

# EXHIBIT A

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

IN RE: ZETIA (EZETIMIBE) ANTITRUST  
LITIGATION

MDL No. 2836  
No. 2:18-md-2836- RBS-DEM

This Document Relates to: All End-Payor  
Actions

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Settlement Agreement”) is made and entered into as of April 19, 2023, by and between The City of Providence, Rhode Island, International Union of Operating Engineers Local 49 Health and Welfare Fund, Painters District Council No. 30 Health & Welfare Fund, Philadelphia Federation of Teachers Health & Welfare Fund, Sergeants Benevolent Association Health & Welfare Fund, The Uniformed Firefighters’ Association of Greater New York Security Benefit Fund and the Retired Firefighters’ Security Benefit Fund of the Uniformed Firefighters’ Association, and United Food and Commercial Workers Local 1500 Welfare Fund (collectively, “Plaintiffs”) and Merck & Co., Inc.; Merck Sharp & Dohme Corp.; Schering-Plough Corp.; Schering Corp.; MSP Singapore Co. LLC (collectively “Merck”); Glenmark Pharmaceuticals, Ltd.; and Glenmark Pharmaceuticals Inc., USA incorrectly identified as Glenmark Generics Inc., USA (collectively “Glenmark” and together with Merck the “Defendants”), and the nationally certified End-Payor Class defined below (the “End-Payor Class Action,” or the “Action”). This Settlement Agreement is intended to, and upon occurrence of the Effective Date (as defined in Paragraph 5 below) will fully, finally, and forever resolve, compromise, discharge, and settle the claims of the End-Payor Class in the above-captioned litigation, subject to the terms and conditions set forth herein (the “Settlement”).

WHEREAS, several similar class actions complaints were filed in this district alleging that Merck and Glenmark: (i) reached, entered into and implemented a reverse payment agreement to

delay the introduction of a less expensive AB-rated generic version of Zetia into the United States which caused Plaintiffs and the Class to pay *supra*-competitive prices for Zetia and its AB-rated generic equivalents known as ezetimibe, in violation of state antitrust and consumer-protection laws, and the equitable remedy unjust enrichment;

WHEREAS, those cases filed in this district were consolidated and styled *In re Zetia (Ezetimibe) Antitrust Litigation*, No. MDL No. 2836, No. 2:18-md-2836- RBS-DEM (the “Lawsuit” or “Action”), before the United States District Court for the Eastern District of Virginia, Norfolk Division (the “Court”) as a putative class action; and

WHEREAS, Merck and Glenmark deny each and every one of Plaintiffs’ allegations, have not conceded or admitted any liability or that Plaintiffs’ claims were filed within the applicable statutes of limitations, have not conceded or admitted the propriety of certification of any class in this Action for any purposes other than settlement, that any conduct challenged by Plaintiffs and the Class caused any damage whatsoever, and have asserted a number of defenses to Plaintiffs’ and the Class’s claims;

WHEREAS, the Plaintiffs and the Class and Merck and Glenmark (the “Parties”) have concluded, after extensive discovery and investigation of the facts and after fully preparing for trial, and after carefully considering the circumstances of the End-Payor Class Action, including the claims asserted in said Action, and the possible and asserted legal and factual defenses thereto, that it would be in the best interests of the Parties to enter into this Settlement Agreement in order to avoid the uncertainties of litigation, particularly complex litigation such as this, and to assure a benefit to the End-Payor Class and further, that the Parties consider the Settlement set forth in this Settlement Agreement to be fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23 and in the best interests of the End Payor Class;

WHEREAS, Co-Lead Counsel, on behalf of Plaintiffs and the End-Payor Class, on the one hand, and counsel for Merck and Glenmark on the other hand, 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 Plaintiffs, both individually and on behalf of the End-Payor Class, and Merck and Glenmark.

NOW THEREFORE, it is agreed by the undersigned, on behalf of Plaintiffs and the End-Payor Class, on the one hand, and Merck and Glenmark, on the other hand, that the End-Payor Class and all claims of Plaintiffs and the End-Payor Class be settled, compromised and dismissed with prejudice as to Merck and Glenmark (and, except as hereinafter provided, without costs as to Plaintiffs, the EPP Class, or Merck and Glenmark), subject to Court approval, for the following End-Payor Class which the Court has previously certified (the “Third-Party Payor Class”, “EPP Class”, or “Class”) (Dkt. #1316) and which Merck and Glenmark shall support for purposes of this Settlement only:

All Third-Party Payor entities (“TPPs”) within the Brand Subclass or the Generic Subclass defined herein that, for consumption by their members, employees, insureds, participants, or beneficiaries, and not for resale, indirectly purchased, paid and/or provided reimbursement for some or all of the purchase price of Zetia or its AB-rated generic equivalents in any form, that was sold through a retail pharmacy, including mail-order pharmacies and long-term care pharmacies, in Alabama, Arizona, California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia West Virginia and Wisconsin from November 15, 2014 (the “but-for generic entry date”) through November 18, 2019.

Brand Subclass: TPPs that indirectly purchased, paid and/or provided reimbursement for some or all of the purchase price of brand Zetia purchased between the but-for generic entry date and December 11, 2016, inclusive. Excluded from the Brand Subclass are Optum Health Part D Plans, Silverscript Part D Plans, Emblem Health Part D, Humana Part D Plans, Optum Health Managed Care Plans, and any TPPs that used one of these plans or OptumRx as its pharmacy benefits manager (“PBM”) during this subclass period.

Generic Subclass: TPPs that indirectly purchased, paid and/or provided reimbursement for some or all of the purchase price of generic ezetimibe purchased between the generic entry date (December 12, 2016) and November 18, 2019, inclusive.

General Exclusions: The following entities are excluded from both

subclasses:

- a. Defendants and their subsidiaries and affiliates;
- b. All federal and state governmental entities except for cities, towns, municipalities or counties with self-funded prescription drug plans;
- c. All entities who purchased Zetia or generic Zetia for purposes of resale or directly from Defendants or their affiliates;
- d. Fully-insured health plans (i.e., health plans that purchased insurance from another third-party payor covering 100 percent of the plan's reimbursement obligations to its members); and
- e. Pharmacy benefit managers.

1. **Reasonable Best Efforts to Effectuate This Settlement.** Co-Lead Counsel for the Class and Merck and Glenmark agree to support approval of this Settlement Agreement to the Court and to undertake their reasonable best efforts, including undertaking all actions contemplated by and 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 in the End-Payor Class Action. This includes Merck and Glenmark serving notice on those entities required to receive notice pursuant to 28 U.S.C. § 1715.

Co-Lead Counsel shall provide Merck and Glenmark with a draft of their preliminary and final approval papers which shall include (i) motion for entry of a proposed Preliminary Approval Order,, (ii) any accompanying memorandum of law, and (iii) proposed form of notice (including the proposed Proof of Claim and Release) in advance of filing and shall consider in good faith any concerns or suggestions expressed by Merck and Glenmark. Co-Lead Counsel shall similarly provide Merck and Glenmark with a draft of their approval papers and consider in good faith any concerns or suggestions expressed by Merck and Glenmark.

2. **Motion for Preliminary Approval of the Settlement.** Plaintiff shall submit to the Court—and Merck and Glenmark shall take no position regarding—a motion (the “Motion”) requesting entry of an order preliminarily approving the Settlement, and authorizing dissemination of notice to the End-Payor Class (the “Preliminary Approval Order”) substantially in the form of Exhibit

A hereto. The Motion, which Merck and Glenmark shall have the reasonable opportunity to review in advance of Plaintiff filing, shall:

- a. request preliminary approval of the Settlement set forth in this Settlement Agreement as fair, reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23, and in the best interests of the End-Payor Class;
- b. seek appointment of a notice administrator;
- c. seek appointment of an Escrow Agent (as defined in Paragraph 6 below);
- d. request a stay of all proceedings against Merck and Glenmark in the Action, except those proceedings provided for or required by this Settlement Agreement;
- e. seek approval for class notice by means of notice substantially in the form attached hereto as Exhibit B; and
- f. include a proposed form of order, which includes such provisions as are typical in such orders, including a finding that the proposed plan of notice complies with Rule 23 and the requirements of due process, and a provision that if final approval of the Settlement is not obtained, the Settlement is null and void and the Parties will revert to their positions *ex ante* without prejudice to their rights, claims, or defenses as of the date immediately prior to the execution of this Settlement Agreement;

3. **Motion for Final Approval and Entry of Final Judgment.** If the Court preliminarily approves this Settlement Agreement, Plaintiff shall submit—and Merck and Glenmark shall take no position regarding—a motion for final approval by the Court of this Settlement Agreement (“Final Approval Motion”) after notice has been disseminated to the End-Payor Class pursuant to the Preliminary Approval Order. The Final Approval Motion, which Merck and Glenmark shall have the reasonable opportunity to review in advance of Plaintiffs’ filing, shall be submitted to the Court within twenty-one days after the Court-ordered deadline by which members of the End-

Payor Class may object to the Settlement, and shall seek entry of an order and final judgment (“Final Approval Order”) substantially in the form attached hereto as Exhibit C:

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

b. finding that all members of the End-Payor Class (“Class Members”) shall be bound by this Settlement Agreement, including the release provisions and covenant not to sue set forth in this Settlement Agreement;

c. finding that the notice given constitutes due, adequate, and sufficient notice and meets the requirements of due process and the Federal Rules of Civil Procedure;

d. incorporating the releases set forth in Paragraphs 10 and 11 of this Settlement Agreement, and forever barring the Releasors (as defined in Paragraph 10 below) from asserting any Released Claims (as defined in Paragraph 10 below) against any of the Releasees (as defined in Paragraph 10 below); providing for the payment of reasonable attorneys’ fees and reimbursement of expenses, if any, solely from a settlement fund underwritten by the Settlement Amount (the “Settlement Fund”);

e. providing for payment solely from the Settlement Fund of any incentive award to the named Plaintiffs in addition to whatever monies each will receive from the Settlement Fund pursuant to court order;

f. directing that the Action be dismissed with prejudice as to Merck and Glenmark at the appropriate time and, except as provided for herein, without costs or attorneys’ fees recoverable under 15 U.S.C. § 15(a));

g. retaining exclusive jurisdiction over the Settlement and the Settlement Agreement, including the administration and consummation of the Settlement; and

h. directing that the judgment of dismissal with prejudice of all End-Payor Class claims against Merck and Glenmark shall be final and appealable pursuant to Fed. R. Civ. P. 54(b), there being no just reason for delay.

4. **Finality of Settlement.** This Settlement Agreement shall become final upon the occurrence of all of the following (the “Effective Date”):

- a. The Settlement is not terminated pursuant to Paragraph 13 below;
- b. The Settlement and this Settlement Agreement are approved by the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure;
- c. The Court enters the Final Approval Order, entering a final judgment of dismissal with prejudice against Plaintiff and the Class; and
- d. The time for appeal from the Court’s signing of the Final Approval Order has expired or, if the Final Approval Order is appealed, it has been resolved by agreement and withdrawn by the appealing party, or it has been affirmed by the court of last resort to which an appeal of such Final Approval Order may be taken, or if there are no objections filed by Class Members which might have standing to appeal.

5. **Settlement Payments.** Merck and Glenmark collectively shall pay a total settlement amount of Seventy Million Dollars (\$70,000,000) (the “Settlement Amount”) into an escrow account (the “Escrow Account”) held and administered by Valley National Bank (formerly Bank Leumi USA) (the “Escrow Agent”), as set forth below, as follows:

- a. Merck shall deposit into an interest-bearing Escrow Account, established by Plaintiffs’ counsel, the sum of Fifty-Six Million Dollars (\$56,000,000) (the “Merck Payment”) within the later of 7 days after the preliminary approval of the settlement or 60 days from April 19, 2023;

b. Glenmark shall pay into the Escrow Account the sum of Fourteen Million Dollars (\$14,000,000) (the “Glenmark Payment”) the later of 7 days after preliminary approval of the settlement or April 19, 2024.

c. Merck shall not be responsible for the Glenmark Payment referenced in Paragraph b above, and Glenmark shall not be responsible for the Merck Payment referenced in Paragraph a.

d. In the event that Glenmark fails to satisfy its obligation to make the Glenmark Payment under the provisions of the settlement, Glenmark shall pay all attorneys’ fees and costs incurred to enforce the terms of this Settlement Agreement as against Glenmark.

e. Subject to the terms and conditions of this Settlement Agreement and the escrow agreement executed by the End-Payor Class and Merck and Glenmark (the “Escrow Agreement”), after receipt of wire transfer instructions and bank verification documentation necessary to make the wire transfer, whichever is later, up to One Million Five Hundred Thousand (\$1,500,000) may be withdrawn by Co-Lead Counsel for End-Payor Plaintiffs from the Escrow Account without prior Court approval for the purpose of providing notice to the Class and for Notice related expenses incurred by the Notice/Claims Administrator. Any monies used or expenses incurred from the settlement amount for notice and administration (including contracting with outside vendors for this work) will not be reimbursed to Merck or Glenmark (“Notice Expenses”). If payment is due on a Saturday, Sunday, or a federal holiday, the payment shall be due on the next business day.

f. Under no circumstances will Merck be required to pay more than the Merck Payment, nor shall Glenmark be required to pay more than the Glenmark Payment, whether for service awards if any, taxes, wire transfer fees or bank fees of any kind associated with the wire transfer of funds, interest, notice, administration, costs, attorneys’ fees, or otherwise, into the Escrow Account. The total consideration that Merck and Glenmark shall each pay shall only be the Merck Payment and the Glenmark payment, respectively.

**6. The Settlement Fund.**

a. The Escrow Account is to be administered under the Court's continuing supervision and control. The Escrow Agent shall cause the funds deposited in the Escrow Account to be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, or money market invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All funds held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Settlement Agreement and/or further order(s) of the Court. After the Effective Date, the Settlement Fund shall be distributed in accordance with the Court-approved plan or formula of allocation of the Settlement Fund, (the "Plan of Allocation"). Merck and Glenmark will take no position with respect to such proposed Plan of Allocation or such plan to be proposed by the Court. Merck and Glenmark will have no involvement in the selection of the Notice/Claims administrator and claims process. It is understood and agreed by the Parties that any Plan of Allocation is not a part of this Settlement Agreement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Settlement Agreement, and any order or proceedings solely relating to the Plan of Allocation shall not operate to terminate or cancel this Settlement Agreement or affect the finality of the judgment, the Final Approval Order, or any other orders entered pursuant to this Settlement Agreement.

b. After making the payments described in Paragraph 5 above, Merck and Glenmark shall have no responsibility whatsoever for the allocation or distribution of the Settlement Fund and shall not be responsible for any disputes relating to the amount, allocation, or distribution of any fees, costs, or awards. Further, after making the payments described in Paragraph 5 above, Merck and

Glenmark shall not be liable for any additional payments to the End-Payor Class or Plaintiffs' Counsel for any reason. Liability for additional payments, if any, to the End-Payor Class or Plaintiff's Counsel pursuant to this Settlement Agreement shall be the sole responsibility of Plaintiffs' Counsel.

c. Plaintiffs and Co-Lead Counsel for the Class shall be reimbursed and indemnified for all expenses solely out of the Settlement Fund. After payment of the Merck Payment and Glenmark Payment, Merck and Glenmark shall not be liable for any costs, attorneys' fees, other fees, or expenses of any of Plaintiffs' or the End-Payor Class's respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

d. To the extent that there is any ambiguity or inconsistency concerning disbursements when this Settlement Agreement and the Escrow Agreement are read together, the terms of this Settlement Agreement shall control.

7. **No Injunctive Relief.** This Settlement Agreement does not include any provisions for injunctive relief.

8. **Full Satisfaction; Limitation of Interest and Liability.** Members of the End-Payor Class shall look solely to the Settlement Fund for settlement and satisfaction of all claims that are released hereunder, including any costs, fees or expenses of any Class Member 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 that the Settlement becomes final pursuant to Paragraph 5 herein, the Settlement Fund will satisfy any and all Released Claims. Except as provided by order of the Court, no Class Member shall have any interest in the Settlement Fund or any portion thereof. Merck and Glenmark shall have no liability with respect to disbursements from the Settlement Fund pursuant to any Court-approved plan of allocation.

**9. Attorneys' Fees, Expenses and Costs.**

a. Co-Lead Counsel may submit an application or applications (the "Fee and Expense Application") for distributions from the Settlement Fund for: (a) an award of attorneys' fees; plus (b) reimbursement of expenses incurred in connection with prosecuting the Action; plus (c) any interest on such attorneys' fees and expenses (until paid) at the same rate and for the same periods as earned by the Settlement Fund, as appropriate, and as may be awarded by the Court. The Fee and Expense Application may also seek Court approval for service awards to End-Payor Class Representative Plaintiffs to compensate them for their contributions to this Action. The proposed service awards shall be in addition to any distribution to End-Payor Plaintiffs under the Plan of Allocation and are subject to Court approval. Defendants shall take no position before the Court on any Fee and Expense Application nor on the allocation of any award among counsel for the Class.

b. Any amounts that are awarded by the Court pursuant to the above paragraph (the "Fee and Expense Award") and service awards shall be paid from the Net Settlement Fund consistent with the provisions of this Agreement. In no event shall any attorneys' fees, reimbursement of expenses, or incentive award be paid before the Effective Date. End-Payor Plaintiffs and Class Members, and their respective counsel, shall not seek payment of any attorneys' fees, expenses, costs, or service awards from Merck and Glenmark in this Action, or in any other action related to the Released Claims, from any source other than the Settlement Fund.

c. The procedures for and the allowance or disallowance by the Court of the application by Plaintiffs' Counsel for attorneys' fees, reimbursement of expenses, and/or incentive award to be paid out of the Settlement Fund are not part of this Settlement Agreement. Notwithstanding any right of termination in Paragraph 13, any order or proceeding relating solely to the application by Co-Lead Counsel for any award of attorneys' fees, reimbursement of expenses, and service award, or any appeal from any such order, shall not operate or provide a basis to terminate or cancel this Settlement

Agreement, or affect or delay the finality of the Judgment and the Settlement of the Action as set forth herein. No order of the Court or modification or reversal on appeal of any order of the Court solely concerning any fee and expense award, service award, or Plan of Allocation shall constitute grounds for cancellation or termination of this Agreement.

d. If the Court's award of such fees and expenses is reduced subsequent to the disbursement of any attorneys' fees, reimbursement of expenses, and/or incentive award, Co-Lead Counsel shall within ten (10) business days after receiving written notice from the Court refund to the Escrow Account the amount of any such reduction in attorneys' fees, reimbursement of expenses, and/or incentive award with interest. The interest rate applicable to any refund made to the Escrow Account pursuant to this Paragraph shall be the same interest rate earned by the Settlement Fund during the period between the disbursement of any attorneys' fees, reimbursement of expenses, and/or incentive award and any refund required by this Paragraph. The amount deposited into the Escrow Account shall be solely for the benefit of the Class and shall be included in the Settlement Fund and be distributed according to the Plan of Allocation.

e. If the Court's award of such fees, expenses, and/or incentive is vacated or reversed, subsequent to the disbursement of any attorneys' fees, reimbursement of expenses, and/or incentive award, Co-Lead Counsel shall within ten (10) business days after receiving written notice from the Court or from Merck and Glenmark of such vacatur or reversal refund to the Escrow Account the amounts of any such attorneys' fees, reimbursement of expenses, and/or incentive award with earned and paid interest, and further provided that if the Settlement Agreement is terminated pursuant to Paragraph 13 below, Co-Lead Counsel shall within ten (10) business days after giving notice to or receiving notice from Merck and Glenmark of such termination, refund to the Escrow Account the amounts of any such attorneys' fees, reimbursement of expenses, and/or incentive award with earned and paid interest. The interest rate applicable to any refund made to the Escrow Account pursuant to

this Paragraph shall be the same interest rate earned by the Settlement Fund during the period between the disbursement of any attorneys' fees, reimbursement of expenses, and/or incentive award and any refund required by this Paragraph.

f. For the avoidance of doubt, neither the Releasees (as defined and set forth below) nor their counsel shall have any responsibility for or liability whatsoever with respect to any payment(s) to Co-Lead Counsel pursuant to this Agreement and/or to any other Person who may assert some claim thereto or any Fee and Expense Award that the Court may make in the Action, other than as set forth in this Settlement Agreement.

**10. Releases and Covenants.**

a. Upon the occurrence of the Effective Date and in consideration of payment by Merck of the Merck Payment, and by Glenmark of the Glenmark Payment , as specified in Paragraph 5 above, Defendants and their past, present and future parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, general or limited partners, employees, agents, attorneys and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assignees of each of the foregoing) (the "Releasees" or "Released Parties" and each a "Released Party") are and shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages, and liabilities, of any nature whatsoever (whether such claims, demands, actions, suits, causes of action, damages, or liabilities arise or are incurred before, during or after the date hereof, including costs, expenses, penalties and attorneys' fees, under federal or state laws, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, contingent or non-contingent, in law or equity, that the End-Payor Plaintiffs and/or the End-Payor Class (including any of their past, present or future assignees, officers, directors, insurers, general or limited partners, divisions, stockholders, agents, attorneys, employees, legal representatives, trustees, parents, associates, affiliates, subsidiaries, partners, heirs, executors, administrators, purchasers,

predecessors, successors and assignees, acting in their capacity as such) (collectively the “Releasers”) ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively, as assignees or in any other capacity, to the extent arising out of or relating to, in whole or in part in any manner, to:

(1) all conduct, acts, or omissions alleged in the Lawsuit and/or that could have been alleged in the Lawsuit (or arising out of substantially the same subject matter), regardless of legal theory;

(2) all conduct, acts, or omissions alleged in any action, litigation, or proceeding that is substantially and functionally equivalent to the Lawsuit, and any conduct alleged in any other complaint filed in federal or state court related to the Lawsuit (the “Related Actions”);

(3) all conduct, acts, or omissions concerning alleged delay or impairment in the marketing, sale, manufacture, pricing, or purchase of, ezetimibe, Zetia or its generic equivalents, or the enforcement of intellectual property related thereto, that were or could have been asserted in the Lawsuit or the Related Actions; or

(4) all conduct, acts, or omissions relating to any agreement between the Merck Defendants and the Glenmark Defendants or any potential or actual manufacturers of ezetimibe or generic Zetia that were or could have been asserted in the Lawsuit or the Related Actions (collectively, the “Released Claims”).

b. The intent of this Settlement Agreement is to effect a complete and total resolution of the Lawsuit to the extent of the claims of the End-Payor Plaintiffs that were or could have been asserted in the Lawsuit or Related Actions. Notwithstanding the foregoing, this Settlement Agreement is not intended to release any claims arising in the ordinary course of business between End-Payor Plaintiffs and the Released Parties concerning product liability, breach of warranty or

contract (other than breach of warranty or contract based in whole or in part on any conduct challenged by any End-Payor Plaintiff in the Lawsuit or the Related Actions), or personal or bodily injury.

c. Releasors hereby covenant not to sue or otherwise seek to establish or impose liability against any of the Releasees based, in whole or in part, on any of the Released Claims. Releasors shall be permanently barred and enjoined from instituting, commencing, or prosecuting against the Releasees any Released Claims or claims related to the Released Claims. The Parties contemplate and agree that this Settlement Agreement may be pleaded as a bar to a lawsuit, and an injunction may be obtained, preventing any action from being initiated or maintained in any case sought to be prosecuted on behalf of any Releasors with respect to the Released Claims.

11. **Additional Release.** In addition, with respect to the Released Claims that are the subject matter of Paragraph 10, each Releasor hereby expressly waives and releases, upon the occurrence of the Effective Date, 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each Releasor hereby also expressly waives and releases, upon the occurrence of the Effective Date, any and all provisions, rights, and/or benefits conferred or 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 Released Claims. Nonetheless, upon the Effective Date, each Releasor hereby expressly waives and fully, finally, and

forever settles and releases any known or unknown, foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, contingent or non-contingent Released Claim, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Releasor, upon the occurrence of the Effective Date, also hereby expressly waives and fully, finally, and forever settles, releases and discharges any and all Released Claims that it may have against any Releasees under § 17200, *et seq.*, of the California Business and Professions Code or any similar comparable or equivalent provision of the law of any other state or territory of the United States or other jurisdiction, which are expressly incorporated into the definition of Released Claims.

12. The Parties and their counsel shall not make any applications for sanctions, pursuant to Rule 11 of the Federal Rules of Civil Procedure or other court rule or statute, with respect to any claims or defenses in this action. While retaining their right to deny liability, Merck and Glenmark will agree that this action was filed and prosecuted in good faith and with an adequate basis in fact, was not frivolous, and is being settled voluntarily by Merck and Glenmark after consultation with competent legal counsel.

13. **Termination.**

a. Merck and Glenmark shall have the option to terminate the Settlement and Merck and Glenmark have the right to have their Settlement Amount refunded (but excluding Merck and Glenmark's portion of incurred Notice Expenses up to One Million Five Hundred Thousand Dollars (\$1,500,000)), if (i) the Court declines to grant final approval of the Settlement; or (ii) the Court enters the Final Approval Order and appellate review is sought, and on such review, the Final Approval Order and corresponding judgment are set aside or affirmed with material modification.

b. The parties agree that they shall jointly submit to the Court for *in camera* review only, a provision which allows Merck and Glenmark to terminate the settlement in the event that more than a threshold of the members of the Class elect to opt out of the settlement.

c. For the avoidance of doubt, any order of the Court that: (i) materially narrows or does not approve the scope of the release and covenant not to sue set forth in Paragraphs 10 and 11; (ii) purports to impose additional material obligations on Merck and Glenmark; or (iii) declines to enter a Final Approval Order that materially meets the requirements set forth in Paragraph 4 of this Settlement Agreement, or any order on review or appeal that would have the foregoing effects, constitutes a failure to grant final approval of this Settlement Agreement and confers on Merck and Glenmark the right to terminate provided by this Paragraph.

d. If for any reason the Settlement does not become final in accordance with the terms of Paragraph 4 of this Settlement Agreement, then: (i) this Settlement Agreement shall be of no force or effect; (ii) all funds paid by Merck and Glenmark into the Settlement Fund, plus interest (net of any taxes paid on such interest) shall be returned to Merck and Glenmark as set forth in Paragraph 13; (iii) any release pursuant to Paragraphs 10 and 11 above shall be of no force or effect; and (iv) the Parties agree, subject to the Court's approval, that litigation of the Action by Plaintiff and the End-Payor Class will resume, in a reasonable manner and on a reasonable timetable to be approved by the Court.

e. A modification or reversal on appeal of any amount of the attorneys' fees, reimbursement of expenses, and/or incentive award shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such Final Approval Order and shall not give rise to any right of termination.

f. In the event that the Court provides members of the Class another opportunity to opt out of the Class, no later than thirty (30) days following the deadline set by the Court for the members of the Class to exclude themselves, Co-Lead Counsel shall provide Merck and Glenmark's counsel with a complete and final list of Persons that elected to exclude themselves from the Class. With the Final Approval Motion of the Settlement, Co-Lead Counsel will file with the Court, to the extent the

Court finds there are any additional opt-out periods, a complete list of requests for exclusion from the Class (including only the name, city, and state of the Person requesting exclusion) and a report (the “Exclusion Report”) from the Notice/Claims Administrator to the Court setting forth (i) all members of the Class that have expressed a wish to be excluded from the Class and the amount unsettled claims pertaining to purchases by such members of the Class, (ii) its ability to validate the existence of such entities’ authority to exclude other members of the Class from the Class, and (iii) the effect, if any, of the exercise of such entities’ authority on the number and proportion of unsettled claims pertaining to purchases by the Class that opt out of the Settlement.

g. With respect to any member of the Class who requested exclusion from the Class and is therefore not a member of the Class, Defendants reserve all of its legal rights and defenses.

h. Merck or Glenmark shall have, in its sole and absolute discretion, the option to terminate the Settlement in its entirety in the event that the Final Approval Order, upon becoming final, does not provide for the dismissal with prejudice of all claims by any member of the Class as described in the Settlement Agreement.

14. In the event of termination of the Settlement as provided for in this Settlement Agreement, the Parties shall revert to their respective statuses as of the date and time immediately prior to execution of the Settlement Agreement.

15. **Reimbursement of the Settlement Fund Upon Termination.** If this Settlement Agreement is terminated pursuant to the provisions of Paragraph 13 above, the Escrow Agent shall return any amounts paid by Merck and Glenmark into the Settlement Fund—including any attorneys’ fees, reimbursement of expenses, or incentive award paid to Plaintiffs or Plaintiffs’ Counsel (but excluding Merck and Glenmark’s portion of incurred Notice Expenses (the “Net Settlement Fund”))—to Merck and Glenmark. Subject only to expiration of any time deposit investment(s) not to exceed ninety (90) days, the Escrow Agent shall disburse the Net Settlement Fund—including the

Settlement Fund and all interest earned on the Settlement Fund while held in escrow, excluding only Notice and Administrative Costs (including any necessary payments to the Escrow Agent for its services) that either have been properly disbursed or are due and owing, taxes and tax expenses that have been paid or that have accrued and will be payable at some later date, and attorneys' fees and costs that have been disbursed pursuant to Court order—to Merck and Glenmark in accordance with this Paragraph within fifteen (15) business days after receipt of either: (i) written notice signed by Merck and Glenmark's counsel stating that this Settlement Agreement has been terminated; or (ii) any order of the Court so directing. Any remaining portion of the Net Settlement Fund invested in time deposits not to exceed ninety (90) days shall be disbursed within ten (10) days after the expiration of such investments. If said amount or any portion thereof is not returned within such a period, then interest shall accrue thereon at the rate of ten percent (10%) per annum until the date that said amount is returned. Within ten (10) business days after written notification of a termination is sent by counsel for Defendants to Co-Lead Counsel, all attorneys' fees and costs which have been disbursed to Co-Lead Counsel pursuant to Court order shall be refunded, reimbursed, and repaid by Co-Lead Counsel to Defendants. The Escrow Agent shall apply for any tax refund owed to the Net Settlement Fund within ten (10) business days after written notification of such event is sent by counsel for Defendants to the Escrow Agent and pay the proceeds to Defendants within ten (10) business days of receipt, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund, pursuant to such written request. If the Settlement Agreement is terminated pursuant to Paragraph 13 above, any obligations pursuant to this Settlement Agreement (other than disbursement of the Net Settlement Fund to Merck and Glenmark as set forth above) shall cease immediately and the releases set forth in Paragraphs 10 and 11 shall be null and void, and any judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

**16. Preservation of Rights.** The Parties hereto agree that this Settlement Agreement, whether it becomes final or not, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party (except to the extent provided herein), shall not be deemed or construed to be an admission or evidence of any violation of any statute or law (or lack thereof), of any liability or wrongdoing by Merck and Glenmark (or lack thereof), or of the truth (or lack thereof) of any of the claims or allegations contained in the Consolidated Class Action Complaint and Demand for Jury Trial Complaint or any other pleading or document, and evidence thereof shall not be discoverable or used directly or indirectly, in any way (other than to effectuate or enforce the terms of this Settlement Agreement), whether in the Action or in any other action of proceeding. Neither this Settlement Agreement, nor any terms and provisions, nor any of the negotiations or proceedings connected with it, nor any action taken to carry out this Settlement Agreement shall be referred to, offered into evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law. 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 Merck and/or Glenmark from asserting any release or using this Settlement Agreement to offset any liability to any other parties.

**17. Taxes.**

The Parties intend that any taxes due as a result of income earned by the Settlement Fund will be paid from the Settlement Fund. Co-Lead Counsel shall be solely responsible for directing the Escrow Agent to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Fund. Further, Co-Lead Counsel shall be solely

responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Settlement Fund. Co-Lead Counsel shall be entitled to direct the Escrow Agent to pay from the Escrow Account customary and reasonable tax expenses, including professional fees and expenses incurred in connection with carrying out the Escrow Agent's or tax preparer's responsibilities as set forth in this Paragraph. Merck and Glenmark shall have no responsibility to make any tax filings related to the Settlement, 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 taxes with respect thereto unless the Settlement is not consummated and the Settlement Fund or the Net Settlement Fund is returned to Merck and Glenmark. Other than as specifically set forth herein, Merck and Glenmark shall have no responsibility for the payment of taxes or tax-related expenses. If, for any reason, for any period of time, Merck or Glenmark are required to pay taxes on income earned by the Settlement Fund, the Escrow Agent shall, upon written instructions from Merck and Glenmark with notice to Co-Lead Counsel, timely pay to Merck and Glenmark sufficient monies from the Settlement Fund to enable them to pay all taxes (state, federal, or other) on income earned by the Settlement Fund.

a. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "Administrator" of the Escrow Account shall be the Claims Administrator, who shall timely and properly file or cause to be filed on a timely basis, all tax returns necessary or advisable with respect to the Escrow Account (including without limitation all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B-2(1)).

b. The Parties and their counsel shall treat and shall at all times cause the Escrow Agent to treat, the Settlement Fund as a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. The Parties, their counsel, and the Escrow Agent agree that they will not ask the Court to take any action inconsistent with the treatment of the Escrow Account in this manner. In addition,

the Escrow Agent and, as required, the Parties shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, 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 the Escrow Agent 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 that is consistent with the Escrow Account being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1.

No portion of the settlement payment shall constitute, or shall be construed as constituting, a payment in lieu of treble damages, fines, penalties, punitive damages or forfeitures.

**18. Binding Effect.**

a. This Settlement Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and to the Releasees. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Plaintiff and their Counsel shall, upon occurrence of the Effective Date, be binding upon all Class Members, Releasers, and their respective successors and assigns.

b. With respect to any member of the Certified Class who requested exclusion from the Certified Class and is therefore not a member of the Class, Merck and Glenmark reserve all of their legal rights and defenses.

**19. Integrated Agreement.** This Settlement Agreement, together with the schedules and exhibits hereto and the documents incorporated herein by reference, contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties hereto with respect to the transactions contemplated by this Settlement Agreement, and

supersedes all prior agreements or understandings, whether written or oral, between or among any of the Parties hereto with respect to the subject matter hereof. This Settlement Agreement shall not be modified in any respect except by a writing executed by all of the Parties hereto. It is understood by the Plaintiffs and Defendants that, except for the matters expressly represented herein, the facts or law with respect to which this Settlement Agreement is entered into may turn out to be other than or different from the facts now known to each party or believed by such party to be true. Each party therefore expressly assumes the risk of the facts or law turning out to be so different and agrees that this Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law. Except as otherwise provided herein, each party shall bear its own costs and attorneys' fees.

20. **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.

21. **No Party is the Drafter.** None of the Parties hereto 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.

22. **Choice of Law.** All terms of this Settlement Agreement shall be governed by Virginia law.

23. **Consent to Jurisdiction.** Merck and Glenmark and each Class Member hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Eastern District of Virginia, Norfolk Division, for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein.

Nothing in this paragraph shall prohibit: (a) the assertion in any forum in which a claim is brought that any release herein is a defense, in whole or in part, to such claim; or (b) in the event that such a defense is asserted in such forum, the determination of its merits in that forum.

24. **Representations and Warranties.** Each party hereto represents and warrants to each other party hereto that it has the requisite authority (or in the case of natural persons, the legal capacity) to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby.

25. **Amendment; Waiver.** This Settlement Agreement shall not be modified in any respect except by a writing executed by Defendants and Co-Lead Counsel, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement.

26. **No Admission.** Nothing in this Settlement Agreement, nor in any document related to this Settlement Agreement, nor anything contained herein or therein or contemplated hereby or thereby, nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement, shall be construed as an admission or concession in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body, or any other body or authority, present or future, by Merck or Glenmark, including, without limitation, that Merck or Glenmark have engaged in any conduct or practices that violate any statute or other law.

27. **Notice.** Notice to Plaintiffs pursuant to this Settlement Agreement shall be sent by United States mail or overnight courier, and electronic mail.

If directed to Co-Lead Counsel for the Class, address notice to:

MILLER LAW LLC  
Marvin A. Miller  
145 S. Wells St., Suite 1800  
Chicago, IL 60606

MOTLEY RICE LLC  
Michael M. Buchman  
777 Third Avenue, Suite 2101  
New York, NY 10017

If directed to Merck, address notice to:

GIBSON, DUNN & CRUTCHER  
Samuel Liversidge  
Eric Stock  
333 South Grand Ave.  
Los Angeles, CA 90071

If directed to Glenmark, address notice to:

KIRKLAND & ELLIS LLP  
Devora Allon  
601 Lexington Avenue  
New York, NY 10022

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.

**28. Execution in Counterparts.** This Settlement Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the settling parties to this Settlement Agreement shall exchange among themselves original signed or scanned counterparts and a complete set of executed counterparts shall be filed with the Court.

**29. Duty Not to Encourage Exclusion or Objection.** Plaintiffs, Co-Lead Counsel, and Defendants agree that they shall not in any way encourage, promote, or solicit any Person within the definition of the Class, or their counsel, to request exclusion from the Class, to object to this Settlement, or to seek any relief inconsistent with this Settlement.

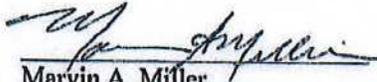
**30. Confidentiality and No Press Release.** The terms of this Settlement shall remain confidential until End-Payor Plaintiffs move for an order directing notice to the Class, unless

Defendants and Co-Lead Counsel agree otherwise, provided that the parties may disclose the terms of this Settlement to accountants, lenders, indemnitors, auditors, legal counsel, tax advisors, or consultants; or as part of any security or other disclosure required by law (as determined by Plaintiffs, Merck, or Glenmark and its counsel); or in response to a request by any governmental, judicial, or regulatory authority or otherwise required by applicable law or court order and End-Payor Plaintiffs may disclose the terms of the Settlement to any entity that has applied to serve as Notice/Claims Administrator, Escrow Administrator, or Escrow Agent, who shall abide by the terms of this paragraph. Any formal press release by a settling party regarding this Settlement prior to entry of the Final Approval Order shall be shared in advance with the other settling party, with a reasonable opportunity for comments and suggested changes. No such press release shall be made prior to the End-Payor Plaintiffs moving for an order directing notice to the Class.

**31. Return or Destruction of Confidential Materials.** Plaintiffs and Defendants agree to comply with the relevant provisions of the Protective Order entered in the Action at the final conclusion of the Action.

**32. Authorization to Enter Settlement Agreement.** The undersigned representative of Defendant represents that he or she is fully authorized to enter into and to execute this Settlement Agreement on behalf of Defendants and to effectuate the terms of this settlement Agreement. Co-Lead Counsel, on behalf of End-Payor Plaintiffs and the Class, represent that they are, subject to Court approval, expressly authorized to take all action required or permitted to be taken by or on behalf of the Class pursuant to this Settlement Agreement to effectuate its terms and to enter into and execute this Settlement Agreement and any modifications or amendments to this Settlement Agreement on behalf of the Class that they deem appropriate.

IN WITNESS WHEREOF, the Parties hereto through their fully authorized representatives  
have agreed to this Settlement Agreement as of April 19, 2023.



Marvin A. Miller  
Miller Law LLC  
145 S. Wells St., 18th Floor  
Chicago, IL 60606



Michael M. Buchman  
Motley Rice LLC  
777 Third Avenue, Suite 2100  
New York, NY 10017

*End Payor Co-Lead Class Counsel*



Samuel Liversidge  
Eric Stock  
GIBSON, DUNN & CRUTCHER  
333 South Grand Ave.  
Los Angeles, CA 90071

*Counsel for Merck*



Devora Allon  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, NY 10022

*Counsel for Glenmark*

# EXHIBIT A

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

IN RE: ZETIA (EZETIMIBE) ANTITRUST  
LITIGATION

MDL No. 2836  
No. 2:18-md-2836-RBS-DEM

This Document Relates To: All End-Payor  
Actions

**[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT  
AND PROVIDING FOR NOTICE OF SETTLEMENT**

This Court, having reviewed and considered the Settlement Agreement executed between the The City of Providence, Rhode Island, International Union of Operating Engineers Local 49 Health and Welfare Fund, Painters District Council No. 30 Health & Welfare Fund, Philadelphia Federation of Teachers Health & Welfare Fund, Sergeants Benevolent Association Health & Welfare Fund, The Uniformed Firefighters' Association of Greater New York Security Benefit Fund and the Retired Firefighters' Security Benefit Fund of the Uniformed Firefighters' Association, and United Food and Commercial Workers Local 1500 Welfare Fund (collectively, "End-Payor Plaintiffs" or "Plaintiffs") and Merck & Co., Inc.; Merck Sharp & Dohme Corp.; Schering-Plough Corp.; Schering Corp.; MSP Singapore Co. LLC (collectively "Merck"); Glenmark Pharmaceuticals, Ltd.; and Glenmark Pharmaceuticals Inc., USA incorrectly identified as Glenmark Generics Inc., USA (collectively "Glenmark"), ("Defendants") and the nationally certified Class defined in End-Payor Plaintiffs' Motion for Preliminary Approval of Proposed Settlement, Approval of the Form and Manner of Notice to the Class, and Proposed Schedule for a Fairness Hearing, ORDERS:

1. Preliminary approval of the Defendants Settlement, subject to further consideration at the Fairness Hearing described below.
2. On August 20, 2021, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, the Court certified the following End-Payor Plaintiff Class as against the Defendants:

All Third-Party Payor entities (“TPPs”) within the Brand Subclass or the Generic Subclass defined herein that, for consumption by their members, employees, insureds, participants, or beneficiaries, and not for resale, indirectly purchased, paid and/or provided reimbursement for some or all of the purchase price of Zetia or its AB-rated generic equivalents in any form, that was sold through a retail pharmacy, including mail-order pharmacies and long-term care pharmacies, in Alabama, Arizona, California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia and Wisconsin from November 15, 2014 (the “but-for generic entry date”) through November 18, 2019.

Brand Subclass: TPPs that indirectly purchased, paid and/or provided reimbursement for some or all of the purchase price of brand Zetia purchased between the but-for generic entry date and December 11, 2016, inclusive. Excluded from the Brand Subclass are Optum Health Part D Plans, Silverscript Part D Plans, Emblem Health Part D, Humana Part D Plans, Optum Health Managed Care Plans, and any TPPs that used one of these plans or OptumRx as its pharmacy benefits manager (“PBM”) during this subclass period.

Generic Subclass: TPPs that indirectly purchased, paid and/or provided reimbursement for some or all of the purchase price of generic ezetimibe purchased between the generic entry date (December 12, 2016) and November 18, 2019, inclusive.

General Exclusions: The following entities are excluded from both subclasses:

- a. Defendants and their subsidiaries and affiliates;
- b. All federal and state governmental entities except for cities, towns, municipalities, or counties with self-funded prescription drug plans;
- c. All entities who purchased Zetia or generic Zetia for purposes of resale or directly from Defendants or their affiliates;
- d. Fully-insured health plans (*i.e.*, health plans that purchased insurance from another third-party payor covering 100 percent of the plan’s reimbursement obligations to its members); and
- e. Pharmacy benefit managers.

**Also excluded from the Class are third-party payors that previously submitted timely and valid requests for exclusion. There is no new opportunity for third-party payors to request exclusion.**

3. Unless otherwise defined herein, capitalized terms referencing the Settlement Agreement shall have the meanings ascribed to those terms in each of the respective Settlement Agreements.

4. The Court previously appointed Plaintiffs The City of Providence, Rhode Island, International Union of Operating Engineers Local 49 Health and Welfare Fund, Painters District Council No. 30

Health & Welfare Fund, Philadelphia Federation of Teachers Health & Welfare Fund, Sergeants Benevolent Association Health & Welfare Fund, The Uniformed Firefighters' Association of Greater New York Security Benefit Fund and the Retired Firefighters' Security Benefit Fund of the Uniformed Firefighters' Association, and United Food and Commercial Workers Local 1500 Welfare Fund as the class representatives ("Class Representatives"). ECF Nos. 1094, 1316. The Court also previously appointed Marvin Miller of Miller Law LLC and Michael M. Buchman of Motley Rice LLC as Interim Co-Lead Counsel for the Class on August 15, 2018. ECF No. 105. The Court later appointed Messrs. Miller and Buchman Co-Lead Counsel on August 20, 2021. ECF No. 1094, 1316.

5. The Fairness Hearing shall be held before this Court on \_\_\_\_\_, 2023, at \_\_\_\_\_, before the Honorable Rebecca Beach Smith, in Courtroom \_\_ of the, United States District Court, Norfolk, Virginia, to determine: (i) whether the terms and conditions provided for in the proposed Settlement Agreement and are fair, reasonable, and adequate to the Class and should be finally approved by the Court; (ii) whether a Final Order and Judgment of Dismissal, Exhibit C to the Settlement Agreement, which, *inter alia*, dismisses the Action in its entirety with prejudice and contains releases, should be entered; (iii) whether the proposed Plan of Allocation should be approved; and (iv) the amount of reasonable attorneys' fees, costs, and expenses, if any, that should be awarded to Class Counsel and an incentive award to Class Representatives.

**Preliminary Approval of the Brand Settlement Agreement**

6. The Court finds that the proposed Settlement, which includes separate cash payments from Merck and Glenmark that collectively total Seventy Million Dollars (\$70,000,000) (the "Settlement Fund"), to be deposited into an escrow account for the benefit of the Class, in exchange for, *inter alia*, dismissal of the litigation between the Class and Defendants with prejudice and release and discharge of the Released Claims, as set forth in the Settlement Agreement, and which was arrived at by arm's-length negotiations by highly experienced counsel after formal and informal mediations, years of litigation, and after

commencement of jury selection, falls within the range of possibly approvable settlements. The proposed Settlement is, therefore, hereby preliminarily approved, subject to further consideration at the Fairness Hearing.

**Approval of the Notice Plan**

7. Members of the End-Payor Class have previously been given notice of the pendency of the litigation and the opportunity to exclude themselves from the EPP Class. Fifteen (16) members of the EPP Class ultimately requested exclusion. The Court finds that the prior notice of class certification to the EPP Class satisfied the requirements of Rule 23 and due process, and because the prior notice to the EPP Class provided an opt-out period that closed on May 10, 2022, there is no need for an additional opt-out period pursuant to Fed. R. Civ. P. 23(e)(4).

8. The Court approves, as to form and content, the notice plan (“Notice Plan”) and exhibits attached to the Declaration of Elaine Pang, and finds that the direct mailing and email distribution of the Postcard Notice<sup>7</sup> and publishing of the Summary Notice substantially in the manner and form set forth therein meet the requirements of Federal Rule of Civil Procedure 23

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<sup>7</sup> Postcard Notice, Summary Notice, Claim Forms, and the capitalized terms regarding Notice and recipients of notice in paragraphs 12, 13, and 15, below are defined in the Notice Plan.

and due process, and constitute the best notice practicable under the circumstances and shall constitute due and sufficient notice to all entitled to be noticed.

9. The Court further reserves the right to enter a Final Judgment and Order of Dismissal that approves the Settlements and dismisses the Action (as defined in the Settlement Agreements); on the merits and with prejudice regardless of whether the Court has approved the Plan of Allocation or awarded attorneys' fees and expenses or awarded the Class Representatives an incentive award.

10. The Court appoints A.B. Data, Ltd. as Notice and Claims Administrator ("Notice and Claims Administrator" or "ABD") to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

(a) Not later than 21 days after entry of this Order (the "Notice Date"), Co-Lead Counsel shall cause a link to the Summary Notice and the Claim Forms, substantially in the forms annexed as Exhibits attached to the Declaration of Elaine Pang and hosted on a website maintained by the Notice and Claims Administrator, to be emailed to all members of the End-Payor Class whose last-known email addresses can be identified with reasonable effort. Where a last-known email address is not reasonably available or where an email is returned as being undeliverable, Co-Lead Counsel shall cause a copy of the Postcard Notice providing an address, phone number and website address where members of the End-Payor Class can obtain the Notice and Claim Form, advising them of their right to object to the Settlement, and of the date and time for the Fairness Hearing to be mailed by first-class mail to all members of the End-Payor Class (as defined in the Notice) who can be identified with reasonable effort. Since End-Payor Class Members have, by earlier notice<sup>8</sup> been afforded the opportunity to opt out of the End-Payor Class and the deadline to do so expired May 10, 2022, no further opt out period shall be provided.

(b) Not later than 21 days after the issuance of this Order, Co-Lead Counsel shall cause the Summary Notice to be published once in a nationally distributed newswire, and not later than 21 days after the issuance of this Order, Co-Lead Counsel shall place a copy of the Consolidated Class Action

Complaint And Demand For Jury Trial and the Settlement Agreement (including Exhibits) on the website, <http://www.InreZetiaAntitrustLitigation.com> maintained by the Notice and Claims Administrator.

(c) Not later than 60 days after the issuance of this Order, Class Counsel shall cause to be served on Defendants' counsel and filed with the Court proof, by affidavit or declaration, of compliance with the notice requirements of this Order.

(d) Not later than 7 days prior to the Fairness Hearing, the Notice and Claims Administrator shall submit a report outlining the implementation of the Notice Plan, including how many Notices were sent, and how many Claim Forms were submitted.

11. All members of the EPP Class shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class.

12. Members of the End-Payor Class who wish to participate in the Settlement shall complete and submit a Claim Form in accordance with the instructions contained therein. Unless the Court orders otherwise, all Claim Forms must be submitted electronically by, or if mailed, postmarked no later than \_\_\_\_\_, 2023. Any member of the End-Payor Class that does not submit a timely Claim Form within the time provided shall be barred from sharing in the distribution of the proceeds of the Net Settlement Amount unless otherwise ordered by the Court.

13. Any member of the End-Payor Class which requested exclusion from the End-Payor Class set forth in the earlier Notice dated March 11, 2022, shall have no rights under the Settlement Agreement, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Defendants Settlement Agreement or the judgment.

14. Members of the End-Payor Class may enter an appearance in the Action, at their own expense, individually or through counsel of their choice. Members of the End-Payor Class who do not enter an appearance will be represented by Co-Lead Counsel.

15. Members of the End-Payor Class may appear and show cause if they have any reason why the proposed Settlement should or should not be approved as fair, reasonable, and adequate, why a judgment should or should not be entered thereon, why the Plan of Allocation should or should not be approved, why attorneys' fees and expenses should or should not be awarded, or why a service awards should or should not be provided to the Class Representatives.

16. Any member of the End-Payor Class who does not make a written objection in the manner provided in the Notices and/or appear in person or through a representative at the Fairness Hearing shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the Settlement, to the Plan of Allocation, or to any award of attorneys' fees reimbursement of expenses, and incentive award to the Class Representatives.

17. The Court appoints Valley National Bank (formerly Bank Leumi USA) to be the Escrow Agent pursuant to the terms of the Escrow Agreement entered into between Valley National Bank and Co-Lead Counsel for the End-Payor Class. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Settlement Agreement and Plan of Allocation.

18. No Releasees or Released Parties shall have any responsibility for or liability with respect to the Plan of Allocation or any application for attorneys' fees, reimbursement of expenses, or incentive award to the Class Representatives and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

19. At or after the Fairness Hearing, the Court will determine whether the Plan of Allocation and the application for attorneys' fees, reimbursement of expenses, and service awards to the Class Representatives shall be approved.

20. All reasonable expenses incurred in identifying and notifying members of the End-Payor

Class, as well as administering the Settlement Fund, including any taxes, shall be paid as set forth in the Settlement Agreement. In the event the Settlement is not approved by the Court, or otherwise fails to become effective, neither Class Representative Plaintiffs, the End-Payor Class, nor Class Counsel shall have any obligation to repay any amounts actually and properly disbursed for disseminating the notice to the End-Payor Class and related notice administration expenses, except as provided in the Settlement Agreement.

21. Neither this Order, the Settlement, nor any of their terms or provisions, nor any act performed or document executed pursuant to or in furtherance of them, nor any of the negotiations or proceedings connected with them, shall be construed as an admission or concession by any party of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind and shall not be construed as, or deemed to be evidence of, or an admission or concession that, Plaintiffs or any members of the End-Payor Plaintiff Class have suffered any damages, harm, or loss.

22. In the event that the Settlement does not become final in accordance with their terms, this Order shall be vacated and rendered null and void to the extent provided by and in accordance with the terms of the Settlement Agreement. In such event, all orders entered, and releases delivered in connection herewith shall also be null and void to the extent provided by and in accordance with the Settlement Agreement.

#### **Schedule**

23. The Court reserves the right to continue the Fairness Hearing without further notice to the End-Payor Plaintiff Class other than by ECF and posting on the website, <http://www.InreZetiaAntitrustLitigation.com>, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlements. The Court may approve the Settlement, with such modifications as may be agreed to by the parties, if appropriate, without further notice to the End-Payor Plaintiff Class other than by ECF.

24. Pending the Fairness Hearing, all members of the End-Payor Plaintiff Class are enjoined from initiating or prosecuting any actions or claims against any Releasees or Released Parties that are within the scope of the releases provided for by the Settlement Agreement.

25. The following schedule of dates shall govern the resolution of the Settlements:

EVENT:	PROPOSED DEADLINE:
Deadline for Class Counsel to provide notice to Class Members by effectuating the Summary Notice and Postcard Notice as specified in the Notice Plan	_____, 2023 [or <b>21 days</b> after entry of Preliminary Approval Order]
Deadline for Class Counsel to cause the Summary Notice to be published twice in nationally distributed, business-focused newswires	_____, 2023 [or <b>21 days</b> after entry of Preliminary Approval Order]
Deadline for Class Counsel to file affidavit of notice of emailing, mailing, and publication	_____, 2023 [or <b>30 days</b> after entry of Preliminary Approval Order]
Deadline for members of the Class to file objections to the (i) the Settlement, (ii) the Plan of Allocation, (iii) the application by Class Counsel for attorneys’ fees and/or reimbursement of expenses (collectively, the “Applications”)	_____, 2023 [or <b>60 days</b> after entry of Preliminary Approval Order]
Deadline for filing of Final Approval papers in support of (i) the Settlement, (ii) the Plan of Allocation, (iii) the application by Class Counsel for attorneys’ fees and/or reimbursement of expenses (collectively, the “Applications”) •	_____, 2023 [or <b>7 days</b> before the Fairness Hearing]
Deadline for Class Members in the Class to submit/file: • Proof of Claim and Release Forms • Objections to the Settlement, or any of the Applications for award of Attorneys’ fees, reimbursement of expenses, and incentive awards	_____, 2023
Deadline for filing reply to any opposition to the Applications for award of Attorneys’ fees, reimbursement of expenses, and incentive awards or any response to any objection(s) filed	_____, 2023

Deadline for Notice and Claims Administrator to submit report outlining implementation of the Notice Plan	_____, 2023  [or 7 days before the Fairness Hearing]
Date of Fairness Hearing	_____, 2023  [or 75 days after entry of the Preliminary Approval Order]

**IT IS SO ORDERED:**

DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Rebecca Beach Smith  
Senior United States District Judge  
Eastern District of Virginia, Norfolk Division

# EXHIBIT B

**If you are a Third-Party Payor which indirectly purchased, paid, or provided reimbursement for some or all of the price of brand Zetia or its AB-rated generic equivalents, you could receive a payment from a class action lawsuit.**

Your rights may be affected by a proposed settlement in a class action lawsuit regarding the prices paid for brand and/or generic Zetia by third-party payors filed against Defendants Merck & Co., Inc.; Merck Sharp & Dohme Corp.; Schering-Plough Corp.; Schering Corp.; MSP Singapore Co. LLC; Glenmark Pharmaceuticals, Ltd.; and Glenmark Pharmaceuticals Inc., USA incorrectly identified as Glenmark Generics Inc., USA (collectively, the “Defendants”). The case name is *In re Zetia (Ezetimibe) Antitrust Litigation*, Civil Action No. 2:18-md-2836 (E.D. Va.) (the “Lawsuit”). The Lawsuit, which is pending in the United States District Court for the Eastern District of Virginia, Norfolk Division, alleges that Defendants harmed competition and violated state antitrust, consumer protection, and unjust enrichment laws in certain U.S. states. Plaintiffs allege that Defendants unlawfully delayed the availability of allegedly less-expensive generic versions of Zetia and that Defendants’ alleged conduct caused third-party payors to pay too much for branded and generic Zetia in the states (defined below). Defendants deny that they engaged in any wrongdoing or that any party or member of the Class was damaged by Defendants’ conduct.

The Court has preliminarily approved the proposed settlement between the End-Payor Class and Defendants (the “Settlement”). The proposed Settlement will provide for the payment of \$70 million (the “Settlement Fund”) to resolve the End-Payor Class claims against Defendants. The full text of the proposed Settlement Agreement, which is dated as of April 19, 2023, is available at [www.InReZetiaAntitrustLitigation.com](http://www.InReZetiaAntitrustLitigation.com).

The Court has scheduled a hearing to decide whether to approve the Settlement, the plan for allocating the Settlement Fund to Class Members, and the request of Class Counsel for payment of attorneys’ fees, reimbursement of expenses, and incentive awards to the Class Representative Plaintiffs out of the Settlement Fund (the “Fairness Hearing”). The Fairness Hearing is scheduled for \_\_\_\_\_, 2023, at \_\_\_:\_\_\_ **a.m./p.m.**, before Judge Rebecca Beach Smith and/or Magistrate Judge Douglas E. Miller at Walter E. Hoffman United States Courthouse, 600 Granby St., Norfolk, Virginia 23510.

### **Who Is Included?**

You may be a member of the End-Payor Class if you are a third-party payor and you purchased, paid, and/or provided reimbursement for brand Zetia or its AB-rated generic equivalents in any form, that was sold through a retail pharmacy, including mail-order pharmacies and long-term care pharmacies, in Alabama, Arizona, California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia and Wisconsin from November 15, 2014 (the “but-for generic entry date”) through November 18, 2019.

A more detailed notice, including the exact End-Payor Class definitions and exceptions to End-Payor Class membership, is available at [www.InReZetiaAntitrustLitigation.com](http://www.InReZetiaAntitrustLitigation.com).

### **Your Rights and Options**

**DO NOTHING:** If you did not request exclusion from the End-Payor Class by May 10, 2022, you are a member of the End-Payor Class and by doing nothing you will remain in the End-Payor Class, but will not be entitled to share in any distribution from the Settlement Fund. You will be bound by any decision of the Court in this Lawsuit, including rulings on the Settlement.

**SUBMIT A CLAIM FORM:** If you did not exclude yourself from the End-Payor Class prior to the May 10, 2022 deadline and believe you are a Class Member, you will need to complete and return a Claim Form to obtain a share of the Net Settlement Fund. The Claim Form, and information on how to submit it, are available on the

Settlement website, [www.InReZetiaAntitrustLitigation.com](http://www.InReZetiaAntitrustLitigation.com). Claim Forms must be postmarked (if mailed) or received (if submitted online) on or before \_\_\_\_\_, 2023.

OBJECT TO THE SETTLEMENT: If you object to all or any part of the Settlement, the request for attorneys' fees, reimbursement of expenses, or the award of incentive payments to the Class Representatives, or desire to speak in person at the Fairness Hearing, you must file a written letter of objection and/or a notice of intention to speak along with a summary statement with the Court and with Co-Lead Counsel and counsel for the Defendants by \_\_\_\_\_, 2023.

### **Want More Information?**

Go to [www.InReZetiaAntitrustLitigation.com](http://www.InReZetiaAntitrustLitigation.com), call 1-877-315-0588, email [info@InReZetiaAntitrustLitigation.com](mailto:info@InReZetiaAntitrustLitigation.com), or write to *In re Zetia Antitrust Litigation*, P.O. Box 173046, Milwaukee, WI 53217.

The deadlines contained in this Notice may be amended by Court Order, so check the Settlement website for any updates. Please *do not* call the Court or the Clerk of the Court for information about the Settlement.

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

**If you indirectly purchased, paid, or reimbursed for  
branded Zetia or generic Zetia (ezetimibe) between November 15, 2014 and  
November 18, 2019,**

***You Could Get a Payment from a Class Action Lawsuit.  
A Federal Court Ordered this Class Notice.***

***YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT, SO  
PLEASE READ THIS NOTICE CAREFULLY.***

*This is not a solicitation from a lawyer. You are not being sued.*

The purpose of this Notice is to alert you of a proposed settlement in a lawsuit regarding the prices paid for brand and/or generic Zetia by third-party payors filed against Defendants Merck & Co., Inc.; Merck Sharp & Dohme Corp.; Schering-Plough Corp.; Schering Corp.; MSP Singapore Co. LLC; (collectively “Merck”); Glenmark Pharmaceuticals, Ltd.; and Glenmark Pharmaceuticals Inc., USA incorrectly identified as Glenmark Generics Inc., USA (collectively “Glenmark”) (together with Merck, the “Defendants”). The case name is *In re Zetia (Ezetimibe) Antitrust Litigation*, Civil Action No. 2:18-md-2836 (E.D. Va.) (the “Lawsuit”). The Lawsuit, which is pending in the United States District Court for the Eastern District of Virginia, Norfolk Division alleges that Defendants harmed competition and violated state antitrust, consumer protection, and unjust enrichment laws in certain U.S. states. Plaintiffs allege that Defendants unlawfully delayed the availability of allegedly less-expensive generic versions of Zetia, and that Defendants’ alleged conduct caused third-party payors to pay too much for branded and generic Zetia in the states (defined below). Defendants deny any wrongdoing.

The Court previously determined that the Lawsuit can be a class action because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. The End-Payor Class (“End-Payor Class” or “EPP Class”) is defined as follows:

All Third-Party Payor entities (“TPPs”) within the Brand Subclass or the Generic Subclass defined herein that, for consumption by their members, employees, insureds, participants, or beneficiaries, and not for resale, indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of Zetia or its AB-rated generic equivalents in any form, that was sold through a retail pharmacy, including mail-order pharmacies and long-term care pharmacies, in Alabama, Arizona, California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wisconsin from November 15, 2014 (the “but-for generic entry date”) through November 18, 2019.

**QUESTIONS? CALL 877-315-0588 OR VISIT [WWW.INREZETIAANTITRUSTLITIGATION.COM](http://WWW.INREZETIAANTITRUSTLITIGATION.COM).**

Brand Subclass: TPPs that indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of brand Zetia purchased between the but-for generic entry date and December 11, 2016, inclusive. Excluded from the Brand Subclass are Optum Health Part D Plans, Silverscript Part D Plans, Emblem Health Part D, Humana Part D Plans, Optum Health Managed Care Plans, and any TPPs that used one of these plans or OptumRx as its pharmacy benefits manager (“PBM”) during this subclass period.

Generic Subclass: TPPs that indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of generic ezetimibe purchased between the generic entry date (December 12, 2016) and November 18, 2019, inclusive.

General Exclusions: The following entities are excluded from both subclasses:

- a. Defendants and their subsidiaries and affiliates;
- b. All federal and state governmental entities except for cities, towns, municipalities, or counties with self-funded prescription drug plans;
- c. All entities who purchased Zetia or generic Zetia for purposes of resale or directly from Defendants or their affiliates;
- d. Fully-insured health plans (*i.e.*, health plans that purchased insurance from another third-party payor covering 100 percent of the plan’s reimbursement obligations to its members); and
- e. Pharmacy benefit managers.

The Court has preliminarily approved the proposed settlement between the End-Payor Class and Defendants (the “Settlement”). The proposed Settlement will provide for the payment of \$70 million (the “Settlement Fund”) to resolve the End-Payor Class’s claims against Defendants. The full text of the proposed Settlement Agreement dated as of April 19, 2023, is available at [www.InReZetiaAntitrustLitigation.com](http://www.InReZetiaAntitrustLitigation.com).

The Court has scheduled a hearing (the “Fairness Hearing”) to decide whether to approve the Settlement, the plan for allocating the Settlement Fund to members of the End-Payor Class (“Class Members”) (summarized in Question \_ below), and the request of the attorneys for the End-Payor Class for payment of attorneys’ fees, reimbursement of expenses, and incentive awards for the 8 Class Representatives, out of the Settlement Fund. The Fairness Hearing is scheduled for \_\_\_\_\_, 2023, at \_\_:\_\_ a.m./p.m., before Judge Rebecca Beach Smith and/or Magistrate Judge Douglas E. Miller at Walter E. Hoffman United States Courthouse, 600 Granby St., Norfolk, Virginia 23510.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</b>	
<b>DO NOTHING</b>	If you are a member of the End-Payor Class, by doing nothing you will remain in the End-Payor Class but will not be entitled to share in any distribution from the Settlement Fund. You will be bound by any decision of the Court in this Lawsuit, including rulings on the Settlement. <i>See Question 11.</i>
<b>SUBMIT A CLAIM FORM</b>	If you did not exclude yourself from the End-Payor Class prior to the May 10, 2022 deadline and believe you are a Class Member, and want to participate in the distribution of the Net Settlement Fund, you will need to complete and return a Claim Form to obtain a share of the Settlement Fund. The Claim Form, and information on how to submit it, are available on the Settlement website. Claim Forms must be postmarked (if mailed) or received (if submitted online) on or before _____, 2023. <i>See Question 7</i> for more information.
<b>OBJECT TO THE SETTLEMENT OR SPEAK AT THE FAIRNESS HEARING</b>	If you object to all or any part of the Settlement, request for attorneys' fees, reimbursement of expenses, or incentive awards to the Class Representatives, or desire to speak in person at the Fairness Hearing, you must file a written letter of objection and/or a notice of intention to speak along with a summary statement with the Court and with Co-Lead Counsel and counsel for the Defendant by _____, 2023. <i>See Question 10.</i>
<b>GET MORE INFORMATION</b>	If you would like more information about the Lawsuit, you can review this Notice and send questions to the Settlement Administrator and/or Co-Lead Counsel. <i>See Question 18.</i> <b>DO NOT CONTACT THE COURT OR THE DEFENDANTS IF YOU HAVE QUESTIONS REGARDING THIS NOTICE.</b>

This Notice incorporates by reference the definitions in the Settlement Agreement. The Settlement Agreement and the Court's Preliminary Approval Order are posted on the Settlement website, [www.InReZetiaAntitrustLitigation.com](http://www.InReZetiaAntitrustLitigation.com). All capitalized terms used, but not defined, shall have the same meanings as in the Settlement Agreement and the Court's Preliminary Approval Order.

**QUESTIONS? CALL 877-315-0588 OR VISIT [WWW.INREZETIAANTITRUSTLITIGATION.COM](http://WWW.INREZETIAANTITRUSTLITIGATION.COM).**

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## BASIC INFORMATION

### 1. Why did I receive this Notice?

You received this Notice because, according to available records, you may have indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price for brand Zetia or its AB-rated generic equivalents, at some point from November 15, 2014 (the “but-for generic entry date”) through November 18, 2019. A prior notice about the Lawsuit and the Court’s decision to certify the End-Payor Class was mailed to you on or about March 11, 2022. This second Notice is being sent to you because a proposed Settlement with the Defendants has been reached in this Lawsuit.

A federal court authorized this Notice because you have a right to know that you may be part of the certified End-Payor Class and about all of your options under the proposed Settlement. This Notice explains the Lawsuit and the Settlement; describes the certified Class whose rights may be affected by the Settlement; and explains your legal rights. Note that you may have received this Notice in error; simply receiving this Notice does not mean that you are definitely a member of the End-Payor Class. You may confirm that you are a member of the End-Payor Class by reviewing the criteria set forth in **Question 5** below. You may also call, email, or write to the lawyers in this case at the telephone numbers or addresses listed in **Question 12** below.

### 2. What is the Lawsuit about?

Plaintiffs, The City of Providence Rhode Island, International Union of Operating Engineers Local 49 Health & Welfare Fund, Painters District Council No. 30 Health & Welfare Fund, Philadelphia Federation of Teachers Health & Welfare Fund, The Uniformed Firefighters’ Association of Greater New York Security Fund and the Retired Firefighters’ Security Benefit Fund of the Uniformed Firefighters’ Association, Sergeants Benevolent Association Health & Welfare Fund, and United Food and Commercial Workers Local 1500 Welfare Fund (collectively, the “Plaintiffs”), filed lawsuits individually and as representatives of all persons or entities in the End-Payor Class. The Court has appointed them as Class Representatives.

Plaintiffs allege that Defendants violated state antitrust, consumer protection, and unjust enrichment laws by allegedly participating in an unlawful scheme to delay and impede the market entry of less expensive, generic versions of Zetia. Specifically, Plaintiffs allege that the Merck Defendants entered into unlawful agreement with the Glenmark Defendants, whereby the Merck Defendants agreed to pay the Glenmark Defendants in exchange for the Glenmark Defendants agreeing to delay selling their generic version of Zetia. Plaintiffs allege that they and other members of the End-Payor Class were injured by being overcharged on their Zetia branded and generic purchases during the class period resulting from Defendants’ alleged anticompetitive conduct. A copy of the End-Payor Plaintiffs’ Consolidated Class Action Complaint is available at [www.InReZetiaAntitrustLitigation.com](http://www.InReZetiaAntitrustLitigation.com).

Defendants deny all of these allegations, including that their alleged conduct violated any applicable laws or regulations. Defendants also deny that any member of the End-Payor Class was damaged or is entitled to damages or other relief.

**QUESTIONS? CALL 877-315-0588 OR VISIT [WWW.INREZETIAANTITRUSTLITIGATION.COM](http://WWW.INREZETIAANTITRUSTLITIGATION.COM).**

Following the completion of fact discovery, expert discovery, class certification, summary judgment motions, and motions determining the admissibility of testimony, and following extensive negotiations, Plaintiffs, individually and on behalf of the End-Payor Class, entered into the Settlement with Defendants. The Settlement Agreement is available for review on the Settlement website. The Settlement is not an admission of wrongdoing by Defendants or an admission by End-Payor Plaintiffs of any lack of merit in their claims.

THE COURT HAS NOT DECIDED WHETHER DEFENDANTS VIOLATED ANY LAWS. THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF PLAINTIFFS' CLAIMS OR THE DEFENSES ASSERTED BY DEFENDANTS.

### **3. Why is this Lawsuit a class action?**

In a class action, one or more entities called “Class Representatives” sue on behalf of other entities with similar claims. In this case, the Class Representatives are The City of Providence Rhode Island, International Union of Operating Engineers Local 49 Health & Welfare Fund, Painters District Council No. 30 Health & Welfare Fund, Philadelphia Federation of Teachers Health & Welfare Fund, The Uniformed Firefighters’ Association of Greater New York Security Fund and the Retired Firefighters’ Security Benefit Fund of the Uniformed Firefighters’ Association, Sergeants Benevolent Association Health & Welfare Fund, and United Food and Commercial Workers Local 1500 Welfare Fund. The Class Representatives and the entities on whose behalf they have sued together constitute the “End-Payor Class.”

The companies that have been sued are called the “Defendants.” In this case, the Defendants are Merck & Co., Inc.; Merck Sharp & Dohme Corp.; Schering-Plough Corp.; Schering Corp.; MSP Singapore Co. LLC; Glenmark Pharmaceuticals, Ltd.; and Glenmark Pharmaceuticals Inc., USA incorrectly identified as Glenmark Generics Inc., USA. In a class action lawsuit, one court resolves the issues for everyone in the Class, except for those class members who exclude themselves (*i.e.*, “opt out”) from the Class. The Court, by Order dated August 20, 2021, determined that the Lawsuit between End-Payor Class Plaintiffs and Defendants can proceed as a class action.

The case does not involve the safety or efficacy of Zetia or generic Zetia.

### **4. Why is there a Settlement with Defendants?**

The Settlement is the product of extensive negotiations between Co-Lead Counsel for the End-Payor Class and counsel for the Defendants, with mediation and after lengthy, hard-fought litigation. At the time of the Settlement, discovery was complete, motion for class certification filed, expert reports had been exchanged and experts examined, and motions for summary judgment and to determine the admissibility of testimony had been decided, and End-Payor Plaintiffs and Defendants began jury selection in April 2023. By settling, the End-Payor Class and Defendants avoid the cost and risks of trial and possible appeals. For the End-Payor Class, the Settlement, if approved by the Court, ensures that the Class Members will receive compensation for damages arising from Defendants’ alleged scheme to delay and impede the market entry of less expensive, generic versions of Zetia. Co-Lead Counsel and the Class Representatives believe that the terms of the Settlement, including payment by the Merck Defendants of

QUESTIONS? CALL 877-315-0588 OR VISIT [WWW.INREZETIAANTITRUSTLITIGATION.COM](http://WWW.INREZETIAANTITRUSTLITIGATION.COM).

\$56 million and payment by the Glenmark Defendants of \$14 million in exchange for a release of End-Payor Plaintiffs' and the End-Payor Class's claims against the Defendants, are fair, reasonable, and adequate, and in the best interests of the Class.

## WHO CAN PARTICIPATE IN THE SETTLEMENT?

To see if you are in the End-Payor Class and, if so, how you will be able to share in the Settlement Fund, you need to determine whether you may be a Class Member.

### **5. Am I part of the End-Payor Class?**

You may be a member of the End-Payor Class if, during the period between November 15, 2014 and November 18, 2019 (the "Class Period"), as a Third-Party Payor, you indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price for branded Zetia or generic Zetia in Alabama, Arizona, California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wisconsin, for consumption by yourselves, or your members, employees, insureds, participants, or beneficiaries.

Third-Party Payors are entities (besides the patient or the health care provider) that provide reimbursement for health care expenses, like prescription drug benefits. They include entities such as health insurance companies and self-insured health and welfare plans that make payments from their own funds, and other health benefit providers and entities with self-funded plans that contract with a health insurer or administrator to administer their prescription drug benefits. Third-Party Payors include such private entities that may provide prescription drug benefits for current or former public employees and/or public benefits programs, but only to the extent that such a private entity purchased brand Zetia or its AB-rated generic equivalents for consumption by its members, employees, insureds, participants, or beneficiaries.

As a Third-Party Payor, you are **NOT** a member of the End-Payor Class if you are among any of the following:

- a. Defendants and their subsidiaries and affiliates;
- b. All federal and state governmental entities except for cities, towns, municipalities, or counties with self-funded prescription drug plans;
- c. All entities who purchased Zetia or generic Zetia for purposes of resale or directly from Defendants or their affiliates;
- d. Fully-insured health plans (*i.e.*, health plans that purchased insurance from another third-party payor covering 100 percent of the plan's reimbursement obligations to its members); and
- e. Pharmacy benefit managers.

In addition, you are excluded from the Brand Subclass if you are among any of the following: Optum Health Part D Plans, Silverscript Part D Plans, Emblem Health Part D, Humana Part D Plans, Optum

**QUESTIONS? CALL 877-315-0588 OR VISIT [WWW.INREZETIAANTITRUSTLITIGATION.COM](http://WWW.INREZETIAANTITRUSTLITIGATION.COM).**

Health Managed Care Plans, and any Third-Party Payors that used one of these plans or OptumRx as its pharmacy benefits manager (“PBM”) during this subclass period.

Entities that submitted a valid exclusion request before the May 10, 2022, exclusion deadline described in the previous Notice of this Lawsuit sent to Class Members are also excluded.

If you are not sure whether you are included, you may call, email, or write to the Settlement Administrator or lawyers in this case at the telephone numbers, email addresses, or addresses listed in **Question 12** below.

## **THE SETTLEMENT BENEFITS**

### **6. What does the Settlement with the Defendants provide?**

The Merck Defendants will, within the later of 7 days after the preliminary approval of the Settlement or 60 days from April 19, 2023, pay \$56 million into an interest-bearing escrow account established by Co-Lead Counsel. The Glenmark Defendants shall pay into the escrow account the sum of Fourteen Million Dollars (\$14,000,000) the later of 7 days after preliminary approval of the settlement or April 19, 2024. The funds will be held in escrow for the benefit of the End-Payor Class (including any interest that accrues) pending the Court’s approval of the Settlement and Co-Lead Counsel’s plan to distribute the Settlement Fund to Class Members.

If the Settlement is approved by the Court and becomes final, Co-Lead Counsel will seek approval from the Court to obtain from the Settlement Fund: (i) attorneys’ fees for all class counsel of at least one-third of the Settlement Fund; (ii) reimbursement of reasonable costs and expenses incurred by Co-Lead Counsel in connection the litigation; (iii) payment for incentive awards to the Class Representative Plaintiffs in recognition of their efforts to date on behalf of the Class; (iv) and may seek additional attorneys’ fees and reimbursement of expenses under a common benefit award. The remainder after payment of the above expenses and payment of any Administration Expenses (the “Net Settlement Fund”) will be divided among Class Members that timely return valid, approved claim forms pursuant to the Plan of Allocation set forth following this Notice.

In exchange, the End-Payor Class’s claims against Defendants will be dismissed with prejudice, and Defendants will be released by Class Members from all claims concerning the subject matter of or acts, omissions, or other conduct alleged in the End-Payor Plaintiffs’ Consolidated Class Action Complaint. The full text of the release is included in the Settlement Agreement available at [www.InReZetiaAntitrustLitigation.com](http://www.InReZetiaAntitrustLitigation.com).

The Settlement may be terminated under the conditions set forth in the Settlement Agreement, paragraph 13. If the Settlement is terminated, the Lawsuit will proceed against Defendants as if the Settlement had not been reached.

## HOW YOU GET A PAYMENT: SUBMITTING A CLAIM FORM

### 7. How can I get a payment?

To be eligible to receive a payment if the Court approves the Settlement, all Class Members must complete and submit a valid Claim Form to request their *pro rata* shares of the Net Settlement Fund. You will not be responsible for calculating the amount you are entitled to receive. You can get a Claim Form at [www.InReZetiaAntitrustLitigation.com](http://www.InReZetiaAntitrustLitigation.com) or by calling 1-877-315-0588 or writing to the address below and requesting a Claim Form. Claim Forms must be received (if submitted online) or postmarked (if mailed) by \_\_\_\_\_, 2023, and may be submitted online at [www.InReZetiaAntitrustLitigation.com](http://www.InReZetiaAntitrustLitigation.com) or mailed to the address below:

In re Zetia Antitrust Litigation  
c/o A.B. Data, Ltd.  
P.O. Box 173046  
Milwaukee, WI 53217

### 8. How much will my payment be?

Each Class Member's share of the Net Settlement Fund will be based on its qualifying purchases of brand and/or generic Zetia, and will be determined according to the End-Payor Plaintiffs' proposed Plan of Allocation, if approved by the Court. Payments will be based on a number of factors, including the number of valid claims filed by all members of the End-Payor Class and the dollar value of each member of the End-Payor Class's purchases in proportion to the total claims filed. Complete details of how your recovery will be calculated are in the detailed Plan of Allocation, which can be viewed at [www.InReZetiaAntitrustLitigation.com](http://www.InReZetiaAntitrustLitigation.com).

### 9. When would I get my payment?

The Court must approve the Settlement and any appeals of that decision must be resolved before any money is distributed to Class Members. The Settlement Administrator must also complete processing of all of the Claim Forms and determine distribution amounts. This process can take several months.

QUESTIONS? CALL 877-315-0588 OR VISIT [WWW.INREZETIAANTITRUSTLITIGATION.COM](http://WWW.INREZETIAANTITRUSTLITIGATION.COM).

## OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with any part of the Settlement and/or Co-Lead Counsel's request for attorneys' fees, reimbursement of expenses, or the request for incentive awards to the Class Representatives by filing an objection.

### 10. How do I tell the Court what I think about the Settlement?

If you are a Class Member, you can ask the Court to deny approval of the Settlement by filing an objection. You may tell the Court that you object, entirely or in part, to the Settlement and/or Co-Lead Counsel's request for attorneys' fees, reimbursement of expenses, or Plaintiffs' request for incentive awards. You cannot ask the Court to order a different Settlement; the Court can only approve or reject the proposed Settlement. If the Court denies approval, no Settlement payments will be sent out and the Lawsuit against the Defendants will continue. If that is what you want to happen, you must object. You may also ask the Court to speak in person at the Fairness Hearing.

Any objection or request to speak in person at the Fairness Hearing must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Fairness Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers and/or requests to speak in person at the Fairness Hearing must: (a) include your name, address, telephone number, and signature and clearly identify the case name and number (*In re Zetia (Ezetimibe) Antitrust Litigation*, Civil Action No. 2:18-md-2836 (E.D. Va.)); (b) provide a summary statement outlining the position to be asserted and the grounds for the objection, including whether the objection applies only to you, together with copies of any supporting papers or briefs; (c) be submitted to the Court either by electronic filing via the Court's Case Management/Electronic Case Files (CM/ECF) system or by mailing it to the Clerk of the United States District Court for the Eastern District of Virginia, Norfolk Division, Walter E. Hoffman United States Courthouse, 600 Granby St., Norfolk, Virginia 23510 on or before \_\_\_\_\_, 2023; and (d) also be mailed and delivered by \_\_\_\_\_, 2023, to Co-Lead Counsel and to Defense Counsel listed in **Question 12**.

## IF YOU DO NOTHING

### 11. What happens if I do nothing at all?

If you are a Class Member and you do nothing, you will remain in the End-Payor Class and be bound by the decision in the Action and on the Settlement, but you may not participate in the Settlement as described in this Notice, if the Settlement is approved. To participate in the Settlement, you must complete, sign, and return the Claim Form before the claims filing deadline provided on the Claim Form and on the Settlement website to be eligible to receive a payment.

QUESTIONS? CALL 877-315-0588 OR VISIT [WWW.INREZETIAANTITRUSTLITIGATION.COM](http://WWW.INREZETIAANTITRUSTLITIGATION.COM).

## THE LAWYERS REPRESENTING THE CLASS

### 12. Do I have a lawyer in this case?

The law firms listed below have been appointed by the Court as Co-Lead Counsel. Co-Lead Counsel are experienced in handling similar cases against other pharmaceutical companies. Co-Lead Counsel are:

Co-Lead Counsel	
Marvin A. Miller <b>Miller Law LLC</b> 145 S. Wells St., 18 <sup>th</sup> Floor Chicago, IL 60606	Michael M. Buchman <b>Motley Rice LLC</b> 777 Third Avenue, 27 <sup>th</sup> Floor New York, NY 10017

The law firms listed below represent the Defendants:

Defense Counsel	
Samuel Liversidge Eric Stock <b>Gibson, Dunn &amp; Crutcher LLP</b> 333 South Grand Avenue Los Angeles, CA 90071	Devora Allon <b>Kirkland &amp; Ellis LLP</b> 601 Lexington Avenue New York, NY 10022

You will not be personally charged for the services of these lawyers in litigating this case against the Defendants.

### 13. Should I hire my own lawyer?

You do not need to hire your own lawyer because the lawyers appointed by the Court are working on your behalf. You may hire a lawyer and enter an appearance through your lawyer at your own expense if you so desire.

### 14. How will the lawyers be paid?

If the Court approves the Settlement, Co-Lead Counsel will ask the Court for an award of attorneys' fees of one-third (1/3) from the Settlement Fund (plus a proportionate share of the interest and any portion of the funds received from the common benefit fund to be created pursuant to Court Order), and reimbursement of litigation expenses incurred prior to the Settlement. Co-Lead Counsel will also ask for incentive awards for the Class Representatives in the aggregate sum of \$300,000.00 to be paid from the Settlement Fund for their efforts to date on behalf of the End--Payor Class. Co-Lead Counsel may also request additional attorneys' fees and reimbursement of expenses in connection with the administration and preservation of the Settlement Fund. If the Court grants Co-Lead Counsel's requests, these amounts would be deducted from the Settlement Fund. You will not have to pay these fees, expenses, and costs out

of your own pocket. The Administrative Expenses for the Settlement will also be paid out of the Settlement Fund.

Co-Lead Counsel's request for an award of attorneys' fees, reimbursement of expenses, and for incentive awards for the Class Representatives will be filed with the Court and made available for download or viewing on or before \_\_\_\_\_, 2023, on the Settlement website, and at the office of the Clerk of the United States District Court for the Eastern District of Virginia, Norfolk Division, Walter E. Hoffman United States Courthouse, 600 Granby St., Norfolk, Virginia 23510, which can be visited between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. You can tell the Court you do not agree with Co-Lead Counsel's request for attorneys' fees and expenses, or for incentive awards for the Class Representatives, by filing an objection as described in **Question 10**.

## THE FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to.

### 15. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at \_\_\_:\_\_\_ a.m./p.m. on \_\_\_\_\_, 2023, before Judge Rebecca Beach Smith and/or Magistrate Judge Douglas E. Miller in Courtroom \_ at the U.S. District Court for the Eastern District of Virginia, Norfolk Division, Walter E. Hoffman United States Courthouse, 600 Granby St., Norfolk, Virginia 23510. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to give final approval to the proposed Settlement. We do not know how long the decision will take.

The time and date of the Fairness Hearing may change without additional mailed or publication notice. For updated information on the hearing, visit [www.InReZetiaAntitrustLitigation.com](http://www.InReZetiaAntitrustLitigation.com).

### 16. Do I have to come to the hearing?

No. Co-Lead Counsel will answer questions posed by the Court. But you are welcome to attend the hearing at your own expense. If you send an objection, you do not have to appear in Court to talk about it; as long as you mail your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary. Attendance is not necessary to receive a *pro rata* share of the Settlement Fund, provided you submitted a valid and timely Claim Form.

### 17. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing, either in person or through your own attorney, if you file a request to speak in person. See **Question 10**. If you appear through your own attorney, you are responsible for paying that attorney.

QUESTIONS? CALL 877-315-0588 OR VISIT [WWW.INREZETIAANTITRUSTLITIGATION.COM](http://WWW.INREZETIAANTITRUSTLITIGATION.COM).

## GETTING MORE INFORMATION

**18. Are more details available?**

For more detailed information about this litigation, please refer to the papers on file in this litigation, which may be inspected at the Office of the Clerk, United States District Court for the Eastern District of Virginia, Norfolk Division, Walter E. Hoffman United States Courthouse, 600 Granby St., Norfolk, Virginia 23510 during regular business hours of each business day. You may also get additional information by writing to Co-Lead Counsel as indicated above (*See Question 12*), by visiting [www.InReZetiaAntitrustLitigation.com](http://www.InReZetiaAntitrustLitigation.com) (which provides copies of some key pleadings), or by contacting the Settlement Administrator, A.B. Data, Ltd., at the following:

In re Zetia Antitrust Litigation  
c/o A.B. Data, Ltd.  
P.O. Box 173046  
Milwaukee, WI 53217  
1-877-315-0588

[info@InReZetiaAntitrustLitigation.com](mailto:info@InReZetiaAntitrustLitigation.com)

**PLEASE DO NOT WRITE TO OR CALL THE COURT OR THE CLERK'S OFFICE FOR INFORMATION. INSTEAD, PLEASE DIRECT ANY INQUIRIES TO THE SETTLEMENT ADMINISTRATOR OR TO CO-LEAD COUNSEL LISTED ABOVE IN QUESTION 12.**

**DATED:** \_\_\_\_\_

**BY ORDER OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK  
DIVISION**

**QUESTIONS? CALL 877-315-0588 OR VISIT [WWW.INREZETIAANTITRUSTLITIGATION.COM](http://WWW.INREZETIAANTITRUSTLITIGATION.COM).**

# EXHIBIT C

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

IN RE: ZETIA (EZETIMIBE) ANTITRUST  
LITIGATION

MDL No. 2836  
No. 2:18-md-2836- RBS-DEM

**This Document Relates To: All End-Payor  
Actions**

**[PROPOSED] FINAL ORDER AND JUDGMENT OF DISMISSAL**

This matter came before the Court for hearing on the application of the settling parties for approval of the Settlement Agreement and the Settlement sets forth the following:

The City of Providence, Rhode Island, International Union of Operating Engineers Local 49 Health and Welfare Fund, Painters District Council No. 30 Health & Welfare Fund, Philadelphia Federation of Teachers Health & Welfare Fund, Sergeants Benevolent Association Health & Welfare Fund, The Uniformed Firefighters' Association of Greater New York Security Benefit Fund and the Retired Firefighters' Security Benefit Fund of the Uniformed Firefighters' Association, and United Food and Commercial Workers Local 1500 Welfare Fund (collectively, "Plaintiffs"), individually and on behalf of the End-Payor Plaintiff Class, and Merck & Co., Inc.; Merck Sharp & Dohme Corp.; Schering-Plough Corp.; Schering Corp.; MSP Singapore Co. LLC (collectively "Merck"); Glenmark Pharmaceuticals, Ltd.; and Glenmark Pharmaceuticals Inc., USA incorrectly identified as Glenmark Generics Inc., USA (collectively "Glenmark"), have executed a Settlement Agreement dated as of April 19, 2023. Due and adequate notice having been given of the Settlement, and the Court having previously certified the Class set forth in the Settlement Agreement between Plaintiffs, Merck and Glenmark, and having considered all papers filed and proceedings held herein, and good cause appearing,

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:**

1. Unless otherwise defined herein, capitalized terms referencing the Settlement

Agreement shall have the meanings ascribed to those terms in the Settlement Agreement, including without limitation the Class described in the Settlement Agreement.

2. This Court has jurisdiction over this Action, the parties, and all Class Members pursuant to 28 U.S.C. § 1332(d).

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court finds that the Settlement is, in all respects, fair, reasonable, adequate to, and in the best interests of the Plaintiffs and members of the EPP Class, and that the Settlement was the result of arm's-length negotiations by experienced counsel representing the interests of the Plaintiffs and the members of the EPP Class. Accordingly, the Settlement is hereby approved in all respects and shall be consummated in accordance with the terms and provisions in the Settlement Agreement. The settling parties, to the extent that they have not already done so, are hereby directed to perform the obligations set forth in the Settlement Agreement.

4. The Action and all claims contained therein, are dismissed with prejudice as against each and all of the Releasees or Released Parties, without costs or attorneys' fees recoverable under 15 U.S.C. § 15(a), except where expressly reserved in the Settlement Agreement to the benefit of Class plaintiffs. In addition, the Class will not make applications against any Releasees or Released Parties, and the Releasees and the Released Parties will not make applications against Plaintiff, the Class, or Class Counsel for fees, costs, or sanctions pursuant to Rule 11, Rule 37, Rule 45, or any other Court rule or statute, with respect to any claims or defenses in this Action or to any aspect of the institution, prosecution, or defense of this Action.

5. Once the Settlement Agreement becomes final, pursuant to its respective terms, all Released Claims of Plaintiffs and the Class Members shall be released and forever discharged by all Class Members and Releasers as against the Releasees and the Released Parties, whether or not such Class Members execute and deliver a claim form or participate in the Settlement Fund.

6. Once the Settlement Agreement becomes final, pursuant to their respective terms, all Class Members and Releasers shall be forever barred and enjoined from asserting, commencing, instituting, intervening in or participating in, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind or character (whether brought directly, in a representative capacity, derivatively, or in any other capacity) any of the Released Claims against any of the Releasees or Released Parties.

7. Once the Settlement Agreement becomes final, pursuant to and only to the extent of its respective terms, the Releasees and the Released Parties shall be deemed to have, and by operation of this Order shall have, fully, finally, and forever released, relinquished, and discharged the Plaintiffs, and the Releasers, each and all of the Class Members, and Co-Lead Counsel from all claims whatsoever arising out of, relating to, or in connection with the investigation, institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims, except for those claims brought to enforce the Settlement.

8. The Court finds that the implementation of the notice plan constituted the best notice practicable under the circumstances and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, and any other applicable law.

9. Neither any objection to this Court's approval of the Plan of Allocation submitted by Co-Lead Counsel nor to any portion of the Order regarding the attorneys' fee and expense application, nor any incentive award to the Class Representatives shall in any way disturb or affect the finality of this Final Order and Judgment of Dismissal.

10. The releases set forth in each of the Settlement Agreement shall be given full force and effect.

11. Neither the Settlement Agreement, the Settlement, any of its terms or provisions, any act performed or document executed pursuant to or in furtherance of them, nor any of the negotiations or

proceedings connected with them: (a) is or may be deemed to be or may be used as an admission of, concession or evidence of, the validity of any Released Claim, the truth of any fact alleged in the Action, the deficiency of any defense that has been or could have been asserted in the Action, or of any alleged wrongdoing, liability, negligence, or fault of any Releasees or Released Parties; or (b) is or may be deemed to be or may be used as an admission, concession or evidence of, any fault or misrepresentation or omission of, including with respect to any statement or written document attributed to, approved or made by, any of the Releasees or Released Parties in any civil, criminal, administrative, or other proceeding before any court, administrative agency, arbitration tribunal, or other body. Any of the Releasees or Released Parties may file the Settlement Agreements and/or this Final Order and Judgment of Dismissal in any other action or other proceeding that may be brought against them in order to support a defense, argument, or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense, argument, or counterclaim.

12. This Court previously directed that Notice be disseminated to Class Members. By his Declaration, Eric J. Miller of A.B. Data, Ltd., noted that the Notice Plan was implemented and that 16 members of the EPP Class requested exclusion. Those excluded entities shall not be bound by the orders of this Court and shall not participate in the Settlement, Settlement Fund, or benefits of the Settlement Agreement.

13. Without affecting the finality of this Final Order and Judgment of Dismissal in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of these Settlement; (b) disposition of the Settlement Fund; and (c) all parties in this action for the purpose of construing, enforcing, and administering the Settlement Agreement and this Final Order and Judgment of Dismissal.

14. After completion of the processing of all claims by the notice and claims administrator (the "Notice and Claims Administrator"), the Notice and Claims Administrator shall disburse the Net

Settlement Fund in accordance with the Settlement Agreement and Plan of Allocation without further order of this Court.

15. The Court finds that during the course of the Action, the settling parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11. Pursuant to and in full compliance with Rule 23 of the Federal Rules of Civil Procedure, the Court finds and concludes that due and adequate notice was directed to all Class Members advising them that: (a) Class Counsel would seek an award of attorneys' fees of up to one-third (1/3) of the Settlement Fund (plus a proportionate share of the interest and any portion of the funds received from the common benefit fund to be created pursuant to Court Order), on behalf of Class Counsel, and reimbursement of expenses incurred in connection with the prosecution of the Action not to exceed \$\_\_\_\_, Plaintiff and Class Representative would seek a compensatory incentive award not to exceed \$\_\_\_\_,000; and (b) Class Members had a right to object to such application(s). A full and fair opportunity was given to all members of the EPP Class to be heard with respect to the application for the award of attorneys' fees and expenses. The Court finds and concludes that the requested fee award is reasonable and awards attorneys' fees equal to \_\_\_\_of the Settlement Fund (\$70,000,000), plus a proportionate share of any interest earned on the Settlement Fund and amounts derived from the common benefit fund, plus reimbursement of expenses in the amount of \$\_\_\_\_, both to be paid from the Settlement Fund pursuant to the Settlement Agreement, upon entry of this Order, and awards Plaintiffs and the Class Representatives aggregate compensatory incentive award of \$\_\_\_\_, to be paid pursuant to the terms of the Settlement Agreement and allocated among the Class Representatives by Co-Lead Counsel.

16. Pursuant to and in full compliance with Rule 23 of the Federal Rules of Civil Procedure, the Court finds and concludes that due and adequate notice was directed to all Class Members advising them of the Plan of Allocation and of their right to object, and a full and fair opportunity was given to all members of the EPP Class to be heard with respect to the Plan of Allocation. The Court finds

that the formula for the calculation of the claims of authorized claimants, which is set forth in the notice of pendency and proposed settlement of class action sent to members of the EPP Class (the “Notice”), provides a fair and reasonable basis upon which to allocate among members of the EPP Class the proceeds of the Settlement Fund established by the Settlement Agreement, with due consideration having been given to administrative convenience and necessity. The Court hereby finds and concludes that the Plan of Allocation set forth in the Notice is in all respects fair and reasonable and the Court hereby approves the Plan of Allocation.

17. All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Final Order and Judgment of Dismissal, pursuant to their terms.

18. This Final Order and Judgment dismissing with prejudice all EPP Class members’ claims against Defendants shall be final and appealable pursuant to Fed. R. Civ. P. 54(b), there being no just reason for delay.

DATED: \_\_\_\_\_

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The Honorable Rebecca Beach Smith  
Senior United States District Judge  
Eastern District of Virginia, Norfolk Division