraph 9 above, each Releasor hereby expressly waives, releases, and forever discharges any and all provisions, rights, and/or benefits conferred by § 1542 of the California Civil Code, which reads:

Section 1542. General Release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each Releasor also hereby expressly waives, releases, and forever discharges any and all provisions, rights, and/or benefits conferred by any law of any state or territory of the United

States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each Releasor 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 that are the subject matter of this Paragraph. Nonetheless, upon the Effective Date, each Releasor hereby expressly waives and fully, finally, and forever settles, releases, and discharges any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or noncontingent claim that is the subject matter of this Paragraph, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

15. **Reservation of Claims.** Subject to the releases contained in paragraphs 14 and 16, the Releasors and the Mylan Defendants expressly agree that this Settlement Agreement and the releases are not intended to release any claims arising in the ordinary course of business between Releasors and the Released Parties under Article 2 of the Uniform Commercial Code (pertaining to sales), or the laws of negligence or product liability or implied warranty, breach of contract, breach of express warranty, or personal injury, to the extent that such claims are not based in whole or in part on any conduct challenged or alleged, or which could reasonably have been alleged, in the Action and do not relate to drug pricing, antitrust, fraud, unfair competition, unjust enrichment, or competition laws.

16. **Release of Plaintiffs, the Class, and Plaintiffs' Counsel.** The Mylan Defendants shall release as against Plaintiffs and their attorneys, and all other members of the Class (*i.e.*, those who do not opt out), all claims, demands, actions, causes of action, allegations, rights, obligations, costs, losses, and damages arising in whole or in part from or in connection with acts or omissions of any of the Released Parties of any and every kind or nature, whether in law or in equity, in tort or contract, or arising under any statute or regulation, based solely upon the institution,

prosecution, or settlement of the claims asserted in the Action, except for claims relating to the enforcement of the Settlement.

17. **Claim Forms.** Plaintiffs and Lead Counsel will ensure that each claim form contains a copy of the release set forth in paragraphs 14 and 16.

18. **Stay of Proceedings.** Pending Court approval of the Settlement and consistent with subparagraph 3(a) above, and other than as expressly set forth in this Settlement, the Parties agree to stay any and all proceedings in the Action against the Mylan Defendants other than those incidental to the settlement process.

19. **Withdrawal.** If any of the conditions set forth below occurs and the Mylan Defendants give written notice that they wish to withdraw from the Settlement Agreement (subject to the terms below and herein), then this Settlement Agreement shall terminate and be null and void in relevant part, and the Parties will be returned to the status quo ante as if no settlement had been negotiated or entered into:

- a. Preliminary or final approval is denied;
- b. Any objections to the proposed settlement are sustained, which results in material changes to the Settlement (e.g., because it increases the cost of settlement, narrows the scope of the release, or otherwise deprives the Mylan Defendants of a benefit of the settlement);
- c. Obtaining preliminary or final approval of the Settlement results in material changes (e.g., because it increases the cost of settlement, narrows the scope of the release, or otherwise deprives the Mylan Defendants of a benefit of the settlement); or
- d. The final approval of the Settlement is (i) materially modified by an appellate court (e.g., because it increases the cost of settlement, narrows the scope of the release, or otherwise deprives the Mylan Defendants of a benefit of the settlement) or (ii) reversed by an appellate court.

An order by the Court awarding a Fee and Expense Award in any amount lower than requested by Lead Counsel pursuant to this Settlement Agreement shall not itself be deemed a modification of

all or a part of the terms of this Settlement Agreement or the Final Judgment and Order and the award of a Fee and Expense Award that is lower than requested by Lead Counsel shall not itself give rise to any right of termination. A modification or reversal on appeal of any amount of Fee and Expense Award from the Settlement Fund to Plaintiffs in the Action, shall not itself be deemed a modification of all or a part of the terms of this Settlement Agreement or the Final Judgment and Order and shall not itself give rise to any right of termination.

20. **Opt-Outs.** Class Notice shall provide that the period for any Class member to opt-out of the Class will be no less than 45 days following commencement of dissemination of the Class Notice, and the opt-out shall be in writing and shall be signed by the member of the Class who is opting-out. In the event of any opt outs from the Class prior to final approval of the Settlement, the Settlement Amount will be reduced in proportion to the opt-out Class members' pro rata share of aggregate brand and generic EpiPen purchases of Class members during the Class Period. Further, the Mylan Defendants shall have the option in their sole discretion to terminate the Settlement Agreement in the event that Class members representing in the aggregate more than 8% of total brand and generic EpiPen purchases during the Class Period opt out of the Class following preliminary approval of the Settlement.

21. **Termination.** In the event that the Settlement is terminated, or for any reason does not become final in accordance with the terms of paragraph 6 hereof, then (i) any amount of the Settlement Fund, including any and all interest earned thereon, less the costs of administration of the funds and the costs of the notice(s) provided for herein, shall be paid to the Mylan Defendants, as soon as practicable after the Escrow Agent receives notice of termination pursuant to paragraph 19 hereof, and no greater than 15 days, and (ii) any release pursuant to paragraphs 14 and 16 above shall be of no force or effect.

22. **Preservation of Rights.** The Parties agree that the Settlement, whether or not it shall become final, and any and all negotiations, documents and discussions associated with it shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by the Mylan Defendants, or of the truth of any of the claims or allegations contained in any complaint or any other pleading or document filed in this Action; and evidence thereof shall not be discoverable, admissible, or otherwise used directly or indirectly, in any way (except that the provisions of this Settlement Agreement can be used by the Parties to effectuate or enforce the Settlement Agreement), whether in the Action or in any other action or proceeding. The Parties expressly reserve all their rights if the Settlement does not become final in accordance with paragraph 6 of this Settlement Agreement or is otherwise terminated in accordance with provisions of this Settlement Agreement, and the Parties will return to their respective positions, without prejudice. Upon the Settlement becoming final, nothing in this paragraph shall prevent the Mylan Defendants from asserting any release or using this Settlement Agreement to offset any liability to any other parties.

23. **Resumption of Litigation.** The Parties agree that in the event that the Settlement Agreement is terminated, or the Settlement does not become final pursuant to paragraph 6, litigation of the Action will resume in a reasonable manner to be approved by the Court upon joint application by the Parties.

24. **Settlement Confidentiality.** The Parties agree that the fact of settlement and all settlement terms shall remain confidential until the earlier of (i) the filing of the motion for preliminary approval, or (ii) the disclosure of the settlement and its terms by the Court on its own initiative, and further agree to preserve the confidentiality of this Settlement Agreement, including its terms (other than as part of the factual background of the settlement in settlement-related

documents, in discussions with the Court, or the Class notices), to the maximum extent possible consistent with this Agreement, with the exception that the Mylan Defendants shall have the right to disclose the Settlement in connection with any securities disclosure obligations.

25. **Continued Compliance with Protective Order.** Notwithstanding this Settlement or the termination of the Action, the Parties acknowledge and reaffirm that the Stipulated Protective Order (“Protective Order”) (ECF No. 99), including without limitation Section 3 thereto, shall continue to be binding on the Parties, counsel, and all persons who were required to execute acknowledgement forms pursuant to the Protective Order, and agree to continue complying with the terms of the Protective Order in all respects. Plaintiffs’ counsel shall instruct all experts and consultants retained by Plaintiffs in connection with the Action concerning their continuing obligations under the Protective Order. Plaintiffs further agree that they and their counsel shall not disclose non-public information obtained in the Action.

26. **Public Statements.** With the exception of any submissions or filings with the Court to effectuate the Settlement, Plaintiffs agree that they will not at any time make public statements (which includes press releases, communication to the press or other media, statements on the Internet, speeches, or other communications in public fora) concerning the Settlement, the Action, the litigation of the Action, the settlement of the Action, including all related documents, communications, or issues relating to the settlement of the Action, or the Parties, witnesses, or counsel involved in the Action, apart from agreed-upon statements and responses or biographical information concerning counsel’s involvement in the matter, with the exceptions that (i) Plaintiffs shall have the right to disclose the Settlement to comply with their financial, legal, reporting, and securities disclosure obligations, if any, and (ii) Plaintiffs shall have the right to take actions to enforce the Settlement to the extent necessary.

27. **Non-Disparagement.** The Parties agree not to make any statements, written or verbal, or to cause or encourage any other person to make any statements, written or verbal, that defame, disparage, or in any way criticize the personal or business reputation, practices, or conduct of the Parties, the Released Parties, and their respective counsel concerning all Released Claims, as well as the litigation of this Action, the Settlement, and any discussions, interactions, or negotiations of the Settlement by the Parties and their counsel; provided, however, that nothing herein shall preclude any Party or its agents, representatives, or counsel from any good faith response to any inquiries under oath or in response to a government inquiry or from making statements in the course of legal proceedings, or from non-public privileged communications with Class members with regard to the settlement.

28. **Binding Effect.** This Settlement Agreement shall be binding upon, and inure to the benefit of, the Parties, the Released Parties, the Releasers, 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 Plaintiffs and their counsel shall be binding upon all members of the Class and the Releasers and their respective successors and assigns.

29. **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 email followed by postage prepaid mail, to the following persons, and shall be addressed as follows:

To Plaintiffs and the Class:

Linda P. Nussbaum
Nussbaum Law Group, P.C.
1133 Avenue of the Americas, 31st Floor
New York, NY 10036

To the Mylan Defendants:

Adam K. Levin
David M. Foster
Carolyn A. DeLone
Michael D. Gendall

Telephone: (917) 438-9102
lnussbaum@nussbaumpc.com

Michael L. Roberts
Roberts Law Firm US, PC
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mikeroberts@robertslawfirm.us

*Interim Co-Lead Counsel for Plaintiffs and
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Brian C. Fries (15889)
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Telephone: (816) 292-2000
Fax: (816) 292-2001
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james.moloney@lathropgpm.com

Counsel for the Mylan Defendants

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 hereinabove provided, ten (10) calendar days before the change is effective.

30. **Integrated Agreement.** This Settlement Agreement, including its exhibits, contains the entire, complete, and integrated statement of each and every term and provision agreed to, by and among the Parties. The exhibits to this Settlement Agreement are:

- Exhibit A: Form of Preliminary Approval Order
- Exhibit B: Form of Detailed Notice of the Settlement
- Exhibit C: Form of Summary Notice of the Settlement
- Exhibit D: Form of Reminder Notice of the Settlement

31. **No Modification.** This Settlement Agreement shall not be modified in any respect, unless by writing executed by each of the Parties.

32. **Independent Settlement.** This Settlement of the Action is entirely independent of all other cases or litigations and is not conditioned on approval by any other plaintiff or settlement of any other case.

33. **Headings.** The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

34. **No Party is the Drafter.** None of the Parties shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

35. **Choice of Law and Forum.** Any conflict arising under the Settlement Agreement will be governed by and interpreted according to the substantive laws of Kansas without regard to its choice of law or conflict of laws principles. The exclusive forum for any dispute will be the United States District Court for the District of Kansas.

36. **Continuing Jurisdiction of the Court.** The Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.

37. **Cooperation.** The Parties will work together in good faith to file a motion for preliminary approval and to obtain final approval of the Settlement by the Court.

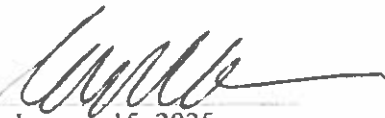
38. **Authorization.** The persons signing this Agreement hereby warrant and represent that they have the power and authority to bind any party on whose behalf this Agreement is signed. Plaintiffs have conferred with Lead Counsel and have been advised of the class action settlement

process.

39. **Execution in Counterparts.** This Settlement Agreement may be executed in counterparts. Signatures transmitted by facsimile or email shall be considered valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement and filed with the Court.

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

Nussbaum Law Group, P.C.

By: 
Dated: January 15, 2025


Linda P. Nussbaum
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1133 Avenue of the Americas, 31st Floor
New York, NY 10036
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lnussbaum@nussbaumpc.com

By: *Michael Roberts*
Dated: January 15, 2025

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*Interim Co-Lead Counsel for Plaintiffs and
the Direct Purchaser Class*

Mylan N.V., Mylan Specialty L.P., and Mylan
Pharmaceuticals Inc.

By: 
Dated: January 15, 2025

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