IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JUDY KIRKBRIDE and BEETA LEWIS, individually and on behalf of all others similarly situated, Plaintiffs, vs. THE KROGER CO., Defendant.	)	Case No. 2:21-cv-00022-ALM-EPD Chief Judge Algenon L. Marbley Magistrate Judge Elizabeth Deavers

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement, including its exhibits (collectively, the "Settlement Agreement") is entered into as of March 12, 2026 by and among Plaintiffs Judy Kirkbride and Beeta Lewis ("Plaintiffs"), the Settlement Class[1], Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, PC as Class Counsel, on the one hand, and Defendant The Kroger Co., on the other hand. Defendant and Plaintiffs are referred to individually as "Party" and collectively as the "Parties." Together, Plaintiffs, the Settlement Class, and Defendant are referred to for purposes of this Settlement Agreement as the "Settling Parties."

I. THE LITIGATION

On January 5, 2021, one of the current Plaintiffs filed the initial class action complaint. ECF No. 1. Plaintiffs' central allegation is that Defendant should have considered the prices it charged under its Rx Savings Club or Health Savings Club ("Savings Club") when determining its usual and customary ("U&C") prices, resulting in some insured customers paying more for prescription drugs. Defendant denies Plaintiffs' allegations and maintains that it acted appropriately in reporting its retail prices as its U&C prices. On April 16, 2021, Defendant filed a motion to strike the complaint. ECF No. 28. On April 29, 2021, before the District Court could rule, certain Plaintiffs filed an amended complaint ("Amended Complaint"). ECF No. 30. On July 12, 2022, the District Court denied Kroger's motion to dismiss the Amended Complaint. ECF No. 42. On July 26, 2022, Kroger filed its answer to the Amended Complaint, and on July 27, 2022, Plaintiffs filed a motion to strike Kroger's affirmative defenses. ECF No. 44; ECF No. 45. On January 1, 2023, Kroger then filed its amended answer to the Amended Complaint. ECF No. 55. On January 23, 2023, Plaintiffs filed a renewed motion to strike Defendant's affirmative

[1] Capitalized terms not defined in the introductory paragraph are defined in § IV.1, *infra*.

defenses. ECF No. 57. On September 5, 2023, the District Court struck, without prejudice, certain of Kroger's affirmative defenses. ECF No. 62.

Over the course of over five years of hard-fought litigation, the Parties engaged in extensive fact and expert discovery. Plaintiffs issued and Kroger responded to 16 requests for production, 11 interrogatories, and 4 requests for admission. Kroger issued and Plaintiffs responded to 30 requests for production, 10 interrogatories, and 13 requests for admission. Kroger issued six non-party subpoenas and Plaintiffs issued two non-party subpoenas for documents, and the Parties received documents and data in response. Defendants reviewed over 18,000 documents and produced nearly 4,000 documents; and Plaintiffs reviewed over 22,000 pages of documents. Plaintiffs took or defended nine Party and non-party depositions pursuant to Federal Rules of Civil Procedure 30(b)(6) and 45, including depositions of six of the Parties' seven experts,[2] Kroger, and the two named Plaintiffs. The Parties' experts issued opening, responsive, and rebuttal reports relating to Plaintiffs' motion for class certification. Each Plaintiff also produced documents, including information reflecting purchases of prescriptions from Kroger.

On February 16, 2024, Plaintiffs filed their motion for class certification and expert reports, ECF Nos. 72, 72-1. On May 17, 2024, Kroger filed its second amended answer to the Amended Complaint, and reinstated certain of its affirmative defenses. ECF No. 82; ECF No. 83. On May 28, 2024, Defendant filed its opposition to Plaintiffs' motion for class certification and its expert reports. ECF Nos. 84, 84-1, 84-2.[3] Plaintiffs filed a reply and Defendant filed a surreply and Rule 702 motions. Class certification briefing concluded following the filing of Plaintiffs' reply papers,

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[2] Plaintiffs introduced an additional expert, Dr. Susan Hayes, during class certification briefing, so Kroger did not have an opportunity to depose her prior to her testimony at the March 19-21, 2025 evidentiary hearing.

[3] Kroger also served on Plaintiffs at that time, but did not file on the docket, one additional expert report. Kroger also served one amended expert report on Plaintiffs on June 20, 2024, which was filed on the docket. ECF No. 150.

including rebuttal expert reports, and Defendant's additional sur-reply and sur-rebuttal expert report. ECF Nos. 101, 101-1, 147, 149. On October 3, 2024, the Parties completed all briefing related to Defendant's Rule 702 motions. ECF Nos. 85, 85-1, 85-2, 86, 86-1, 86-2, 98, 98-1, 99, 99-1, 99-2, 99-3, 99-4, 99-5, 108, 108-1, 108-2, 109, 110, 110-1, 110-2, 111, 115, 116, 118, 119.

On March 19-21, 2025, the District Court held a three-day evidentiary hearing and oral argument on the motion for class certification and Rule 702 motions. ECF No. 85; ECF No. 86; ECF No. 101; ECF No. 110; ECF No. 111; ECF No. 144; ECF No. 145; ECF No. 147; ECF No. 156. On April 9, 2025, the District Court granted Plaintiffs' motion for class certification and denied the Rule 702 motions. ECF No. 142.

Following the District Court's April 9, 2025 order, Kroger filed a petition for permission to appeal the District Court's grant of class certification in the Sixth Circuit ("Petition"). *Kirkbride et al. v. The Kroger Co.*, No. 25-0302 (6th Cir. Apr. 11, 2025), ECF No. 1-2. The Sixth Circuit has not ruled on the Petition. On May 22, 2025, the Parties filed a joint motion to hold the case in abeyance pending mediation, which the Sixth Circuit granted. *See id.*, ECF Nos. 16, 17-2.

II. DEFENDANT'S DENIAL OF WRONGDOING AND LIABILITY

Defendant contends that the claims and allegations of wrongdoing or liability by Plaintiffs and the Settlement Class in the Action are without merit. Defendant expressly denies all allegations of wrongdoing or liability. The Parties are settling this matter with no findings of liability or wrongdoing by Kroger as to any of Plaintiffs' allegations. Further, the Settling Parties' agreement as to certification of the Settlement Class is only for purposes of effectuating a Settlement and for no other purpose. Defendant retains all of its objections, arguments, and/or defenses with respect to the merits of the Action and class certification if the Settlement Agreement does not receive approval or if it is terminated. The Settling Parties acknowledge that there has been no stipulation to any class for any purposes other than effectuating the Settlement, and, although the District Court certified three litigation classes, Kroger has requested permission to appeal that certification to the Sixth Circuit, and if the District Court declines to approve the Settlement Agreement in whole, including the class definition provided herein, or if the Settlement Agreement is voided, terminated pursuant to ¶ 8.3, or fails to become effective for any reason, then, in addition to the provisions of ¶¶ 8.1-8.4, this Settlement Agreement becomes null and void *ab initio*, and no Party may cite this Settlement Agreement, the negotiations that led to the Settlement Agreement, or any related documents filed in connection with the Settlement Agreement for any purpose related to the Action, including arguing the merits of class certification and/or any Party's claims or defenses.

It is expressly agreed that neither this Settlement Agreement nor any action taken to carry out this Settlement Agreement is, may be construed as, or may be used as an admission by Defendant of any fault, wrongdoing, or liability whatsoever with respect to the subject matter of the Action.

III. THE BENEFITS OF SETTLEMENT

The Parties to this Action engaged in extensive arm's-length settlement negotiations. The Parties retained Miles N. Ruthberg of Phillips ADR as the mediator. Kroger provided additional data to Plaintiffs sufficient to allow Plaintiffs to reliably estimate damages to the Settlement Class, and the Parties submitted written mediation briefs and exhibits, and participated in numerous pre-mediation conferences with the mediator. On August 21, 2025, the Parties attended an all-day in-person mediation, and engaged in additional negotiations thereafter, and ultimately agreed in principle (subject to certain terms set forth below) to settle the Action in exchange for a total cash payment by Kroger of $17,000,000.00 for the benefit of the Settlement Class and other terms as further described below.

The Settling Parties know that further prosecution and defense of the Action would be protracted and expensive and, having taken into account the uncertainty and risks inherent in any such litigation, have determined that it is desirable to compromise and settle all claims in the Action with respect to the Settlement Class described in this Settlement Agreement and to proceed to seek approval, implementation, and administration of this Settlement in the Southern District of Ohio.

Plaintiffs, on behalf of themselves and as representatives of the Settlement Class, and Defendant have worked to resolve their differences, and have elected to settle those differences under the terms of this Settlement Agreement rather than continue litigating their respective positions to conclusion.

The Settling Parties intend by this Settlement Agreement to resolve all claims of the Settlement Class against Defendant, and vice versa, and to resolve all other Plaintiffs' Released Claims and Defendant's Released Claims (as defined below) in accordance with the terms of this Settlement Agreement.

IV. TERMS OF AGREEMENT

NOW, THEREFORE, Plaintiffs, on behalf of themselves and as representatives of the Settlement Class, the Settlement Class, and Defendant, in consideration of the execution of this Settlement Agreement, the mutual promises contained herein, the benefits to be received hereunder, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all Settling Parties, hereby agree as follows:

1. Definitions

The following terms and phrases shall have the following meanings under the provisions of this Settlement Agreement, whether used in the singular or plural, and whether in the possessive or non-possessive:

1.1 "Action" means *Kirkbride et al. v. The Kroger Co.*, No. 2:21-cv-00022 (S.D. Ohio).

1.2 "Attorneys' Fees and Expenses" means attorneys' fees and out-of-pocket litigation expenses and charges (including expert and consulting fees) submitted by Class Counsel in an amount to be determined by the District Court. Attorneys' Fees and Expenses shall be paid from the Settlement Fund.

1.3 "Claim Form" means the claim form attached as Exhibit E as approved by the District Court.

1.4 "Class Counsel" means Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, PC.

1.5 "Contact Information" means any potential Settlement Class Members' names, dates of birth, phone numbers, physical addresses (including zip code), and email addresses that are in Defendant's possession and reasonably accessible as of the date of this Settlement Agreement.

1.6 "Defendant" or "Kroger" means The Kroger Co., including all pharmacies owned and/or operated by The Kroger Co. or any of its affiliates.

1.7 "Defendant's Counsel" means Reed Smith LLP.

1.8 "Defendant's Released Claims" means all claims, demands, damages, harm, injuries, actions, causes of action, suits, proceedings, matters, disputes, obligations, costs, and losses of any kind whatsoever, whether known or Unknown Claims, suspected or unsuspected, accrued or unaccrued, and contingent or non-contingent, which now exist or have existed upon any theory of law or equity (whether contractual, common law, statutory, federal, state, local, or otherwise), against Plaintiffs' Released Persons arising out of or related to the institution, prosecution, or Settlement of the claims asserted in the Action, except for claims relating to the enforcement of the Settlement Agreement, the filed stipulated undertaking referenced in ¶ 7.1 ("Stipulated Undertaking"), and the side agreement referenced in ¶ 8.3 ("Side Agreement").

1.9 "Defendant's Released Persons" means Kroger and its respective legal representatives, predecessors, successors and assigns, present and former parents and subsidiaries and affiliated entities, and present and former employees, partners, agents, representatives, independent contractors, officers, directors, shareholders, attorneys, accountants, managers, and all other legally associated individuals or entities.

1.10 "Distribution" means an electronic disbursement or disbursement by check payable to the order of a Settlement Class Member as the distribution of the Settlement Class Member's share of the Net Settlement Fund pursuant to the approved Plan of Allocation and Distribution.

1.11 "Distribution Date" means the date of the initial disbursement of the Net Settlement Fund to Settlement Class Members. No Distribution shall be made to Settlement Class Members until the Effective Date.

1.12 "Effective Date" means the date on which the Judgment becomes Final and Non-Appealable.

1.13 "Escrow Account" means the interest-bearing account controlled by the Escrow Agent into which the sum of $17,000,000.00, paid to the Escrow Agent by Defendant, in the manner and amounts as set forth in ¶ 2.1, shall be deposited.

1.14 "Escrow Agent" means Angeion Group.

1.15 "Escrow Fees" means any fees, costs, and expenses incurred by the Escrow Agent other than Taxes and Tax Expenses.

1.16 "Fairness Hearing" means the proceedings to be held before the District Court to determine whether the Settlement should be approved as fair, reasonable and adequate pursuant to

Rule 23(e)(2) of the Federal Rules of Civil Procedure; whether the Judgment should be entered; and whether the motion for award of Attorneys' Fees and Expenses and Service Awards should be granted.

1.17 "Final and Non-Appealable" means, with respect to the Judgment approving this Settlement Agreement and the proposed class settlement contemplated under this Settlement Agreement, when the Judgment has been entered and the time has expired to file: (a) a notice of appeal; or (b) any motion which would legally extend the time to appeal the Judgment or challenge or seek reconsideration, modification or vacation of the Judgment. If a notice of appeal is filed, the Judgment becomes Final and Non-Appealable when the appellate court enters an order or judgment dismissing or overruling the relief requested and that order or judgment itself becomes final and no longer subject to further review in any court, or on the date all the appellants dismiss with prejudice any appeal. For the avoidance of doubt, any appeal or proceeding seeking subsequent judicial review of an order solely with respect to Attorneys' Fees and Expenses shall not in any way delay or preclude the Judgment from becoming Final and Non-Appealable.

1.18 "Judgment" means the order of the District Court giving final approval to this Settlement in accordance with the terms of this Settlement Agreement, substantially in the form of the attached Exhibit F.

1.19 "Plaintiffs" means collectively: Judy Kirkbride and Beeta Lewis.

1.20 "Net Settlement Fund" means the Settlement Fund less: (a) Attorneys' Fees and Expenses, including Service Awards, as awarded by the District Court; (b) Notice and Administration Expenses; (c) Taxes, Tax Expenses, and Escrow Fees; and (d) other Court-approved deductions.

1.21 "Notice" means the Notices of Settlement of Class Action and Fairness Hearing, which are to be sent to the Settlement Class after the District Court determines them to be consistent with the requirements of Due Process and Rule 23, and is substantially in the forms of the attached Exhibits C1, C2, and D.

1.22 "Notice Plan" means the plan created by the Parties and Settlement Administrator for the purpose of providing Notice to the Settlement Class, as described in ¶¶ 5.1-5.8, below.

1.23 "Notice and Administration Expenses" means the reasonable expenses of the Settlement Administrator incurred or charged in connection with the following, as approved by the District Court:

(a) Providing notice of the Settlement to Settlement Class Members pursuant to the Notice Plan, including through digital communications and publication of the Notice (including the cost of print and digital communications and publications, as well as making certain efforts to locate Settlement Class Members);

(b) Maintenance of a dedicated Settlement Website to facilitate communications with Settlement Class Members and to provide access to Settlement-related documents and information;

(c) Responding to inquiries regarding the Settlement by Settlement Class Members;

(d) Implementation of the Plan of Allocation and Distribution (including the processing of claims, calculating the allocations and distributions, and providing disbursements);

(e) Costs of preparing and dispersing Distributions and tax documentation to the Settlement Class Members; and

(f) Any other reasonable fees and expenses of the Settlement Administrator.

1.24 "Opt-Out Deadline" means the date by which Settlement Class Members must elect to opt out of the Settlement Class as set forth in the Preliminary Approval Order.

1.25 "Plaintiffs' Related Parties" means Plaintiffs' respective legal representatives, including Class Counsel, heirs, executors, administrators, beneficiaries, trustees, predecessors, successors in interest, transferees and assignees, in their capacities as such.

1.26 "Plaintiffs' Released Claims" means all claims, demands, damages, harm, injuries, actions, causes of action, suits, proceedings, matters, disputes, obligations, costs, and losses of any kind whatsoever, whether known or Unknown Claims, suspected or unsuspected, accrued or unaccrued, and contingent or non-contingent, which now exist or have existed upon any theory of law or equity (whether contractual, common law, statutory, federal, state, local, or otherwise), including any claims for compensatory or punitive damages, or for attorneys' fees, costs, or disbursements of any kind, against Defendant's Released Persons arising out of or related to the conduct challenged in the Action, including any and all claims relating to the reporting of U&C prices for pharmaceuticals, regardless of whether "usual and customary" or "U&C" appears as a defined contractual term in any relevant contract, except for claims relating to the enforcement of the Settlement Agreement, the Stipulated Undertaking, and the Side Agreement.

1.27 "Plaintiffs' Released Persons" means Plaintiffs, Settlement Class Members, and Plaintiffs' Related Parties.

1.28 "Plan of Allocation and Distribution" means the methodology for allocating and distributing the Net Settlement Fund to Settlement Class Members, attached as Exhibit A.

1.29 "Preliminary Approval Order" means the order (or orders) of the District Court: (a) preliminarily approving this Settlement Agreement; (b) preliminarily certifying the Settlement Class; (c) preliminarily appointing class representatives; (d) preliminarily appointing Class

Counsel; (e) appointing the Settlement Administrator and Escrow Agent; (f) approving the form and manner of disseminating the Notice to Settlement Class Members; (g) approving the Notice Plan; (h) preliminarily approving the Plan of Allocation and Distribution; and (i) scheduling a Fairness Hearing. The Preliminary Approval Order shall also provide that, if this Settlement Agreement is not approved in whole, is voided, terminated pursuant to ¶ 8.3, or fails to become effective for any reason, the Settling Parties shall be returned to the *status quo* that existed immediately prior to May 23, 2025, when the Sixth Circuit first held the case in abeyance so that the Parties could engage in settlement discussions. *See Kirkbride et al. v. The Kroger Co.*, No. 25-0302 (6th Cir. Apr. 11, 2025), ECF No. 17-2. The Preliminary Approval Order shall be substantially in the form of the order attached as Exhibit B.

1.30 "Released Persons" means Defendant's Released Persons and Plaintiffs' Released Persons.

1.31 "Released Claims" means Defendant's Released Claims and Plaintiffs' Released Claims.

1.32 "Service Awards" means payments, to be approved by the District Court, to Plaintiffs in their capacity as representatives of the Settlement Class to compensate them for their work on behalf of the Settlement Class, including participating in the litigation, performing work in support of the litigation, and undertaking the risks of litigation.

1.33 "Settlement" means the settlement between the Settling Parties in the Action on the terms and conditions set forth in this Settlement Agreement.

1.34 "Settlement Administrator" means Angeion Group. Angeion Group will administer this Settlement Agreement and the Plan of Allocation and Distribution.

1.35 "Settlement Amount" means $17,000,000.00 in cash to be paid by Defendant into the Escrow Account for the benefit of the Settlement Class. The Settlement Amount will be paid in the manner set forth in ¶ 2.1.

1.36 "Settlement Class Member" means a person who is a member of the Settlement Class who does not opt out.

1.37 "Settlement Class Period" means from December 9, 2018 through the date on which Class Notice is disseminated.

1.38 "Settlement Class" means the following:

> All individuals in the United States and its territories who, at any point in time during the Settlement Class Period, paid in whole or in part for one or more prescription drugs from Kroger using their insurance.

The following individuals are excluded from the Settlement Class: (1) any Judge presiding over any portion of this Action, including appeals, and immediate members of the Judges' families, any members of the Judges' respective staffs (but not members of the immediate families of judicial staff); (2) officers and directors of Kroger, its subsidiaries, parent companies, successors, predecessors, affiliates, and any entity in which Kroger has a controlling interest; (3) individuals who timely and validly request exclusion from the Settlement Class; (4) the legal representatives, successors, or assigns of any such excluded individuals; and (5) all individuals that have sued (other than through this Action), filed an arbitration demand, or participated in a settlement in a suit against Kroger relating to its determination of U&C prices in connection with the Savings Club (this exclusion from the Settlement Class does not apply to individuals that have voluntarily dismissed their claims without prejudice in any suit or arbitration).

1.39 "Settlement Fund" means the Settlement Amount, plus all interest and accretions thereto.

1.40 "Settlement Website" means the dedicated website created, administered, and maintained by the Settlement Administrator in connection with the Settlement, at an available URL (such as, for example, www.krogersavingsclubsettlement.com).

1.41 "Tax" or "Taxes" mean any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority.

1.42 "Tax Expenses" means expenses and costs incurred in connection with the implementation and administration of the "qualified settlement fund" described in ¶¶ 2.8-2.13 (including expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in ¶¶ 2.8-2.13).

1.43 "Unknown Claims" means: (a) any Plaintiffs' Released Claims that Plaintiffs or any Settlement Class Member does not know or suspect to exist in his or her favor at the time of the release of Defendant's Released Persons which, if known by him or her, might have affected such Plaintiff's or Settlement Class Member's settlement or decisions with respect to the Settlement, including the release of Defendant's Released Persons or the decision not to object to or opt out of this Settlement; and (b) any Defendant's Released Claims that Defendant does not know or suspect to exist in its favor at the time of the release of Plaintiffs' Released Persons, which if known by it, might have affected its settlement or decision with respect to the Settlement, including the release of Plaintiffs' Released Persons. With respect to: (i) any and all Plaintiffs' Released Claims against Defendant's Released Persons and (ii) any and all Defendant's Released Claims against Plaintiffs' Released Persons, the Settling Parties stipulate and agree that, upon the Effective Date, they shall expressly waive, and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by the law of any state or territory or other jurisdiction or principle of common law or foreign law that is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Settling Parties and the Settlement Class Members may hereafter discover facts in addition to or different from those that he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but the Settling Parties shall expressly fully, finally, and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or have existed, upon any theory of law or equity now existing or coming into existence in the future, including conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of law (including by operation of the Judgment) to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement.

1.44 The term "including" means including but not limited to.

2. The Settlement

a. Payments to Settlement Class Members

2.1 **Payment by Defendant**. Defendant agrees to pay $17,000,000.00 into a non-reversionary common fund for the benefit of Settlement Class Members. Within 45 days after the District Court enters a Judgment, Defendant will pay the Settlement Amount into the Escrow Account, which the Escrow Agent will control. No disbursements shall be made to Settlement Class Members until the Effective Date. If this Settlement Agreement is not approved in whole, is voided, or is terminated pursuant to ¶ 8.3, or if the Settlement Agreement fails to become effective for any reason: (a) the balance in the Settlement Fund, including interest accrued thereon and the amounts returned to the Settlement Fund pursuant to ¶ 7.3, but less Taxes, Tax Expenses, Escrow Fees, and any Notice and Administration Expenses actually paid or incurred, shall be promptly returned to Defendant not later than 35 days after the Settlement Agreement is not approved, is voided, terminated pursuant to ¶ 8.3, or fails to become effective for any reason; and (b) the Settling Parties shall be returned to the *status quo* that existed in the Action immediately prior to May 23, 2025, when the Sixth Circuit first stayed the case so that the Parties could engage in settlement discussions.

2.2 Distributions to Settlement Class Members shall be in accordance with this Settlement Agreement, the Plan of Allocation and Distribution as approved by the District Court, and the Judgment.

2.3 The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition and settlement of all the Released Claims. Except with regard to the amount Kroger agrees to pay in the event that the Settlement fails to become effective for any reason prior to entry of the Judgment as stated in ¶ 5.6, below, the Settlement Amount paid by Defendant is its sole monetary responsibility under this Settlement Agreement, and Settlement Class Members who do not timely seek to exclude themselves from the Settlement Class shall not look to any of Defendant's Released Persons for satisfaction of any Plaintiffs' Released Claims. Defendant is not responsible for payment of Attorneys' Fees and Expenses, Notice and Administration Expenses, Escrow Fees, or any out-of-pocket expenses, other than indirectly through its payment of the Settlement Amount, or as provided for in this Settlement Agreement.

b. The Escrow Agent

2.4 The Escrow Agent shall invest the Settlement Amount deposited pursuant to ¶ 2.1 in United States Agency or Treasury Securities or other instruments backed by the Full Faith & Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All risks related to the investment of the Settlement Fund shall be borne by the Settlement Fund. The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the investment decisions or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent.

2.5 The Escrow Agent shall not disburse the Settlement Fund except as provided in the Settlement Agreement or by an order of the District Court.

2.6 Subject to further order(s) and/or directions as may be made by the District Court, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of the Settlement Agreement. Neither the Parties nor their respective counsel shall be liable for the loss of any portion of the Settlement Fund, nor have any liability, obligation, or responsibility for (a) the payment of claims, taxes (including interest and penalties), legal fees, or any other expenses payable from the Settlement Fund; (b) the investment of any Settlement Fund assets; or (c) any act, omission, or determination of the Escrow Agent.

2.7 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the District Court, and shall remain subject to the jurisdiction of the District Court, until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order(s) of the District Court.

c. Taxes and Tax Expenses

2.8 The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary Parties, and thereafter to cause the appropriate filing to occur.

2.9 For the purpose of § 1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in ¶ 2.8 hereof) shall be consistent with this ¶ 2.9 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶ 2.10 hereof. Defendant's Released Persons shall have no responsibility or liability for the Settlement Fund's tax returns or other filings. Plaintiffs' Released Persons shall have no responsibility or liability for the Settlement Fund's tax returns or other filings, other than indirectly through the Settlement Fund.

2.10 All: (a) Taxes (including any estimated Taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Persons or their counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes; and (b) Tax Expenses, shall be paid out of the Settlement Fund; in all events Defendant's Released Persons and their counsel shall have no liability or responsibility for the Taxes or the Tax Expenses, and Plaintiffs' Released Persons, the Settling Parties, and their counsel shall have no liability or responsibility for the Taxes or the Tax Expenses other than indirectly through the Settlement Fund. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the District Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from Distribution to Settlement Class Members any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(l)(2)). The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

2.11 The Settlement Administrator will be responsible for the filing of forms related to all Taxes (including any interest or penalties thereon), including all federal, state, local, or any other Taxes of any kind, that may be owed on any income earned by the Settlement Fund.

2.12 Defendant's Released Persons and Defendant's Counsel shall have no liability for or obligations with regard to Taxes and Tax Expenses, including with respect to acts or omissions of the Settlement Administrator or its agents. The Escrow Agent, through the Settlement Fund, shall indemnify and hold each Defendant's Released Persons and Defendant's Counsel harmless for any Taxes and Tax Expenses (including, without limitation, taxes payable by reason of such indemnification).

2.13 Plaintiffs' Released Persons and Class Counsel shall have no liability for or obligations with regard to Taxes and Tax Expenses, including with respect to acts or omissions of the Settlement Administrator or its agents, other than indirectly through the Settlement Fund. The Escrow Agent, through the Settlement Fund, shall indemnify and hold Plaintiffs' Released Persons and Class Counsel harmless for any Taxes and Tax Expenses (including, without limitation, taxes payable by reason of such indemnification).

d. Refund of Settlement Payment Upon Termination of Settlement

2.14 In the event that the Settlement Agreement is not approved, is voided, terminated pursuant to ¶ 8.3, or fails to become effective for any reason, the balance in the Settlement Fund, including interest accrued thereon and the amounts returned to the Settlement Fund pursuant to ¶ 7.3, but less Taxes, Tax Expenses, Escrow Fees, and any Notice and Administration Expenses actually paid or incurred, shall be promptly returned to Defendant pursuant to written instructions from Defendant's Counsel, not later than 35 days after the Settlement Agreement is not approved, is voided, terminated pursuant to ¶ 8.3, or fails to become effective for any reason.

3. Preliminary Approval Order, CAFA Notice, and Fairness Hearing

3.1 Promptly after execution of the Settlement Agreement, Class Counsel shall submit the Settlement Agreement to the District Court and shall apply for entry of the Preliminary Approval Order, requesting, among other things, the preliminary approval of the Settlement set forth in the Settlement Agreement, approval of the Notice, preliminary appointment of Plaintiffs as class representatives for the Settlement Class, and preliminary appointment of Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, PC as Class Counsel, substantially in the form of the attached Exhibit B. The Notice shall include the general terms of the Settlement set forth in the Settlement Agreement, a description of the proposed Plan of Allocation and Distribution, the general terms of the application for a Fee and Expense Award (as defined in ¶ 7.1), and the date of the Fairness Hearing. Defendant agrees not to oppose appointment of Plaintiffs as class representatives for the Settlement Class and appointment of Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, PC as Class Counsel for the Settlement Class.

3.2 At the time of the submission of this Settlement Agreement to the District Court as described above, Class Counsel shall request that after notice is given, the District Court hold the Fairness Hearing and approve the Settlement of the Action as set forth herein. At the Fairness Hearing, Class Counsel also will request that the District Court: (1) grant final approval of this Settlement and direct its implementation pursuant to the terms and conditions of the Settlement Agreement; (2) confirm that the Notice Plan complies in all respects with the requirements of due process and Rule 23 by providing due, adequate, and sufficient notice to the Settlement Class; (3) determine that this Settlement is fair, reasonable, and adequate; (4) approve the proposed Plan of Allocation and Distribution; (5) grant Plaintiffs' application for an award of Attorneys' Fees and Expenses, including Plaintiffs' request for Service Awards in connection with their representation of the Settlement Class; (6) direct that the Action be dismissed with prejudice; (7) state pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and direct that the Judgment is a final, appealable order; and (8) retain the District Court's continuing and exclusive jurisdiction over the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement, and over the Settlement Class Members for all matters relating to the Action.

3.3 After Notice is given, the Parties shall request and seek to obtain from the District Court a Judgment, in the form attached as Exhibit F.

3.4 Pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, *et seq.* ("CAFA"), no later than 10 calendar days after this Settlement Agreement is filed with the District Court, Defendant shall serve or cause to be served proper notice of the proposed Settlement upon those who are entitled to notice pursuant to CAFA.

4. Releases and Dismissal

4.1 Upon the Effective Date, Plaintiffs' Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Plaintiffs' Released Claims against Defendant's Released Persons with prejudice, whether or not any such Plaintiffs' Released Person shares in the Settlement Fund. Claims to enforce the terms of this Settlement Agreement, the Stipulated Undertaking, and the Side Agreement are not released.

4.2 Upon the Effective Date, Plaintiffs' Released Persons and anyone claiming through or on behalf of any of them will be forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, asserting any of the Plaintiffs' Released Claims against any of Defendant's Released Persons.

4.3 Upon the Effective Date, Defendant's Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Defendant's Released Claims against Plaintiffs' Released Persons with prejudice. Claims to enforce the terms of this Settlement Agreement, the Stipulated Undertaking, and the Side Agreement are not released.

4.4 As part of Plaintiffs' motion for final approval, and in consideration of the promises set forth in this Settlement Agreement, including payment of the Settlement Fund, the Plaintiffs, through their counsel and on behalf of themselves and the Settlement Class, shall request that the District Court dismiss the Action with prejudice.

5. Notice To The Class

5.1 In their motion for preliminary approval, Plaintiffs will propose that the District Court appoint Angeion Group as the Settlement Administrator. The parties have agreed upon Angeion Group to serve as the Settlement Administrator.

5.2 The Parties will work in good faith to assist the Settlement Administrator with developing an appropriate and reasonable Notice Plan, to be completed as soon as practicable after, but no later than fourteen (14) days after, execution of this Settlement Agreement. In the event the Parties and the Settlement Administrator cannot agree on a Notice Plan, the Parties will bring the issue before the District Court for a ruling. The Notice is designed to provide clear and concise notice of the terms of this Settlement Agreement in plain, easily understood language. Plaintiffs will recommend to the District Court the Notice Plan, to be approved in the Preliminary Approval Order, which will be administered by the Settlement Administrator.

5.3 The Settlement Administrator will facilitate the notice process by providing professional guidance and support in the implementation of the Notice Plan and by overseeing the Claim Form submission process and validating claims.

5.4 The duties undertaken by the Settlement Administrator shall be as described in this Settlement Agreement, the Court-approved Plan of Allocation and Distribution, the Court-approved Notice Plan, and orders of the District Court. The Settlement Administrator shall (a) administer the issuance of Notice to the Settlement Class in accordance with the terms of the Preliminary Approval Order and any other orders of the District Court; (b) determine the validity of submitted claims; (c) calculate the Recognized Claim amounts (defined in the Plan of Allocation and Distribution) of Authorized Claimants (defined in the Plan of Allocation and Distribution) that shall be allowed; (d) administer the Distribution of the Net Settlement Fund to Authorized Claimants (defined in the Plan of Allocation and Distribution); and (e) otherwise provide such claims administration services as are customary in settlements of this type, subject to such supervision of Class Counsel and (as appropriate or as circumstances may require) the District Court.

5.5 The Settlement Administrator shall also post on the Settlement Website a copy of this Settlement Agreement, the long-form Notice, substantially in the form of Exhibit D, hereto, the Claim Form, substantially in the form of Exhibit E, hereto, and other pertinent documents and Court filings pertaining to the settlement (including the motion for attorneys' fees upon its filing).

5.6 Notice and Administration Expenses will not exceed $325,000 prior to the Effective Date. Notice and Administration Expenses incurred prior to the District Court entering a Judgment will be paid by Class Counsel, or the Settlement Administrator may agree to defer receiving payment pending final approval of the Settlement, to be reimbursed out of the Settlement Fund once it is funded. In the event that the Settlement fails to become effective for any reason prior to entry of a Judgment and, therefore, the Settlement Fund is not funded, Kroger will pay the Settlement Administrator and/or reimburse Class Counsel (to the extent Class Counsel has already paid the Settlement Administrator) for the Notice and Administration Expenses actually incurred up to $150,000, and Class Counsel will pay the Settlement Administrator for the Notice and Administration Expenses actually incurred above $150,000 up to the cap of $325,000. Once a Judgment is entered, all Notice and Administration Expenses will be paid and/or reimbursed (to the extent Class Counsel has previously paid the Settlement Administrator) from the Settlement

Fund, regardless of whether the Judgment becomes Final and Non-Appealable. In no event shall Plaintiffs or Class Counsel be responsible to pay any amount for Notice and Administration Expenses other than as specified in this paragraph or indirectly through the Settlement Fund.

5.7 The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with regular reports at weekly intervals containing information concerning Notice (including any opt outs or objections), administration, and implementation of the Settlement Agreement, including the approved Plan of Allocation and Distribution.

5.8 The Settlement Administrator shall provide a declaration to the District Court attesting to the Notice to the Settlement Class and all measures undertaken to provide notice of the Settlement to the Settlement Class upon request by the Parties or as ordered by the District Court.

6. Claims Administration

6.1 No later than April 9, 2026, Defendant shall produce to the Settlement Administrator, with a copy to Class Counsel, an electronic list from its records that includes the Contact Information for Settlement Class Members. This electronic document shall be called the "List of Known Claimants."

6.2 Each Settlement Class Member wishing to participate in the Settlement, and who has not timely and properly elected to opt out of this Settlement, shall be required to submit to the Settlement Administrator a Claim Form. Each Claim Form must be submitted under penalty of perjury under the procedures outlined in the Plan of Allocation and Distribution and instructions contained in the Claim Form or otherwise given by the Settlement Administrator.

6.3 All Claim Forms must be received by the Settlement Administrator within the time prescribed in the Preliminary Approval Order unless otherwise ordered by the District Court. Any Settlement Class Member who fails to submit a properly completed Claim Form within such period authorized by the District Court shall be forever barred from receiving any payments pursuant to this Settlement Agreement or from the Net Settlement Fund (unless Class Counsel in its discretion deems such late submission to be a formal or technical defect and waives the lateness of the submission in the interest of achieving substantial justice, or unless, by order, the District Court approves that Settlement Class Member's untimely submitted Claim Form), but will in all other respects be subject to the provisions of this Settlement Agreement.

6.4 Claim Forms that do not meet the submission requirements may be rejected. Prior to rejecting a Claim Form for other than lack of timeliness, the Settlement Administrator shall communicate with the claimant to give the claimant the opportunity to remedy any curable deficiencies in the Claim Form submitted. The Settlement Administrator, under the supervision of Class Counsel, shall notify in a timely fashion and in writing, all claimants whose Claim Forms they propose to reject in whole or in part, setting forth the reasons thereof, and shall indicate in such deficiency notice that the claimant whose claims are to be rejected has the right to review by the District Court if the claimant so desires and complies with the requirements of this Settlement Agreement.

6.5 If any claimant whose Claim Form has been rejected in whole or in part desires to contest such rejection, the claimant must, within twenty (20) calendar days after the date of notice required by ¶ 6.4 above, serve upon the Settlement Administrator a written statement of reasons indicating the claimant's ground(s) for contesting the rejection along with copies of any supporting documentation, and requesting a review thereof by the District Court. If a dispute concerning whether a claim should be accepted or rejected cannot be otherwise resolved, Class Counsel shall thereafter present the request for review to the District Court.

6.6 Without regard to whether a Claim Form is submitted or allowed, each claimant who declines to be excluded from the Settlement Class shall be deemed to have submitted to the jurisdiction of the District Court with respect to such claimant's claim, and such claimant's claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that claimant's status as a Settlement Class Member and the validity and amount of the claimant's claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with the processing of Claim Forms.

6.7 Payment pursuant to this Settlement Agreement shall be deemed final and conclusive against all Settlement Class Members. All Settlement Class Members whose claims are not approved shall be barred from participating in distributions from the Net Settlement Fund, but shall otherwise be bound by all of the terms of the Judgment to be entered in the Action and the releases provided for in this Settlement Agreement, and will be barred from bringing any action against the Defendant's Released Persons arising out of or relating to Plaintiffs' Released Claims. All proceedings with respect to the administration, processing, and determination of claims described in this Settlement Agreement and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of and decided by the District Court. All Plaintiffs' Released Persons expressly waive trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to such determinations as provided herein. The decision of the District Court with respect to objections to the Settlement Administrator's claim determinations shall be final and binding on all Plaintiffs' Released Persons, and there shall be no appeal to any court, including the United States Court of Appeals for the Sixth Circuit, such right of appeal having been knowingly and intentionally waived by each Plaintiffs' Released Persons.

6.8 Subject to the terms of the Settlement Agreement and order(s) of the District Court, the Settlement Fund shall be applied as follows:

(a) to pay all Notice and Administration Expenses;

(b) to pay the Taxes and Tax Expenses described in ¶¶ 2.8-2.13 hereof;

(c) to pay Escrow Fees;

(d) to pay Attorneys' Fees and Expenses to Class Counsel to the extent allowed by the District Court;

(e) after the Effective Date, to pay Service Awards to Plaintiffs to the extent allowed by the District Court; and

(f) after the Effective Date, to distribute the Net Settlement Fund to Settlement Class Members as allowed by the Judgment, the Settlement Agreement, and the Plan of Allocation and Distribution, as approved by the District Court.

6.9 Any Distribution of monies or funds to Settlement Class Members shall be in accordance with the Settlement Agreement, the Plan of Allocation and Distribution approved by the District Court, and the Judgment.

6.10 Defendant and Plaintiffs agree that the Net Settlement Fund shall be only for the benefit of the Settlement Class, which by definition does not include those who timely and properly opt out of the Settlement Class after receiving the Notice as contemplated under this Settlement Agreement.

6.11 Defendant, Plaintiffs, and Class Counsel shall provide reasonable cooperation to the Settlement Administrator in connection with the information reasonably needed by them to perform the activities contemplated under this Settlement Agreement, including the dissemination of the Notice and the implementation of the Plan of Allocation and Distribution.

6.12 This Settlement is not reversionary, and, if the Settlement becomes Final and Non-Appealable, no portion of the Settlement Fund will be returned to Defendant. Defendant's

Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the Distribution of the Net Settlement Fund, the Plan of Allocation and Distribution, the determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith.

6.13 Defendant's Released Persons shall have no responsibility for allocation or Distribution of the Settlement Amount, whether to the Settlement Class Members or to Class Counsel.

6.14 No person or entity shall have any claim against any Released Persons or the Settlement Administrator based on Distributions made in accordance with the Settlement Agreement and the Settlement contained herein, the Court-approved Plan of Allocation and Distribution, the Judgment, or further order(s) of the District Court. This does not include any claim by any Party for breach of this Settlement Agreement or to enforce the terms of this Settlement Agreement, the Stipulated Undertaking, or the Side Agreement.

7. Class Counsel's Attorneys' Fees and Expenses and Plaintiffs' Service Awards

7.1 Class Counsel will submit an application or applications for: (a) an award of attorneys' fees not to exceed one third of the Settlement Fund; plus (b) out-of-pocket costs and expenses in connection with prosecuting the Action; plus (c) any interest on such Attorneys' Fees and Expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid) as may be awarded by the District Court (the "Fee and Expense Award"). Plaintiffs agree to move for an award of attorneys' fees and an award of fees, costs, and expenses at least 14 days before the objection deadline, or as otherwise ordered by the District Court. If awarded, any Fee and Expense Award will be paid from the Settlement Fund to Class Counsel within 50 days following the District Court's entry of a Judgment approving the Settlement and Fee and Expense

Award, subject to the terms of the separate Stipulated Undertaking entered into by Class Counsel and Defendant and filed with the District Court, in the form attached hereto as Exhibit G, notwithstanding the existence of timely filed objections, or potential appeal therefrom, or any other circumstance jeopardizing the finality of the District Court's Judgment. Class Counsel, in their sole discretion, shall allocate and distribute the Fee and Expense Award among Plaintiffs' counsel of record.

7.2 Plaintiffs may request Service Awards in connection with their representation of the Settlement Class in the amount of $5,000 to each Plaintiff. If awarded, any Service Award will be paid from the Settlement Fund.

7.3 In the event that the Effective Date does not occur, or the Judgment or the order granting the Fee and Expense Award is reversed or modified, or the Settlement Agreement is canceled or terminated for any other reason, and such reversal, modification, cancellation or termination becomes Final and Non-Appealable, and in the event that the Fee and Expense Award has been paid to any extent, then Class Counsel who received any payment of the Fee and Expense Award shall be obligated, within 30 days from receiving notice from Defendant's Counsel or from a court of appropriate jurisdiction, to refund to the Settlement Fund such fees and expenses previously paid to them from the Settlement Fund plus interest actually accrued, in an amount consistent with such reversal or modification. Each such Class Counsel's law firm receiving fees and expenses, as a condition of receiving the Fee and Expense Award, on behalf of itself and each equity partner and/or shareholder of it, agrees that the law firm and its equity partners and/or shareholders are subject to the jurisdiction of the District Court for the purpose of enforcing this provision, and are each jointly and severally liable and responsible for any required repayment.

7.4 Any Fee and Expense Award and/or Service Awards awarded by the District Court shall be paid solely from the Settlement Fund. Defendant's Released Persons shall have no responsibility for any payment of Service Awards to Plaintiffs and/or Attorneys' Fees and Expenses to Class Counsel, other than indirectly through Defendant's payment of the Settlement Amount, as provided for in this Settlement Agreement.

8. Failure to Obtain Approval of Settlement or Termination of Settlement

8.1 If the District Court enters an order denying approval of the Settlement with an opportunity to resubmit, the Parties will meet and confer in good faith to try to resolve any issues raised by the District Court through an amended settlement agreement, although neither Party shall have any obligation to agree to any material modifications to this Settlement Agreement.

8.2 This Settlement Agreement will automatically terminate if the District Court enters an order denying approval of the Settlement, in whole or in part, including if the District Court declines to approve the class definition herein, without an opportunity to resubmit or if any appellate court denies approval of the Settlement and such order becomes Final and Non-Appealable.

8.3 Defendant has the right and option, in its sole discretion, to withdraw from and terminate the Settlement in the event that Settlement Class Members who opt out from the Settlement on or before the Opt-Out Deadline satisfy a certain set of criteria that the Parties have agreed upon, the terms of which are set forth in a separate, confidential Side Agreement ("Triggering Criteria"), which can be provided *in camera* to the District Court upon request. If the Triggering Criteria are met, as soon as practicable but not later than 60 days after the Opt-Out Deadline, Defendant must decide whether it preliminarily intends to terminate the Settlement pursuant to this paragraph. If Defendant makes such preliminary determination to terminate the

Settlement, it will notify Class Counsel by email thereof, and Class Counsel will have 60 days from the date they receive Defendant's notice of preliminary determination to terminate the Settlement to communicate with any opt-outs to attempt to have such Settlement Class Members withdraw their opt-outs and remain in the Settlement Class. Defendant agrees to cooperate in good faith to encourage opt-outs to revoke their opt-out request and remain in the Settlement Class. If any Settlement Class Member withdraws his or her opt-out request, any Claim Form submitted by such Settlement Class Member will be deemed to be timely filed. If the Triggering Criteria continue to be met after 60 days from the date Class Counsel receives Defendant's notice of preliminary determination to terminate the Settlement, the settlement agreement will automatically terminate absent Kroger revoking its notice of intention to terminate prior to the end of the 60-day period following the date Class Counsel receives Defendant's notice of preliminary determination to terminate the Settlement. In the event that Defendant terminates the Settlement pursuant to this paragraph, (a) Class Counsel shall direct the Escrow Agent to return to Defendant, not later than 30 days after such termination, the balance in the Settlement Fund, including interest accrued thereon and the amounts returned to the Settlement Fund pursuant to ¶ 7.3, but less Taxes, Tax Expenses, and Escrow Fees, and any Notice and Administration Expenses actually paid or incurred, and (b) the Settling Parties shall be returned to the *status quo* that existed in the Action immediately prior to May 23, 2025, when the Sixth Circuit first held the case in abeyance so that the Parties could engage in settlement discussions.

8.4 If this Settlement Agreement is terminated pursuant to the terms hereof, or fails to become effective for any reason, then: (a) all orders of the District Court preliminarily or otherwise approving the Settlement and/or preliminarily or otherwise certifying the Settlement Class shall be vacated; (b) the Settling Parties shall be returned to the *status quo* that existed in the Action immediately prior to May 23, 2025, when the Sixth Circuit first held the case in abeyance so that the Parties could engage in settlement discussions; and (c) the Settling Parties shall retain all of their respective rights and defenses as of immediately prior to May 23, 2025. The Settling Parties shall then proceed in all respects as if this Settlement Agreement and any related orders had not been executed and/or entered.

9. Objections to the Settlement and Requests for Exclusion

9.1 The Notice shall require that any objection to (i) the Settlement, or any part of this Settlement Agreement, including Class Counsel's request for Attorneys' Fees and Expenses and/or Plaintiffs' request for Service Awards, and/or (ii) to the Court-approved Plan of Allocation and Distribution, be in writing and comply with all the requirements set forth herein and by the District Court in the Preliminary Approval Order and Notice.

9.2 The Notice shall require that any Settlement Class Member who elects to object to this Settlement Agreement (including any part thereof) or to the motion for Attorneys' Fees and Expenses or Service Awards shall do so in writing, signed in ink by the member of the Settlement Class who is objecting, and sent via first-class U.S. mail to, or filed with, the District Court a prescribed number of days before the Fairness Hearing as provided for in the Preliminary Approval Order with a copy also sent to Class Counsel.

9.3 The written objection shall provide the following information: (a) the objector's name, address, and any attorney representing the objector; (b) the legal or factual basis for the objection; (c) documentation sufficient to prove the objector's membership in the Settlement Class (such as evidence of relevant prescription purchases or payments); (d) a list of any witnesses, exhibits, or legal authority that the objector intends to offer; (e) whether the objector intends to appear, either in person or through counsel, at the Fairness Hearing; (f) whether the objection applies only to the objector, to a subset of the Settlement Class, or to the Settlement Class as a whole; and (g) a list of all class action settlements to which the objector and/or their counsel have previously objected. Any potential Settlement Class Member who fails to timely file and serve such written statement and provide the required information will not be permitted to present any objections at the Fairness Hearing and such failure will render any such attempted objection untimely and of no effect, unless otherwise ordered by the District Court. All presentations of objections will be further limited by the information listed. A potential Settlement Class Member's mere compliance with the foregoing requirements does not in any way guarantee a potential Settlement Class Member the ability to present evidence or testimony at the Fairness Hearing. The decision whether to allow any testimony, argument, or evidence, as well as the scope and duration of any and all presentations of objections at the Fairness Hearing, will be in the sole discretion of the District Court.

9.4 A Settlement Class Member may request to be excluded from the Settlement Class by sending a timely written request postmarked on or before the Opt-Out Deadline specified in the Notice. To exercise the right to be excluded, a member of the Settlement Class must timely send a letter via first-class U.S. mail with postage prepaid or overnight delivery to the address specified in the Notice and include the following: (1) the individual's full name, current mailing address, telephone number, and social security number; (2) a statement that the individual purchased and paid for one or more prescription drugs from Kroger using insurance during the Settlement Class Period; (3) a statement that the individual wishes to be excluded from the Settlement Class (e.g., "I request that I be excluded from the *Kirkbride et al. v. The Kroger Co.* settlement."); and (4) the individual's signature. A request for exclusion that does not include all of the foregoing information, that does not contain the proper signature, that is sent to an address other than the one designated in the Notice, or that is not sent within the time specified shall be invalid and the individual filing such an invalid request shall be a Settlement Class Member and shall be bound by the Settlement, if approved.

9.5 Settlement Class Members shall not be permitted to exclude other Settlement Class Members. Moreover, group or class-wide exclusions shall not be permitted. A request for exclusion must be submitted by each Settlement Class Member on an individual basis, and any request for exclusion by a purported authorized agent or representative of a Settlement Class Member must include proof of the representative's legal authority and authorization to act and request exclusion on behalf of each Settlement Class Member they seek to opt out.

10. Miscellaneous

10.1 While denying liability, Defendant agrees that the Action is being settled voluntarily by Defendant after consultation with competent legal counsel.

10.2 The Settling Parties agree to settle the Released Claims and to execute this Settlement Agreement solely to compromise and settle protracted, complicated, and expensive litigation. The Settling Parties agree that nothing in this Settlement Agreement or the Side Agreement, or the negotiations thereof and the actions taken in compliance thereof, including payment of the Settlement Amount, (i) shall be construed as, deemed to be evidence of, or constitute an admission or concession by any of the Settling Parties as to the merits, or lack of merits, of any allegation or defense asserted in this Action, and (ii) shall be offered or received in evidence in any action or proceeding by or against any Settling Party in any court, administrative agency or other tribunal for any purpose whatsoever, other than to enforce the provisions of the Settlement and this Settlement Agreement, the Stipulated Undertaking, the Side Agreement, or the provisions of any related order, judgment, or release.

10.3 Except as otherwise stated in this Settlement Agreement, Plaintiffs and Defendant shall use their best efforts to cause this Settlement Agreement to be approved and consummated.

Except as otherwise stated in this Settlement Agreement, Plaintiffs, Defendant, and Class Counsel shall also promptly take such actions as may be reasonably required to obtain final approval by the District Court of this Settlement Agreement and to carry out the terms of this Settlement Agreement.

10.4 The District Court shall retain jurisdiction and its traditional equitable powers over the Action as those powers pertain to this Settlement Agreement to resolve any disputes or controversies regarding the enforcement of the Settlement Agreement until the monies and funds in the Escrow Account are fully and finally distributed.

10.5 The Parties agree to mediate any dispute or claim arising out of or relating to the enforcement of the Settlement Agreement with Miles N. Ruthberg of Phillips ADR. In the event the Parties are unable to resolve any such dispute or claim through mediation, any Party may seek relief from the District Court.

10.6 This Settlement Agreement and the Side Agreement constitutes the entire agreement among the Settling Parties related to the Settlement and supersedes all prior agreements, understandings, discussions, negotiations, communications, representations, warranties, or inducements concerning this Settlement Agreement and the Side Agreement, and no Settling Party has relied on any agreements, understandings, discussions, negotiations, communications, representations, warranties, or inducements concerning this Settlement Agreement or the Side Agreement other than those contained and memorialized in this Settlement Agreement and the Side Agreement. The exhibits to this Settlement Agreement are:

Exhibit A [Proposed] Plan of Allocation and Distribution;

Exhibit B [Proposed] Class Settlement Preliminary Approval Order;

Exhibit C1 [Proposed] Short-Form Notice of Settlement;

Exhibit C2 [Proposed] Direct Email Notice of Settlement

Exhibit D [Proposed] Long-Form Notice of Settlement;

Exhibit E [Proposed] Claim Form;

Exhibit F [Proposed] Form of Judgment; and

Exhibit G Stipulated Undertaking.

10.7 To the extent there is a conflict between the provisions of this Settlement Agreement, the Preliminary Approval Order, the Judgment, and/or the Court-approved Plan of Allocation and Distribution, each such document shall have controlling effect in the following rank order: (i) the Judgment; (ii) the Preliminary Approval Order; (iii) this Settlement Agreement; and (iv) the approved Plan of Allocation and Distribution.

10.8 This Settlement Agreement may be executed in one or more counterparts, and may be exchanged by mail, facsimile, or electronic mail, which shall be as effective as original signatures. All executed counterparts taken together shall be deemed to be one and the same instrument. If executed in counterparts, the Settlement Agreement shall not be binding until all Parties have signed and delivered a counterpart of this Settlement Agreement by mail, facsimile, or electronic mail. Counsel for the Settling Parties shall exchange among themselves signed counterparts, and a complete, assembled Settlement Agreement with all executed counterparts shall be filed with the District Court.

10.9 The Parties and their respective counsel have mutually contributed to the preparation of this Settlement Agreement. Accordingly, no provision of this Settlement Agreement shall be construed against any Party on the grounds that one of the Parties or its counsel drafted the provision. Except as otherwise provided herein, each Party shall bear its own attorneys' fees and other litigation expenses and costs.

10.10 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

10.11 Each of the undersigned represents that he or she is fully authorized to execute this Settlement Agreement on behalf of the Party for which he or she signs. Class Counsel has reviewed this Settlement Agreement and the Side Agreement with Plaintiffs and is authorized to sign this Settlement Agreement, the Stipulated Undertaking, and the Side Agreement on behalf of Plaintiffs and putative Settlement Class Members.

10.12 This Settlement Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Ohio, and the rights and obligations of the Parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Ohio without giving effect to that State's choice-of-law principles.

10.13 If the provisions of this Settlement Agreement (or any portion thereof) are held unenforceable in any jurisdiction, then such provisions shall be severable, and the Settling Parties agree that the enforceability of the remaining provisions of this Settlement Agreement shall not in any way be affected or impaired thereby and shall continue in full force and effect.

10.14 The Parties agree that they will not at any time make, publish, or communicate to any person or entity, including in any public forum, any defamatory or disparaging remarks, comments, or statements concerning each other or any of each others' agents, employees, officers, or other associated third parties, that are related to this Action or the underlying facts alleged in this Action.

10.15 The Parties agree to jointly request that the Sixth Circuit continue to hold in abeyance Kroger's petition to appeal the District Court's grant of class certification pending final approval of the Settlement. Kroger agrees to dismiss with prejudice its petition to appeal after the District Court's entry of a Final and Non-Appealable order granting approval of the Settlement.

10.16 Except as stated in ¶ 10.5, the exclusive forum for any dispute arising under or related to this Settlement Agreement, or to enforce the terms of this Settlement Agreement, shall be the United States District Court for the Southern District of Ohio.

10.17 No delay or omission by any Settling Party in exercising any rights under this Settlement Agreement will operate as a waiver of that or any other right. A waiver or consent given by a Settling Party on any one occasion is effective only in that instance and will not be construed as a bar or waiver of any right on any other occasion, unless otherwise agreed in writing.

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JUDY KIRKBRIDE

Judy Kirkbride (Mar 10, 2026 18:35:08 EDT)

DATED: Mar 10, 2026, 2026

BEETA LEWIS

Beeta Lewis (Mar 11, 2026 09:16:00 MDT)

DATED: Mar 11, 2026, 2026

DATED: Mar 10, 2026, 2026

Joseph Marchese (Mar 10, 2026 17:56:20 EDT)

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DATED: Mar 10, 2026, 2026

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Counsel for Plaintiffs and Proposed Class Counsel

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Counsel for Plaintiffs and Proposed Class Counsel

THE KROGER CO.

By: Antonio L. Matthews

Its: Senior Counsel - Litigation

DATED: March12, 2026