IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KPH HEALTHCARE SERVICES, INC., a/k/a KINNEY DRUGS, INC., individually and on behalf all others similarly situated, FWK HOLDINGS, LLC, and CÉSAR CASTILLO LLC, **Plaintiffs**, **v.** **MYLAN N.V., MYLAN SPECIALTY L.P., and MYLAN PHARMACEUTICALS, INC.,** **Defendants**.	**Case No. 20-2065-DDC-TJJ**

ORDER OF DISMISSAL AND FINAL JUDGMENT

Plaintiffs KPH Healthcare Services, Inc.; FWK Holdings LLC; and César Castillo, LLC, individually and on behalf of the proposed Direct Purchaser Settlement Class have filed a Motion for Final Approval of Settlement (Doc. 465). Their motion seeks: final approval of the settlement with defendants Mylan N.V., Mylan Specialty L.P., and Mylan Pharmaceuticals, Inc. (collectively, "Mylan"); approval of the Plan of Allocation;[1] and awards of attorney fees and expenses. Mylan doesn't oppose the motion; no Settlement Class Member has filed any objection to the motion; and no Settlement Class Members have asked to exclude themselves from the class.

[1] This Order uses and incorporates by reference the definitions for defined terms used in the Settlement Agreement dated January 15, 2025 (Doc. 454-2). All capitalized terms used, but not defined in this Order, have the same meanings used in the Settlement Agreement.

The court held a fairness hearing on May 9, 2025, under Rule 23(e)(2) of the Federal Rules of Civil Procedure. No class member appeared for the hearing. The court, after considering the record before it, finds that the Settlement Agreement is fair, reasonable, and adequate. The court thus grants plaintiffs' Motion for Final Approval of Settlement (Doc. 465).

The Settlement satisfies the standard for final approval under Rule 23(e), which permits parties to settle the claims of a certified class action "with the court's approval." Fed. R. Civ. P. 23(e). The court may approve a settlement only after conducting "a hearing" and finding that the settlement is "fair, reasonable, and adequate[.]" Fed. R. Civ. P. 23(e)(2). The Rule includes several factors guiding the decision whether the settlement is "fair, reasonable, and adequate[,]" including 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, taking 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); and
> (D) the proposal treats class members equitably relative to each other.

Id. Also, the Tenth Circuit has identified four overlapping factors that district courts in our Circuit must consider when deciding whether a proposed class settlement is "fair, reasonable, and adequate." These factors require the court to assess:

> (1) whether the proposed settlement was fairly and honestly negotiated;
>
> (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;
>
> (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and
>
> (4) the judgment of the parties that the settlement is fair and reasonable.

Rutter & Wilbanks Corp. v. Shell Oil Co., 314 F.3d 1180, 1188 (10th Cir. 2002). The court previously granted preliminary approval of the Settlement, finding it was likely "fair, reasonable, and adequate," as Rule 23(e) requires. Doc. 458 at 5. Now, the court grants final approval of the Settlement because plaintiffs have shown that it is, in fact, fair, reasonable, and adequate, and comports with each factor specified by Rule 23(e)(2) and the Tenth Circuit. Applying this governing law, the court grants plaintiffs' Motion for Final Approval of Settlement (Doc. 465), as follows:

IT IS HEREBY ORDERED:

1. The court finds that the Settlement (Doc. 454-2) between plaintiffs and Mylan, and the Plan of Allocation (Doc. 454-9), are fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure, and therefore grants final approval of the Settlement Agreement, and directs its consummation pursuant to its terms.

2. The court finds that class representatives have given notice of the Settlement to the Direct Purchaser Settlement Class in substantially the manner approved by the court in its Preliminary Approval Order (Doc. 458). The court also finds that the manner and forms of notice given constituted the best notice practicable under the circumstances. Likewise, the court finds that the notices were due, adequate, and sufficient, and met the requirements of due process and the Federal Rules of Civil Procedure.

3. The court finds that all Class Members had a full and fair opportunity to exclude themselves from the Class, object to the Settlement, and participate in the Final Approval Hearing.

4. The court finds that all Class Members who did not timely exclude themselves from the Direct Purchaser Settlement Class are bound by the Settlement Agreement and all its terms.

5. The court finds that the requested attorneys' fees and unreimbursed litigation costs and expenses are fair and reasonable and therefore awards attorney fees equal to one-third of the Settlement Fund in the amount of $24,500,000, plus any interest accrued on that amount, and awards reimbursement of unreimbursed litigation costs and expenses in the amount of $342,614.77. The court has considered the factors outlined in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), which the Tenth Circuit has endorsed for reviewing an attorney-fees request calculated as a percentage of the settlement fund recovered. *See Voulgaris v. Array Biopharma, Inc.*, 60 F.4th 1259, 1263 (10th Cir. 2023) ("We have also recognized the applicability of the *Johnson* factors to the percentage-of-the-fund method."). The court previously analyzed the *Johnson* factors in awarding a fee of one-third of the fund—the same percentage requested here—recovered in the related Pfizer settlement in this case. *KPH Healthcare Servs., Inc. v. Mylan, N.V.*, No. 20-2065-DDC-TJJ, 2024 WL 3360499, at *4 (D. Kan. July 9, 2024). The court's analysis of the *Johnson* factors there—including the risks involved, the novelty and difficulty of the claims and defenses, and the customary fee and skill and reputation of Class Counsel—applies equally to evaluating the fee request that's part of this Settlement.

Moreover, as outlined in Class Counsel's briefing and supporting declarations, following the Pfizer settlement, Class Counsel continued to perform significant additional work for the class in preparing for class certification, retaining and working with experts, obtaining party and third-party discovery, and negotiating the Settlement. Notably, Class Counsel recovered

significantly more from Mylan ($73.5 million) than it recovered from Pfizer ($50 million) and, together, the two settlements resulted in a settlement of $123.50 million—which is a good outcome for the class members given the risks of the litigation. For these reasons, and for the reasons explained in Class Counsel's written submissions and summarized at the hearing, the *Johnson* factors support awarding one-third of the Settlement Fund. *Voulgaris*, 60 F.4th at 1263 ("The district court properly exercised its discretion in determining that 33% falls within the range of fee percentages awarded in securities class actions and other comparable complex class actions in this Circuit." (internal quotation marks and citation omitted)). And while the court notes that Class Counsel have expended a significant amount of time and labor, the court is not required, and does not consider it necessary, to perform a "lodestar cross-check." *Id*. at 1265 (holding that "the district court was not required to perform a lodestar cross-check" in awarding fees as a percentage of the fund); *KPH Healthcare Servs.*, 2024 WL 3360499, at *5 ("[A] lodestar analysis (or crosscheck) is neither required nor needed to assess reasonableness in a percentage of the fund determination."). The court further grants authority to Co-Lead Counsel to distribute the attorneys' fees, costs and expenses in a manner that, in the opinion of Co-Lead Counsel, fairly compensates each firm in view of its contribution to the prosecution of plaintiffs' claims.

6. The court directs that plaintiffs' and Direct Purchaser Settlement Class Members' claims against Mylan are dismissed with prejudice, and without costs and without attorneys' fees recoverable under 15 U.S.C. § 15(a), except as otherwise provided in the Settlement Agreement.

7. The court has also considered whether the Plan of Allocation treats class members equitably. It does. The Plan of Allocation provides that the net Settlement Fund will be distributed pro rata to eligible class members based on their proportion of the alleged damages.

At the hearing, the court questioned why purchases of brand-name drugs were treated differently, and more favorably, than generic-drug purchases. Class Counsel explained that, under the damages theory they would have used had the case proceeded to trial, their expert measured the alleged overcharge and concluded it was higher for brand as opposed to generic versions. This difference is reflected proportionally in the formula used for allocating the Settlement, and thus the court deems it equitable. The court authorizes Co-Lead Counsel and the Settlement Administrator, A.B. Data, Ltd., to use all reasonable procedures that are not materially inconsistent with this Order or the Settlement Agreement to carry out all remaining aspects of the administration of the Settlement. The court specifically authorizes Co-Lead Counsel and A.B. Data, Ltd. to distribute the Settlement Fund to the eligible Class members according to the Plan of Allocation approved by the court and to reimburse the reasonable costs and expenses incurred by A.B. Data, Ltd., the Class's economist, and the escrow agent, and any other reasonable third party, in administering the Settlement, consistent with this Order and the Settlement Agreement.

8. Any claimant who disagrees with the decision of A.B. Data shall have a further opportunity to seek review of that decision by the court, as provided in the Plan of Allocation. Nevertheless, the Class, Plaintiffs' Counsel, A.B. Data, Ltd., Monument Economics Group, and all persons who are involved in any aspect of the processing of the claims filed in this Settlement, or who are otherwise involved in the administration or taxation of the Mylan Settlement Fund, are hereby released and discharged from any and all claims arising out of such involvement, and, pursuant to the release terms of the Settlement Agreement, all Class members and claimants, and their assignees, whether or not they are to receive payment from the Mylan Settlement Fund, are hereby barred from making any further claim against the Mylan Settlement Fund beyond the amount, if any, allocated to them during the claim administration process.

9. The court will retain exclusive jurisdiction over the Settlement and the Settlement Agreement, including administration and consummation of the Settlement.

10. The judgment of dismissal of all Direct Purchaser Settlement Class claims against Mylan is final and appealable.

IT IS THEREFORE ORDERED BY THE COURT THAT plaintiffs' Motion for Final Approval of Settlement (Doc. 465) is granted, consistent with the terms expressed in this Order.

IT IS SO ORDERED.

Dated this 21st day of May 2025, at Kansas City, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge