UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	)	**MDL 2804**
	)	
	)	**Case No. 1:17-md-2804**
	)	
THIS DOCUMENT RELATES TO:	)	**Judge Dan Aaron Polster**
	)	
ALL THIRD PARTY PAYOR ACTIONS	)	

THIRD PARTY PAYOR PLAINTIFFS' MOTION FOR: (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT WITH ALLERGAN, JANSSEN, TEVA, AND SETTLING PHARMACIES; AND (2) AWARD OF ATTORNEYS' FEES AND EXPENSES AND SETTLEMENT CLASS REPRESENTATIVE SERVICE AWARDS

Third Party Payor Plaintiffs and Settlement Class Representatives Cleveland Bakers and Teamsters Health and Welfare Fund; Pipe Fitters Local Union No. 120 Insurance Fund; Pioneer Telephone Cooperative, Inc. Employee Benefits Plan; American Federation of State, County and Municipal Employees District Council 37 Health & Security Plan; Louisiana Assessors' Insurance Fund; United Food and Commercial Workers Health and Welfare Fund of Northeastern Pennsylvania; and Sheet Metal Workers Local No. 25 Health & Welfare Fund ("Settlement Class Representatives" or "TPP Plaintiffs"), on behalf of themselves and the proposed Settlement Class[1] they represent, respectfully move this Court to enter an Order:

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[1] Unless otherwise noted, capitalized terms herein have the definitions set forth in the four "Settlement Agreements." *See* ECF 6600-2 (Class Action Settlement Agreement among Third Party Payors and the Allergan Defendants), 6600-3 (Class Action Settlement Agreement among Third Party Payors and the Janssen Defendants), 6600-4 (Class Action Settlement Agreement

- Granting final approval of the class action settlements ("Settlement" or "Settlements"), between TPP Plaintiffs and Defendants Allergan, Janssen, Teva, CVS, Walgreens, and Walmart ("Settling Defendants"),[2] under Rule 23(e)(2) of the Federal Rules of Civil Procedure;

- Appointing Paul J. Geller and Mark J. Dearman of Robbins Geller Rudman & Dowd LLP; Elizabeth J. Cabraser and Eric B. Fastiff of Lieff Cabraser Heimann & Bernstein, LLP; and James R. Dugan, II of The Dugan Law Firm, APLC as Settlement Class Counsel and appointing Mr. Geller, Ms. Cabraser, and Mr. Dugan as Co-Lead Settlement Class Counsel;

- Confirming the appointment of Settlement Class Representatives Cleveland Bakers and Teamsters Health and Welfare Fund; Pipe Fitters Local Union No. 120 Insurance Fund; Pioneer Telephone Cooperative, Inc. Employee Benefits Plan; American Federation of State, County and Municipal Employees District Council 37 Health & Security Plan; Louisiana Assessors' Insurance Fund; United Food and Commercial Workers Health and Welfare Fund of Northeastern Pennsylvania; and Sheet Metal Workers Local No. 25 Health & Welfare Fund;

- Awarding Settlement Class Counsel's requested attorneys' fees and expenses under Fed. R. Civ. P. 23(h);

- Awarding Settlement Class Counsel's requested Settlement Class Representative service awards;

- Entering judgment dismissing the TPP Actions by Settlement Class Members, coordinated under MDL No. 2804, with prejudice as to the Settling Defendants and directing

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among Third Party Payors and the Teva Defendants), and 6600-5 (Class Action Settlement Agreement among Third Party Payors and CVS, Walgreens, and Walmart Defendants).

[2] Each Settling Defendant is defined here as set forth in Section I of its respective Settlement Agreement.

Settlement Class Members to promptly dismiss the other Actions not coordinated under MDL No. 2804 with prejudice as to the Settling Defendants, in both instances without costs, except as provided in the Settlement Agreements;

- Discharging and releasing the Released Entities from all Released Claims;
- Permanently enjoining the institution and prosecution by Settlement Class Members and Releasors of any other action against the Released Entities in any forum or jurisdiction asserting Claims in any way related to the Released Claims;
- Discharging and releasing Settlement Class Representatives, Settlement Class Members, and their counsel of all claims, as provided in Section IX.L. of the Settlement Agreements; and
- Reserving and continuing exclusive jurisdiction over the Settlements, including the Escrow Account, the Escrow Agent, Settlement Class Counsel as the Escrow Account's tax administrator, and all future proceedings concerning the administration, consummation, and enforcement of the Settlement Agreements.

TPP Plaintiffs submit herewith a [Proposed] Order Granting TPP Plaintiffs' Motion for Final Approval of Class Action Settlement and for Attorneys' Fees and Expenses and Settlement Class Representative Service Awards, for each of the four settlements ("Final Approval Orders"). Subject to, and without waiving, their Walk-Away Rights set forth in the Settlement Agreements, the Settling Defendants do not oppose entry of the Final Approval Orders.

This motion is supported by the following Memorandum of Points and Authorities and the accompanying Joint Declaration of Elizabeth J. Cabraser and Paul J. Geller in Support of Third Party Payor Plaintiffs' Motion for: (1) Final Approval of Class Action Settlement with Allergan, Janssen, Teva, and Settling Pharmacies; and (2) Award of Attorneys' Fees and Expenses and Settlement Class Representative Service Awards ("Joint Decl.") and the Exhibit thereto.

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MEMORANDUM OF POINTS AND AUTHORITIES

TPP Plaintiffs Cleveland Bakers and Teamsters Health and Welfare Fund; Pipe Fitters Local Union No. 120 Insurance Fund; Pioneer Telephone Cooperative, Inc. Employee Benefits Plan; American Federation of State, County and Municipal Employees District Council 37 Health & Security Plan; Louisiana Assessors' Insurance Fund; United Food and Commercial Workers Health and Welfare Fund of Northeastern Pennsylvania; and Sheet Metal Workers Local No. 25 Health & Welfare Fund, respectfully submit this Memorandum of Points and Authorities in support of their Motion for Final Approval of Class Action Settlements and for Attorneys' Fees, Expenses, and Service Awards, between TPP Plaintiffs and Defendants Allergan, Janssen, Teva, CVS, Walgreens, and Walmart, and request entry of the Final Approval Orders.

I. INTRODUCTION

These settlements resolve claims by TPP Plaintiffs and Settlement Class Members against Settling Defendants for their alleged role in the nationwide opioid crisis. In consideration for Settlement Class Members' release of those claims – and for the amounts TPPs paid and/or costs incurred for opioids and/or for treatment, services, or procedures related to the use of, misuse of, addiction to, and/or overdose from opioids – Settling Defendants will pay, collectively, $180 million, inclusive of any and all fees, expenses, and service awards ("Settlement Amount").[3] After the Effective Date, the Settlement Amount shall not be subject to reduction, and no funds may be returned to the Settling Defendants. Settlement Class Members' claims will be paid pursuant to the Plan of Allocation described in the Expert Report of Professor Meredith Rosenthal Regarding Allocation of Settlement Proceeds (ECF 6600-6). Under the Plan of Allocation, any Settlement

[3] As detailed in their respective Settlement Agreements, the Settling Defendants shall pay: $10 million (Allergan); $40 million (Janssen); $45 million (Teva); and $85 million (CVS, Walgreens, and Walmart).

Class Member filing a valid claim prior to the end of the claims period will be paid its net allocative share, after the Court's final approval of the Settlement and absent any pending appeals. As noted herein, the allocation and claims process are significantly simplified and expedited because they incorporate previously approved plans and procedures from earlier TPP class settlements.

II. SETTLEMENT NOTICE AND ADMINISTRATION SATISFIES RULE 23(c)(2)

Pursuant to the Amended Orders Granting TPP Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Direction of Notice Under Federal Rule of Civil Procedure 23(e) (ECF 6607 (Allergan), 6608 (Janssen), 6609 (Teva), and 6610 (Pharmacies)), Interim Settlement Class Counsel on July 13, 2026, filed with the Court proof of dissemination of the Notice to Settlement Class Members (ECF 6630). As detailed in the Declaration of Michael J. Heuring Regarding Dissemination of Notice, A.B. Data mailed the Postcard Notice to 43,154 entities in its TPP Database, sent 1,589 emails to TPPs and their representatives with available email addresses, caused digital banner ads to appear on certain websites, disseminated a press release version of the Notice via *PR Newswire*, maintained the settlement website (www.TPPOpioidSettlement.com), and operated a case-specific, toll-free telephone number with an interactive voice response system and live operators. *See* ECF 6630-1. Initial responses from TPPs have been positive and encouraging, with no objections or opt-outs received to date, ahead of the objection and opt-out deadline on August 13, 2026. Joint Decl. ¶12.

The TPP Settlement Class is an ascertainable, and previously ascertained, class that has been successfully notified of two previous opioids-related class settlements (with the Distributor Defendants and McKinsey) in notice programs that two courts (this Court, and the Northern District of California) have found to satisfy Rule 23(c)(2) best practicable notice requirements. ECF 5869 at 9 (finding the same Court-approved notice in the TPP-Distributors settlement "fully complied in all respects with the requirements of Fed. R. Civ. P. 23 and due process"); [Updated]

Order Granting Final Approval of Class Action Settlement, Award of Attorneys' Fees and Expenses and Class Representative Service Awards, *In re McKinsey & Co., Inc. Nat'l Prescription Opiate Consultant Litig.*, No. 3:21-md-02996-CRB (N.D. Cal. Aug. 5, 2024), ECF 739 at 2 (nearly identical notice to the TPP class there comported with Rule 23 and due process and "was reasonably calculated under the circumstances to apprise the [s]ettlement [c]lass members of the pendency of this [a]ction"). The notice program for the Settlements here followed these approved notice programs via the same administrator – A.B. Data – updated as appropriate. It uses both direct notice to the Class Members, using their current contact information, and features the TPP settlement website, which includes all pertinent documents, orders, schedules, and deadlines.

Like the two prior TPP notice programs on which it is modeled, the current notice program easily meets due process and Rule 23 requirements.

III. ARGUMENT

A. The Court Should Certify the Settlement Class Under Rule 23(e)(2)

The Court has already found that "it will likely be able to certify, under Rule 23(e)(2), the proposed Settlement Class as defined . . . for settlement purposes only, because the Class and its representatives likely meet all relevant requirements of [Rules 23(a) and 23(b)(3)]." *See, e.g.*, ECF 6607 at 5.[4] TPP Plaintiffs analyzed these requirements in their Motion for Preliminary Approval (ECF 6600) and briefly summarize them again below.

1. The Settlement Class Meets All Requirements of Rule 23(a)

Rule 23(a) requires numerosity, commonality, typicality, and adequacy. The Sixth Circuit has also adopted an implicit ascertainability requirement for classes certified under Rule 23(b)(3).

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[4] Unless otherwise noted, all emphasis is added and citations are omitted.

See In re Nat'l Prescription Opiate Litig., 2021 WL 320754, at *3 (N.D. Ohio Feb. 1, 2021) (citing *Cole v. City of Memphis*, 839 F.3d 530, 541 (6th Cir. 2016)).

Rule 23(a)(1): Numerosity requires that the class be "so numerous that joinder of all members is impracticable[.]" Fed. R. Civ. P. 23(a)(1). Here the Settlement Class contains over 40,000 TPPs, easily satisfying numerosity. *See, e.g.*, *Snelling v. ATC Healthcare Servs. Inc.*, 2012 WL 6042839, at *5 (S.D. Ohio Dec. 4, 2012) (a class of 40 or more is generally sufficiently numerous); *Rotuna v. W. Customer Mgmt. Grp., LLC*, 2010 WL 2490989, at *3 (N.D. Ohio June 15, 2010) (1,800-member class easily satisfied numerosity).

Rule 23(a)(2): Commonality requires that class members share common questions of law or fact. To assess commonality, courts consider whether there is a common contention that, if resolved, would address all claims "in one stroke." *McKnight v. Erico Int'l Corp.*, 655 F. Supp. 3d 645, 656-57 (N.D. Ohio 2023) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). Here, TPPs' claims are rooted in a core set of common questions about Settling Defendants' alleged conduct. These questions are the same across the Settlement Class because they relate to each Settling Defendant's knowledge and actions. They are thus questions that can be fairly resolved for all Settlement Class Members at once.

Rule 23(a)(3): Typicality requires "the claims or defenses of the representative parties [to be] typical of the claims or defenses of the class[.]" Fed. R. Civ. P. 23(a)(3). A named plaintiff's claim is typical if "it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007) (cleaned up). Here, typicality is again satisfied because TPPs' claims arise from Settling Defendants' same alleged conduct and legal duties to prevent diversion within the prescription opioid supply chain, creating a clear nexus between TPP Plaintiffs' claims and those of the Settlement Class Members.

Rule 23(a)(4): Adequacy requires "the representative parties [to] fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). In the Sixth Circuit, there are two criteria for determining adequacy: "(1) the representative must have common interests with the unnamed members of the class; and (2) it must appear that the representative will vigorously prosecute the interests of the class through qualified counsel." *McKnight*, 655 F. Supp. 3d at 657 (quoting *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 524 (6th Cir. 1976)).

The seven appointed Settlement Class Representatives are plaintiffs in actions centralized in this MDL; four are TPP Bellwether Plaintiffs, two were initial briefing bellwethers, and one amended its case to serve as a preservation class complaint tolling TPP claims against Defendants. They have no interests antagonistic to Settlement Class Members and will continue to protect the Settlement Class's interests in overseeing administration of the Settlement and through any appeals. The Settlement Class Representatives understand their duties, have agreed to consider the interests of absent Settlement Class Members, and have reviewed and uniformly endorsed the Settlements' terms. The Settlement Class Representatives have further demonstrated their adequacy by participating actively in the case, and each Settlement Class Representative has expressed continued willingness to protect the Settlement Class until the Settlement is approved and administration completed. Joint Decl. ¶¶25-26. Moreover, as demonstrated throughout this litigation, Interim Settlement Class Counsel have undertaken the ongoing pleading, briefing, investigation, discovery work, effort, and expense of the TPP cases in this MDL. Over the course of the more than eight years since filing their clients' complaints, Interim Settlement Class Counsel have demonstrated their willingness to devote whatever resources are necessary to reach a successful outcome. They, too, satisfy Rule 23(a)(4). *Id.* ¶¶15-17, 21-22.

2. The Settlement Class Meets the Requirements of Rule 23(b)(3)

Predominance: "To meet the predominance requirement [under Rule 23(b)(3)], a plaintiff must establish that issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject to only individualized proof." *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 544 (6th Cir. 2012) (cleaned up). The Settlement Class can be maintained under Rule 23(b)(3) because questions that turn on generalized proof predominate over questions that affect only individual TPPs. TPPs' claims depend, first and foremost, on common questions regarding Settling Defendants' alleged conduct. TPP Plaintiffs also allege a common, unifying injury that, like every Settlement Class Member's injury, allegedly arises from the inordinate increase in opioid sales and diversion nationwide that began with the 1996 launch of OxyContin. These questions, capable of resolution with the same evidence for all TPPs, are the type of questions perfectly suitable for class-wide adjudication. *See Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016). And, while the extent of individual Settlement Class Members' damages may vary in degree, that variance does not defeat a finding of predominance for the Settlement Class as a whole. *See McKnight*, 655 F. Supp. 3d at 658 (citing *Hicks v. State Farm Fire & Cas. Co.*, 965 F.3d 452, 460 (6th Cir. 2020)).

Superiority: The Rule 23(b)(3) superiority requirement concerns whether a class action is a better method than individual litigation for adjudication of a claim. *See Pfaff v. Whole Foods Mkt. Grp. Inc.*, 2010 WL 3834240, at *7 (N.D. Ohio Sept. 29, 2010). From an efficiency standpoint, class treatment here is far superior to the litigation of thousands of individual TPP cases, each of which would have to prove the same wrongful conduct to establish Settling Defendants' wrongful conduct and would offer the same or similar evidence. Given that

Settlement Class Members number in the tens of thousands, a class-wide settlement avoids the possibility of just as many lawsuits with potentially inconsistent rulings and results. Moreover, because some TPPs are quite small, their damages would likely pale against the costs of litigating cases against sophisticated defendants like Allergan, Janssen, and Teva, let alone three of the largest retail pharmacies in the United States. Class-wide resolution of Settlement Class Members' claims solves both of those problems and is thus favorable compared to other available means of adjudication.

Ascertainability: Rule 23(b)(3) classes in the Sixth Circuit must also meet an implied ascertainability requirement, *see Sandusky Wellness Ctr., LLC v. ASD Specialty Healthcare, Inc*., 863 F.3d 460, 466 (6th Cir. 2017), and must include a class definition that is "sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member [of the proposed class,]" *Young*, 693 F.3d at 538. Here, Settlement Class Members can be (and have been) identified based on their status as TPPs that provide healthcare and pharmacy benefits to eligible plan participants and beneficiaries, and that paid for certain prescription drugs and opioid use disorder treatment, services, or procedures for beneficiaries of their plans in the Class Period. Moreover, the TPP settlement classes with which Interim Settlement Class Counsel are experienced, including the prior TPP-Distributors class settlement in MDL 2804, have demonstrated that TPP classes are readily ascertainable. The TPP Class Members have successfully been notified of prior opioid-related class settlements and have filed claims.

For the reasons set forth above, the Court should find that the Settlement Class and its Settlement Class Representatives meet all relevant requirements of Rule 23(a) and (b)(3) for settlement purposes.

B. The Settlement Is Fair, Reasonable, and Adequate Under Rule 23(e)(2)

A court may approve a proposed class settlement only "after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate . . . ; and (D) the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2); *see also McKnight*, 655 F. Supp. 3d at 661. The Settlement, and each of the four settlements individually, satisfies all four of these factors. In the Sixth Circuit, additional considerations guide the Rule 23(e)(2) inquiry: "(1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest." *Int'l Union, United Auto., Aerospace, & Agric. Implement Workers of Am. v. Gen. Motors Corp.*, 497 F.3d 615, 631 (6th Cir. 2007) ("*UAW*"). However, while the *UAW* factors "might have relevance on any particular set of facts[,] [w]here they do not, there is no occasion to consider them." *McKnight*, 655 F. Supp. 3d at 661. Thus, while all of the *UAW* factors may not be relevant to the facts of the settlement at issue here, TPP Plaintiffs note that the Settlement does nonetheless satisfy both the *UAW* factors and the Rule 23(e)(2) factors.

1. Settlement Class Representatives and Interim Settlement Class Counsel Have Adequately Represented the Class Under Rule 23(e)(2)(A)

Rule 23(e)(2)(A) is "redundant of the requirements of Rule 23(a)(4) and Rule 23(g)[.]" 4 William B. Rubinstein et al., *Newberg & Rubenstein on Class Actions* §13:49 (6th ed. 2026). Here, Interim Settlement Class Counsel have prosecuted this action and its fair resolution with vigor and dedication and have fought hard to protect the interests of the Settlement Class as evidenced by the significant compensation available through this Settlement and through the prior class settlement with Distributors. To achieve this outcome, Interim Settlement Class Counsel undertook significant efforts to uncover the facts at issue and engaged in robust Rule 12 motion practice, submitting thorough and successful opposition briefs to Defendants' motion to dismiss and certify the Order for appeal in the *Cleveland Bakers* case. Likewise, the Settlement Class Representatives played an integral role in the litigation by closely consulting with counsel throughout the process. Settlement Class Representatives have also further amended their complaints to conform with the best new evidence in the MDL and briefed important issues related to the Court's management of these cases, and TPP Bellwether Plaintiffs have served numerous subpoenas, negotiated production of claims data with third parties and Defendants, propounded and responded to discovery requests, and engaged in significant discovery negotiations with Settling Defendants. Moreover, the seven appointed Settlement Class Representatives have each worked with counsel to review and evaluate the terms of the proposed Settlement Agreements, and each believes that the Settlement is fair, reasonable, and adequate for the many reasons explained herein. Each Settlement Class Representative has also expressed its continued willingness to protect the Settlement Class until settlement administration is completed. *See* Joint Decl. ¶¶25-26. Accordingly, both Settlement Class Representatives and Interim Settlement Class Counsel satisfy Rule 23(e)(2)(A).

2. The Settlement Is the Product of Good Faith, Informed, Arm's-Length Negotiations Under Rule 23(e)(2)(B)

Rule 23(e)(2)(B) requires that the parties negotiate the settlement at arm's length, which inquiry "aims to root out . . . 'collusive settlements.'" *Newberg* §13:50; *UAW*, 497 F.3d at 631. Here, resolution was achieved by way of good faith, informed, and arm's-length negotiations between experienced counsel with an understanding of the strengths and weaknesses of their respective positions. Joint Decl. ¶¶7-8. Prior to settling, the parties exchanged briefing across several cases, including the *Cleveland Bakers* case, the TPP Bellwether cases, and the numerous case tracks in this MDL (as well as in state courts), which has informed the parties' understanding of their strengths and weaknesses. Settlement Class Representatives who are TPP Bellwether Plaintiffs additionally obtained, collected, reviewed, and produced claims data and documents. Where so much information has already been exchanged, "a court may assume that the parties have a good understanding of the strengths and weaknesses of their respective cases and hence that the settlement's value is based upon such adequate information." *Newberg* §13:49.

Settlements such as this, resulting from formal mediations conducted by experienced mediators, indicate the absence of fraud or collusion. *See Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 277 (6th Cir. 2016); *Waggoner v. U.S. Bancorp*, 2016 WL 7474408, at *3 (N.D. Ohio Dec. 29, 2016). The parties' mediations with Mr. Fouad Kurdi were preceded and followed by years of active litigation, and the 2025 mediations proved successful only after many months of continued, hard-fought negotiations via Mr. Kurdi. Joint Decl. ¶¶7-8. Further, the proposed Settlement does not include any indication of collusive negotiations, such as a clear sailing provision, and no portion of the Settlement Funds would revert to Settling Defendants even if this Court were to award no attorneys' fees.

3. The Relief Provided to the Settlement Class is Adequate Under Rule 23(e)(2)(C)

In assessing whether the relief provided to the Settlement Class is adequate, the Court must take into account: "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)[.]" Fed. R. Civ. P. 23(e)(2)(C).

Costs, risks, and delay of trial: First, the $180 million Settlement Amount is substantial in light of "the costs, risks, and delay of trial and appeal[.]" Fed. R. Civ. P. 23(e)(2)(C)(i). This Court, having supervised, managed, and adjudicated claims and defenses in the Opioids MDL for nearly a decade, needs no tutorial on the litigation risks these cases present: in confronting the novel, tragic (and hopefully unique) fact pattern of the nationwide opioids epidemic, counsel must innovate and adapt available legal theories in the attempt to redress this epidemic in the courts. The one constant in opioids cases is that the opioids litigation is unique; success – on either side – is invariably uncertain. This factor has driven and justified every settlement in the opioids litigation to date, and it applies equally here. This Settlement not only avoids the clear obstacles present in litigating and trying individual TPP cases but assures that Settlement Class Members timely receive compensation only a short time after the Court turned once again to long-stayed claims by the TPPs. Even if individual TPPs achieved successful judgments, the years of delay in achieving that result, on top of the years the TPPs have been stayed from litigating their claims, would only further injure TPP Plaintiffs and Settlement Class Members. Settlement is the more prudent and expeditious route. Moreover, the Settlement serves the public interest in resolving a nationwide class action to benefit TPPs and to conserve the Court's resources by properly avoiding trial and appeals in this already long-standing MDL.

Effectiveness of the proposed method of distributing relief to the Class: The next factor considers "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims[.]" Fed. R. Civ. P. 23(e)(2)(C)(ii). This consideration requires the Court to ensure, *inter alia*, that claims processing: (1) facilitates filing legitimate claims; and (2) is not unduly demanding. *See* Fed. R. Civ. P. 23(e) advisory committee's note to 2018 amendment. Under this factor, Settlement Class Members must also be treated equitably relative to each other. This is accomplished through Dr. Rosenthal's Plan of Allocation (ECF 6600-6), which is based on neutral, objective criteria, is the product of extensive and informed investigation and analysis, and will ensure a fair distribution of the Settlement Funds. Dr. Rosenthal is a preeminent TPP testifying economic expert, and she is thoroughly familiar with the operation of the healthcare industry and the TPPs' role and costs in the delivery of healthcare to their beneficiaries.

With respect to the method of processing class member claims, A.B. Data is a highly qualified Notice and Claims Administrator. A.B. Data has demonstrated success in administering numerous national TPP settlements, including the recent class settlement with Distributors, and will undoubtedly be an effective Notice and Claims Administrator in this action. Thus far, A.B. Data has successfully disseminated Notice (*see* ECF 6630-1), with no objections or opt-outs received to date. Joint Decl. ¶¶11-13. And, even so, after the Effective Date, there will be no reversions of the Settlement Funds to Settling Defendants because all Settlement Funds money, net of fees, expenses, and service awards, shall be distributed to the Settlement Class.

<u>Terms of attorneys' fees</u>: As discussed further below in Section D.1, the Settlement is also fair, reasonable, and adequate with respect to the "terms of any proposed award of attorney's fees, including timing of payment[.]" Fed. R. Civ. P. 23(e)(2)(C)(iii). Interim Settlement Class Counsel has requested 20% of the Settlement Funds, which is modest in comparison to other percentage-of-the-fund requests both in this Circuit and nationwide. And the Court's ultimate decision as to whether to award attorneys' fees, expenses, and Settlement Class Representative service awards does not impact or terminate the underlying Settlement. The terms of Interim Settlement Class Counsel's fee request thus satisfy Rule 23(e)(2)(C)(iii) and should be approved.

Absence of side agreements: The fairness, reasonableness, and adequacy of a settlement must also consider "any agreement required to be identified under Rule 23(e)(3)[.]" Fed. R. Civ. P. 23(e)(2)(C)(iv). Under Rule 23(e)(3), "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal." Here, where the only such agreements are the four Settlement Agreements, there is no risk that "related undertakings . . . may have influenced the terms of the settlement[,]" and this sub-factor supports the adequacy of relief. *See* Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2003 amendment.

4. The Settlement Treats Settlement Class Members Equitably Relative to Each Other Under Rule 23(e)(2)(D)

This factor "ensure[s] that similarly situated class members are treated similarly[.]" *Newberg* §13:56. In evaluating the fairness of a class settlement, Ohio district courts also ensure that the distribution of settlement proceeds is equitable. "Equity does not dictate that the proceeds must be shared on a pro-rata basis, so long as the ultimate distribution is fair, reasonable, and adequate." *Harsh v. Kalida Mfg., Inc.*, 2021 WL 4145720, at *7 (N.D. Ohio Sept. 13, 2021). Here, similarly to *Harsh*, each qualified claimant's share of the Settlement is "based upon their calculated damages," *id.*, turning on actual claims data and ARCOS data. No Settlement Class Member receives preferential treatment under the Settlement because each Settlement Class Member is entitled to a *pro rata* portion of the Settlement Funds based on the Plan of Allocation, which provides that any Settlement Class Member that files a valid claim prior to the end of the claims period, after final approval by the Court and absent pending appeals, will be paid its net allocative share.

In fact, the Plan of Allocation here is identical to the plan the Court approved in connection with the prior TPP-Distributors class settlement; just as the Plan of Allocation treated Class Members equitably there, so it does here. In connection with their motion for final approval of the

TPP-Distributors settlement and as further support that the Plan of Allocation was equitable, Interim Settlement Class Counsel submitted the Declaration of Professor William B. Rubenstein, which provides additional information on allocation approaches in opioid settlements, including the TPP-Distributors class settlement. *See* ECF 5694-2. Interim Settlement Class Counsel submit Professor Rubenstein's updated declaration here, reaffirming the Plan of Allocation. *See* Joint Decl. Ex. 1 ("Rubenstein Decl."). Professor Rubenstein, a Professor at Harvard Law School and leading national expert on class action law, describes the MDL 2804 allocation formula, its use in the *In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation*, MDL 2996 (N.D. Cal.), political subdivision class action settlement and in the *In re National Prescription Opiate Litigation*, MDL 2804 (N.D. Ohio), TPP class settlement with Settling Distributors, and its data-driven parallels with the *McKinsey* TPP class action settlement. *See* Rubenstein Decl. ¶¶3-4, Ex. A. ¶¶1-34. Professor Rubenstein explains how the prior MDL 2804 settlements informed the *McKinsey* TPP settlement and the TPP-Distributors class settlement and offers further support for the legitimacy of the proposed allocation formula used here, Rubenstein Decl. ¶3, Ex. A ¶¶35-47 – an allocation formula that is by now the law of the case, Rubenstein Decl. ¶5. In fact, Professor Rubenstein notes "the present situation is even better for class members than the earlier allocations" because the claims process has been streamlined – allowing Class Members to rely on their claims submissions in the prior two TPP settlements (*i.e.*, *McKinsey* and Settling Distributors). Rubenstein Decl. ¶5. In sum, Professor Rubenstein finds that the proposed allocation formula is data driven and consistent across the Class, ties Class Member recoveries to the harms alleged in the lawsuit, raises no red flags under Rule 23(e)(2), and has already been found to "[meet] the requirements of Rule 23(e)(2)(D)'s equitable principle." *Id.* at ¶3.

The Settlement thus satisfies Rule 23(e)(2)(D).

C. The Court Should Appoint Settlement Class Counsel Under Rule 23(g)(1)

Under Rule 23(g)(2), a court may appoint an applicant as class counsel "only if the applicant is adequate under Rule 23(g)(1) and (4)." In appointing Interim Settlement Class Counsel under Rule 23(g)(3), as well as Interim Co-Lead Settlement Class Counsel, the Court considered the time, effort, and resources that Ms. Cabraser, Mr. Geller, Mr. Dugan, Mr. Dearman, Mr. Fastiff, and their three firms have expended in representing the Settlement Class, as well as their cumulative decades of experience in litigating and settling class actions on behalf of both other plaintiffs in this MDL and TPP plaintiffs in a variety of other cases. Moreover, Interim Co-Lead Settlement Class Counsel are all Court-appointed members of the Plaintiffs' Executive Committee, and Mr. Geller and Ms. Cabraser are Court-appointed members of the Settlement Negotiating Committee. Joint Decl. ¶¶5, 15. The Court appointed Interim Settlement Class Counsel to fairly and adequately represent the interests of the Settlement Class. *See, e.g.*, ECF 6607 at 4. It should now confirm Mr. Geller, Ms. Cabraser, Mr. Dearman, Mr. Fastiff, and Mr. Dugan as Settlement Class Counsel and designate Ms. Cabraser, Mr. Geller, and Mr. Dugan as Co-Lead Settlement Class Counsel.

D. The Court Should Approve Settlement Class Counsel's Requested Fees and Expenses Under Rule 23(h), as Well as the Requested Settlement Class Representative Service Awards

1. The Requested Attorneys' Fees Are Reasonable Under Rule 23(h)

Rule 23(h) governs the award of "reasonable" attorneys' fees and nontaxable costs in class actions. Where, as here, "litigation leads to the creation of a common fund, district courts apply a two-part analysis to assess the reasonableness of an attorneys' fee request." *In re E. Palestine Train Derailment*, 2024 WL 4370003, at *5 (N.D. Ohio Sept. 27, 2024) (citing *Harsh*, 2021 WL 4145720, at *8). The Court first exercises "discretion" in selecting "the appropriate method to calculate the fees, using either the percentage-of-the-fund approach or the lodestar approach." *Id.*

The Court must then "consider six factors, known as the *Ramey* factors, to assess the reasonableness of the fee." *Id.* (citing *Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 436 F. App'x 496, 498 (6th Cir. 2011)). The *Ramey* factors are:

> (a) the value of the benefits rendered to the class; (b) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (c) whether the services were undertaken on a contingent fee basis; (d) the value of the services on an hourly basis; (e) the complexity of the litigation; and (f) the professional skill and standing of all counsel.

Id. (citing *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1194-97 (6th Cir. 1974)). Courts at their discretion may, and often do, consider other factors, such as fees awarded in other common fund cases, although none of these factors is alone dispositive. *See id.*

Interim Settlement Class Counsel are applying for attorneys' fees of 20% of the $180 million Settlement Amount (that is, fees of $36 million), with this application inclusive of the common benefit assessment due under the Court's Ongoing Common Benefit Order (ECF 4428), plus their reimbursable expenses and service awards. "It is not abnormal for negotiated attorneys' fee awards to comprise 20% to 30% of the total award." *Does 1-2 v. Déjà Vu Servs., Inc.*, 925 F.3d 886, 898 (6th Cir. 2019). The requested fee award is thus at the lower end of the range of attorneys' fees regularly deemed reasonable by the Sixth Circuit; *see also*, *e.g.*, *McKnight*, 655 F. Supp. 3d at 663 (approving attorneys' fees at 32.6% of settlement fund); *Brent v. Midland Funding, LLC*, 2011 WL 3862363, at *19 (N.D. Ohio Sept. 1, 2011) (approving attorneys' fees at 29% of settlement amount and collecting cases). Moreover, around the country, "the most common percentages awarded by federal district courts nationwide using the percentage method were 25%, 30%, and 33%, with nearly two-thirds of awards between 25% and 35%, and with a mean award of 25.4% and a median award of 25%." *E. Palestine*, 2024 WL 4370003, at *13 (citing Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical

L. Stud. 811 (2010)). Settlement Class Counsel's requested 20% fee is, thus, well below the national average of percentages awarded in percentage-method cases and is the same percentage this Court awarded in the TPP-Distributors class settlement (ECF 5869 at 13-14).

Next, as analyzed below, Settlement Class Counsel's requested attorneys' fee award satisfies the six *Ramey* factors.

1. Value of the Benefits Rendered to the Class: This, the first *Ramey* factor, is "widely regarded as the most important factor" and concerns "the number of individuals affected by the underlying allegations and the total settlement reached." *E. Palestine*, 2024 WL 4370003, at *9 (cleaned up). Here, the Settlement Class comprises tens of thousands of TPPs across the country, and Settlement Class Members will receive equitable, *pro rata* distributions in direct relation to the harms they incurred as a result of Settling Defendants' alleged conduct. The $180 million Settlement Amount is an excellent value for the Settlement Class. This amount reflects compensation between one group of the MDL 2804 plaintiffs (TPPs) and two groups of MDL 2804 defendants (manufacturers and pharmacies), and, given this scope, the Settlement's value is proportional to the other settlements reached in MDL 2804 and to the TPP class settlement in *McKinsey* ($78 million).

2. Society's Stake in Rewarding the Attorneys Who Achieved These Benefits: This *Ramey* factor also weighs in favor of Settlement Class Counsel's requested fee award. "Encouraging qualified counsel to bring inherently difficult and risky but beneficial class actions like this case benefits society." *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 534 (E.D. Mich. 2003). MDL 2804 is one of the largest and most complex MDLs yet encountered by a federal district court; under the leadership of this Court, numerous proceedings, trials, and settlements have progressed and benefitted countless individuals, organizations, governments,

and, now, TPPs, all of which have felt the effects of the unprecedented public health crisis that has been the opioid epidemic. This gargantuan effort depended upon the efforts of many counsel, and public policy thus strongly supports the requested attorneys' fees. Not only have Settlement Class Counsel in this case undertaken significant risk, time, and effort in prosecuting this litigation, but Settlement Class Counsel have been involved in the larger MDL 2804 for many years. "Attorneys who agree to champion large and complex class actions like this one 'serve a benefit to society and the judicial process by enabling . . . claimants to pool their claims and resources' to 'achieve a result they could not obtain alone.'" *E. Palestine*, 2024 WL 4370003, at *11 (quoting *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 1029, 1043 (S.D. Ohio 2001)). Settlement Class Counsel's fee request – again, at the lower end of the range of percentage-of-the-fund fees typically awarded in common-fund cases in this Circuit – will ensure that adequate incentives exist for lawyers such as Settlement Class Counsel to continue to take on and prosecute complex cases like this one. *See id.*

3. <u>Whether Settlement Class Counsel's Services Were Rendered on a Contingency Fee Basis</u>: The third *Ramey* factor is "an important factor in determining the fee award" and is satisfied here. *Stanley v. U.S. Steel Co.*, 2009 WL 4646647, at *3 (E.D. Mich. Dec. 8, 2009). Settlement Class Counsel prosecuted this action on a contingent-fee basis from the beginning of this action, and throughout the progression of the TPP cases, there has been a risk that Settlement Class Counsel would not recover for the extensive time and resources they have devoted. Thus, this factor weighs strongly in favor of granting Settlement Class Counsel's fee request.

4. <u>The Value of Settlement Class Counsel's Services on an Hourly Basis</u>: "Given the preference in the Sixth Circuit for using the percentage-of-the-fund method to evaluate attorneys' fees . . . , consideration of this fourth [*Ramey*] factor—which courts sometimes refer to as a

'lodestar crosscheck'—is not required." *E. Palestine*, 2024 WL 4370003, at *11 (collecting cases). Nevertheless, courts may consider "summaries of Class Counsel's hourly billing records . . . to determine the reasonableness of the percentage award." *Id.* As the Court is aware, the undersigned Settlement Class Counsel and their firms have spearheaded the litigation of TPP claims in MDL 2804 since its inception eight years ago. Throughout the course of this MDL, they have advanced substantial TPP costs and invested thousands of hours in TPP-specific work, including the drafting, amendment, and defense of the TPP briefing bellwether complaint; TPP discovery; commencing and completing the TPP bellwether selection process; designing the TPP bellwether case tracks; negotiating, mediating, and settling the instant case with the six large Settling Defendants and their sophisticated counsel (together with the prior class settlement with three large distributors); and preserving the TPPs' class allegations. This time, together with additional time incurred by other counsel to the TPP Bellwether Plaintiffs, counsel who performed duly authorized work specifically for the TPPs in connection with law, briefing, and settlement, and others, is reasonable given the complexity and novelty of this case.

5. <u>The Complexity of the Litigation</u>: The TPP cases, situated within the larger MDL 2804, are very factually and legally complex, and this Settlement involves, on one side, a Settlement Class of tens of thousands of TPPs and, on the other, three sophisticated manufacturer defendants and three of the largest retail pharmacies in the country. Moreover, as detailed above and in the Motion for Preliminary Approval (ECF 6600), this Settlement is the result of two mediations and months of ongoing negotiations via a highly skilled mediator, Mr. Kurdi, and follows years of initial investigation, briefing, and discovery. The Settlement is a complex piece of an even more complex whole, which further weighs in favor of granting Settlement Class Counsel's attorneys' fee request.

6. The Professional Skill and Standing of All Counsel: Interim Settlement Class Counsel without doubt satisfy this last *Ramey* factor. They have diligently investigated and litigated this case (as well as numerous other case tracks in MDL 2804), and they have further extensive experience in litigating and settling TPP class actions in this MDL and in other cases across the country, like *McKinsey*. Courts also consider the "quality of opposing counsel" in this *Ramey* factor, *In re Delphi Corp. Sec., Deriv. & "ERISA" Litig.*, 248 F.R.D. 483, 504 (E.D. Mich. 2008); they, too, have demonstrated high-quality and zealous representation of the Settling Defendants. The ability of both sets of equally matched counsel to negotiate a favorable result for the Settlement Class speaks to the competence and professionalism of everyone involved.

Lastly, several additional considerations weigh in favor of the reasonableness of the attorneys' fee request. Any attorneys' fees and expenses awarded by the Court will be paid from the Settlement Funds only after the Court grants Final Approval and the judgment becomes final. The common benefit portion of any fees awarded shall be allocated by the existing Fee Panel among applicant firms that it determines did work that inured to the common benefit. The remaining amount awarded shall be allocated by Co-Lead Settlement Class Counsel among firms actively litigating on behalf of the Settlement Class, with any appeals to such allocation going to Special Master Cohen – an approach commonly permitted in this Circuit. *See, e.g.*, *E. Palestine*, 2024 WL 4370003, at *13 (finding that "Co-Lead Class Counsel, 'who are most familiar with the work done by each firm and each firm's overall contribution to the litigation,' are best suited to apportion these fees among the firms involved") (quoting *In re Auto. Refinishing Paint Antitrust Litig.*, 2008 WL 63269, at *7 (E.D. Pa. Jan. 3, 2008)). These are the same procedures previously approved by this Court in the TPP-Distributors class settlement.

For all of the reasons above, the Court should award Settlement Class Counsel's requested attorneys' fees.

2. The Requested Expenses Are Reasonable Under Rule 23(h)

With respect to expenses, "'awards are customary when litigants have created a common settlement fund for the benefit of a class.'" *Id.* (quoting *Delphi*, 248 F.R.D. at 504). "In determining whether requested expenses are compensable in this common fund, the Court should consider 'whether the particular costs are the type routinely billed by attorneys to paying clients in similar cases.'" *Id.* (quoting *Cardizem*, 218 F.R.D. at 535).

Here, Interim Settlement Class Counsel's expense award is comprised of routine expenses billed by attorneys in related cases. Counsel advanced these expenses without reimbursement or any guarantee of reimbursement. In total, Interim Settlement Class Counsel and counsel working for the benefit of TPPs in this MDL have incurred expenses in an amount not to exceed $1,570,205.89 while prosecuting this case on behalf of the Settlement Class. These expenses have included, for example, expert costs, eDiscovery database hosting, data vendor costs, filing fees, telephone charges, and online legal research. Joint Decl. ¶23.

3. The Settlement Class Representative Service Awards Are Reasonable

"'[S]ervice awards are common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by plaintiffs.'" *E. Palestine*, 2024 WL 4370003, at *6 (quoting *Daoust v. Maru Rest., LLC*, 2019 WL 2866490, at *6 (E.D. Mich. July 3, 2019)). In determining whether to grant service awards, courts consider factors such as a class representative's "actions to protect the class, the degree to which the class has benefitted, . . . the ultimate recovery to the class, and the sums awarded in similar cases." *Id.* (citing 5 William B. Rubinstein et al., *Newberg on Class Actions* §17:13 (5th ed. 2019)).

Interim Settlement Class Counsel request service awards of $50,000 to the four Settlement Class Representatives that are TPP Bellwether Plaintiffs and $10,000 to the three other Settlement Class Representatives. The seven Settlement Class Representatives all undertook considerable time and effort in assisting with the prosecution of this litigation, and their efforts have significantly advanced the protections afforded to and benefits that will be received by all other Settlement Class Members. The total service award amount of $230,000 is a small fraction (0.13%) of the total $180 million Settlement Amount. The requested service awards are thus reasonable compensation for Settlement Class Representatives' time and effort.

IV. CONCLUSION

For the foregoing reasons, TPP Plaintiffs respectfully request that final approval of the settlements be granted, pursuant to the criteria and procedures of Fed. R. Civ. P. 23(e), and in accordance with the terms set forth herein.

<u>Certificate of Compliance with Local Rule 7.1(f)</u>

Pursuant to Local Rule 7.1(f), the undersigned hereby certifies that the Memorandum in Support of Third Party Payor Plaintiffs' Motion for Final Approval of Class Action Settlements and for Attorneys' Fees and Expenses and Service Awards complies with the page limitations (30) established for complex track cases.

DATED: July 24, 2026

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that, on July 24, 2026, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system. Copies will be served upon counsel of record by, and may be obtained through, the Court's CM/ECF system.

/s/ Peter H. Weinberger
Peter Weinberger