

VALEANT CLASS ACTION SETTLEMENT AGREEMENT

Made as of the 4<sup>th</sup> day of August, 2020

Between

**Celso Catucci and Nicole Aubin (as trustee of the Aubin Family Trust)**  
Representative plaintiffs in Québec Superior Court Action No.: 500-06-000783-163  
in their personal and representative capacities

- and -

**Valeant Pharmaceuticals International, Inc. (N/K/A Bausch Health Companies Inc.)**

## Table of Contents

RECITALS .....	1
SECTION 1 - DEFINITIONS .....	2
SECTION 2 - SETTLEMENT BENEFITS .....	10
Payment of Settlement Amount .....	10
Non-Refundable Expenses .....	11
SECTION 3 - CLASS COUNSEL FEES .....	12
Class Counsel Fees Approval .....	12
Taxes and Interest .....	13
No Reversion .....	14
SECTION 4 - DISTRIBUTION OF SETTLEMENT AMOUNT .....	14
Distribution of the Net Settlement Amount .....	14
SECTION 5 - EFFECT OF SETTLEMENT .....	14
No Admissions or Concessions .....	14
Agreement Not Evidence Nor Presumption .....	15
SECTION 6 - STEPS TO IMPLEMENT AGREEMENT .....	16
Reasonable Efforts .....	16
Action in Abeyance .....	16
SECTION 7 - AUTHORIZATION FOR SETTLEMENT APPROVAL ONLY .....	16
Authorization for Settlement Approval on behalf of Supplementary Class and Common Issues .....	16
SECTION 8 - NOTICE TO SETTLEMENT CLASS .....	17
SECTION 9 - SETTLEMENT APPROVAL .....	18
Motions for Approval and Dismissals/Discontinuances .....	18
No Press Release .....	18
SECTION 10 - RELEASES .....	19
SECTION 11 - TERMINATION .....	20
Right of Termination .....	20
Steps Required on Termination .....	21
Notice of Termination .....	22
Effect of Termination .....	22
Disputes Relating to Termination .....	23
SECTION 12 - LIMITS ON USE OF DOCUMENTS .....	23
SECTION 13 - MISCELLANEOUS .....	23
Motions for Directions .....	23
Headings, etc. ....	23
Computation of Time .....	24

Governing Law .....	24
Severability .....	24
Entire Agreement .....	24
Amendments .....	25
Binding Effect.....	25
Survival .....	25
Negotiated Agreement .....	25
Transaction.....	25
Recitals.....	26
Acknowledgements.....	26
Counterparts .....	26
Notice .....	26
Third Party Beneficiaries .....	29

**RECITALS**

- A. WHEREAS** the Action was commenced by the Plaintiffs on behalf of putative class members for, *inter alia*, damages for misrepresentation under Title VIII, Chapter II, Divisions 1 and 11 of the QSA and, if necessary, the concordant provisions of the other Securities Legislation, and for civil fault pursuant to article 1457 of the CCQ;
- B. AND WHEREAS** Valeant, its present and former directors, officers, employees, agents, representatives, underwriters and insurers continue to deny any liability with respect to the allegations made, or which could have been made, in the Action or the Other Actions;
- C. AND WHEREAS** in the Action, the Superior Court authorized the bringing of a class action under articles 574 to 577 of the CCQ and the bringing of an action pursuant to section 225.4 of the QSA in the Authorization Decision;
- D. AND WHEREAS** the Court of Appeal of Québec dismissed the defendants' respective applications for leave to appeal from the Authorization Decision in judgments dated November 30, 2017;
- E. AND WHEREAS** the opt-out period in the Action in respect of the Original Class concluded on June 19, 2018;
- F. AND WHEREAS** in connection with a settlement between the Plaintiffs and PwC, on September 5, 2019, the Superior Court authorized the Supplementary Class;
- G. AND WHEREAS** the opt-out period in respect of the Supplementary Class concluded on November 14, 2019;
- H. AND WHEREAS** counsel for the Parties have engaged in arm's length settlement discussions and negotiations over several years, including mediations before Joel Wiesenfeld, the latter of which ultimately resulted in the Settlement;
- I. AND WHEREAS** documentary discovery and the examination of certain defendants has occurred in the Action, and was to continue;

**NOW THEREFORE**, in consideration of the covenants, agreements and releases set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are

hereby acknowledged, it is agreed by the Parties that the Action be declared settled out of Court without costs, subject to the approval of the Superior Court , on the following terms and conditions.

### **SECTION 1 - DEFINITIONS**

1.1 For the purposes of this Agreement, including the Recitals:

- (a) **Action** means *Catucci and Aubin v. Valeant Pharmaceuticals International Inc. et al.*, brought in Superior Court (District of Montreal) File No. No.: 500-06-000783-163.
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, tax and any other amounts incurred or payable by the Plaintiffs, Class Counsel, the Administrator or otherwise for the approval, implementation and operation of this Agreement, including the costs of notices and claims administration, but not Class Counsel Fees.
- (c) **Administration Expenses & Litigation Disbursements Amount** means the amount of three million dollars (CAD \$3,000,000.00).
- (d) **Agreement** means this settlement agreement, including the recitals.
- (e) **Authorization Decision** means the Judgement of the Honourable Justice Chantal Chatelain of the Superior Court in the Action dated August 29, 2017.
- (f) **CCP** means the *Code of Civil Procedure CQRL, c. 25.01*.
- (g) **CCQ** means the *Civil Code of Québec*.
- (h) **Claims Administrator** means a third-party professional firm appointed by the Superior Court to administer this Agreement and the Plan of Allocation and any employees of such firm.
- (i) **Class Counsel** means Siskinds LLP, Koskie Minsky LLP, Faguy & Co., Strosberg Sasso Sutts LLP, Rochon Genova LLP, Morganti Legal P.C., Siskinds Desmeules s.e.n.c.r.l. and Investigation Counsel P.C.

- (j) **Class Counsel Fees** means the fees and any proportionate amount of accrued interest on the Settlement Amount, Administration Expenses and Litigation Disbursements Amount, holdbacks, GST/PST/HST and other applicable taxes or charges of Class Counsel.
- (k) **Common Issues** means the issues to be dealt with collectively in the Action as set out in paragraph 352 of the Authorization Decision.
- (l) **Effective Date** means the date when the Final Order has been issued by the Superior Court approving the Agreement;
- (m) **Escrow Account** means an interest-bearing Escrow Account at a Canadian Schedule 1 bank under the control of Siskinds LLP for the benefit of Settlement Class Members.
- (n) **Excluded Persons** means Valeant, the Individual Defendants, the Insurer Defendants, PwC, the Underwriter Defendants, members of the immediate families of the Individual Defendants, and the directors, officers, subsidiaries and affiliates of Valeant.
- (o) **Execution Date** means the date on the execution pages as of which the Parties have fully executed this Agreement.
- (p) **Final Order** means the later of a final judgment entered by the Superior Court approving this Agreement, the time to appeal such judgment having expired without any appeal being taken, if an appeal lies, and the approval of this Agreement upon a final disposition of all appeals.
- (q) **Individual Defendants** means J. Michael Pearson, Howard B. Schiller, Robert L. Rosiello, Robert A. Ingram, Ronald H. Farmer, Laizer D. Kornwasser, Theo Melas-Kyriazi, G. Mason Morfit, Dr. Laurence Paul, Robert N. Power, Norma A. Provencio, Lloyd M. Segal, Katherine B. Stevenson, Fred Hassan, Colleen Goggins and Jeffrey W. Ubben.
- (r) **Insurer Defendants** means AIG Insurance Company of Canada, Allianz Global Risks US Insurance Company, Everest Insurance Company of Canada, Royal & Sun Alliance Insurance Company of Canada, Temple Insurance Company, XL

Insurance Company, Chubb Insurance Company of Canada (formerly ACE INA Insurance), Ironshore Canada Ltd., Ironshore Ltd., Liberty Mutual Insurance Company, and Lloyd's Underwriters Syndicate Numbers AWH 2232, QBE 1886, Consortium 9885, AML 1200, MIT 3210, SJC 2003, ANV 1861, NAV 1221, AMA 1200, HCC 4141, AWH 2232, Barbican Professional and Financial Lines Consortium 9562, Starr Financial Lines Consortium 9855 and ASP 4711, having a designated attorney (*fondé de pouvoir*), Sean Murphy, at 1155, Metcalfe Street, Suite 220, Montreal, Quebec, H3B 2V6.

- (s) **Litigation Disbursements** means disbursements made by Class Counsel in connection with the prosecution of the Action or the Other Actions including, but not limited to, any disbursements that were the subject of an outstanding costs award.
- (t) **Non-Refundable Expenses** means certain Administration Expenses stipulated in section 2.10 of the Agreement to be paid from the portion of the Settlement Amount allocated to Non-Refundable Expenses.
- (u) **Notes** means Valeant's: (i) 6.75% senior notes due 2018; (ii) 7.50% senior notes due 2021; (iii) 5.625% senior notes due 2021; (iv) 5.50% senior unsecured notes due 2023; (v) 5.375% senior unsecured notes due 2020; (vi) 5.875% senior unsecured notes due 2023; (vii) 4.50% senior unsecured notes due 2023; and (viii) 6.125% senior unsecured notes due 2025.
- (v) **Notice of Hearing** means the form or forms of notice, as agreed to by the Plaintiffs and Valeant, and approved by the Superior Court, which inform(s) the Settlement Class Members of: (i) the date and location of the Settlement Approval Hearing; (ii) the principal elements of the Agreement; (iii) the process by which Settlement Class Members may object to the Settlement; and (iv) Class Counsel Fees requested by Class Counsel.
- (w) **Offering Memoranda** (each, "**Memorandum**" or "**Circular**") means Valeant's: (i) Offering Circular dated June 27, 2013; (ii) Offering Circular dated November 15, 2013; (iii) Offering Memorandum dated January 15, 2015; and, (iv) Offering Memorandum dated March 13, 2015.

- (x) **Offerings** (each, an “**Offering**”) means the offerings of Valeant’s Securities during the period February 28, 2013 to October 26, 2015 by way of the Offering Memoranda and the Prospectuses.
- (y) **Original Class or Original Class Members** means, other than Excluded Persons and any person who validly opted out of the Action:
- (i) **Primary Market Sub-Class**: All persons and entities, wherever they may reside or may be domiciled, who, during the period February 28, 2013 to October 26, 2015, acquired Valeant’s Securities in an Offering, and held some or all of such Securities at any point in time between October 19, 2015 and October 26, 2015, excluding any claims in respect of Valeant’s Securities acquired in the United States (but not excluding any claims in respect of Valeant’s 4.5% Senior Notes due 2023 offered in March 2015); and,
  - (ii) **Secondary Market Sub-Class**: All persons and entities, wherever they may reside or may be domiciled who, during the period February 28, 2013 to October 26, 2015, acquired Valeant’s Securities in the secondary market and held some or all such Securities at any point in time between October 19, 2015 and October 26, 2015, excluding any claims in respect of Valeant’s Securities acquired in the United States.
- (z) **Other Actions** (each, an **Other Action**) means:
- (i) *Maxime Rousseau-Godbout v Valeant Pharmaceuticals International et al* (Court File No. 500-06-000770-152), commenced in the Superior Court (District of Montreal) on October 27, 2015;
  - (ii) *Joyce Kowalyshyn, Robert Morton, SEB Investment Management AB, and SEB Asset Management S.A. v. Valeant Pharmaceuticals International, Inc. et al.* (Court File No. CV-15-541082-00CP), commenced in the Ontario Superior Court of Justice on November 23, 2015 by way of Notice of Action, with Statement of Claim filed on December 17, 2015;



- (iii) *Lorraine O'Brien v. Valeant Pharmaceuticals International Inc. et al.* (Court File No. CV-15-543678-00CP), commenced in the Ontario Superior Court of Justice on December 30, 2015;
  - (iv) *Joyce Kowalyshyn, Robert Morton, SEB Investment Management AB, and SEB Asset Management S.A. and Lorraine O'Brien v. Valeant Pharmaceuticals International, Inc. et al.*, which consolidated actions (i) and (ii) above by Fresh As Amended Statement of Claim dated September 15, 2016 pursuant to the Order of Justice Paul Perell dated September 15, 2016;
  - (v) *Misuzu Sukenaga v. Valeant Pharmaceuticals International, Inc. et al* (Court File No. CV-15-540567-00CP), commenced in the Ontario Superior Court of Justice on October 27, 2015;
  - (vi) *Randy Okeley v. Valeant Pharmaceuticals International, Inc. et al* (Court File No. S-159991), commenced in the British Columbia Supreme Court on December 2, 2015; and
  - (vii) *Mirza Alladina v Valeant Pharmaceuticals International, Inc. et al* (Court File No. S-159486), commenced in the British Columbia Supreme Court on November 15, 2015.
- (aa) **Parties** means Valeant, the Individual Defendants, the Insurer Defendants, the Underwriter Defendants, and the Plaintiffs and, where necessary, the Settlement Class Members.
  - (bb) **Plaintiffs** means Celso Catucci and Nicole Aubin (as trustee of the Aubin Family Trust).
  - (cc) **Plan of Allocation** means the plan for allocating and distributing the Settlement Amount and accrued interest, net of court-approved deductions, in whole or in part, as established by Class Counsel and approved by the Superior Court.
  - (dd) **Proceedings** means any action or proceeding, other than the Action, solely advancing Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

- (ee) **Prospectuses** means Valeant's: (i) Short Form Base Shelf Prospectus dated and filed on SEDAR on June 14, 2013; (ii) Prospectus Supplement dated and filed on SEDAR on June 18, 2013; (iii) Prospectus dated June 10, 2013, filed on EDGAR on June 19, 2013; (iv) Prospectus Supplement dated June 18, 2013, filed on EDGAR on June 19, 2013; (v) Prospectus dated June 10, 2013, filed on EDGAR on March 18, 2015; and, (vi) Prospectus Supplement dated March 17, 2015, filed on EDGAR on March 18, 2015.
- (ff) **PwC** means PricewaterhouseCoopers LLP, the U.S. member firm in the PwC network of firms.
- (gg) **Superior Court** means Superior Court of Québec.
- (hh) **QSA** means Québec *Securities Act*, CQLR c. V-1.1, as amended.
- (ii) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual, representative or otherwise in nature, whether personal or subrogated, whether a claim (including a proof of claim) is filed under the Plan of Allocation, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity that Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof relating to any conduct alleged (or which could have been alleged) in the Action or Other Actions including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, concerning, based on, arising out of, or in connection with both: (i) the purchase or other acquisition, holding, sale, disposition or other transactions in relation to Securities by Plaintiffs or any other Class Member during the period between February 27, 2012 and November 12, 2015; and (ii) the allegations, transactions, acts, facts, matters, occurrences,

disclosures, statements, filings, representations, omissions, or events that were or could have been alleged or asserted in the Action or the Other Actions. For greater certainty, “costs” above includes all outstanding costs awards payable by Valeant, the Individual Defendants, the Insurer Defendants or the Underwriter Defendants to the Plaintiffs.

- (jj) **Releasees** means, jointly and severally, individually and collectively, Valeant, the Individual Defendants, the Insurer Defendants and the Underwriter Defendants, and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, principals, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (kk) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs and Settlement Class Members on behalf of themselves and any person claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee or representative of any kind.
- (ll) **Securities** means Valeant’s common shares and Notes.
- (mm) **Securities Legislation** means, collectively, the QSA; the *Securities Act*, RSO 1990, c S.5, as amended; the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended.

- (nn) **Settlement** means the settlement provided for in this Agreement.
- (oo) **Settlement Amount** means the sum of ninety-four million dollars (CAD \$94,000,000.00).
- (pp) **Settlement Approval Hearing** means the hearing for the Superior Court's approval of the Settlement.
- (qq) **Settlement Approval Order** means the order of the Superior Court to be requested by the Plaintiffs, with the consent of Valeant, the Individual Defendants, the Underwriter Defendants and the Insurer Defendants, approving the Agreement.
- (rr) **Settlement Class or Settlement Class Members** means, other than Excluded Persons and any person who validly opted out of the Action or who is deemed to have opted out of the Action pursuant to article 580 of the CCP:
- (i) **Primary Market Sub-Class:** All persons and entities, wherever they may reside or may be domiciled, who, during the period February 28, 2013 to November 12, 2015, acquired Valeant's Securities in an Offering, and held some or all of such Securities at any point in time between October 19, 2015 and November 12, 2015, excluding any claims in respect of Valeant's Securities acquired in the United States (but not excluding any claims in respect of Valeant's 4.5% Senior Notes due 2023 offered in March 2015); and,
  - (ii) **Secondary Market Sub-Class:** All persons and entities, wherever they may reside or may be domiciled who, during the period February 27, 2012 to November 12, 2015, acquired Valeant's Securities in the secondary market and held some or all such Securities at any point in time between October 19, 2015 and November 12, 2015, excluding any claims in respect of Valeant's Securities acquired in the United States.
- (ss) **Supplementary Class or Supplementary Class Members** means all persons and entities, wherever they may reside or may be domiciled who, during the periods of February 27, 2012 to February 27, 2013 and October 27, 2015 to November 12, 2015, acquired Valeant's Securities in the secondary market, excluding (a) any

claims in respect of Valeant's Securities acquired in the United States; and (b) Excluded Persons.

- (tt) **Underwriter Defendants** means Goldman Sachs & Co., Goldman Sachs Canada Inc., Deutsche Bank Securities Inc., Barclays Capital Inc., HSBC Securities (USA) Inc., MUFG Securities Americas Inc. (formerly Mitsubishi UFJ Securities (USA) Inc.) Mitsubishi UFG Securities International plc., DBS Bank Ltd., DNB Markets Inc., RBC Capital Markets LLC, Morgan Stanley & Co. LLC, Suntrust Robinson Humphrey Inc., Citigroup Global Markets Inc., CIBC World Markets Corp., SMBC Nikko Securities America Inc., TD Securities (USA) LLC, J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated and BMO Capital Markets Corp.
- (uu) **U.S. Confidentiality Order** means the Stipulation and Confidentiality Order dated July 18, 2017 in the U.S. proceeding captioned *In re Valeant Pharmaceuticals International, Inc. Securities Litigation*, Master No. 3:15-cv-07658-MAS-LHG (U.S. District Court for the District of New Jersey).
- (vv) **Valeant** means the corporation formerly known as Valeant Pharmaceuticals International Inc. which, as of July 13, 2018, changed its name to Bausch Health Companies Inc.

## **SECTION 2 - SETTLEMENT BENEFITS**

### **Payment of Settlement Amount**

- 2.1 Subject to Section 11, upon the earlier of: (i) sixty (60) days from the Execution Date; and (ii) ten (10) business days from the Effective Date, Valeant or its insurers shall pay the Settlement Amount and the Administration Expenses & Litigation Disbursements Amount to Siskinds LLP for deposit into the Escrow Account.
- 2.2 Valeant or its insurers shall deposit the Settlement Amount into the Escrow Account by wire transfer. Siskinds LLP shall provide the necessary wire transfer information to counsel for Valeant on or before the Execution Date so that Valeant or its insurers have a reasonable period of time to comply with section 2.1.

- 2.3 The Settlement Amount shall be paid in full satisfaction of the Released Claims against the Releasees.
- 2.4 The Settlement Amount shall be inclusive of interest, taxes, and Class Counsel Fees. Valeant shall take no position on the Plaintiffs' motion for approval of Class Counsel Fees.
- 2.5 The Administration Expenses & Litigation Disbursements Amount shall be paid in satisfaction of Administration Expenses and Litigation Disbursements.
- 2.6 If the Administration Expenses & Litigation Disbursements Amount exceeds the total amount of Administration Expenses and Litigation Disbursements approved by the Superior Court, any remaining balance shall be distributed to Settlement Class Members in accordance with the Plan of Allocation. If the amount of the Administration Expenses and Litigation Disbursements approved by the Superior Court exceeds the Administration Expenses & Litigation Disbursements Amount, any remaining balance will be paid from the Settlement Amount.
- 2.7 The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount and the Administration Expenses & Litigation Disbursements Amount, for any reason, pursuant to or in furtherance of this Agreement or the Action. Under no circumstances are the Individual Defendants or Underwriter Defendants responsible for the payment of any part of the Settlement Amount or the Administration Expenses & Litigation Disbursements Amount.
- 2.8 Once a Claims Administrator has been appointed, Siskinds LLP shall transfer control of the Escrow Account, net of Class Counsel Fees as approved by the Superior Court, to the Claims Administrator.
- 2.9 Siskinds LLP and the Claims Administrator shall maintain the Escrow Account as provided for in this Agreement. While in control of the Escrow Account, Siskinds LLP and the Claims Administrator shall not pay out all or part of the monies in the Escrow Account, except in accordance with this Agreement, or in accordance with an order of the Superior Court obtained after notice to the Parties.

### **Non-Refundable Expenses**

- 2.10 Non-Refundable Expenses, reasonably incurred, and as approved by the Superior Court, shall be payable by Siskinds LLP from the Administration Expenses & Litigation Disbursement Amount in the Escrow Account, when incurred. Non-Refundable Expenses shall include:
- (a) costs incurred in connection with establishing and operating the Escrow Account;
  - (b) all costs incurred in publishing and distributing the Notice of Hearing, or other steps taken in respect of administration of this Agreement, up to the date of the termination of the Agreement;
  - (c) if necessary, the costs incurred by the Administrator in publishing notice to the Settlement Class that the Agreement has been terminated.
- 2.11 Siskinds LLP shall account to the Superior Court and to the Parties for all payments it makes from the Escrow Account prior to the appointment of the Claims Administrator. In the event that the Agreement is terminated, this account shall be delivered no later than ten (10) days after such termination.
- 2.12 Any disputes concerning the Non-Refundable Expenses shall be dealt with by a motion to the Superior Court on notice to the Parties.

### **SECTION 3 - CLASS COUNSEL FEES**

#### **Class Counsel Fees Approval**

- 3.1 At the Settlement Approval Hearing, Class Counsel shall seek the approval of Class Counsel Fees to be paid as a first charge on the Settlement Amount and Administration Expenses & Litigation Disbursements Amount. Unless this Agreement is terminated pursuant to Section 11, all amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Amount and/or Administration Expenses & Litigation Disbursements Amount.
- 3.2 At the Settlement Approval Hearing, Class Counsel shall seek the approval of Litigation Disbursements to be paid as a first charge on the Administration Expenses & Litigation Disbursements Amount. In the event that the Litigation Disbursements exceed the Administration Expenses and Litigation Disbursements Amount, the balance of the

Litigation Disbursements shall be paid from the Settlement Amount. Unless this Agreement is terminated pursuant to Section 11, all amounts awarded on account of Litigation Disbursements shall be paid from the Administration Expenses & Litigation Disbursements Amount and, if necessary the Settlement Amount.

- 3.3 Valeant acknowledges that it is not a party to the motion concerning the approval of Class Counsel Fees and Litigation Disbursements, will have no involvement in the approval process to determine the amount of Class Counsel Fees and will not make any submissions to the Québec Court concerning Class Counsel Fees and Litigation Disbursements.
- 3.4 Any order in respect of Class Counsel Fees and Litigation Disbursements, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Agreement or affect or delay the Settlement of the Action as provided herein.
- 3.5 Forthwith after the Settlement becomes final, Class Counsel Fees approved by the Superior Court shall be paid to Class Counsel from the Escrow Account.

### **Taxes and Interest**

- 3.6 Except as expressly provided herein, all interest earned on the Settlement Amount and the Administration Expenses & Litigation Disbursement Amount shall accrue to the benefit of the Settlement Class and shall become and remain part of the amount held in escrow pursuant to this Agreement (together with the Settlement Amount and the Administration Expenses & Litigation Disbursements Amount, the “Escrow Amount”).
- 3.7 Subject to Section 3.8, all taxes payable on any interest which accrues on or otherwise in relation to the Escrow Amount shall be the responsibility of the Plaintiffs and the Settlement Class. Class Counsel or a Claims Administrator, as may later be appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Escrow Amount, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Escrow Amount shall be paid from the Escrow Account.
- 3.8 Valeant, the Individual Defendants, the Insurer Defendants and the Underwriter Defendants shall have no responsibility in any way related to the Escrow Account including



but not limited to, making any filings relating to the Escrow Account, paying tax on any income earned by the Escrow Amount, or paying any taxes on the monies in the Escrow Account, unless this Agreement is terminated, in which case any interest earned on the Escrow Amount shall be paid to Valeant who, in such case, shall be responsible for the payment of any taxes on such interest not previously paid by Class Counsel or a Claims Administrator.

### **No Reversion**

- 3.9 Unless this Agreement is terminated as provided herein, Valeant shall not be entitled to the repayment of any portion of the Escrow Amount and then only to the extent of and in accordance with the terms provided herein.

## **SECTION 4 - DISTRIBUTION OF SETTLEMENT AMOUNT**

### **Distribution of the Net Settlement Amount**

- 4.1 The formula for distribution of the Settlement Amount, and any remaining balance of the Administration Expenses & Litigation Disbursements Amount after the payment of Administration Expenses and Litigation Disbursements, to Settlement Class Members shall be contained in the Plan of Allocation.
- 4.2 In conjunction with the Plaintiffs' motion to the Superior Court for approval of this Settlement, on notice to Valeant, the Individual Defendants, the Insurer Defendants and the Underwriter Defendants, Class Counsel will make an application seeking an order from the Superior Court approving the Plan of Allocation, if necessary.
- 4.3 Valeant, the Individual Defendants, the Insurer Defendants and the Underwriter Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the Plan of Allocation, or the investment, distribution or administration of monies in the Escrow Account.

## **SECTION 5 - EFFECT OF SETTLEMENT**

### **No Admissions or Concessions**

- 5.1 This Agreement, whether or not it is terminated, anything contained in it, any and all negotiations, discussions, and communications associated with this Agreement, and any action taken to implement this Agreement, shall not be deemed, construed or interpreted to be:
- (a) an admission or concession by Valeant, the Individual Defendants, the Insurer Defendants or the Underwriter Defendants of any fact, fault, omission, wrongdoing or liability, or of the truth of any of the claims or allegations made or which could have been made against it in the Action or the Other Actions, or the application of the law of Québec to any of the claims made in the Action; or
  - (b) an admission or concession by the Plaintiffs, Class Counsel or the Settlement Class of any weakness in the claims of the Plaintiffs and the Settlement Class, or that the consideration to be given hereunder represents the amount that could or would have been recovered after trial of the Action.

#### **Agreement Not Evidence Nor Presumption**

- 5.2 This Agreement, whether or not it is terminated, anything contained in it, any and all negotiations, documents, discussions and proceedings associated with this Agreement (including, but not limited to, the Plan of Allocation), and any action taken to implement this Agreement, shall not be offered or received in the Action or any pending or future civil, criminal, quasi-criminal, administrative action or disciplinary investigation or proceeding in any jurisdiction:
- (a) against Valeant, the Individual Defendants, the Insurer Defendants or the Underwriter Defendants, as evidence, or a presumption, of a concession or admission of any fact, fault, omission, wrongdoing or liability, or of the truth of any of the claims or allegations made against it in the Action or the Other Actions; or
  - (b) against the Plaintiffs, Class Counsel or the Settlement Class, as evidence, or a presumption, of a concession or admission:
    - (i) of any weakness in the claims of the Plaintiffs and the Settlement Class; or

- (ii) that the consideration to be given hereunder represents the amount that could or would have been recovered after trial of the Action.

5.3 Notwithstanding Section 5.2, this Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Superior Court contemplated by this Agreement, in a proceeding to approve or enforce this Agreement, to defend against the assertion of Released Claims, or as otherwise required by law.

## **SECTION 6 - STEPS TO IMPLEMENT AGREEMENT**

### **Reasonable Efforts**

- 6.1 The Parties shall take all reasonable steps to implement the Agreement and to secure its approval and have the Action declared settled out of Court. This Agreement shall only become final on the Effective Date.
- 6.2 With the exception of the materials contemplated in Section 3 regarding Class Counsel Fees, the Plaintiffs will provide all materials to be filed with or provided to the Superior Court in connection with this Agreement to Valeant in advance for review and comment.

### **Action in Abeyance**

- 6.3 Until the Parties have obtained the Final Order or this Agreement is terminated in accordance with its terms, whichever occurs first, Class Counsel agree to hold in abeyance all other steps in the Action, other than the settlement approval motion and dismissal motion contemplated by this Agreement and such other matters required to implement the terms of this Agreement, unless otherwise agreed in writing by the Parties.

## **SECTION 7- AUTHORIZATION FOR SETTLEMENT APPROVAL ONLY**

### **Authorization for Settlement Approval on behalf of Supplementary Class and Common Issues**

- 7.1 The Action shall be authorized as a class proceeding on behalf of the Supplementary Class solely for purposes of settlement of the Action and the approval of this Agreement by the Superior Court.

- 7.2 In the Plaintiffs' motion for authorization of the Action as a class proceeding on behalf of the Supplementary Class for settlement purposes and for the approval of this Agreement, the only common issues that they will seek to define are the Common Issues and the only class they will assert is the Supplementary Class.
- 7.3 Given that the Supplementary Class were provided the opportunity to opt-out in the context of the approval of the Plaintiffs' settlement with PwC, no further opt-out period will be provided in connection with this Agreement, unless so required by the Superior Court.

### **SECTION 8 - NOTICE TO SETTLEMENT CLASS**

- 8.1 The proposed Settlement Class shall be given the following notices: (i) the Notice of Hearing; (ii) notice if this Agreement is approved; (iii) notice if this Agreement is not approved, is terminated, or otherwise fails to take effect; and (iv) such further notice as may be directed by the Superior Court.
- 8.2 The form of notices referred to in Section 8.1 and the manner and extent of publication and distribution shall be as follows:
- (a) by Class Counsel posting the notice on their websites and by delivering a copy of the notice of authorization electronically to all individuals and entities who have contacted Class Counsel about this action and all individuals and entities who request it;
  - (b) by Class Counsel placing the notice online in abbreviated form with a URL leading to more information on a number of websites for a period of 45 days;
  - (c) disseminated once through Canada NewsWire in English and French;
  - (d) by publishing the notice once in French in a weekday tablet (online) edition of *La Presse*;
  - (e) by publishing the notice on the Québec Class Action Registry; and
  - (f) by publishing the notice once in English in the national print edition of The Globe and Mail, Report on Business section and in English in the national print edition of the National Post, Financial Post section.

or in such form or manner as approved by the Superior Court.

## **SECTION 9 - SETTLEMENT APPROVAL**

### **Motions for Approval and Dismissals/Discontinuances**

- 9.1 As soon as practicable after the Execution Date and in any event no later than five (5) business days thereafter, the Plaintiffs shall institute a motion before the Superior Court for an order: (i) authorizing the Action as a class proceeding for settlement purposes on behalf of the Supplementary Québec Class; (ii) approving the Notice of Hearing and the plan for disseminating the Notice of Hearing; and (iii) establishing the date of the Settlement Approval Hearing.
- 9.2 The form of order referred to in Section 9.1, and any notices attached thereto, shall be as agreed to by the Plaintiffs and Valeant or in such form or manner as approved by the Superior Court.
- 9.3 As soon as practicable after obtaining the order referred to in section 9.1, Plaintiffs shall institute a motion before the Superior Court for the Settlement Approval Order
- 9.4 The form of Settlement Approval Order shall be as agreed to by the Plaintiffs and Valeant or in such form or manner as approved by the Superior Court.
- 9.5 The Approval Order shall also contain a term providing that no action may be taken against Valeant, the Individual Defendants, the Insurer Defendants, the Underwriter Defendants, Class Counsel or the Claims Administrator without leave of the Superior Court with respect to any issues arising from the Settlement.

### **No Press Release**

- 9.6 Plaintiffs and Class Counsel agree that, other than in connection with any court-approved notice arising from this Agreement, they will not issue any press release, whether joint or individual, concerning this Agreement or anything related thereto and that they will not seek to obtain media coverage in relation to the Agreement, with the exception that Class Counsel will post this Agreement on their websites and on the Québec Class Action Registry.

- 9.7 The Parties specifically agree that the Parties will not make any public statements, comment or any communication of any kind about any negotiations or information exchanged as part of the settlement process. The Parties' obligations under this subsection shall not prevent them, or any of them, from reporting to their clients, or from complying with any order of the Superior Court, or from making any disclosure or comment otherwise required by the Agreement, or from making any necessary disclosure or comment for the purposes of any applicable legislation or professional obligation, or from preparing and filing the materials necessary to obtain the Superior Court's approval of the Settlement. For greater certainty, nothing in this section prohibits Valeant from issuing a press release disclosing the fact of this Agreement and describing its terms or from responding to 3rd party inquiries from, *inter alia*, analysts, investors or media regarding same.
- 9.8 If comment is solicited by the press, Class Counsel and the Plaintiffs agree and undertake to describe the Settlement and the terms of this Agreement only as fair, reasonable and in the best interests of the Settlement Class.

#### **SECTION 10 - RELEASES**

- 10.1 As of the Effective Date, and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Agreement, the Releasers forever and absolutely release, relinquish and discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have.
- 10.2 The Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of different facts.
- 10.3 As of the Effective Date, the Releasers and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other person, any action, suit cause of action, claim or demand against any Releasee or against any other person who may seek

contribution or indemnity from any Releasee in respect of any Released Claims or any matter related thereto.

- 10.4 Class Counsel do not as of the date of this Agreement and will not in the future represent plaintiffs in any other proceeding related to any matter raised or which could have been raised in the Action or the Other Actions.
- 10.5 Upon the Effective Date, the Action shall be declared settled out of Court, and without costs.
- 10.6 Upon the Effective Date, each Settlement Class Member shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of the Action.
- 10.7 For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Agreement are material terms (subject to Subsection 11.2), the releases and reservation of rights contemplated in this Section 10 shall be considered a material term of the Agreement and the failure of the Superior Court to approve the releases and/or reservation of rights contemplated herein shall give rise to a right of termination pursuant to section 11.1 of the Agreement.

## **SECTION 11- TERMINATION**

### **Right of Termination**

- 11.1 In the event that:
- (a) the Superior Court declines to grant authorization on behalf of the Supplementary Québec Class for settlement purposes as contemplated by Section 7;
  - (b) the Superior Court declines to approve this Agreement or any material part hereof;
  - (c) the Superior Court approves this Agreement in a materially modified form;
  - (d) the Superior Court issues a Settlement Approval Order that is materially inconsistent with the terms of the Agreement;
  - (e) the Settlement Approval Order does not become a Final Order;

- (f) the Settlement Approval Order is reversed on appeal and the reversal becomes a Final Order;
- (g) the Superior Court declines to declare the Action settled out of Court; or
- (h) the Superior Court declines to approve the releases, covenants (including covenants not to sue), dismissals, and granting of consent contemplated in Section 10, or approves them in a materially modified form;

each of the Plaintiffs and Valeant shall have the right to terminate this Agreement by delivering a written notice in accordance with subsection 13.17 of same within thirty (30) days following an event described above.

- 11.2 Any order, ruling or determination made (or rejected) by the Superior Court with respect to Class Counsel Fees or Class Counsel Disbursements shall not be deemed to be a material modification of all, or a part, of this Agreement and shall not provide any basis for the termination of this Agreement.
- 11.3 Except as provided for in section 11.8 and subject to section 11.9, if the Plaintiffs or Valeant exercise their right to terminate, the Settling Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

### **Steps Required on Termination**

- 11.4 If this Agreement is terminated, either Valeant or the Plaintiffs shall, within thirty (30) days after termination, apply to the Superior Court, on notice to the Parties, for an order:
- (a) declaring this Agreement null and void and of no force or effect except for the provisions of those sections listed in Section 11.8;
  - (b) setting aside and declaring null and void and of no force or effect, *nunc pro tunc*, all prior orders or judgments entered by a court in accordance with the terms of this Agreement; and
  - (c) authorizing the payment to Valeant of the Escrow Amount less taxes paid on interest and less the Non-Refundable Expenses.



11.5 Subject to Section 11.9, the Plaintiffs shall consent to the orders sought in any motion made by Valeant under Section 11.4 and Valeant shall consent to the orders sought in any motion made by the Plaintiffs under Section 11.4.

### **Notice of Termination**

11.6 If this Agreement is terminated, a notice of the termination will be given to the Settlement Class. Plaintiffs' counsel will cause the notice of termination, in a form approved by the Superior Court, to be published and disseminated as the Superior Court directs.

### **Effect of Termination**

11.7 In the event this Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) the Parties will be restored to their respective positions prior to the execution of this Agreement, except as expressly provided for herein;
- (b) no motion for authorization for settlement purposes or motion to approve this Agreement which has not been decided shall proceed;
- (c) the Parties will cooperate in seeking to have all prior orders or judgments entered by a court in accordance with the terms of this Agreement set aside and declared null and void and of no force or effect, and any of the Plaintiffs and Valeant shall be estopped from asserting otherwise;
- (d) Class Counsel shall, within thirty (30) business days of the issuance of the order contemplated by 11.4(b), return to Valeant the Escrow Amount less taxes paid on interest and less the Non-Refundable Expenses;
- (e) this Agreement will have no further force or effect and no effect on the rights of the Parties except as specifically provided for herein;
- (f) all Non-Refundable Expenses are non-recoverable from the Plaintiffs, the Settlement Class Members and Class Counsel; and
- (g) this Agreement will not be introduced into evidence or otherwise referred to in any litigation against Valeant, the Individual Defendants, the Insurer Defendants or the Underwriter Defendants.

11.8 Notwithstanding the provisions of Section 13.5, if this Agreement is terminated, the provisions of Sections 2.10, 2.11, 2.12, 3.7, 3.8, 4.3, 5.1, 5.2, 5.3, 6.2, 8.1(iv), 9.6, 9.7, 11.3, 11.4, 11.5, 11.6, 11.7, 11.9, 12.1, 13.3, 13.4, 13.5, 13.6, 13.7, 13.8, 13.12, 13.13, 13.15, 13.16, and 13.17, and the definitions applicable thereto (but only for the limited purpose of the interpretation of those sections), shall survive termination and shall continue in full force and effect. All other provisions of this Agreement and all other obligations pursuant to this Agreement shall cease immediately.

### **Disputes Relating to Termination**

11.9 If there is a dispute about the termination of this Agreement, the Parties agree that the Superior Court shall determine the dispute on a motion made by Valeant or the Plaintiffs on notice to the Parties.

### **SECTION 12 - LIMITS ON USE OF DOCUMENTS**

12.1 The confidentiality agreement entered into by the parties to the Action dated July 5, 2019 provides that its terms shall survive, *inter alia*, any settlement of the Action. The Parties shall continue to abide by the confidentiality agreement.

### **SECTION 13 - MISCELLANEOUS**

#### **Motions for Directions**

13.1 Any of the Parties may apply to the Superior Court for directions in respect of any matter in relation to this Agreement.

13.2 All motions contemplated by this Agreement shall be on notice to the Parties.

#### **Headings, etc.**

13.3 In this Agreement:

- (a) the division into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation;
- (b) the terms “the Agreement”, “this Agreement”, “herein”, “hereto” and similar expressions refer to this Agreement and not to any particular section or other portion of the Agreement; and

- (c) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

### **Computation of Time**

13.4 In the computation of time in this Agreement, except where a contrary intention appears:

- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

### **Governing Law**

13.5 The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Québec, without prejudice to the position of Valeant, the Individual Defendants, the Insurer Defendants or the Underwriter Defendants as to the law applicable to the issues in the Action.

13.6 The Parties agree that the Superior Court shall retain continuing jurisdiction to interpret and enforce the terms, conditions and obligations under this Agreement and the Settlement Approval Order.

### **Severability**

13.7 Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

### **Entire Agreement**

13.8 This Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions

or representations with respect to the subject matter of this Agreement, unless expressly incorporated herein.

### **Amendments**

13.9 This Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment after settlement approval must be approved by the Superior Court.

### **Binding Effect**

13.10 If the settlement is approved by the Superior Court and becomes final, this Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, Class Counsel, Valeant, the Individual Defendants, the Insurer Defendants, the Underwriter Defendants, the Releasees and the Releasors or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by Valeant shall be binding upon all of the Releasees.

### **Survival**

13.11 The representations and warranties contained in this Agreement shall survive its execution and implementation.

### **Negotiated Agreement**

13.12 This Agreement and the underlying Settlement have been the subject of arm's-length negotiations and discussions among the undersigned and counsel. Each of the Parties has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of this Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Agreement.

### **Transaction**

13.13 This Agreement constitutes a transaction in accordance with articles 2631 and following of the CCQ, and the Parties are hereby renouncing any errors of fact, of law and/or of calculation.

**Recitals**

13.14 The recitals to this Agreement are true, constitute material and integral parts hereof and are fully incorporated into, and form part of, this Agreement.

**Acknowledgements**

13.15 Each Party hereby affirms and acknowledges that:

- (a) her, his or its signatory has the authority to bind the Party for which it is signing with respect to the matters set forth herein and has reviewed this Agreement;
- (b) the terms of this Agreement and the effects thereof have been fully explained to her, him or it by her, his or its counsel; and
- (c) her, his or its representative fully understands each term of this Agreement and its effect.

**Counterparts**

13.16 This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and an emailed pdf. signature shall be deemed an original signature for purposes of executing this Agreement.

**Notice**

13.17 Any notice, instruction, motion for court approval or motion for directions or court orders sought in connection with this Agreement or any other report or document to be given by any Party to any other Party shall be in writing and delivered by email to:

**For Plaintiffs and the Settlement Class:**

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Email: michael.robb@siskinds.com

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**For Everest Insurance Company of Canada, Royal & Sun Alliance Insurance Company of Canada, Chubb Insurance Company of Canada (formerly ACE INA Insurance), Liberty Mutual Insurance Company and Lloyd's Underwriters Syndicate numbers QBE 1886, Consortium 9885, MIT 3210, ANV 1861, NAV 1221, AMA 1200, HCC 4141, Barbican Professional and Financial Lines Consortium 9562:**

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**For AML 1200, Starr Financial Lines Consortium 9885:**

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Montreal, Qc, H3B 2V6

**Third Party Beneficiaries**

13.18 The Individual Defendants, the Insurer Defendants and the Underwriter Defendants are stipulated to be third party beneficiaries of the obligations in sections Section 5, Section 9, Section 10 and Section 12 of this Agreement for the purpose of Art 1444 CCQ, and as such,




the Individual Defendants, the Insurer Defendants and the Underwriter Defendants have the right to exact performance of said obligations directly.

**This Agreement is executed as of August 4, 2020.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Siskinds LLP as counsel for the Plaintiffs and the Settlement Class

Date: August 4, 2020

  
\_\_\_\_\_  
Osler, Hoskin & Harcourt LLP as counsel for Valeant