

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

<b>IN RE: CARDIZEM CD</b>	)	<b>MASTER FILE</b>
<b>ANTITRUST LITIGATION</b>	)	<b>NO. 99-MD-1278</b>
	)	
<b>This document relates to:</b>	)	<b>MDL NO. 1278</b>
	)	
<b>DUANE READE</b>	)	<b>Case No. 99-CV-73870</b>
<b>LOUISIANA WHOLESALE</b>	)	<b>Case No. 99-CV-73259</b>
	)	
	)	

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT is made and entered into as of the 13th day of August 2002, by and between: (1) defendants Aventis Pharmaceuticals, Inc. (“Aventis”) and Andrx Pharmaceuticals, Inc. (“Andrx”) (Aventis and Andrx each a “Defendant,” and collectively the “Defendants”); and (2) plaintiffs in the class actions *Louisiana Wholesale Drug Co., Inc. v. Hoechst Marion Roussel, Inc., et al.*, Case No. 99-CV-73259; and *Duane Reade, Inc. v. Hoechst Marion Roussel, Inc., et al.*, Case No. 99-CV-73870 ), which were consolidated under Case No. 99-MDL-1278 (Edmunds, J.) (the “Class Action”);

WHEREAS, Plaintiffs have alleged, among other things, that the Agreement between Defendants Aventis and Andrx dated September 24, 1997 was illegal under Section 1 of the Sherman Act, 15 U.S.C. §1, and caused Plaintiffs and other members of the Direct Purchaser Class (as defined in the Notice of Pendency of Class Action, approved by the Court on November 26, 2001) to incur significant damages;

WHEREAS, Defendants deny each and every one of Plaintiffs' allegations of unlawful conduct and damages and have asserted a number of defenses to Plaintiffs' claims;

WHEREAS, Plaintiffs and Defendants agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Defendants or of the truth of any of the claims or allegations alleged in the Class Action or actions consolidated therein;

WHEREAS, arm's-length settlement negotiations have taken place between counsel for Plaintiffs and Defendants, and this Settlement Agreement, which embodies all of the terms and conditions of the settlement between Defendants and the Direct Purchaser Class Plaintiffs, both individually and on behalf of the Direct Purchaser Class, has been reached, subject to the final approval of the Court;

WHEREAS, Plaintiffs' counsel have concluded, after extensive discovery and investigation of the facts and after carefully considering the circumstances of the Class Action, including the claims asserted in the complaints filed in this Action and the possible legal and factual defenses thereto, that it would be in the best interests of the Direct Purchaser Class to

enter into this Settlement Agreement in order to avoid the uncertainties of this particularly complex litigation; and to assure a benefit to the Direct Purchaser Class and further, that Plaintiffs' counsel consider the settlement set forth herein to be fair, reasonable, and adequate and in the best interests of the Direct Purchaser Class;

WHEREAS, Defendants have concluded, despite their belief that they are not liable for the claims asserted and have good defenses thereto, that they will enter into this Settlement Agreement solely to avoid the further expense, inconvenience and burden of this protracted litigation, and the distraction and diversion of their personnel and resources, and thereby to put to rest this controversy with valued business customers, and to avoid the risks inherent in uncertain complex litigation; and

WHEREAS, the Court certified a class consisting of the following members on November 26, 2001:

All persons (or assignees of such persons) who at any time during the period July 9, 1998 through June 23, 1999 (the "Class Period") directly purchased Cardizem CD from HMRI [now, Aventis Pharmaceuticals, Inc.]; and who also, after the first generic version of Cardizem CD entered the market on June 23, 1999, either: (1) purchased one or more generic versions of Cardizem CD, or (2) obtained increased discounts for their direct purchases of Cardizem CD. Excluded from the class are Defendants and their officers, directors, management and employees, subsidiaries, or affiliates.

Also excluded from the class are those entities who have already opted out of the class, on or before the opt-out deadline of January 25, 2002 ordered by the Court, including plaintiffs in the actions *CVS Meridian, Inc., et al. v. Hoechst Marion Roussel, Inc., et al.*, Case No. 99-CV-75036 in MDL No. 1278 and *Kroger Co., et al. v. Hoechst Marion Roussel, Inc., et al.*, Case No.

99-CV-73735 in MDL No. 1278.

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

1. **Definitions.** When used anywhere in this Settlement Agreement the following terms shall be defined as explained in this section:

- (a) “Andrx” shall mean defendant Andrx Pharmaceuticals, Inc.;
- (b) “Aventis” shall mean defendant Aventis Pharmaceuticals, Inc. (formerly known as Hoechst Marion Roussel, Inc.);
- (c) “Defendant” shall mean either Andrx or Aventis. “Defendants” shall mean both Andrx and Aventis;
- (d) “Class Actions” shall mean the class actions *Louisiana Wholesale Drug Co., Inc. v. Hoechst Marion Roussel, Inc., et al.*, Case No. 99-CV-73259; and *Duane Reade, Inc. v. Hoechst Marion Roussel, Inc., et al.*, Case No. 99-CV-73870, which were consolidated under Case No. 99-MDL-1278 (Edmunds, J.);
- (e) “CVS Action” shall mean the action captioned, *CVS Meridian, Inc., et al. v. Hoechst Marion Roussel, Inc., et al.*, Case No. 99-CV-75036 consolidated in MDL No. 1278;

(f) “Kroger Action” shall mean the action captioned *Kroger Co., et al. v. Hoechst Marion Roussel, Inc., et al.*, Case No. 99-CV-73735 consolidated in MDL No. 1278;

(g) “Direct Purchaser Class” or “Class” or “Direct Purchaser Class Plaintiffs” or “Plaintiffs” shall mean the class certified by the Court in the Class Actions as follows:

All persons (or assignees of such persons) who at any time during the period July 9, 1998 through June 23, 1999 (the “Class Period”) directly purchased Cardizem CD from HMRI [now, Aventis Pharmaceuticals, Inc.]; and who also, after the first generic version of Cardizem CD entered the market on June 23, 1999, either: (1) purchased one or more generic versions of Cardizem CD, or (2) obtained increased discounts for their direct purchases of Cardizem CD. Excluded from the class are Defendants and their officers, directors, management and employees, subsidiaries, or affiliates.

Also excluded from the Class are those entities who have already opted out of the Class on or before the opt-out deadline of January 25, 2002 ordered by the Court;

(h) “MOU” shall mean the Memorandum of Understanding entered into among the parties as of July 1, 2002, a copy of which is attached hereto as Appendix A.

(i) “MDL 1278” shall mean the litigation captioned In Re: Cardizem CD Antitrust Litigation, Master File No. 99-MD-1278, plus any and all related cases and actions consolidated or coordinated with that litigation for discovery or other purposes.

- (j) "Escrow Agreement" shall mean the escrow agreement entered into among the parties on July 1, 2002, a copy of which is attached hereto as Appendix B.
- (k) "Settlement Fund" shall mean the sum of One Hundred and Ten Million Dollars (\$110,000,000) which Defendants collectively have paid into an escrow account pursuant to the Escrow Agreement, plus any interest earned.
- (l) "Mediator" shall mean Professor Eric Green of Resolutions LLC.

2. **Reasonable Best Efforts to Effectuate This Settlement and Motion for Preliminary Approval.**

(a) Counsel for the undersigned agree to recommend approval of this Settlement Agreement by the Court and to undertake their reasonable best efforts, including all steps and efforts detailed in this Settlement Agreement and the MOU, and any other steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Settlement Agreement.

(b) Direct Purchaser Class Plaintiffs shall file with the Court a motion for preliminary approval of the settlement. Defendants shall have a reasonable opportunity to review the motion papers in advance of filing.

(c) Direct Purchaser Class Plaintiffs shall file the motion for preliminary approval no earlier than September 17, 2002.

In the event that the Court preliminarily approves the settlement, Plaintiffs shall, in

accord with the order of preliminary approval, provide Class members with notice of the settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs' counsel will recommend notice to the Class by means of (i) direct mail; and (ii) publication in not more than two trade publications.

3. **Motion for Final Approval and Entry of Final Judgment.** If the Court preliminarily approves this Settlement Agreement, counsel for the Direct Purchaser Class Plaintiffs shall submit a motion for final approval of this Settlement Agreement by the Court, after appropriate notice to the Class, and shall seek entry of an order and final judgment in a form as follows:

- (a) finally approving this Settlement Agreement and its terms as being a fair, reasonable and adequate settlement as to Plaintiffs and the Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms;
- (b) directing that the Class Actions, as well as all of the claims and causes of action asserted therein, be dismissed with prejudice, and, except as provided for herein, without costs;
- (c) reserving exclusive jurisdiction of the Court over the settlement and this Settlement Agreement, including the administration and consummation of this settlement; and
- (d) determining pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal shall be entered as final and appealable.

4. **Conditions to Finality of the Settlement Agreement.** This Settlement Agreement shall become final upon the occurrence of all of the following:
- (i) final approval of the Settlement Agreement by the Court without:
    - (a) any modification of Paragraphs 4-10, and 12-14 (excluding any modification of the provisions of those paragraphs concerning incentive awards payable to the named Plaintiffs from the Settlement Fund, disbursement of costs, fees and/or expenses from the Settlement Fund, or of any dates or time periods by which a party must act pursuant to the Settlement Agreement, MOU or Escrow Agreement, subject to subsection (d) below); (b) any modification of anything else in this Settlement Agreement that affects the terms and scope of the releases set forth in Paragraph 12 or Defendants' ability to assert the releases; (c) any modification of anything else in this Settlement Agreement that affects the amount of money paid by the Defendants pursuant to the MOU and Paragraphs 5 and 7 of this Settlement Agreement; and (d) without any material modification of anything else in this Settlement Agreement, in accordance with Rule 23(e) of the Federal Rules of Civil Procedure;
  - (ii) entry, as provided for in Paragraph 3 herein, is made of the final judgment of dismissal with prejudice as to Defendants against all Direct Purchaser Class Plaintiffs and members of the Direct Purchaser Class who have not excluded themselves from the Class Actions before the January 25, 2002 opt-out deadline ordered by the Court; and
  - (iii) (A) the time for appeal from the Court's approval of this Settlement Agreement as described in (i) hereof and/or entry of a final judgment as described in (ii) hereof has expired or, (B) if appealed, either such appeal shall have been dismissed prior to resolution by the Court or approval of this Settlement Agreement and the final judgment shall have been affirmed in their entirety by the court to which such appeal has been taken and the Court's approval and final judgment or such affirmance shall have become no longer subject to further appeal or review.
5. **Settlement Fund.** Pursuant to the provisions of the MOU, Defendants

collectively have paid the sum of One Hundred and Ten Million Dollars (\$110,000,000) into an escrow account (the "Settlement Fund"), in a proportion to which they have agreed and which is known to the Mediator, held and administered by Prudential Securities, Inc., an escrow agent mutually agreed to by Plaintiffs and Defendants. The escrow account has been established and shall be administered pursuant to the Escrow Agreement. The Settlement Fund is the total amount, subject to Paragraph 7 of this Settlement Agreement, that Defendants will pay under this Settlement Agreement or in connection with the Class Actions in relation to the Direct Purchaser Class Plaintiffs, including without limitation, Direct Purchaser Class Plaintiffs' attorneys' fees and costs, any Court-approved awards to named Plaintiffs for acting as Class representatives, and payment of any and all administrative and notice expenses associated with this litigation or Settlement. It is intended that the Settlement Fund be treated as a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1 and that any taxes due as a result of interest earned by the Settlement Fund will be paid from the Settlement Fund. All interest earned on the Settlement Fund shall be added to, and shall be deemed to constitute part of, the Settlement Fund. The Settlement Fund and all interest earned by the Settlement Fund shall be for the benefit of the Direct Purchaser Class Plaintiffs, less reasonable attorneys' fees, any incentive payments awarded by the Court to the Class representatives and expenses approved by the Court, subject only to the provisions of this Settlement Agreement.

6. **Return of the Settlement Fund and Nullification of Releases.** In the event that this Settlement Agreement does not become final as required by Paragraph 4, the Settlement Fund, including any and all interest earned thereon, shall be returned to the Defendants in the

same proportion with which they contributed to the Settlement Fund as described in Paragraph 5, less any costs to be deducted pursuant to the terms of the Escrow Agreement, and any release pursuant to Paragraph 12 below shall be of no force or effect. Subject to the provisions of Paragraph 13 of this Settlement Agreement, the MOU, and the Escrow Agreement regarding the return of the Settlement Fund, the Settlement Fund shall be returned to the Defendants immediately after one of the following events: (a) the Court denies preliminary approval to the Settlement Agreement without allowing for a motion for final approval; or (b) the Court denies final approval to the Settlement Agreement without allowing the parties to address any issues or concerns raised by the Court (subject to Paragraph 4 above); or (c) an Appellate Court denies approval to the Settlement Agreement without allowing the parties to address any issues or concerns raised by the Court (subject to Paragraph 4 above); or (d) the Settlement Agreement does not otherwise become final as defined in Paragraph 4.

7. **Adjustments to Settlement Fund.** If Defendants settle with the plaintiffs in the CVS Action or the Kroger Action, or with any other private entity that has filed an action claiming damages for direct purchases of Cardizem CD which has been consolidated in these multidistrict proceedings (MDL No. 1278) (collectively, the "Opt-Out Plaintiffs"), in exchange for releases equivalent to that given by the Plaintiffs, at a better rate per purchase for the percentage of purchases, consistent with the principles set forth in the Court's class determination decision, than those Opt-Out Plaintiffs represent, than is reflected in this Settlement Agreement, Defendants shall make up the difference to the Direct Purchaser Class in the manner described below. Nothing herein affects the right or ability of Defendants to conduct

business and make agreements with any actual or prospective customer, including any of the Opt-Out Plaintiffs, so long as it is done without the actual intent of circumventing this provision. Reference to Defendants in this paragraph shall mean each Defendant treated separately.

(a) Pursuant to the provisions of the MOU, the Mediator (1) has determined or will determine a safe harbor of minimum and maximum percentages of purchases consistent with, the principles set forth in the Court's class certification decision (Order No. 24) within which any settlement between a Defendant (or Defendants) and any and all of the Opt-Out Plaintiffs will not trigger an obligation under this paragraph to pay more money to the Direct Purchaser Class Plaintiffs; and (2) shall determine whether any proposed settlement between any Defendant or Defendants and the Opt-Out Plaintiffs falls within that safe harbor, and if it does not fall within that safe harbor, the Mediator will determine what payment the Defendant or Defendants will be required to pay the Direct Purchaser Class Plaintiffs to make up the difference, if they eventually effectuate that proposed settlement. The parties agree to be bound by such determinations. These determinations shall be kept confidential by the Plaintiffs and Defendants and shall not be disclosed in any way to anyone not a party to this Settlement Agreement, except that disclosure may be made to the Court under seal in the event that a party is required to enforce the Mediator's determination.

(b) The parties further agree that the Mediator shall determine any dispute concerning the percentage of purchases consistent with the principles set forth in the Court's class determination decision (Order No. 24) and such determination shall be final and binding

between that Defendant (or Defendants) and the Plaintiffs.

(c) In making the determinations described above in sub-sections (a) and (b) for each Defendant separately, the Mediator shall use the proportion referred to in paragraph 5. If Defendants desire, the determinations above can be made on a joint basis.

8. **Full Satisfaction; Limitation of Interest and Liability.** Members of the Class who have not timely excluded themselves from the Class Actions on or before the opt-out deadline of January 25, 2002 ordered by the Court shall look solely to the Settlement Fund for settlement with and satisfaction against Defendants of all claims that are released hereunder. Certain Class members have purported to assign all or a portion of their claims (the "Assigned Claims"). Members of the Class and their representatives (the term "representatives" for these purposes only excludes assignees solely to the extent Assigned Claims are preserved herein) shall not under any circumstances be entitled to any further compensation from Defendants with respect to any Assigned Claims, and such claims shall be considered released by the Direct Purchaser Class Plaintiffs to the full extent provided by Paragraph 12 below. In the event the settlement becomes final pursuant to Paragraph 4, the Settlement Fund will fully satisfy any and all Released Claims as defined in Paragraph 12. Except as provided by order of the Court, no Class member shall have any interest in the Settlement Fund or any portion thereof. Defendants shall have no liability with respect to disbursements from the Settlement Fund pursuant to any Court-approved plan of allocation.

9. **Reimbursement of Costs, Fees, and Expenses.** The Direct Purchaser Class

Plaintiffs and their counsel will be reimbursed and indemnified solely out of the Settlement Fund for all expenses including, but not limited to, the costs of notice of this settlement to Class members. Defendants shall not be liable for any costs, or fees or expenses of any of Plaintiffs' 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.

10. **Disbursements from Settlement Fund.** If this Settlement Agreement becomes final pursuant to the provisions of Paragraph 4 hereof, the Settlement Fund shall be distributed to Plaintiffs and Direct Purchaser Class members as ordered by the Court. In addition, disbursements for the costs and expenses of Class notice, distribution and administration of the Settlement Fund, together with attorneys' fees, incentive payments to Class representatives and reasonable expenses awarded by the Court, shall be made from the Settlement Fund. Defendants will not oppose such disbursement of the Settlement Fund.

11. **Attorneys' Fees, Expenses and Costs.** Direct Purchaser Class Plaintiffs' counsel intend to seek attorneys' fees in an amount up to 30% of the Settlement Fund, plus reimbursement of reasonable costs and expenses incurred in the prosecution of this action. Defendants agree to take no position with respect to the application by Direct Purchaser Class Plaintiffs' counsel for the attorneys' fees and expense payments set forth above. Defendants agree, subject to any order by the Court, that Plaintiffs' counsel will be paid their awarded attorneys' fees and costs within five (5) business days after entry of the Court's orders (a) finally approving the settlement (as described in Paragraph 4); and (b) awarding counsel fees and costs.

Defendants agree that any attorneys' fees and expenses awarded by the Court shall be disbursed only to Direct Purchaser Class Plaintiffs' Co-Lead Counsel, Garwin, Bronzaft, Gerstein & Fisher, L.L.P. and Boies, Schiller & Flexner, LLP, for allocation among the various Direct Purchaser Class Plaintiffs' counsel which have participated in this litigation. Disbursement of Direct Purchaser Class Plaintiffs' attorneys' fees shall not be delayed by reason of any appeal of the final judgment. However, if a final judgment by the District Court approving the settlement is reversed on appeal, Direct Purchaser Class Plaintiffs' Co-Lead Counsel, Garwin, Bronzaft, Gerstein & Fisher, L.L.P. and Boies, Schiller & Flexner, LLP, shall, within five (5) business days after receiving written notice from counsel for Defendants, cause a refund to be made to the Settlement Fund in the amount of the disbursement paid to Direct Purchaser Class Plaintiffs' counsel, plus interest that would have accrued on that amount had it remained in the Settlement Fund.

12. **Releases.** Upon the Settlement Agreement becoming final in accord with Paragraph 4 hereof, the Direct Purchaser Class Plaintiffs and members of the Direct Purchasers Class in the Class Actions, and their respective past, present and future directors, officers, employees, shareholders, attorneys, heirs, executors, administrators, general or limited partners, all acting in their capacity as representative of a direct purchaser of Cardizem CD and/or its AB-rated equivalents, and their respective past, present and future affiliates, divisions, agents, representatives, predecessors, parents, subsidiaries, successors, and assigns, ("Direct Purchaser Releasers"), hereby unconditionally, fully, and finally release and discharge forever Defendants

and their respective past, present and future directors, officers, employees, shareholders, affiliates, divisions, agents, representatives, attorneys, heirs, executors, administrators, predecessors, parents, subsidiaries, general or limited partners, successors, and assigns ("Direct Purchaser Releasees") from any claims, debts, obligations, damages, liabilities, actions, and causes of action, of whatever nature, whether known or unknown, whether accrued in whole or in part of any kind whatsoever, from the beginning of time through the date of this Agreement, which any of the Direct Purchaser Releasers had (subject to the last sentence of this Paragraph) or has against any of the Direct Purchaser Releasees that were or could have been asserted by Direct Purchaser Class Plaintiffs and/or members of the Direct Purchaser Class in the Class Actions relating to the drug Cardizem CD and/or its AB-rated equivalents arising out of or concerning the facts and circumstances giving rise to the allegations (including without limitation the Stipulation between HMRI and Andrx, dated September 24, 1997) in the Class Actions or in any other complaint filed in any action consolidated or coordinated with MDL No. 1278, including without limitation all claims asserted by any plaintiff in MDL No. 1278 (the "Released Claims"). Each member of the Direct Purchaser Class hereby covenants and agrees that it shall not hereafter seek to establish liability against any Direct Purchaser Releasee, in whole or in part, for any of the Released Claims. All Released Claims are released and discharged to the fullest extent of the law, except solely if asserted by an entity who validly and timely opted out, and, with respect to any such opt-out claims that are or purport to be brought in whole or in part by

reason of an assignment, then solely to the extent of the purchases of Cardizem CD identified in valid assignments to said entity entered into on or before January 25, 2002. The parties acknowledge that Defendants have asserted, and intend to assert, that the assignments of the Assigned Claims are subject to various defenses and will contest those assignments on all available grounds; however, nothing in this Paragraph or this Settlement Agreement itself shall be used by any party to challenge or support the validity as such of the assignments described in Paragraph 8 hereof.

13. **Effect of Disapproval.** If any of the events described in Paragraph 6 (a) - (d) occur then this Settlement Agreement shall be cancelled and terminated and shall become null and void upon the election of Defendants or Plaintiffs' Co-Lead Counsel, and the Settlement Fund shall be returned to the Defendants immediately as described in Paragraph 6. A modification or reversal on appeal of any amount of Plaintiffs' attorneys' fees and expenses, or incentive payments to Plaintiffs, awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such final judgment and shall not result in the cancellation or termination of this Settlement Agreement, nor shall it give rise to a right of election by any party hereto to declare this Settlement Agreement null and void.

14. **Preservation of Rights.** The parties hereto agree that this Settlement Agreement, whether or not it shall become final pursuant to Paragraph 4, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party; shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by Defendants or of the truth of any of the claims or allegations contained in the complaint or any other pleading; and evidence thereof shall not be discoverable or used directly or indirectly by the Direct Purchaser Class Plaintiffs or any third party, in any way, (except that the provisions of this Settlement Agreement can be used by the parties to enforce the provisions of the Settlement Agreement), whether in the Class Actions or in any other action or proceeding. The parties expressly reserve all their rights if the settlement does not become final in accordance with the terms of this Settlement Agreement. Subject to Paragraphs 8 and 12 above, nothing in this paragraph shall prevent Defendants from asserting any release or using this Settlement Agreement to offset any liability to any other parties.

15. **Resumption of Discovery Upon Failure of Approval.** In the event that the Settlement Agreement is not approved by the Court or the settlement does not become final pursuant to Paragraph 4, discovery will resume in the Class Actions, in a reasonable manner to be approved by the Court.

16. **Confidentiality.** Neither Plaintiffs nor any counsel or other agent for or representative of Plaintiffs or the Class will make or cause to be made any public statement or comment regarding this litigation or its settlement without the prior written consent of each of

the Defendants; provided that after Defendants have made public disclosures, Plaintiffs may also make public announcements. In the event that no prior public announcements are made, all terms of this Settlement Agreement, the MOU, and the Escrow Agreement (collectively, the “Settlement Documents”) are to be treated as confidential and not disclosed to anyone except as agreed in writing by the parties, until the Settlement Agreement is presented to the Court. Defendants shall be entitled to disclose the essential terms of the Settlement Documents, in their own discretion, under the auspices of the Mediator, or any successor mediator appointed by mutual agreement of the parties, and shall be entitled to make such disclosures as they, in their discretion, shall determine are appropriate under the securities laws. No confidentiality obligation prevents Defendants from asserting any release.

17. **Binding Effect.** This Settlement Agreement shall be binding upon, and inure to the benefit of the parties hereto, the Direct Purchaser Releasees, and their respective successors and assigns. Without limiting the generality of the foregoing, each and every undertaking, covenant and agreement herein by the Direct Purchaser Class Plaintiffs and their counsel shall be binding upon all members of the Direct Purchaser Releasors, and their respective successors and assigns (subject to the limitations set forth in Paragraphs 8 and 12).

18. **Integrated Agreement.** This Settlement Agreement together with the MOU and the Escrow Agreement contains the entire, complete, and integrated statement of each and every

term and provision agreed to by and among the parties. This Settlement Agreement shall not be modified in any respect except by a writing executed by all the parties hereto.

19. **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.

20. **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.

21. **Choice of Law.** All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the state of Michigan without regard to its choice of law or conflict of laws principles.

22. **Consent to Jurisdiction.** Defendants, Plaintiffs and each member of the Direct Purchaser Class hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Eastern District of Michigan, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement.

23. **No Admission.** Defendants have denied, and continue to deny, any wrongdoing or legal liability arising from any of the facts or conduct alleged in these actions. Neither the

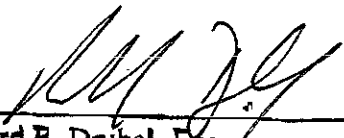
MOU, nor this Settlement Agreement, nor any other settlement-related document is an admission that any claim which was brought or could have been brought against the Defendants has any merit whatsoever and shall not be construed as an admission by Defendants or used in any way by the Direct Purchaser Class Plaintiffs in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority, present or future, including, without limitation, being used to show that Defendants have engaged in any conduct or practice that violates any antitrust statute or other law. Any other provision herein notwithstanding, this Settlement Agreement may be used to the extent necessary (a) to effectuate the terms of this Settlement Agreement; (b) to assert the releases or covenants not to sue granted herein; or (c) by Defendants to offset any liability to any other parties (subject to the limitations in Paragraphs 8 and 12).

24. **Intended Beneficiaries.** Nothing in this Settlement Agreement shall be deemed to confer any rights or benefits, or impose any obligations, on any person other than the Direct Purchaser Releasers and the Direct Purchaser Releasees.

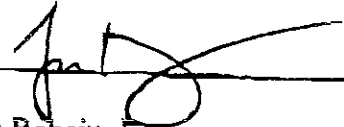
25. **Execution in Counterparts.** This Settlement Agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement and filed with the Court.


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

By: \_\_\_\_\_  
Bruce E. Gerstein, Esq.,  
Barry S. Taus, Esq.,  
Jan Bartelli, Esq.  
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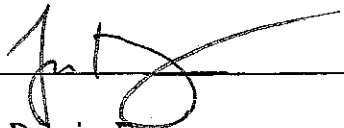
*Counsel for Defendant  
Andrx Pharmaceuticals, Inc.*

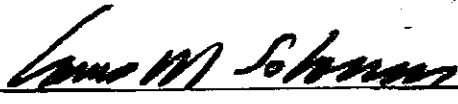
IN WITNESS WHEREOF, the parties hereto through their fully authorized representatives have agreed to this Settlement Agreement on the date first above herein written.

By: \_\_\_\_\_  
Bruce E. Gerstein, Esq.  
Barry S. Taus, Esq.  
Jan Bartelli, Esq.  
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**IN WITNESS WHEREOF**, the parties hereto through their fully authorized representatives have agreed to this Settlement Agreement on the date first above herein written.

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