

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

ROBERT FORD, et al.,

Plaintiffs,

v.

TAKEDA PHARMACEUTICALS U.S.A.,  
INC., et al.,

Defendants.

No. 1:21-cv-10090-WGY

**PLAINTIFFS' UNOPPOSED MOTION FOR  
FINAL APPROVAL OF CLASS SETTLEMENT**

Plaintiffs move under Federal Rule of Civil Procedure 23(e) for final approval of the class action settlement and for the Court to enter the proposed Final Order and Judgment. Defendants do not oppose the grant of final approval.

This motion is supported by Plaintiffs' Memorandum in Support of Motion for Preliminary Approval of Class Settlement (Doc. 96), Plaintiffs' Memorandum in Support of Motion for Certification of Settlement Class (Doc. 99), Plaintiffs' Memorandum in Support of Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards for Named Plaintiffs (Doc. 112), the Declaration of Mr. Sanford J. Rosen (Doc. 109), the Declaration of James C. Sturdevant (Doc. 110), the Statement of Gallagher Fiduciary Advisors, LLC, serving as the Independent Fiduciary, approving of the Settlement, including attorneys' fees and expenses, the Declaration of Analytics Consulting LLC, this Court's Orders certifying a Settlement Class (Doc. 101), preliminarily approving this Settlement (Doc. 102), and setting the final fairness hearing (Doc. 103), as well as Plaintiffs' accompanying memorandum in support of this motion.

March 9, 2023

/s/ Jerome J. Schlichter  
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### **CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on March 9, 2023.

/s/ Jerome J. Schlichter

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ROBERT FORD and PHILLIP SCHWARTZ,  
individually and as representatives of a class of  
participants and beneficiaries on behalf of the  
Takeda Pharmaceuticals U.S.A., Inc. Savings and  
Retirement Plan,

*Plaintiffs,*

v.

TAKEDA PHARMACEUTICALS U.S.A., INC.,  
TAKEDA PHARMACEUTICALS U.S.A., INC.  
EXECUTIVE COMPENSATION COMMITTEE,  
AND JOHN DOES 1–14.

*Defendants.*

No. 1:21-cv-10090-WGY

CLASS ACTION

**[PROPOSED] FINAL ORDER AND JUDGMENT**

Upon consideration of the Plaintiffs’ Unopposed Motion for Final Approval of the Settlement of the above-referenced litigation under the terms of a Class Action Settlement Agreement dated November 14, 2022 (the “Settlement Agreement”), the Court hereby orders and adjudges as follows:

1. For purposes of this Final Order and Judgment, capitalized terms used herein have the definitions set forth in the Settlement Agreement, which is incorporated herein by reference.
2. In accordance with the Court’s Preliminary Approval Order, Settlement Notice was timely distributed by electronic or first-class mail to all Class Members who could be identified with reasonable effort, and Settlement Notice was published on the Settlement Website maintained by Class Counsel. In addition, pursuant to the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*, notice was provided to the Attorneys General for each of the states in which a

Class Member resides, the Attorney General of the United States, and the United States Secretary of Labor.

3. The form and methods of notifying the Settlement Class of the terms and conditions of the proposed Settlement Agreement met the requirements of Fed. R. Civ. P. 23(c)(2), any other applicable law, and due process, and constituted the best notice practicable under the circumstances; and due and sufficient notices of the Fairness Hearing and the rights of all Class Members have been provided to all people, powers and entities entitled thereto.

4. All requirements of the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*, have been met.

5. Class Members had the opportunity to be heard on all issues regarding the resolution and release of their claims by submitting objections to the Settlement Agreement to the Court.

6. Each and every objection to the Settlement is overruled with prejudice.

7. The Motion for Final Approval of the Settlement Agreement is hereby **GRANTED**, the Settlement of the Litigation is **APPROVED** as fair, reasonable, and adequate to the Plans and the Settlement Class, and the Settling Parties are hereby directed to take the necessary steps to effectuate the terms of the Settlement Agreement.

8. The operative complaint and all claims asserted therein in the Class Action are hereby dismissed with prejudice and without costs to any of the Settling Parties and Released Parties other than as provided for in the Settlement Agreement.

9. The Plans, the Class Representatives, and the Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, predecessors, successors, assigns, agents, and attorneys) hereby fully, finally, and

forever settle, release, relinquish, waive, and discharge all Released Parties (including Defendants) from the Released Claims, regardless of whether or not such Class Member receives a monetary benefit from the Settlement, executed and delivered a Former Participant Claim Form, filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, and whether or not the objections or claims for distribution of such Class Member have been approved or allowed.

10. The Class Representatives, the Class Members, and the Plan acting individually or together, or in combination with others, are hereby barred from suing or seeking to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration, or a proceeding before any state insurance or other department or commission) any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of the Settlement Agreement in accordance with the procedures set forth in the Settlement Agreement.

11. Class Counsel, the Class Representatives, the Class Members, or the Plan may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with the Defendants and the other Released Parties, or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Class Member not to object to the Settlement. Notwithstanding the foregoing, each Class Representative, each Class Member, and the Plan has and have hereby fully, finally, and forever settled, released, relinquished, waived, and discharged any and all Released Claims. The Class Representatives, Class Members, and the Plan have hereby acknowledged that the foregoing waiver was

bargained for separately and is a key element of the Settlement embodied in the Settlement Agreement of which this release is a part.

12. The Class Representatives, Class Members, and the Plan hereby settle, release, relinquish, waive, and discharge any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims, including without limitation, Section 1542 of the California Civil Code, 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 Class Representatives, Class Members, and the Plan with respect to the Released Claims also hereby waive any and all provisions, rights and benefits conferred by any law or of any State or territory within the United States or any foreign country, or any principle of common law, which is similar, comparable, or equivalent in substance to Section 1542 of the California Civil Code.

13. The Court finds that it has subject matter jurisdiction over the claims herein and personal jurisdiction over Class Members herein pursuant to the provisions of ERISA, and expressly retains that jurisdiction for purposes of enforcing this Final Order and the Settlement Agreement. Any motion to enforce paragraphs 8 through 12 of this Final Order or the Settlement Agreement, including by way of injunction, may be filed in this Court, and the provisions of the Settlement Agreement and/or this Final Order may also be asserted by way of an affirmative defense or counterclaim in response to any action that is asserted to violate the Settlement Agreement.

14. Each Class Member shall hold harmless Defendants, Defense Counsel, and the Released Parties for any claims, liabilities, attorneys’ fees, and expenses arising from the

allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys' fees and expenses.

15. The Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Current Participant and each Authorized Former Participant.

16. With respect to payments or distributions to Authorized Former Participants, all questions not resolved by the Settlement Agreement shall be resolved by the Settlement Administrator in its sole and exclusive discretion.

17. With respect to any matters that arise concerning the implementation of distributions to Current Participants (after allocation decisions have been made by the Settlement Administrator in its sole discretion), all questions not resolved by the Settlement Agreement shall be resolved by the Plan administrator or other fiduciaries of the Plan in accordance with applicable law and the governing terms of the Plan.

18. Within seven (7) calendar days following the issuance of all settlement payments to Class Members, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list of each person who was issued a settlement payment and the amount of such payment.

19. Upon entry of this Order, all Class Members shall be bound by the Settlement Agreement (including any amendments) and by this Final Order.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_, 2023

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HON. WILLIAM G. YOUNG  
UNITED STATES DISTRICT JUDGE



**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

ROBERT FORD, et al.,

Plaintiffs,

v.

TAKEDA PHARMACEUTICALS U.S.A.,  
INC., et al.,

Defendants.

No. 1:21-cv-10090-WGY

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF  
UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT**

This Settlement provides significant monetary relief, \$22 million, and substantial future relief that will benefit virtually every participant in the Takeda Pharmaceuticals U.S.A., Inc. Savings and Retirement Plan (“Plan”). The Court should enter its order approving the Settlement.

Plaintiffs filed their original complaint on January 19, 2021. Doc. 1. In summary, Plaintiffs claimed that Defendants breached their duties under the Employee Retirement Income Security Act of 1974 (“ERISA”) by causing the Plan to retain the Northern Trust Focus Fund target date funds, selecting, and retaining as Plan investment options higher-cost share classes of mutual funds and collective investment trusts, and failing to monitor and remedy breaches of other Plan fiduciaries.

The Settlement was the product of extensive arm’s-length negotiations preceded by hard-fought litigation. Considering the litigation risks, further prosecution of this action would inevitably entail along with the uncertainty of a trial, Plaintiffs request that the Court grant final approval of the proposed Settlement.

## **BACKGROUND**

On January 19, 2021, Plaintiffs filed their original complaint. Doc. 1. On March 15, 2021, Defendants filed a motion to dismiss Plaintiffs' complaint. Doc. 17. On April 19, 2021, Plaintiffs filed an amended complaint, Doc. 22, which Defendants moved to dismiss on June 4, 2021. Doc. 26. The Court held a hearing on Defendants' motion to dismiss the amended complaint on July 21, 2021, and permitted Plaintiffs leave to file a motion for leave to file a second amended complaint. Doc. 35. The next day, the Court ordered the parties to mediate. Doc. 36. The parties held that mediation in the fall of 2021 but did not reach a settlement. Plaintiffs subsequently moved for leave to file a second amended complaint, Doc. 39, which motion the Court granted on January 24, 2022, Doc. 49, denying Defendants' motion to dismiss the first amended complaint as moot. Doc. 51.

On January 24, 2022, Plaintiffs filed a second amended complaint that is the operative complaint and that sets forth Plaintiffs' claims. Doc. 53. In Count I, Plaintiffs allege Defendants breached their duty of prudence under 29 U.S.C. § 1104(a)(1)(B) by retaining the Northern Trust Focus Fund target date funds, which consistently underperformed and suffered from a variety of ongoing and significant quantitative and qualitative deficiencies. In Count II, Plaintiffs allege Defendants breached their duty of prudence under 29 U.S.C. § 1104(a)(1)(B) by selecting and retaining as Plan investment options higher-cost share classes of mutual funds and collective investment trusts. In Count III, Plaintiffs alleged that Defendants failed to loyally and prudently monitor their appointed fiduciaries.

Defendants answered the second amended complaint on March 7, 2022. Doc. 58. Defendants moved to strike Plaintiffs' jury demand on May 27, 2022, Doc. 70, and Plaintiffs

moved for class certification on June 30, 2022. Doc. 78. Both motions were fully briefed, and the Court had set a hearing on Plaintiffs' motion for October 13, 2022. Doc. 93.

The parties held a second mediation on September 13, 2022, in front of the Hon. Morton Denlow. The parties reached a settlement in principle at that mediation. The parties informed the Court of their tentative agreement, and the Court cancelled the hearing scheduled for October 13, 2022, and ordered the parties to file a motion for preliminary approval of the settlement by November 14, 2022. Doc. 94.

**The terms of the Settlement.**

In exchange for release and for the dismissal of the actions and for entry of a judgment as provided for in the Settlement, Defendants will make available to Class Members the benefits described below.

**A. Monetary Relief.**

Defendants will deposit \$22,000,000 (the "Gross Settlement Amount") into an interest-bearing settlement account (the "Gross Settlement Fund"). The Gross Settlement Fund will be used to pay the participants' recoveries, administrative expenses to facilitate the Settlement, and Plaintiffs' counsel's attorneys' fees and costs, and Class Representatives' Compensation if awarded by the Court.

The majority of Class Members will automatically receive their distributions directly into their tax-deferred retirement account. Those who already left the Plan and no longer have an active account are given the option to receive their distributions in the form of a check made out to them individually or as a rollover into another tax-deferred account. As a result, most Class Members will receive their distributions tax-deferred, further enhancing the significant monetary recovery.

**B. Additional Terms.**

In addition to the monetary component of the Settlement, Defendant agreed to substantial non-monetary terms in accordance with Article 10 of the Settlement Agreement. These terms include:

1. There will be a Settlement Period of three years from the Settlement Effective Date during which Defendants will comply with the terms set forth herein.
2. During the Settlement Period, the Committee shall meet as often as is necessary to fulfill its fiduciary duties, but no less than quarterly.
3. During the Settlement Period, Defendants shall continue to provide annual training to the Committee regarding ERISA's fiduciary duties.
4. During the Settlement Period, Defendants shall retain or continue to retain an independent consultant pursuant to ERISA § 3(21) to provide ongoing assistance in reviewing the Plan's investment options.
5. During the Settlement Period, in considering the Plan's investment options, Defendants shall consider (1) the cost of different share classes available for the particular investment option as well as other criteria applicable to different share classes; (2) the availability of revenue sharing on any share class available for any particular investment option; and (3) other factors that Defendants deem appropriate under the circumstances.
6. Before the expiration of the Settlement Period, Defendants, through the use of the Plan's consultant shall initiate a request for information ("RFI") for recordkeeping and administrative services. The RFI will be conducted by a knowledgeable consultant and will disclose the identity of the Plan along with pertinent details about the Plan and its participants, soliciting bids from at least three competent vendors. The bids will be formally evaluated by the consultant and the Plan

fiduciaries. Within sixty (60) days after the conclusion of the RFI, Defense Counsel on behalf of Defendants shall notify Class Counsel by e-mail that Defendants have completed the RFI and briefly describe the outcome of their decision related to the Plan's expenses for recordkeeping and administrative services.

7. Within thirty (30) calendar days after the end of each year of the Settlement Period, and within thirty (30) calendar days after the conclusion of the Settlement Period, Defendants will provide Class Counsel with the following information current as of the end of the most recent calendar quarter: a list of the Plan's investment options, the fees for those investment alternatives, and a copy of the Investment Policy Statement(s) (if any) for the Plan.

The non-monetary terms are substantial and materially add to the total value of the Settlement.

**Certification of settlement class, preliminary approval of the Settlement, and Plaintiffs' motion for attorneys' fees.**

Plaintiffs filed their motions for certification of a settlement class and preliminary approval of the Settlement on November 14, 2022. Docs. 95, 98. In accordance with the terms of the Settlement, on November 22, 2022, the Settlement Administrator served the CAFA notice to the United States Attorney General, as well as the Attorney Generals for the 50 states and the District of Columbia and Puerto Rico. Exh. 1, Decl. of Analytics, ¶ 3. On November 21, 2022, the Court certified the settlement class, appointed the undersigned as Settlement Class Counsel, and preliminarily approved the Settlement. Docs. 101, 102. On January 20, 2023, Plaintiffs filed their Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards for Named Plaintiffs. Doc. 105.

## ARGUMENT

There is a “presumption of fairness for settlements that are deemed to be the result of ‘arms-length negotiations’ following ‘adequate’ discovery.” *In re Celexa and Lexapro Marketing and Sales Practices Litig.*, No. 09-2067-NMG, 2014 WL 4446464, at \*4 (D. Mass. Sep. 8, 2014) (citing *Nat’l Ass’n of Chain Drug Stores v. New Eng. Carpenters Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir. 2009)); *see also Newberg on Class Actions* §11.41 at 11-88 (3d ed. 1992).

Although the First Circuit has not adopted any single list of factors in approving a settlement, Courts in the First Circuit have considered factors such as: “(1) the risk, complexity, expense and duration of the case; (2) comparison of the proposed settlement with the likely result of continued litigation, (3) reaction of the class to the settlement; (4) stage of litigation and the amount of discovery completed; and (5) quality of counsel and conduct during litigation and settlement negotiations.” *In re Celexa and Lexapro Marketing and Sales Practices Litig.*, 2014 WL 4446464, at \*4 (quotations omitted). As previously explained in Plaintiffs’ prior briefing related to this Settlement (Docs. 96, 99), and incorporated herein by reference, all relevant factors are met.

### **I. The Settlement is fair because it is the product of extensive arm’s length negotiations.**

There is an initial strong presumption that a proposed class action settlement is fair and reasonable when it is the result of arm’s-length negotiations. *City Pshp. Co. Atlantic Acquisition Ltd. Pshp.*, 100 F.3d 1041, 1043 (1st Cir. 1996) (noting a strong presumption that a proposed class action settlement is fair and reasonable when it is the result of arm’s-length negotiations). The parties reached the Settlement only after lengthy negotiations, including two mediations, with the assistance of nationally recognized mediators. Doc. 96 at 8. The parties began

settlement discussions in fall 2021 but were unable to reach an agreement on all terms, including non-monetary relief, until September 2022. Counsel on both sides are experienced and thoroughly familiar with the factual and legal issues presented. Doc. 96 at 8-11. Indeed, Class Counsel is the preeminent law firm in ERISA fiduciary breach litigation and pioneered the field. *Id.*

**II. All relevant factors weigh in favor of approving the Settlement.**

**A. The Settlement was reached after vigorous litigation and extensive negotiations.**

The first and fourth factors examine the risk, complexity, expense and duration of the case, the stage of litigation and the amount of discovery completed. Counsel filed this case over two years ago. Litigating this ERISA 401(k) breach of fiduciary duty case involved managing a case with sparse, yet rapidly evolving law, extremely complex facts, and analysis of a great number of documents. *LaLonde v. Textron, Inc.*, 369 F.3d 1, 6 (1st Cir. 2004) (noting the sparse jurisprudence relating to ERISA breach of fiduciary duty claims) (citing *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 459 n.13 (S.D.N.Y. 2004)). It requires deep, specialized knowledge of 401(k) industry practices, as demonstrated by the fact that Class Counsel spent a year and nine months investigating the industry before filing any claim. Doc. 107 ¶¶ 21, 25.

After pioneering excessive fee 401(k) litigation, in August 2016, Class Counsel became the first law firm in the country to file an excessive fee lawsuit involving a university's retirement plan. The novelty and difficulty of those cases is demonstrated by the fact that Defendants retained global law firms that employed attorneys from multiple offices throughout the nation. The subject matter is highly technical, including facts about prudent investment practices, industry best practices, fiduciary practices, and complex financial matters, requiring the use of

multiple experts for all parties.

Given the complexity and expense of this case, the representation was highly risky, and Plaintiffs' counsel litigated this matter on a contingent basis with no guarantee of recovery. The risk of non-recovery in this case was significant. Several of the 401(k) cases handled by Class Counsel were dismissed and the dismissals upheld by the Courts of Appeals. *Hecker v. Deere & Co.*, 556 F.3d 575 (7th Cir. 2009); *Loomis v. Exelon Corp.*, 658 F.3d 667 (7th Cir. 2011); *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011). Others had summary judgment granted against the plaintiffs in whole or in part. *Kanawi v. Bechtel Corp.*, 590 F.Supp.2d 1213 (N.D. Cal. 2008); *Taylor v. United Techs. Corp.*, No. 06-3194, 2009 U.S.Dist.LEXIS 19059 (D. Conn. Mar. 3, 2009), *aff'd*, 354 Fed. Appx. 525 (2d Cir. 2009); *George v. Kraft Foods Global, Inc.*, 684 F.Supp. 2d 992 (N.D. Ill. 2010), *rev'd in part*, 641 F.3d 786 (7th Cir. 2011); *Tibble v. Edison Int'l*, 639 F.Supp.2d 1074 (C.D. Cal. 2009), *aff'd*, 729 F.3d 1110 (9th Cir. 2013), *vacated*, 135 S. Ct. 1823 (2015), *aff'd on remand*, 820 F.3d 1041 (9th Cir. 2016); *Cunningham v. Cornell Univ.*, 16-6525, 2019 WL 4735876 (S.D.N.Y. Sep. 27, 2019).

At the time the settlement was reached, the parties had been engaged in over a year and a half of litigation. Although this case settled before full-scale discovery had occurred, the case was vigorously litigated. Defendant moved to dismiss Plaintiffs' original and amended complaints, and the parties fully briefed two additional motions (for class certification and to strike Plaintiffs' jury demand) before this case settled. Only after extended arm's length negotiations were the parties able to reach an agreement to resolve the claims asserted in this lawsuit.

**B. The Settlement is reasonable considering the likely result of continued litigation.**

The second factor examines the comparison of the proposed settlement with the likely result



of continued litigation. The Settlement represents an outstanding recovery considering both the strength of Plaintiffs' claims but also the strength of Defendants' defenses. The first two iterations of the complaint were met with motions to dismiss. The Court indicated at the motion to dismiss hearing that Defendants' arguments were strong, the claims just "squeak[ed] by," Doc. 41 at 16:5–13 (emphasis added), and a motion for summary judgment would get the case "into the weeds[.]" *Id.* at 16:12–13. There was a substantial risk of extended litigation followed by loss and non-payment. Defendants also moved to strike Plaintiffs' jury demand, a motion that, if granted, might have substantially impacted the value of the case.

Plaintiffs maintain that they have strong underlying claims for breach of fiduciary duty against Defendants. However, the existence of significant legal obstacles and Defendants' legal defenses rendered any recovery in this case uncertain. This makes the monetary recovery of \$22 million highly valuable, even without considering the value of the non-monetary terms and the changes Defendants will make to the Plan because of this litigation. Considering the benefit of tax deferral and the economic value of the non-monetary relief, the Settlement is valued at up to \$26.092 million. Doc. 112 at 8. The Settlement also avoids lengthy and costly litigation.

Without this Settlement, the parties would incur very substantial expenses in continuing this litigation due to the complexity of the issues involved. As previously explained by Plaintiffs, even if Plaintiffs prevailed at trial, further delay in recovery and additional expenses would be incurred through many years of appeal, which has been the experience of Class Counsel. Doc. 112 at 11. There is no reason to believe this case would proceed differently than prior ERISA class actions handled by Class Counsel.

**C. The Class reacted favorably to the Settlement.**

The third factor examines the reaction of the class to the settlement. As of the objection

deadline of February 21, 2023, and as of this filing, of the over 48,000 Class Members who were sent notices, *there is not a single class member* who filed an objection to any aspect of the Settlement, including Plaintiffs’ requested attorneys’ fees and reimbursement of expenses, or the case contribution awards sought for the Named Plaintiffs.<sup>1</sup> A majority of the Class Members—32,661—will receive automatic distributions from the common fund. Many of the 16,228 Former Participants who are required to submit a claims form have done so. As of the date of this filing, 5,243 Former Participants, or over 32 percent, have submitted claims, and the claims filing deadlines continues until March 13, 2023. In addition to the positive reaction to the Settlement by Class Members, the Independent Fiduciary has thoroughly reviewed all aspects of the Settlement and has approved the Settlement and Plaintiffs’ attorneys’ fees and expenses as reasonable. *See* Exh. 2 (Statement of Gallagher Fiduciary Advisors, LLC).

**D. The quality of counsel and conduct during litigation and settlement.**

The fifth factor examines the quality of counsel and conduct during litigation and settlement negotiations. Plaintiffs’ counsel is the “preeminent firm” in excessive fee litigation having “achieved unparalleled results on behalf of its clients” in the face of “enormous risks.” *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 12242015, at \*3–4 (C.D. Ill Oct. 15, 2013). Courts across the country have recognized the reputation, skill, and determination of Plaintiffs’ counsel in pursuing relief on behalf of retirement plan participants. Doc. 112 at 14-16, Doc. 107 ¶¶ 5-18. Defense counsel is a highly regarded global law firm with significant experience in ERISA litigation. As reflected by the docket in this case, the parties vigorously litigated this matter.

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<sup>1</sup> One person filed an objection which she later withdrew after Class Counsel explained that she was never a Plan participant. Docs. 114, 115.

## CONCLUSION

The Court should grant final approval of the Settlement.

March 9, 2023

/s/ Jerome J. Schlichter  
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*Local Counsel for Plaintiffs*

## CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on March 9, 2023.

/s/ Jerome J. Schlichter

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

ROBERT FORD, et al.,

Plaintiffs,

v.

TAKEDA PHARMACEUTICALS U.S.A.,  
INC., et al.,

Defendants.

No. 1:21-cv-10090-WGY

**DECLARATION OF ANALYTICS CONSULTING, LLC**

Richard Simmons, under penalty of perjury pursuant to 28 U.S.C. §1746, declares:

1. I am the President at Analytics Consulting LLC (“Analytics”), a firm with offices in Chanhassen, Minnesota that provides consulting services relating to the design and implementation of class action and mass tort litigation settlements and notice programs. I am responsible for Analytics’ consulting services, including the implementation of the notice program in this matter. The following statements are based on my personal knowledge and information provided by other Analytics employees working under my supervision, and if called as a witness, could and would testify competently thereto.

2. In compliance with the Order Granting Motion for Preliminary Approval of Class Action Settlement (Doc. 102, Nov. 21, 2022) and §2.39 of the Settlement Agreement (Doc. 95-1, Nov. 14, 2022), Analytics was retained by Class Counsel to serve as the Settlement Administrator. Section 3.4 of the Settlement Agreement and the Order provide additional direction on the date and manner of the notice procedure. I submit this Declaration in order to provide the Court and the parties to the Settlement with information regarding the mailing of the Notices of Class Action Settlement and Fairness Hearing (“the Notice”), the Claim Form, and

other administrative activities in accordance with the Settlement Agreement. All capitalized terms in this Declaration have the same meaning as in the Settlement Agreement, unless otherwise specified herein.

3. As required by the Class Action Fairness Act (“CAFA”) and §4.1.6 of the Settlement Agreement, on November 22, 2022, Analytics caused to be served by Federal Express or Certified Return Receipt Requested First-Class mail, where applicable, a Notice of Proposed Settlement to the United States Attorney General, as well as the Attorney Generals for the 50 states and the District of Columbia. A copy of the Notice of Proposed Settlement, excluding exhibits, is attached hereto as **Exhibit A**.

4. As of the date of this declaration, no such recipient provided notice that they object to the Settlement.

5. Analytics was responsible for providing notice to Settlement Class Members. Specifically, the Notice was to be sent by electronic means or mailed by first class mail, postage prepaid, to the last known address of each Settlement Class Member who could be identified by the Plan’s recordkeeper through commercially reasonable means.

6. Analytics received from the Plan’s recordkeeper data files containing the names, addresses, and social security numbers of members of the Settlement Class. Additionally, some records contained e-mail addresses for members of the Settlement Class. The data was consolidated into a single database, and was updated using the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“USPS”),<sup>1</sup> certified via the

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<sup>1</sup> The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms, and lists submitted to it are automatically updated with any reported move based on a comparison with the person’s name and last known address.

Coding Accuracy Support System (“CASS”),<sup>2</sup> and verified through Delivery Point Validation (“DPV”).<sup>3</sup> This resulted in mailable address records or e-mail records for 48,889 Settlement Class Members.

7. On January 20, 2023, Analytics caused Settlement Notice to be mailed or e-mailed to all 48,889 Settlement Class Members as follows: (1) 1,273 Former Participant Notice and Claim Forms were mailed to Class Members who were determined to be Former Participants, meaning persons who participated in the Plan during the Class Period and on September 30, 2022, did not have a Plan balance greater than \$0. In addition to the mailed Claims Forms, on January 20, 2023, 14,955 Former Participants for which an e-mail address was provided were e-mailed the Former Participant Notice with a link to an electronic version of the Former Participant Claim Form. (2) On January 20, 2023, 1,414 Current Participant Notices were mailed to Class Members whom were determined to be Current Participants, meaning persons who participated in the Plan during the Class Period and on September 30, 2022, had a positive Plan balance. In addition to the mailed Current Participant Notices, on January 20, 2023, 31,247 Current Participants for which an e-mail address was provided were e-mailed the Current Participant Notice. Copies of Former Participant Notice and Claim Form as well as the Current Participant Notice in both mail and e-mail format are attached as **Exhibit B**.

8. Analytics developed an electronic Former Participant Claim Form application which was also placed on the website maintained by Analytics and referenced in the e-mail version of the Former Participant Notice sent to Class Members. The Former Participant Claim

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<sup>2</sup> Coding Accuracy Support System is a certification system used by the USPS to ensure the quality of ZIP + 4 coding systems.

<sup>3</sup> Records that are ZIP + 4 coded are then sent through Delivery Point Validation to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses, and reports exactly what is wrong with incorrect addresses.

Form application allows Class Members to fill out and electronically submit Former Participant Claim Forms and supporting documentation.

9. Shortly after Settlement Notices were sent, Analytics analyzed the records of who were sent e-mail Notice and promptly mailed Notice to Class Members whose e-mail Notice was un-deliverable as follows: (1) 1,766 Former Participant Notice and Claim Forms were mailed to Former Participant Class Members; (2) 1,903 Current Participant Notices were mailed to Current Participant Class Members.

10. On February 14, 2023, Analytics mailed the Notice and Claim Form to 12,195 Former Participant Class Members who had not submitted a claim at that time.

11. As of the date of this declaration, the USPS has returned 1,351 Notices as undeliverable. Of these undeliverable Notices, Analytics located 1,053 new addresses through a third-party commercial data source, Experian. Analytics re-mailed the Notices to those 1,053 Class Members at these updated addresses.

12. Analytics established and is maintaining a toll-free phone number (1-888-696-8934) for the Settlement to provide Class Members with additional information regarding the settlement. The toll-free number became operational on or before January 20, 2023, and automated service was available 24 hours per day, 7 days per week. As of the date of this declaration, Analytics has received a total of 1,048 telephone calls out of which 615 Class Members requested to speak with a customer service representative for assistance, all of which have been responded to in a timely manner. In response to telephone requests for Notices made directly to Analytics, an additional 12 Notices were mailed.

13. Prior to January 20, 2023, Analytics established and is maintaining a website ([www.takeda401ksettlement.com](http://www.takeda401ksettlement.com)) for the Settlement to provide Class Members with additional

information regarding the settlement. Recognizing the increasingly mobile nature of communications, the Website is mobile optimized, meaning it can be clearly read and used by Class Members visiting the Website via smart phone or tablet.

14. By visiting the Website, Class Members are able to read and download key information about the litigation, including, without limitation:

- a. important dates and deadlines;
- b. answers to frequently asked questions;
- c. contact information for Analytics and Class Counsel; and,
- d. case documents, including the Class Notice and other relevant case documents such as the Class Action Settlement Agreement, and Plaintiffs' Motion for Attorneys' Fees, Memorandum in Support of Attorneys' Fees, and Declarations.

15. As of the date of this Declaration, there have been 13,062 visitors to the Website.

16. Paragraph 10 of the Order (Doc. 102) provides that all valid claim forms must be received by the Settlement Administrator with a postmark date or submitted online no later than March 13, 2023. As of the date of this declaration, Analytics has received 5,243 completed Claim Forms.

17. Analytics has paid or will pay the following Administrative Expenses from the Gross Settlement Amount: 1.) Analytics total fees for Claims Administration through the date of this declaration, \$77,098; 2.) Gallagher Fiduciary Fee, \$15,000.00; and 3.) Huntington Bank Escrow Fee, \$5,000.00. Analytics estimates remaining Administrative Expenses for Claims Administration of \$48,678. Analytics also will reserve \$150,000 of the Gross Settlement Amount as a reserve for unanticipated future Administrative Expenses and adjustments due to data or calculation errors to be paid under §5.8 of the Settlement Agreement.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.



Executed on March 9, 2023, in Minneapolis, Minnesota.

A handwritten signature in black ink, appearing to read "Richard Simmons". The signature is written in a cursive style with a horizontal line underneath the name.

Richard Simmons  
President – Analytics Consulting LLC



18675 Lake Drive East  
Chanhassen, MN 55317  
Phone: 952.404.5739  
Email: [jmitchell@analyticsllc.com](mailto:jmitchell@analyticsllc.com)

November 22, 2022

«COMPANY»  
«NAME\_»  
«ADDRESS\_1\_»  
«ADDRESS\_2»  
«ADDRESS\_3»  
«CITY», «STATE» «ZIP»

Re: *Ford, et al. v. Takeda Pharmaceuticals U.S.A., Inc., et al.*  
Case No. 1:21-cv-10090-WGY (D. Mass.)  
Notice Pursuant to 28 U.S.C. § 1715

Dear Sir or Madam:

Analytics Consulting LLC, settlement administrator, on behalf of Defendants Takeda Pharmaceuticals U.S.A., Inc., and Takeda Pharmaceuticals U.S.A., Inc. Executive Compensation Committee ("Defendants") in the above-captioned action (the "*Ford* Action"), hereby provides your office with this notice under the provisions of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1711 *et seq.* Pursuant to 28 U.S.C. § 1715, this notice is to inform you of a proposed class action settlement of the *Ford* Action, a lawsuit currently pending in the United States District Court for the District of Massachusetts, in which Plaintiffs alleged that Defendants breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001, *et seq.*, in connection to the management of the Takeda Pharmaceuticals U.S.A., Inc. Savings and Retirement Plan (the "Plan").

Plaintiffs filed a motion with the United States District Court for the District of Massachusetts on November 14, 2022, requesting preliminary approval of the proposed settlement. On November 21, 2022, the court granted preliminary approval of the proposed settlement and scheduled a hearing to address final approval of the settlement on March 23, 2023.

In accordance with 28 U.S.C. § 1715(b), Defendants state as follows:

**(1) The complaint and any materials filed with the complaint.**

The original complaint, first amended complaint, and operative second amended complaint in the *Ford* Action, as well as all attachments thereto, are contained on the enclosed CD in the folder labeled Tab 1. In addition, these pleadings and records filed in the *Ford* Action are available on the internet through the federal government's PACER service at [https://ecf.mad.uscourts.gov/cgi-bin/DktRpt.pl?210630644264723-L\\_1\\_0-1](https://ecf.mad.uscourts.gov/cgi-bin/DktRpt.pl?210630644264723-L_1_0-1). Additional information about the PACER service may be found at <https://www.pacer.gov>.

**(2) Notice of any scheduled judicial hearing in the class action.**

Plaintiffs in the *Ford* Action filed an unopposed motion for preliminary approval of the proposed class action settlement on November 14, 2022, and the court granted preliminary approval on November 21, 2022. A hearing on final approval of the settlement has been scheduled on March 23, 2023 at 2 p.m. If the hearing is rescheduled or additional hearings are scheduled, information concerning the date, time, and location of those hearings will be available through PACER and can be accessed as described in section (1) above.



## ANALYTICS

**(3) Any proposed or final notification to class members.**

The court-approved forms of direct notice to class members, which provide notice of the proposed settlement and each class member's right to object to the class action, are included on the enclosed CD in the folder labeled Tab 2. Because the proposed settlement class would likely be certified under Rule 23(b)(1) of the Federal Rules of Civil Procedure, the notices explain that there is no right to request exclusion from the settlement.

**(4) Any proposed or final class action settlement.**

The parties' class action settlement agreement dated November 14, 2022 ("Settlement Agreement"), is included on the enclosed CD in the folder labeled Tab 3.

**(5) Any settlement or other agreement contemporaneously made between class counsel and counsel for Defendants.**

There are no additional agreements between class counsel and counsel for Defendants, other than those reflected in the Settlement Agreement.

**(6) A final judgment or notice of dismissal.**

No final judgment or notice of dismissal has yet been entered in the *Ford* Action. Upon entry, a copy of the Final Order and Judgment will be available through PACER and can be accessed as described in section (1) above.

**(7) Names of class members who reside in each state and the estimated proportionate share of the claims of such members to the entire settlement.**

A list of the names of class members who reside in each state, based on the last mailing address known to Defendants, is included in Tab 4 of the enclosed CD. The specific settlement allocation to each class member will be determined by the Settlement Administrator according to a court-approved formula. As a result, we do not yet know how much each class member will receive, and it is not feasible to determine the estimated proportionate share of the claims of the class members who reside in each state to the entire settlement. Upon final approval of the court, the settlement proceeds will be distributed among the class members according to the Plan of Allocation set forth in the Settlement Agreement.

**(8) Any written judicial opinion relating to the materials described in sections (3) through (6).**

The court granted preliminary approval of the settlement on November 21, 2022, which is included in Tab 5 of the attached CD.

Inasmuch as certain documents on the enclosed CD contain confidential information, it has been encrypted and password-protected. Decryption instructions and the password will be sent under separate cover.

Thank you for your attention to this matter.

Sincerely,

Jeff Mitchell  
Project Manager, Analytics Consulting LLC

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ROBERT FORD and PHILLIP SCHWARTZ, individually and as representatives of a class of participants and beneficiaries on behalf of the Takeda Pharmaceuticals U.S.A., Inc. Savings and Retirement Plan,

*Plaintiffs,*

v.

TAKEDA PHARMACEUTICALS U.S.A., INC., TAKEDA PHARMACEUTICALS U.S.A., INC. EXECUTIVE COMPENSATION COMMITTEE, AND JOHN DOES 1–14.

*Defendants.*

No. 1:21-cv-10090-WGY

CLASS ACTION

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**Your rights might be affected if you are a member of the following class:**

All participants and beneficiaries of the Takeda Pharmaceutical U.S.A. Inc. Savings and Retirement Plan (“Plan”) from January 19, 2015, through September 30, 2022, excluding the Defendants.

**IF YOU HAVE ANY OBJECTION TO THE SETTLEMENT DESCRIBED IN THIS NOTICE, YOU HAVE UNTIL FEBRUARY 21, 2023, TO FILE YOUR WRITTEN OBJECTION WITH THE COURT.**

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Plan alleging violations of the Employee Retirement Income Security Act (“ERISA”). The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who had Plan accounts during the Class Period with a balance greater than \$0 as of September 30, 2022 (“Current Participants”). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than \$0 as of September 30, 2022 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.

The terms and conditions of the Settlement are set forth in the Settlement Agreement dated November 14, 2022. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at <https://takeda401ksettlement.com>. Any amendments to the Settlement Agreement or any other settlement documents will be posted on this website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice. Only if the Court gives final approval to the Settlement, and only if that approval is upheld in the event of an appeal, will payments under the Settlement be made.

A hearing on the final approval of the Settlement and for approval of the Class Representatives’ petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will take place on **March 23, 2023, at 2:00 p.m.**, before United States District Court Judge William G. Young in John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Courtroom 18, Boston, MA 02210.

Any objections to the Settlement, to the petition for Attorneys’ Fees and Costs, or to Class Representatives’ Compensation, must be served in writing on Class Counsel and Defendants’ Counsel, as identified on page 6 of this Settlement Notice.

Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at <https://takeda401ksettlement.com>.

**According to the Plan’s records, you are a Former Participant. If you believe instead that you meet the definition of a Current Participant, please contact the Settlement Administrator. Former Participants are individuals who no longer had an account balance in the Plan greater than \$0 as of September 30, 2022.**

**YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:**

<p><b>OUR RECORDS INDICATE THAT YOU ARE A FORMER PARTICIPANT. TO RECEIVE YOUR SHARE OF THE NET SETTLEMENT AMOUNT, YOU MUST RETURN THE ENCLOSED FORMER PARTICIPANT CLAIM FORM BY MARCH 13, 2023.</b></p>	<p><u>Our records indicate that you are a Former Participant.</u> To receive your share of the Net Settlement Amount, you must return a Former Participant Claim Form that is postmarked or electronically filed by <b>March 13, 2023</b>. If you do not return the Former Participant Claim Form that is postmarked or electronically filed by <b>March 13, 2023</b>, you will forfeit your share of the Net Settlement Amount, even though you will be bound by the Settlement, including the release. A claim form is enclosed with this notice but may also be obtained by accessing <a href="https://takeda401ksettlement.com">https://takeda401ksettlement.com</a>.</p>
<p><b>YOU CAN OBJECT (NO LATER THAN FEBRUARY 21, 2023).</b></p>	<p>If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek information through discovery from any person who files an objection, which means you could be required to produce documents and appear at a deposition to be interviewed and asked questions.</p>
<p><b>YOU CAN ATTEND A HEARING ON MARCH 23, 2023.</b></p>	<p>If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by <b>February 21, 2023</b>, of your intention to appear at the hearing.</p>

**The Class Action**

The case is called *Ford, et al. v. Takeda Pharmaceuticals U.S.A., Inc., et al.*, No. 21-cv-10090 (D. Mass.) (the “Class Action”). The Court supervising the case is the United States District Court for the District of Massachusetts. The individuals who brought this suit are called Class Representatives, and the entities they sued are called the Defendants. The Class Representatives are current and former participants in the Plan. The Defendants are Takeda Pharmaceuticals U.S.A, Inc. and certain affiliates and individuals. The Class Representatives’ claims are described below, and additional information about them is available at <https://takeda401ksettlement.com>.

**The Settlement**

The Settlement was reached on September 13, 2022. Class Counsel filed this action on January 19, 2021. Since the time the case was filed, Class Counsel devoted substantial time and effort to review and analyze tens of thousands of pages of documents produced by Defendants and hundreds of thousands of pages of other documents to support their underlying claims. The Settling Parties engaged in substantial settlement discussions with multiple mediators. Only after extensive arm’s-length negotiations were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of \$22,000,000 will be established to resolve the Class Action. The Net Settlement Amount is \$22,000,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys' Fees and Costs, Class Representatives' Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing accounts in the Plan(s). Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

#### **Additional Provisions in the Settlement**

The Settlement further provides the following additional terms for a Settlement Period of three years from the Settlement Effective Date:

- (1) During the Settlement Period, the Committee shall meet as often as is necessary to fulfill its fiduciary duties, but no less than quarterly.
- (2) During the Settlement Period, Defendants shall continue to provide annual training to Plan fiduciaries regarding their fiduciary duties under ERISA.
- (3) During the Settlement Period, Defendants shall retain or continue to retain an independent consultant pursuant to ERISA § 3(21) to provide ongoing assistance in reviewing the Plan's investment options.
- (4) During the Settlement Period, in considering the Plan's investment options, Defendants shall consider (1) the cost of different share classes available for the particular investment option as well as other criteria applicable to different share classes; (2) the availability of revenue sharing on any share class available for any particular investment option; and (3) other factors that Defendants deem appropriate under the circumstances.
- (5) Before the expiration of the Settlement Period, Defendants, through the use of the Plan's consultant shall initiate a request for information ("RFI") for recordkeeping and administrative services. The RFI will be conducted by a knowledgeable consultant and discloses the identity of the Plan along with pertinent details about the Plan and its participants, soliciting bids from at least three competent vendors. The bids will be formally evaluated by the consultant and the Plan fiduciaries. Within sixty (60) days after the conclusion of the RFI, Defense Counsel on behalf of Defendants shall notify Class Counsel by e-mail that Defendants have completed the RFI and briefly describe the outcome of their decision related to the Plan's expenses for recordkeeping and administrative services.
- (6) Within thirty (30) calendar days after the end of each year of the Settlement Period, and within thirty (30) calendar days after the conclusion of the Settlement Period, Defendants will provide Class Counsel with the following information current as of the end of the most recent calendar quarter: a list of the Plan's investment options, the fees for those investment alternatives, and a copy of the Investment Policy Statement(s) (if any) for the Plan.

#### **Release**

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as all Defendants and other "Released Parties" from "Released Claims." The Released Parties include (a) Takeda Pharmaceuticals U.S.A., Inc., the Executive Compensation Committee, the Benefit Investment and Administration Committee, and the US Investment Committee; (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future parent corporation(s); (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (e) their past, present, and future agents, officers, employees, trustees, boards of trustees, members of their board of trustees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them; and (f) the Plan and the Plan's fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

The Released Claims include all claims that were asserted or might have been asserted in the Class Action and all claims relating to the implementation of the Settlement.

This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at <https://takeda401ksettlement.com>. Generally, the release means that Class Members will not have the right to sue the Defendants, the Plan, or the Released Parties for conduct arising out of or relating to the allegations in the Class Action.

This is only a summary of the Settlement. The entire Settlement Agreement is at <https://takeda401ksettlement.com>.

### **Statement of Attorneys' Fees and Costs Sought in the Class Action**

Class Counsel has devoted many hours investigating potential claims, bringing this case, and handling it. Class Counsel reviewed thousands of pages of documents produced in this case and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to monitor for three years compliance with the Settlement Agreement; (3) to enforce the Settlement Agreement in accordance with its terms; and (4) to do (1)-(3) without additional pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$7,333,333, in addition to no more than \$100,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$15,000 each, for two Class Representatives who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel and providing information for the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, <https://takeda401ksettlement.com>.

## **1. Why Did I Receive This Settlement Notice?**

The Court caused this Settlement Notice to be sent to you because the Plan's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

## **2. What Is The Class Action About?**

In the Class Action, Class Representatives claim that, during the Class Period, the Defendant violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq.*, with respect to its management, operation, and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plan have suffered any harm or damage for which Defendants could or should be held responsible. Defendants contend that they acted prudently and in keeping with their fiduciary responsibilities under ERISA, and in the best interests of the Plan's participants.

## **3. Why Is There A Settlement?**

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and

Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

#### 4. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper(s), or, if on September 30, 2022, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) "Current Participant" as defined on page 1, or (2) an "Authorized Former Participant" (a "Former Participant" as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form that is postmarked by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Plan of Allocation will allocate the Net Settlement Fund among Current and Authorized Former Participants as follows:

- A. The Authorized Former Participants and Current Participants will be separated into three categories: (a) those who invested in the Northern Trust Focus Funds (target date funds); (b) those who invested in Northern Trust index funds (non-target date funds); (c) all others.
- B. After taking account of the De Minimis Amounts (as described below), those in category (a) will receive 80% of the Net Settlement Amount; those in category (b) will receive 10% of the Net Settlement Amount; and those in category (c) will receive 10% of the Net Settlement Amount.
- C. Within each category, the allotted percentage of the Net Settlement Amount will be divided using the following method:
  1. The end-of-quarter balances for the Class Period of each Current Participant and each Authorized Former Participant are identified for each quarter;
  2. All end-of-quarter balances identified in step 1 are summed together for each Current Participant and each Authorized Former Participant;
  3. An average end-of-quarter balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not participate in the Plan);
  4. For each Current Participant and each Authorized Former Participant, the average end-of-quarter balance of step 3 is divided by the average end-of-quarter balance for the Class Period of all Current and Authorized Former Participants;
  5. Each Current Participant and each Authorized Former Participant will receive a fraction of the total Net Settlement amount assigned to their respective category.
- D. Class Members who are entitled to a distribution of less than ten dollars (\$10.00) will receive a payment of \$10.00 (the "De Minimis Amount") from the Net Settlement Amount. The Settlement Administrator shall progressively increase Class Members' awards falling below the De Minimis Amount until the lowest participating Class Member award is the De Minimis Amount, *i.e.*, ten dollars (\$10.00). The resulting calculation shall be known as the "Final Entitlement Amount" for each Class Member.

There are approximately 49,000 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive payment by check if and to the extent you are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under the Settlement Agreement in accordance with the plan of allocation as if you are a Current Participant or Authorized Former Participant.



## 5. How Can I Receive My Distribution?

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a “Current Participant” or a “Former Participant.” **According to the Plan’s records, you are a Former Participant. Therefore, if this is correct, you need to submit a claim form to receive your share of the Settlement.**

## 6. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount depends on several matters, including the Court’s final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur in mid-year 2023.

**There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.**

## 7. Can I Get Out Of The Settlement?

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

## 8. Do I Have A Lawyer In The Case?

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

## 9. How Will The Lawyers Be Paid?

Class Counsel will file a petition for the award of Attorneys’ Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys’ Fees and Costs to not more than \$7,333,333 in fees and \$100,000 in costs and Class Counsel will also monitor compliance with the Settlement for three years without charge and has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

## 10. How Do I Tell The Court If I Don’t Like The Settlement?

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Ford et al v. Takeda Pharmaceuticals U.S.A., Inc. et al.*, No. 21-cv-10090 (D. Mass.). Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than **February 21, 2023**. The Court’s address is United States District Court for the District of Massachusetts, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Courtroom 18, Boston, MA 02210. Your written objection also must be mailed to the lawyers listed below, no later than **February 21, 2023**. Please note that the Court’s Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served to the objector.

CLASS COUNSEL	DEFENDANTS’ COUNSEL
SCHLICHTER, BOGARD & DENTON Attn: Takeda Pharmaceuticals 401(k) Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 takedasettlement@uselaws.com	MORGAN, LEWIS & BOCKIUS LLP Attn: Abbey M. Glenn 1111 Pennsylvania Ave NW Washington, DC 20004

### 11. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Fairness Hearing on **March 23, 2023, at 2:00 p.m.**, at the United States District Court for District of Massachusetts, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Courtroom 18, Boston, MA 02210.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

### 12. Do I Have To Attend The Fairness Hearing?

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable, and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

### 13. May I Speak At The Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Ford, et al. v. Takeda Pharmaceuticals U.S.A., Inc., et al.*, No. 21-cv-10090 (D. Mass.)." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than February 21, 2023**.

### 14. What Happens If I Do Nothing At All?

**If you are a "Current Participant" as defined on page 1, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved.**

If you are a "Former Participant" as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

**According to the Plan's records, you are a Former Participant, so you will need to submit a Former Participant Claim Form in order to receive your share of the Settlement.**

### 15. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: <https://takeda401ksettlement.com>, call **1-888-696-8934**, or write to the Settlement Administrator at:

Takeda Pharmaceuticals 401(k) Settlement Administrator  
c/o Analytics Consulting LLC  
P.O. Box 2010  
Chanhassen, MN 55317-2010

Takeda Pharmaceuticals 401(k) Settlement Administrator  
c/o Analytics Consulting LLC  
P.O. Box 2010  
Chanhassen, MN 55317-2010  
<https://takeda401ksettlement.com>

**FORMER PARTICIPANT CLAIM FORM**

ABC1234567890



JOHN Q CLASSMEMBER  
123 MAIN ST  
APT 1  
ANYTOWN, ST 12345

Claim Number: 1111111

PIN: a!b@c#d\$

This Former Participant Claim Form is **ONLY** for Class Members who are **Former Participants**, or the beneficiaries, alternate payees, or attorneys-in-fact of Former Participants (all of whom will be treated as Former Participants). A Former Participant is a Class Member who did not have an account in the Plan (as defined below) with a balance greater than \$0 as of September 30, 2022. This form must be completed, signed, and mailed to the Settlement Administrator with a postmark date on or before **March 13, 2023**, or electronically filed online at <https://takeda401ksettlement.com> no later than **March 13, 2023** for you to receive your share of the Settlement proceeds. **Former Participants who do not complete and timely return this form will not receive any Settlement payment.** Please review the instructions below carefully. If you have questions regarding this Claim Form, you may contact the Settlement Administrator as indicated below.

\*\*\*\*\*

**PART 1: INSTRUCTIONS FOR COMPLETING FORMER PARTICIPANT ROLLOVER FORM**

1. Complete this claim form and keep a copy of all pages of your Former Participant Claim Form, including page 1 with the address label, for your records..
2. Mail your completed Former Participant Claim Form postmarked no later than **March 13, 2023**, to the Settlement Administrator at the following address:

**Takeda Pharmaceuticals 401(k) Settlement Administrator  
c/o Analytics Consulting LLC  
P.O. Box 2010  
Chanhassen, MN 55317-2010**

Claim Forms may also be completed and submitted to the Settlement Administrator electronically online at <https://takeda401ksettlement.com>. Electronic Claim Forms must be submitted no later than **March 13, 2023**.

It is your responsibility to ensure the Settlement Administrator has timely received your Former Participant Claim Form.

3. Other Reminders:
  - You must provide date of birth, signature, and a completed Substitute IRS Form W-9, which is attached as Part 5 to this form.
  - If you desire to do a rollover but do not complete in full the rollover information in Part 4 Payment Election of the Settlement Distribution Form, payment will be made to you directly.
  - If you change your address after sending in your Former Participant Claim Form, please send your new address to the Settlement Administrator.
  - **Timing Of Payments To Eligible Class Members.** Please note that Settlement payments are subject to the Settlement Agreement's receiving final Court approval. If the Settlement Agreement is approved and if you are entitled to a Settlement payment under the terms of the Settlement, such payments will be distributed no earlier than early to mid-year 2023 due to the need to process and verify information for all Settlement Class Members who are entitled to a payment and to compute the amount of each payment. Payments may be further delayed if any appeals are filed.
4. **Questions?** If you have any questions about this Former Participant Claim Form, please call the Settlement Administrator at **1-888-696-8934**.
5. The Settlement Administrator will provide advice only regarding completing this form and will not provide financial, tax, or other advice concerning the Settlement. You therefore may want to consult with your financial or tax advisor. Information about the status of the approval of the Settlement, Settlement administration, and claim processing is available on the lawsuit website, <https://takeda401ksettlement.com>.

You are eligible to receive payment from a class action settlement. The Court has preliminarily approved the class settlement of *Ford, et al. v. Takeda Pharmaceuticals U.S.A., Inc., et al.*, No. 21-cv-10090 (D. Mass.). That settlement provides allocation of monies to the individual accounts of Settlement Class Members who had plan accounts with a positive balance in the Takeda Pharmaceutical U.S.A. Inc. Savings and Retirement Plan (the "Plan") as of September 30, 2022 ("Current Participants"). Settlement Class Members who are entitled to a distribution but who did not have a plan account with a positive balance in the Plan as of September 30, 2022 ("Former Participants") will receive their allocation in the form of a check or rollover if and only if they mail a valid Former Participant Claim Form to the Settlement Administrator at the address atop this form postmarked no later than **March 13, 2023** or electronically filed online at <https://takeda401ksettlement.com> no later than **March 13, 2023**. For more information about the Settlement, please see <https://takeda401ksettlement.com>, or call **1-888-696-8934**.

Because you are a Former Participant (or beneficiary of a Former Participant) in the Plan, you must decide whether you want your payment (1) sent payable to you directly or (2) to be rolled over into another eligible retirement plan or into an individual retirement account ("IRA"). To make that choice, please complete and mail this Former Participant Claim Form to the Settlement Administrator at the address atop this form postmarked no later than **March 13, 2023**. Claim Forms may also be completed and submitted to the Settlement Administrator electronically online at <https://takeda401ksettlement.com>. Electronic Claim Forms must be submitted no later than **March 13, 2023**. If you do not indicate a payment election, your payment will be sent payable to you directly.

**PART 2: PARTICIPANT INFORMATION**

First Name Middle Last Name  
[Grid for name entry]

Mailing Address  
[Grid for mailing address entry]

City State Zip Code  
[Grid for city, state, and zip code entry]

Home Phone  
[Grid for home phone entry]

Work Phone or Cell Phone  
[Grid for work phone or cell phone entry]

Participant's Social Security Number  
[Grid for social security number entry]

Participant's Date of Birth  
[Grid for date of birth entry with labels M M D D Y Y Y Y]

Email Address  
[Grid for email address entry]

Check here if you were a Former Participant but did not receive this Claim Form in the mail. This may be because you were a participant in the Plan only for a brief period

**PART 3: BENEFICIARY OR ALTERNATE PAYEE INFORMATION (IF APPLICABLE)**

Check here if you are the **surviving spouse or other beneficiary** for the Former Participant and the Former Participant is deceased. **Documentation must be provided showing current authority of the representative to file on behalf of the deceased.** Please complete the information below and then continue on to Parts 4 and 5 on the next page.

Check here if you are an **alternate payee under a qualified domestic relations order (QDRO), or attorney-in-fact** for the Former Participant. The Settlement Administrator may contact you with further instructions. Please complete the information below and then continue on to Parts 4 and 5 on the next page.

Your First Name Middle Last Name  
[Grid for beneficiary name entry]

Your Social Security Number or Tax ID Number  
[Grid for beneficiary SSN or TIN entry]

Your Date of Birth  
[Grid for beneficiary date of birth entry with labels M M D D Y Y Y Y]

Your Mailing Address  
[Grid for beneficiary mailing address entry]

City State Zip Code  
[Grid for beneficiary city, state, and zip code entry]



**From:** [Notice](#)  
**To:** [Jeff Mitchell](#)  
**Subject:** Notice of Class Action Settlement and Fairness Hearing: Takeda Pharmaceuticals 401(k) Settlement  
**Date:** Wednesday, January 11, 2023 10:47:32 AM

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ROBERT FORD and PHILLIP  
SCHWARTZ, individually and as  
representatives of a class of participants  
and beneficiaries on behalf of the Takeda  
Pharmaceuticals U.S.A., Inc. Savings and  
Retirement Plan,

No. 1:21-cv-10090-WGY

*Plaintiffs,*

CLASS ACTION

v.

TAKEDA PHARMACEUTICALS U.S.A.,  
INC., TAKEDA PHARMACEUTICALS  
U.S.A., INC. EXECUTIVE  
COMPENSATION COMMITTEE, AND  
JOHN DOES 1–14.

*Defendants.*

[File Your Claim Form](#)

**Claim Number:  
PIN:**

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**Your rights might be affected if you are a member of the following class:**

All participants and beneficiaries of the Takeda Pharmaceutical U.S.A. Inc. Savings and Retirement Plan (“Plan”) from January 19, 2015, through September 30, 2022, excluding the Defendants.

**IF YOU HAVE ANY OBJECTION TO THE SETTLEMENT DESCRIBED IN THIS NOTICE, YOU HAVE UNTIL FEBRUARY 21, 2023, TO FILE YOUR WRITTEN OBJECTION WITH THE COURT.**

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Plan alleging violations of the Employee Retirement Income Security Act (“ERISA”). The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who had Plan accounts during the Class Period with a balance greater than \$0 as of September 30, 2022 (“Current Participants”). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than \$0 as of September 30, 2022 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.

The terms and conditions of the Settlement are set forth in the Settlement Agreement

dated November 14, 2022. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at <https://takeda401ksettlement.com>. Any amendments to the Settlement Agreement or any other settlement documents will be posted on this website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice. Only if the Court gives final approval to the Settlement, and only if that approval is upheld in the event of an appeal, will payments under the Settlement be made.

A hearing on the final approval of the Settlement and for approval of the Class Representatives' petition for Attorneys' Fees and Costs and for Class Representatives' Compensation will take place on **March 23, 2023, at 2:00 p.m.**, before United States District Court Judge William G. Young in John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Courtroom 18, Boston, MA 02210.

Any objections to the Settlement, to the petition for Attorneys' Fees and Costs, or to Class Representatives' Compensation, must be served in writing on Class Counsel and Defendants' Counsel, as identified below.

Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at <https://takeda401ksettlement.com>.

**According to the Plan's records, you are a Former Participant. If you believe instead that you meet the definition of a Current Participant, please contact the Settlement Administrator. Former Participants are individuals who no longer had an account balance in the Plan greater than \$0 as of September 30, 2022.**

#### YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:

**OUR RECORDS INDICATE THAT YOU ARE A FORMER PARTICIPANT. TO RECEIVE YOUR SHARE OF THE NET SETTLEMENT AMOUNT, YOU MUST RETURN THE ENCLOSED FORMER PARTICIPANT CLAIM FORM BY MARCH 13, 2023.**

Our records indicate that you are a Former Participant. To receive your share of the Net Settlement Amount, you must return a Former Participant Claim Form that is postmarked or electronically filed by **March 13, 2023**. If you do not return the Former Participant Claim Form that is postmarked or electronically filed by **March 13, 2023**, you will forfeit your share of the Net Settlement Amount, even though you will be bound by the Settlement, including the release. A claim form is enclosed with this notice but may also be obtained by accessing <https://takeda401ksettlement.com>.

File Your Claim Form

Claim Number:  
PIN:

**YOU CAN OBJECT (NO LATER THAN FEBRUARY 21, 2023).**

If you wish to object to any part of the Settlement, you may (as discussed below)

write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek information through discovery from any person who files an objection, which means you could be required to produce documents and appear at a deposition to be interviewed and asked questions.

**YOU CAN ATTEND A HEARING ON MARCH 23, 2023.**

If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by **February 21, 2023**, of your intention to appear at the hearing.

**The Class Action**

The case is called *Ford, et al. v. Takeda Pharmaceuticals U.S.A., Inc., et al.*, No. 21-cv-10090 (D. Mass.) (the “Class Action”). The Court supervising the case is the United States District Court for the District of Massachusetts. The individuals who brought this suit are called Class Representatives, and the entities they sued are called the Defendants. The Class Representatives are current and former participants in the Plan. The Defendants are Takeda Pharmaceuticals U.S.A, Inc. and certain affiliates and individuals. The Class Representatives’ claims are described below, and additional information about them is available at <https://takeda401ksettlement.com>.

**The Settlement**

The Settlement was reached on September 13, 2022. Class Counsel filed this action on January 19, 2021. Since the time the case was filed, Class Counsel devoted substantial time and effort to review and analyze tens of thousands of pages of documents produced by Defendants and hundreds of thousands of pages of other documents to support their underlying claims. The Settling Parties engaged in substantial settlement discussions with multiple mediators. Only after extensive arm’s-length negotiations were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of \$22,000,000 will be established to resolve the Class Action. The Net Settlement Amount is \$22,000,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys’ Fees and Costs, Class Representatives’ Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing accounts in the Plan(s). Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

**Additional Provisions in the Settlement**

The Settlement further provides the following additional terms for a Settlement Period of



three years from the Settlement Effective Date:

1. During the Settlement Period, the Committee shall meet as often as is necessary to fulfill its fiduciary duties, but no less than quarterly.
2. During the Settlement Period, Defendants shall continue to provide annual training to Plan fiduciaries regarding their fiduciary duties under ERISA.
3. During the Settlement Period, Defendants shall retain or continue to retain an independent consultant pursuant to ERISA § 3(21) to provide ongoing assistance in reviewing the Plan's investment options.
4. During the Settlement Period, in considering the Plan's investment options, Defendants shall consider (1) the cost of different share classes available for the particular investment option as well as other criteria applicable to different share classes; (2) the availability of revenue sharing on any share class available for any particular investment option; and (3) other factors that Defendants deem appropriate under the circumstances.
5. Before the expiration of the Settlement Period, Defendants, through the use of the Plan's consultant shall initiate a request for information ("RFI") for recordkeeping and administrative services. The RFI will be conducted by a knowledgeable consultant and discloses the identity of the Plan along with pertinent details about the Plan and its participants, soliciting bids from at least three competent vendors. The bids will be formally evaluated by the consultant and the Plan fiduciaries. Within sixty (60) days after the conclusion of the RFI, Defense Counsel on behalf of Defendants shall notify Class Counsel by e-mail that Defendants have completed the RFI and briefly describe the outcome of their decision related to the Plan's expenses for recordkeeping and administrative services.
6. Within thirty (30) calendar days after the end of each year of the Settlement Period, and within thirty (30) calendar days after the conclusion of the Settlement Period, Defendants will provide Class Counsel with the following information current as of the end of the most recent calendar quarter: a list of the Plan's investment options, the fees for those investment alternatives, and a copy of the Investment Policy Statement(s) (if any) for the Plan.

#### **Release**

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as all Defendants and other "Released Parties" from "Released Claims." The Released Parties include (a) Takeda Pharmaceuticals U.S.A., Inc., the Executive Compensation Committee, the Benefit Investment and Administration Committee, and the US Investment Committee; (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future parent corporation(s); (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (e) their past, present, and future agents, officers, employees, trustees, boards of trustees, members of their board of trustees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them; and (f) the Plan and the Plan's fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

The Released Claims include all claims that were asserted or might have been asserted in the Class Action and all claims relating to the implementation of the Settlement.

This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at <https://takeda401ksettlement.com>. Generally, the release means that Class Members

will not have the right to sue the Defendants, the Plan, or the Released Parties for conduct arising out of or relating to the allegations in the Class Action.

This is only a summary of the Settlement. The entire Settlement Agreement is at <https://takeda401ksettlement.com>.

### **Statement of Attorneys' Fees and Costs Sought in the Class Action**

Class Counsel has devoted many hours investigating potential claims, bringing this case, and handling it. Class Counsel reviewed thousands of pages of documents produced in this case and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to monitor for three years compliance with the Settlement Agreement; (3) to enforce the Settlement Agreement in accordance with its terms; and (4) to do (1)-(3) without additional pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$7,333,333, in addition to no more than \$100,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$15,000 each, for two Class Representatives who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel and providing information for the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, <https://takeda401ksettlement.com>.

### **1. Why Did I Receive This Settlement Notice?**

The Court caused this Settlement Notice to be sent to you because the Plan's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

### **2. What Is The Class Action About?**

In the Class Action, Class Representatives claim that, during the Class Period, the Defendant violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq.*, with respect to its management, operation, and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plan have suffered any harm or damage for which Defendants could or should be held

responsible. Defendants contend that they acted prudently and in keeping with their fiduciary responsibilities under ERISA, and in the best interests of the Plan's participants.

### **3. Why Is There A Settlement?**

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

### **4. How Much Will My Distribution Be?**

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper(s), or, if on September 30, 2022, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) "Current Participant" as defined on page 1, or (2) an "Authorized Former Participant" (a "Former Participant" as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form that is postmarked by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Plan of Allocation will allocate the Net Settlement Fund among Current and Authorized Former Participants as follows:

A. The Authorized Former Participants and Current Participants will be separated into three categories: (a) those who invested in the Northern Trust Focus Funds (target date funds); (b) those who invested in Northern Trust index funds (non-target date funds); (c) all others.

B. After taking account of the De Minimis Amounts (as described below), those in category (a) will receive 80% of the Net Settlement Amount; those in category (b) will receive 10% of the Net Settlement Amount; and those in category (c) will receive 10% of the Net Settlement Amount.

C. Within each category, the allotted percentage of the Net Settlement Amount will be divided using the following method:

1. The end-of-quarter balances for the Class Period of each Current Participant and each Authorized Former Participant are identified for each quarter;
2. All end-of-quarter balances identified in step 1 are summed together for each Current Participant and each Authorized Former Participant;
3. An average end-of-quarter balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not participate in the Plan);
4. For each Current Participant and each Authorized Former Participant, the average end-of-quarter balance of step 3 is divided by the average end-of-quarter balance for the Class Period of all Current and Authorized Former Participants;
5. Each Current Participant and each Authorized Former Participant will receive a fraction of the total Net Settlement amount assigned to their respective category.

D. Class Members who are entitled to a distribution of less than ten dollars (\$10.00) will receive a payment of \$10.00 (the “De Minimis Amount”) from the Net Settlement Amount. The Settlement Administrator shall progressively increase Class Members’ awards falling below the De Minimis Amount until the lowest participating Class Member award is the De Minimis Amount, *i.e.*, ten dollars (\$10.00). The resulting calculation shall be known as the “Final Entitlement Amount” for each Class Member.

There are approximately 49,000 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive payment by check if and to the extent you are entitled to receive a portion of a Current Participant’s or Authorized Former Participant’s allocation under the Settlement Agreement in accordance with the plan of allocation as if you are a Current Participant or Authorized Former Participant.

#### **5. How Can I Receive My Distribution?**

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a “Current Participant” or a “Former Participant.” **According to the Plan’s records, you are a Former Participant. Therefore, if this is correct, you need to submit a claim form to receive your share of the Settlement.**

[File Your Claim Form](#)

**Claim Number:**  
**PIN:**

#### **6. When Will I Receive My Distribution?**

The timing of the distribution of the Net Settlement Amount depends on several matters, including the Court’s final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur in mid-year 2023.

**There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.**

#### **7. Can I Get Out Of The Settlement?**

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

#### **8. Do I Have A Lawyer In The Case?**

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### **9. How Will The Lawyers Be Paid?**

Class Counsel will file a petition for the award of Attorneys’ Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys’ Fees and Costs to not more than \$7,333,333 in fees and \$100,000 in costs and Class Counsel will also monitor compliance with the Settlement for three years without charge and has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

#### **10. How Do I Tell The Court If I Don’t Like The Settlement?**

If you are a Class Member, you can tell the Court that you do not agree with the

Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Ford et al v. Takeda Pharmaceuticals U.S.A., Inc. et al.*, No. 21-cv-10090 (D. Mass.). Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than **February 21, 2023**. The Court's address is United States District Court for the District of Massachusetts, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Courtroom 18, Boston, MA 02210. Your written objection also must be mailed to the lawyers listed below, no later than **February 21, 2023**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served to the objector.

**CLASS COUNSEL**

SCHLICHTER, BOGARD & DENTON

Attn: Takeda Pharmaceuticals 401(k)

Settlement

100 S. Fourth St., Suite 1200

St. Louis, MO 63102

[takedasettlement@uselaws.com](mailto:takedasettlement@uselaws.com)

**DEFENDANTS' COUNSEL**

MORGAN, LEWIS & BOCKIUS LLP

Attn: Abbey M. Glenn

1111 Pennsylvania Ave NW

Washington, DC 20004

**11. When and Where Will the Court Decide Whether to Approve the Settlement?**

The Court will hold a Fairness Hearing on **March 23, 2023, at 2:00 p.m.**, at the United States District Court for District of Massachusetts, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Courtroom 18, Boston, MA 02210.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

**12. Do I Have To Attend The Fairness Hearing?**

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable, and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

**13. May I Speak At The Fairness Hearing?**

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in Ford, et al. v. Takeda Pharmaceuticals U.S.A., Inc., et al., No. 21-cv-10090 (D. Mass.)." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than February 21, 2023**.

**14. What Happens If I Do Nothing At All?**

**If you are a "Current Participant" as defined above, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved.**

If you are a "Former Participant" as defined above, and you do nothing, you will be bound

by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

**According to the Plan's records, you are a Former Participant, so you will need to submit a Former Participant Claim Form in order to receive your share of the Settlement.**

**15. How Do I Get More Information?**

If you have general questions regarding the Settlement, you can visit this website: <https://takeda401ksettlement.com>, call 1-888-696-8934, or write to the Settlement Administrator at:

Takeda Pharmaceuticals 401(k) Settlement Administrator  
c/o Analytics Consulting LLC  
P.O. Box 2010  
Chanhassen, MN 55317-2010

Takeda Pharmaceuticals 401(k) Settlement Administrator | c/o Analytics Consulting LLC, P.O. Box 2010, Chanhassen, MN 55317

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ROBERT FORD and PHILLIP SCHWARTZ, individually and as representatives of a class of participants and beneficiaries on behalf of the Takeda Pharmaceuticals U.S.A., Inc. Savings and Retirement Plan,

*Plaintiffs,*

v.

TAKEDA PHARMACEUTICALS U.S.A., INC., TAKEDA PHARMACEUTICALS U.S.A., INC. EXECUTIVE COMPENSATION COMMITTEE, AND JOHN DOES 1–14.

*Defendants.*

No. 1:21-cv-10090-WGY

CLASS ACTION

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**Your rights might be affected if you are a member of the following class:**

All participants and beneficiaries of the Takeda Pharmaceutical U.S.A. Inc. Savings and Retirement Plan (“Plan”) from January 19, 2015, through September 30, 2022, excluding the Defendants.

**IF YOU HAVE ANY OBJECTION TO THE SETTLEMENT DESCRIBED IN THIS NOTICE, YOU HAVE UNTIL FEBRUARY 21, 2023 TO FILE YOUR WRITTEN OBJECTION WITH THE COURT.**

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Plan alleging violations of the Employee Retirement Income Security Act (“ERISA”). The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who had Plan accounts during the Class Period with a balance greater than \$0 as of September 30, 2022 (“Current Participants”). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than \$0 as of September 30, 2022 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.

The terms and conditions of the Settlement are set forth in the Settlement Agreement dated November 14, 2022. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at <https://takeda401ksettlement.com>. Any amendments to the Settlement Agreement or any other settlement documents will be posted on this website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.

Only if the Court gives final approval to the Settlement, and only if that approval is upheld in the event of an appeal, will payments under the Settlement be made.

A hearing on the final approval of the Settlement and for approval of the Class Representatives’ petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will take place on **March 23, 2023, at 2:00 p.m.**, before United States District Court Judge William G. Young in John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Courtroom 18, Boston, MA 02210.

Any objections to the Settlement, to the petition for Attorneys’ Fees and Costs, or to Class Representatives’ Compensation must be served in writing on Class Counsel and Defendants’ Counsel, as identified on page 7 of this Settlement Notice.

Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at <https://takeda401ksettlement.com>.

**According to the Plan’s records, you are a Current Participant. If you believe instead that you meet the definition of a Former Participant, please contact the Settlement Administrator. Current Participants include both participants who are current employees and participants who are no longer employed by Takeda Pharmaceuticals U.S.A, Inc. but continue to have an account balance in the Plan.**

**YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:**

<p><b>OUR RECORDS INDICATE THAT YOU ARE A CURRENT PARTICIPANT. YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT</b></p>	<p><u>Our records indicate that you are a Current Participant because you had an account balance in the Plan as of September 30, 2022.</u> If, however, you are a Former Participant who participated in the Plan during the Class Period and did not have a balance greater than \$0 as of September 30, 2022, or are the beneficiary, alternate payee, or attorney-in-fact of such a person, then, unlike a Current Participant, you must return a Former Participant Claim Form that is postmarked or electronically filed by <b>March 13, 2023</b> to receive a check for your share of the Net Settlement Amount. If you are a Former Participant, and you do not return the Former Participant Claim Form that is postmarked or electronically filed by <b>March 13, 2023</b>, you will forfeit your share of the Net Settlement Amount. We have not included a claim form in your notice because Current Participants do not need to submit a claim form. However, if you believe you are a Former Participant, a claim form may be obtained by accessing <a href="https://takeda401ksettlement.com">https://takeda401ksettlement.com</a>.</p>
<p><b>YOU CAN OBJECT (NO LATER THAN FEBRUARY 21, 2023)</b></p>	<p>If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek information through discovery from any person who files an objection, which means you could be required to produce documents and appear at a deposition to be interviewed and asked questions.</p>
<p><b>YOU CAN ATTEND A HEARING ON MARCH 23, 2023</b></p>	<p>If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by <b>February 21, 2023</b>, of your intention to appear at the hearing.</p>

**The Class Action**

The case is called *Ford, et al. v. Takeda Pharmaceuticals U.S.A., Inc., et al.*, No. 21-cv-10090 (D. Mass.) (the “Class Action”). The Court supervising the case is the United States District Court for the District of Massachusetts. The individuals who brought this suit are called Class Representatives, and the entities they sued are called the Defendants. The Class Representatives are current and former participants in the Plan. The Defendants are Takeda Pharmaceuticals U.S.A, Inc. and certain affiliates and individuals. The Class Representatives’ claims are described below, and additional information about them is available at <https://takeda401ksettlement.com>.



### **The Settlement**

The Settlement was reached on September 13, 2022. Class Counsel filed this action on January 19, 2021. Since the time the case was filed, Class Counsel devoted substantial time and effort to review and analyze tens of thousands of pages of documents produced by Defendants and hundreds of thousands of pages of other documents to support their underlying claims. The Settling Parties engaged in substantial settlement discussions with multiple mediators. Only after extensive arm's-length negotiations were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of \$22,000,000 will be established to resolve the Class Action. The Net Settlement Amount is \$22,000,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys' Fees and Costs, Class Representatives' Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing accounts in the Plan(s). Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

### **Additional Provisions in the Settlement**

The Settlement further provides the following additional terms for a Settlement Period of three years from the Settlement Effective Date:

- (1) During the Settlement Period, the Committee shall meet as often as is necessary to fulfill its fiduciary duties, but no less than quarterly.
- (2) During the Settlement Period, Defendants shall continue to provide annual training to Plan fiduciaries regarding their fiduciary duties under ERISA.
- (3) During the Settlement Period, Defendants shall retain or continue to retain an independent consultant pursuant to ERISA § 3(21) to provide ongoing assistance in reviewing the Plan's investment options.
- (4) During the Settlement Period, in considering the Plan's investment options, Defendants shall consider (1) the cost of different share classes available for the particular investment option as well as other criteria applicable to different share classes; (2) the availability of revenue sharing on any share class available for any particular investment option; and (3) other factors that Defendants deem appropriate under the circumstances.
- (5) Before the expiration of the Settlement Period, Defendants, through the use of the Plan's consultant shall initiate a request for information ("RFI") for recordkeeping and administrative services. The RFI will be conducted by a knowledgeable consultant and discloses the identity of the Plan along with pertinent details about the Plan and its participants, soliciting bids from at least three competent vendors. The bids will be formally evaluated by the consultant and the Plan fiduciaries. Within sixty (60) days after the conclusion of the RFI, Defense Counsel on behalf of Defendants shall notify Class Counsel by e-mail that Defendants have completed the RFI and briefly describe the outcome of their decision related to the Plan's expenses for recordkeeping and administrative services.
- (6) Within thirty (30) calendar days after the end of each year of the Settlement Period, and within thirty (30) calendar days after the conclusion of the Settlement Period, Defendants will provide Class Counsel with the following information current as of the end of the most recent calendar quarter: a list of the Plan's investment options, the fees for those investment alternatives, and a copy of the Investment Policy Statement(s) (if any) for the Plan.

### **Release**

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as all Defendants and other "Released Parties" from "Released Claims." The Released Parties include (a) Takeda Pharmaceuticals U.S.A., Inc., the Executive Compensation Committee, the Benefit Investment and Administration Committee, and the US Investment Committee; (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future parent corporation(s); (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (e) their past, present, and future agents, officers, employees, trustees, boards of trustees, members of their

board of trustees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them; and (f) the Plan and the Plan's fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

The Released Claims include all claims that were asserted or might have been asserted in the Class Action and all claims relating to the implementation of the Settlement.

This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at <https://takeda401ksettlement.com>. Generally, the release means that Class Members will not have the right to sue Defendants, the Plan, or the Released Parties for conduct arising out of or relating to the allegations in the Class Action.

This is only a summary of the Settlement. The entire Settlement Agreement is at <https://takeda401ksettlement.com>.

### **Statement of Attorneys' Fees and Costs Sought in the Class Action**

Class Counsel has devoted many hours investigating potential claims, bringing this case, and handling it. Class Counsel reviewed thousands of pages of documents produced in this case and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to monitor for three years compliance with the Settlement Agreement; (3) to enforce the Settlement Agreement in accordance with its terms; and (4) to do (1)-(3) without additional pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$7,333,333, in addition to no more than \$100,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$15,000 each, for two Class Representatives who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel and providing information for the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, <https://takeda401ksettlement.com>.

## **1. Why Did I Receive This Settlement Notice?**

The Court caused this Settlement Notice to be sent to you because the Plan's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

## **2. What Is The Class Action About?**

In the Class Action, Class Representatives claim that, during the Class Period, Defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq.*, with respect to its management, operation, and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plan has suffered any harm or damage for which Defendants could or should be

held responsible. Defendants contend that they acted prudently and in keeping with their fiduciary responsibilities under ERISA, and in the best interests of the Plan's participants.

### 3. Why Is There A Settlement?

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

### 4. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper(s), or, if on September 30, 2022, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) "Current Participant" as defined on page 1, or (2) an "Authorized Former Participant" (a "Former Participant" as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form that is postmarked by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Plan of Allocation will allocate the Net Settlement Fund among Current and Authorized Former Participants as follows:

- A. The Authorized Former Participants and Current Participants will be separated into three categories: (a) those who invested in the Northern Trust Focus Funds (target date funds); (b) those who invested in Northern Trust index funds (non-target date funds); (c) all others.
- B. After taking account of the De Minimis Amounts (as described below), those in category (a) will receive 80% of the Net Settlement Amount; those in category (b) will receive 10% of the Net Settlement Amount; and those in category (c) will receive 10% of the Net Settlement Amount.
- C. Within each category, the allotted percentage of the Net Settlement Amount will be divided using the following method:
  1. The end-of-quarter balances for the Class Period of each Current Participant and each Authorized Former Participant are identified for each quarter;
  2. All end-of-quarter balances identified in step 1 are summed together for each Current Participant and each Authorized Former Participant;
  3. An average end-of-quarter balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not participate in the Plan);
  4. For each Current Participant and each Authorized Former Participant, the average end-of-quarter balance of step 3 is divided by the average end-of-quarter balance for the Class Period of all Current and Authorized Former Participants;
  5. Each Current Participant and each Authorized Former Participant will receive a fraction of the total Net Settlement amount assigned to their respective category.
- D. Class Members who are entitled to a distribution of less than ten dollars (\$10.00) will receive a payment of \$10.00 (the "De Minimis Amount") from the Net Settlement Amount. The Settlement Administrator shall progressively increase Class Members' awards falling below the De Minimis Amount until the lowest participating Class Member award is the De Minimis Amount, *i.e.*, ten dollars (\$10.00). The resulting calculation shall be known as the "Final Entitlement Amount" for each Class Member.

There are approximately 49,000 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive payment by check if and to the extent you are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under the Settlement Agreement in accordance with the plan of allocation as if you are a Current Participant or Authorized Former Participant.

### 5. How Can I Receive My Distribution?

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a "Current Participant" or a "Former Participant." **According to the Plan's records, you are a Current Participant. Therefore, if this is correct, you do not need to do anything to receive your share of the Settlement.**

### 6. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount depends on several matters, including the Court's final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur in mid-year 2023.

**There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.**

### 7. Can I Get Out Of The Settlement?

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

### 8. Do I Have A Lawyer In The Case?

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

### 9. How Will The Lawyers Be Paid?

Class Counsel will file a petition for the award of Attorneys' Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys' Fees and Costs to not more than \$7,333,333 in fees and \$100,000 in costs and Class Counsel will also monitor compliance with the Settlement for three years without charge and has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

### 10. How Do I Tell The Court If I Don't Like The Settlement?

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Ford, et al. v. Takeda Pharmaceuticals U.S.A., Inc., et al.*, No. 21-cv-10090 (D. Mass.). Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than **February 21, 2023**. The Court's address is United States District Court for the District of Massachusetts, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Courtroom 18, Boston, MA 02210. Your written objection also must be mailed to the lawyers listed below, **no later than February 21, 2023**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served to the objector.

CLASS COUNSEL	DEFENDANTS' COUNSEL
SCHLICHTER, BOGARD & DENTON Attn: Takeda Pharmaceuticals 401(k) Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 takedasettlement@uselaws.com	MORGAN, LEWIS & BOCKIUS LLP Attn: Abbey M. Glenn 1111 Pennsylvania Ave NW Washington, DC 20004

### 11. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Fairness Hearing on **March 23, 2023, at 2:00 p.m.** at the United States District Court for District of Massachusetts, Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Courtroom 18, Boston, MA 02210.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

### 12. Do I Have To Attend The Fairness Hearing?

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable, and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

### 13. May I Speak At The Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Ford, et al. v. Takeda Pharmaceuticals U.S.A., Inc., et al.*, No. 21-cv-10090 (D. Mass.)." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than February 21, 2023**.

### 14. What Happens If I Do Nothing At All?

**If you are a "Current Participant" as defined on page 1, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved. According to the Plan's records, you are a Current Participant.**

If you are a "Former Participant" as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

### 15. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: <https://takeda401ksettlement.com>, call **1-888-696-8934**, or write to the Settlement Administrator at:

Takeda Pharmaceuticals 401(k) Settlement Administrator  
c/o Analytics Consulting LLC  
P.O. Box 2010  
Chanhassen, MN 55317-2010

**Takeda Pharmaceuticals 401(k) Settlement Administrator**

c/o Analytics Consulting LLC

P.O. Box 2010

Chanhassen, MN 55317-2010

**COURT-APPROVED NOTICE**

ABC1234567890 - Claim Number 1111111



JOHN Q CLASSMEMBER

123 MAIN ST

ANYTOWN, ST 12345

**From:** [Notice](#)  
**To:** [Jeff Mitchell](#)  
**Subject:** Notice of Class Action Settlement and Fairness Hearing: Takeda Pharmaceuticals 401(k) Settlement  
**Date:** Wednesday, January 11, 2023 10:47:57 AM

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ROBERT FORD and PHILLIP  
SCHWARTZ, individually and as  
representatives of a class of participants  
and beneficiaries on behalf of the Takeda  
Pharmaceuticals U.S.A., Inc. Savings and  
Retirement Plan,

No. 1:21-cv-10090-WGY

*Plaintiffs,*

CLASS ACTION

v.

TAKEDA PHARMACEUTICALS U.S.A.,  
INC., TAKEDA PHARMACEUTICALS  
U.S.A., INC. EXECUTIVE  
COMPENSATION COMMITTEE, AND  
JOHN DOES 1–14.

*Defendants.*

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**Your rights might be affected if you are a member of the following class:**

All participants and beneficiaries of the Takeda Pharmaceutical U.S.A. Inc. Savings and Retirement Plan (“Plan”) from January 19, 2015, through September 30, 2022, excluding the Defendants.

**IF YOU HAVE ANY OBJECTION TO THE SETTLEMENT DESCRIBED IN THIS NOTICE, YOU HAVE UNTIL FEBRUARY 21, 2023, TO FILE YOUR WRITTEN OBJECTION WITH THE COURT.**

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Plan alleging violations of the Employee Retirement Income Security Act (“ERISA”). The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who had Plan accounts during the Class Period with a balance greater than \$0 as of September 30, 2022 (“Current Participants”). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than \$0 as of September 30, 2022 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.

The terms and conditions of the Settlement are set forth in the Settlement Agreement dated November 14, 2022. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at

<https://takeda401ksettlement.com>. Any amendments to the Settlement Agreement or any other settlement documents will be posted on this website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.

Only if the Court gives final approval to the Settlement, and only if that approval is upheld in the event of an appeal, will payments under the Settlement be made.

A hearing on the final approval of the Settlement and for approval of the Class Representatives' petition for Attorneys' Fees and Costs and for Class Representatives' Compensation will take place on **March 23, 2023, at 2:00 p.m.**, before United States District Court Judge William G. Young in John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Courtroom 18, Boston, MA 02210.

Any objections to the Settlement, to the petition for Attorneys' Fees and Costs, or to Class Representatives' Compensation must be served in writing on Class Counsel and Defendants' Counsel, as identified below.

Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at <https://takeda401ksettlement.com>.

**According to the Plan's records, you are a Current Participant. If you believe instead that you meet the definition of a Former Participant, please contact the Settlement Administrator. Current Participants include both participants who are current employees and participants who are no longer employed by Takeda Pharmaceuticals U.S.A, Inc. but continue to have an account balance in the Plan.**

#### YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:

**OUR RECORDS INDICATE THAT YOU ARE A CURRENT PARTICIPANT. YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT.**

Our records indicate that you are a Current Participant because you had an account balance in the Plan as of September 30, 2022. If, however, you are a Former Participant who participated in the Plan during the Class Period and did not have a balance greater than \$0 as of September 30, 2022, or are the beneficiary, alternate payee, or attorney-in-fact of such a person, then, unlike a Current Participant, you must return a Former Participant Claim Form that is postmarked or electronically filed by **March 13, 2023** to receive a check for your share of the Net Settlement Amount. If you are a Former Participant, and you do not return the Former Participant Claim Form that is postmarked or electronically filed by **March 13, 2023**, you will forfeit your share of the Net Settlement Amount. We have not included a claim form in your notice because Current Participants do not need



to submit a claim form. However, if you believe you are a Former Participant, a claim form may be obtained by accessing <https://takeda401ksettlement.com>.

**YOU CAN OBJECT (NO LATER THAN FEBRUARY 21, 2023).**

If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek information through discovery from any person who files an objection, which means you could be required to produce documents and appear at a deposition to be interviewed and asked questions.

**YOU CAN ATTEND A HEARING ON MARCH 23, 2023.**

If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by **February 21, 2023**, of your intention to appear at the hearing.

**The Class Action**

The case is called *Ford, et al. v. Takeda Pharmaceuticals U.S.A., Inc., et al.*, No. 21-cv-10090 (D. Mass.) (the “Class Action”). The Court supervising the case is the United States District Court for the District of Massachusetts. The individuals who brought this suit are called Class Representatives, and the entities they sued are called the Defendants. The Class Representatives are current and former participants in the Plan. The Defendants are Takeda Pharmaceuticals U.S.A, Inc. and certain affiliates and individuals. The Class Representatives’ claims are described below, and additional information about them is available at <https://takeda401ksettlement.com>.

**The Settlement**

The Settlement was reached on September 13, 2022. Class Counsel filed this action on January 19, 2021. Since the time the case was filed, Class Counsel devoted substantial time and effort to review and analyze tens of thousands of pages of documents produced by Defendants and hundreds of thousands of pages of other documents to support their underlying claims. The Settling Parties engaged in substantial settlement discussions with multiple mediators. Only after extensive arm’s-length negotiations were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of \$22,000,000 will be established to resolve the Class Action. The Net Settlement Amount is \$22,000,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys’ Fees and Costs, Class Representatives’ Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled

to a distribution under the Plan of Allocation will be made into their existing accounts in the Plan(s). Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

**Additional Provisions in the Settlement**

The Settlement further provides the following additional terms for a Settlement Period of three years from the Settlement Effective Date:

1. During the Settlement Period, the Committee shall meet as often as is necessary to fulfill its fiduciary duties, but no less than quarterly.
2. During the Settlement Period, Defendants shall continue to provide annual training to Plan fiduciaries regarding their fiduciary duties under ERISA.
3. During the Settlement Period, Defendants shall retain or continue to retain an independent consultant pursuant to ERISA § 3(21) to provide ongoing assistance in reviewing the Plan's investment options.
4. During the Settlement Period, in considering the Plan's investment options, Defendants shall consider (1) the cost of different share classes available for the particular investment option as well as other criteria applicable to different share classes; (2) the availability of revenue sharing on any share class available for any particular investment option; and (3) other factors that Defendants deem appropriate under the circumstances.
5. Before the expiration of the Settlement Period, Defendants, through the use of the Plan's consultant shall initiate a request for information ("RFI") for recordkeeping and administrative services. The RFI will be conducted by a knowledgeable consultant and discloses the identity of the Plan along with pertinent details about the Plan and its participants, soliciting bids from at least three competent vendors. The bids will be formally evaluated by the consultant and the Plan fiduciaries. Within sixty (60) days after the conclusion of the RFI, Defense Counsel on behalf of Defendants shall notify Class Counsel by e-mail that Defendants have completed the RFI and briefly describe the outcome of their decision related to the Plan's expenses for recordkeeping and administrative services.
6. Within thirty (30) calendar days after the end of each year of the Settlement Period, and within thirty (30) calendar days after the conclusion of the Settlement Period, Defendants will provide Class Counsel with the following information current as of the end of the most recent calendar quarter: a list of the Plan's investment options, the fees for those investment alternatives, and a copy of the Investment Policy Statement(s) (if any) for the Plan.

**Release**

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as all Defendants and other "Released Parties" from "Released Claims." The Released Parties include (a) Takeda Pharmaceuticals U.S.A., Inc., the Executive Compensation Committee, the Benefit Investment and Administration Committee, and the US Investment Committee; (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future parent corporation(s); (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (e) their past, present, and future agents, officers, employees, trustees, boards of trustees, members of their board of trustees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them; and (f) the Plan and the Plan's fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

The Released Claims include all claims that were asserted or might have been asserted in the Class Action and all claims relating to the implementation of the Settlement.

This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at <https://takeda401ksettlement.com>. Generally, the release means that Class Members will not have the right to sue Defendants, the Plan, or the Released Parties for conduct arising out of or relating to the allegations in the Class Action.

This is only a summary of the Settlement. The entire Settlement Agreement is at <https://takeda401ksettlement.com>.

### **Statement of Attorneys' Fees and Costs Sought in the Class Action**

Class Counsel has devoted many hours investigating potential claims, bringing this case, and handling it. Class Counsel reviewed thousands of pages of documents produced in this case and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to monitor for three years compliance with the Settlement Agreement; (3) to enforce the Settlement Agreement in accordance with its terms; and (4) to do (1)-(3) without additional pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$7,333,333, in addition to no more than \$100,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$15,000 each, for two Class Representatives who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel and providing information for the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, <https://takeda401ksettlement.com>.

### **1. Why Did I Receive This Settlement Notice?**

The Court caused this Settlement Notice to be sent to you because the Plan's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

### **2. What Is The Class Action About?**

In the Class Action, Class Representatives claim that, during the Class Period, Defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as

amended, 29 U.S.C. §1001, *et seq.*, with respect to its management, operation, and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plan has suffered any harm or damage for which Defendants could or should be held responsible. Defendants contend that they acted prudently and in keeping with their fiduciary responsibilities under ERISA, and in the best interests of the Plan's participants.

### **3. Why Is There A Settlement?**

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

### **4. How Much Will My Distribution Be?**

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper(s), or, if on September 30, 2022, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) "Current Participant" as defined on page 1, or (2) an "Authorized Former Participant" (a "Former Participant" as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form that is postmarked by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Plan of Allocation will allocate the Net Settlement Fund among Current and Authorized Former Participants as follows:

A. The Authorized Former Participants and Current Participants will be separated into three categories: (a) those who invested in the Northern Trust Focus Funds (target date funds); (b) those who invested in Northern Trust index funds (non-target date funds); (c) all others.

B. After taking account of the De Minimis Amounts (as described below), those in category (a) will receive 80% of the Net Settlement Amount; those in category (b) will receive 10% of the Net Settlement Amount; and those in category (c) will receive 10% of the Net Settlement Amount.

C. Within each category, the allotted percentage of the Net Settlement Amount will be divided using the following method:

1. The end-of-quarter balances for the Class Period of each Current Participant and each Authorized Former Participant are identified for each quarter;
2. All end-of-quarter balances identified in step 1 are summed together for each Current Participant and each Authorized Former Participant;
3. An average end-of-quarter balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not

- participate in the Plan);
4. For each Current Participant and each Authorized Former Participant, the average end-of-quarter balance of step 3 is divided by the average end-of-quarter balance for the Class Period of all Current and Authorized Former Participants;
  5. Each Current Participant and each Authorized Former Participant will receive a fraction of the total Net Settlement amount assigned to their respective category.

D. Class Members who are entitled to a distribution of less than ten dollars (\$10.00) will receive a payment of \$10.00 (the “De Minimis Amount”) from the Net Settlement Amount. The Settlement Administrator shall progressively increase Class Members’ awards falling below the De Minimis Amount until the lowest participating Class Member award is the De Minimis Amount, *i.e.*, ten dollars (\$10.00). The resulting calculation shall be known as the “Final Entitlement Amount” for each Class Member.

There are approximately 49,000 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive payment by check if and to the extent you are entitled to receive a portion of a Current Participant’s or Authorized Former Participant’s allocation under the Settlement Agreement in accordance with the plan of allocation as if you are a Current Participant or Authorized Former Participant.

#### **5. How Can I Receive My Distribution?**

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a “Current Participant” or a “Former Participant.” **According to the Plan’s records, you are a Current Participant. Therefore, if this is correct, you do not need to do anything to receive your share of the Settlement.**

#### **6. When Will I Receive My Distribution?**

The timing of the distribution of the Net Settlement Amount depends on several matters, including the Court’s final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur in mid-year 2023.

#### **There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.**

#### **7. Can I Get Out Of The Settlement?**

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

#### **8. Do I Have A Lawyer In The Case?**

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### **9. How Will The Lawyers Be Paid?**

Class Counsel will file a petition for the award of Attorneys’ Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys’ Fees and Costs to not more than \$7,333,333 in fees and \$100,000 in costs and Class Counsel will also monitor compliance with the Settlement for three years without charge and has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

#### **10. How Do I Tell The Court If I Don't Like The Settlement?**

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Ford, et al. v. Takeda Pharmaceuticals U.S.A., Inc., et al.*, No. 21-cv-10090 (D. Mass.). Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than **February 21, 2023**. The Court's address is United States District Court for the District of Massachusetts, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Courtroom 18, Boston, MA 02210. Your written objection also must be mailed to the lawyers listed below, **no later than February 21, 2023**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served to the objector

#### **CLASS COUNSEL**

SCHLICHTER, BOGARD & DENTON  
Attn: Takeda Pharmaceuticals 401(k)  
Settlement  
100 S. Fourth St., Suite 1200  
St. Louis, MO 63102  
[takedasettlement@uselaws.com](mailto:takedasettlement@uselaws.com)

#### **DEFENDANTS' COUNSEL**

MORGAN, LEWIS & BOCKIUS LLP  
Attn: Abbey M. Glenn  
1111 Pennsylvania Ave NW  
Washington, DC 20004

#### **11. When and Where Will the Court Decide Whether to Approve the Settlement?**

The Court will hold a Fairness Hearing on **March 23, 2023, at 2:00 p.m.** at the United States District Court for District of Massachusetts, Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Courtroom 18, Boston, MA 02210.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

#### **12. Do I Have To Attend The Fairness Hearing?**

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable, and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

#### **13. May I Speak At The Fairness Hearing?**

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Ford, et al. v. Takeda Pharmaceuticals U.S.A., Inc., et al.*, No. 21-cv-10090 (D. Mass.)." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than February 21, 2023**.

#### **14. What Happens If I Do Nothing At All?**

**If you are a "Current Participant" as defined above, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved. According to the Plan's records,**

**you are a Current Participant.**

If you are a “Former Participant” as defined above, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

**15. How Do I Get More Information?**

If you have general questions regarding the Settlement, you can visit this website: <https://takeda401ksettlement.com>, call 1-888-696-8934, or write to the Settlement Administrator at:

Takeda Pharmaceuticals 401(k) Settlement Administrator  
c/o Analytics Consulting LLC  
P.O. Box 2010  
Chanhassen, MN 55317-2010

Takeda Pharmaceuticals 401(k) Settlement Administrator | c/o Analytics Consulting LLC, P.O. Box 2010, Chanhassen, MN 55317

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Gallagher Fiduciary Advisors, LLC  
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New York, NY 10017 USA

212-918-9666  
www.ajg.com

February 21, 2023

**VIA ELECTRONIC MAIL**

Sonali Das, Esq.  
Takeda Pharmaceuticals U.S.A., Inc.  
95 Hayden Avenue  
Lexington, MA 02421

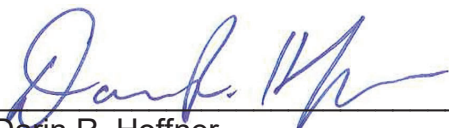
**Re: Ford et al. v. Takeda Pharmaceuticals U.S.A., Inc., et al.**

Dear Ms. Das:

Pursuant to the agreement between Takeda Pharmaceuticals U.S.A., Inc. and Gallagher Fiduciary Advisors, LLC (“Gallagher”), Gallagher has been engaged to act as the independent fiduciary of the Takeda Pharmaceuticals U.S.A., Inc. Savings and Retirement Plan (the “Plan”) in connection with the Class Action Settlement Agreement (the “Settlement Agreement”) in Ford et. al. v. Takeda Pharmaceuticals U.S.A., Inc., et al., 1:21-cv-10090 (D. Mass.), executed on November 14, 2022.

This will confirm that, on behalf of the Plan, and in its capacity as independent fiduciary, Gallagher approves and authorizes the settlement of Released Claims, as defined in the Settlement Agreement. In making our determination, Gallagher, as the independent fiduciary, has determined that the Settlement Agreement meets the requirements of ERISA Prohibited Transaction Class Exemption 2003-39, as amended.

GALLAGHER FIDUCIARY ADVISORS, LLC

By:   
Darin R. Hoffner  
Area Senior Vice President and  
Area Counsel

cc: Troy A. Doles, Esq.  
Abbey M. Glenn, Esq.

DRH/slb





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## FORD ET AL. V. TAKEDA PHARMACEUTICALS U.S.A., INC., ET AL.

### SETTLEMENT OF ERISA LITIGATION

February 21, 2023

#### I. Summary

Gallagher Fiduciary Advisors, LLC (“Gallagher”) was appointed to act as an independent fiduciary of the Takeda Pharmaceuticals U.S.A., Inc. Savings and Retirement Plan (the “Plan”) in connection with the settlement dated November 14, 2022 of Ford et al. v. Takeda Pharmaceuticals U.S.A. Inc., et al., 1:21-cv-10090 (D. Mass.) (the “Litigation”) that resolves the ERISA class action claims brought in the Litigation. All terms not otherwise defined herein shall have the meanings set forth in the Class Action Settlement Agreement dated November 14, 2022 (the “Settlement”).

Gallagher’s responsibilities pursuant to its agreement and the Settlement are to (i) determine whether to approve and authorize the settlement of Released Claims on behalf of the Plan and (ii) determine whether the Settlement satisfies the requirements of the Prohibited Transaction Class Exemption 2003-39 (the “Class Exemption”).

Gallagher engaged in the following activities: (i) we reviewed documents filed with the Court, including the Complaint and the Amended Complaints, the Motion to Dismiss, the Memorandum of Law in support of the Motion to Dismiss, the Motion for Preliminary Approval of Class Action Settlement, the Settlement Agreement, the Order granting preliminary approval of the Settlement, and the Plaintiff’s memorandum of law in support of the motion for attorneys’ fees, (ii) we interviewed Troy Doles, Heather Lea and Nathan Emmons of Schlichter Bogard & Denton LLP, lead counsel for Plaintiffs; (iii) we interviewed Abbey Glenn of Morgan Lewis & Bockius LLP, counsel for Defendants, and (iv) we interviewed the Hon. Morton Denlow (Ret.), former magistrate judge of the U.S. District Court for the Northern District of Illinois, the mediator.



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## II. Requirements of the Class Exemption

In order for the Class Exemption to apply, the following conditions must be met:

1. Where the litigation has not been certified as a class action by the court, and no federal or state agency is a plaintiff in the litigation, an attorney or attorneys retained to advise the plan on the claim, and having no relationship to any of the parties other than the plan, determines that there is a genuine controversy involving the plan.
  - This condition has been met because on November 21, 2022, the Court certified the Class as set forth in the Settlement Agreement.
2. The settlement is authorized by a fiduciary (the authorizing fiduciary) that has no relationship to, or interest in, any of the parties involved in the claims, other than the plan, that might affect the exercise of such person's best judgment as a fiduciary.
  - Gallagher has no relationship to, or interest in, any of the parties involved in the Litigation that could affect the exercise of its judgment.
3. The settlement terms, including the scope of the release of claims; the amount of cash received by the plan; the proposed attorney's fee award; any non-monetary relief included in the Settlement, and any other sums to be paid from the recoveries, are reasonable in light of the plan's likelihood of full recovery, the value of claims foregone and the risks and costs of litigation.

On January 19, 2021, Plaintiffs filed their original complaint. On March 15, 2021, Defendants filed a motion to dismiss Plaintiffs' complaint. On April 19, 2021, Plaintiffs filed an amended complaint, which Defendants moved to dismiss on June 4, 2021. The Court held a hearing on Defendants' motion to dismiss the amended complaint on July 21, 2021, and permitted Plaintiffs to file a motion for leave to file a second amended complaint. The next day, the Court ordered the parties to mediate. The parties held that mediation in the fall of 2021 but did not reach a settlement. Plaintiffs subsequently moved for leave to file a second amended complaint, which motion the Court granted on January 24, 2022, denying Defendants' motion to dismiss the first amended complaint.



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On January 24, 2022, Plaintiffs filed a second amended complaint that is the operative complaint and that sets forth Plaintiffs' claims. In Count I, Plaintiffs alleged Defendants breached their duty of prudence under ERISA by retaining the Northern Trust Focus Fund target date funds as investment options in the Plan. In Count II, Plaintiffs alleged Defendants breached their duty of prudence under ERISA by selecting and retaining as Plan investment options higher-cost share classes of mutual funds and collective investment trusts. In Count III, Plaintiffs alleged that Defendants failed to loyally and prudently monitor their appointed fiduciaries.

Defendants answered the second amended complaint on March 7, 2022. Plaintiffs moved for class certification on June 30, 2022.

The parties held a second mediation on September 13, 2022 with the Hon. Morton Denlow as mediator. The parties reached a settlement in principle at that mediation.

The Settlement involves a cash payment to the Plan of \$22,000,000, less attorney's fees, legal expenses and a cash award to each of the Named Plaintiffs, arrived at after hard fought negotiations by the parties.

Additionally, the Settlement includes non-monetary terms. Within three years after the Settlement Effective Date, the Plan's administrative committee will: (a) meet as often as is necessary to fulfill its fiduciary duties, but no less than quarterly; (b) Defendants will continue to provide annual training to the committee regarding ERISA's fiduciary duties; (c) Defendants will retain or continue to retain an independent consultant pursuant to ERISA Section 3(21) to provide ongoing assistance in reviewing the Plan's investment options; (d) in considering the Plan's investment options, Defendants will consider: (1) the cost of different share classes available for the particular investment option as well as other criteria applicable to different share classes; (2) the availability of revenue sharing on any share class available for any particular investment option; and (3) other factors that Defendants deem appropriate under the circumstances; and (e) Defendants, through the use the Plan's consultant, will initiate a request for information for recordkeeping and administrative services, soliciting bids from at least three competent vendors.

Plaintiffs' counsel has applied to the Court to approve its fee request of one third of the Settlement amount, or \$7,333,333, as well as reimbursement of its litigation costs of \$62,158.69 and an award to each



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of the Named Plaintiffs of \$15,000. The lodestar multiplier is 2.41%. The Court ultimately will determine the fairness of the fee request.

After a thorough review of the pleadings and interviews with the parties' counsel and the mediator, Gallagher has concluded that the Settlement was achieved at arms' length and is reasonable given the uncertainties of a larger recovery for the Class at trial and the value of claims foregone. The fee request is also reasonable in light of the effort expended by Plaintiffs' counsel in the Litigation.

4. The terms and conditions of the transaction are no less favorable to the plan than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.
  - This condition has been met. The Settlement is at least as favorable as an arms-length transaction agreed to by unrelated parties would likely have been. Counsel for both sides and the mediator confirmed that the Settlement was the product of arms-length negotiations.
5. The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.
  - Although the transaction will have the incidental effect of releasing the fiduciaries, the Settlement is not designed to benefit those fiduciaries but rather to resolve claims that have not been fully adjudicated and to enable the Plan to recover a portion of its losses.
6. Any extension of credit by the plan to a party in interest in connection with the settlement of a legal or equitable claim against the party in interest is on terms that are reasonable, taking into consideration the creditworthiness of the party in interest and the time value of money.
  - This condition is not applicable in that the Settlement does not require the Plan to extend credit to any party in interest.
7. The transaction is not described in Prohibited Transaction Class Exemption (PTE) 76-1 (relating to delinquent employer contributions to multiemployer and multiple employer collectively bargained plans).



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- Neither the Settlement nor the underlying claims relate to delinquent employer contributions, and the Settlement is therefore not described in PTE 76-1.
- 8.** All the terms of the settlement are specifically described in a written settlement agreement or consent decree.
- This condition has been met.
- 9.** Assets other than cash may be received by the plan from a party in interest in connection with a settlement in limited, specified circumstances. To the extent assets other than cash are received by the plan in exchange for the release of the plan's or the plan fiduciary's claims, such assets must be specifically described in the written settlement agreement and valued at their fair market value, as determined in accordance with section 5 of the Voluntary Fiduciary Correction (VFC) Program.
- This condition does not apply because the monetary portion of the Settlement is being paid in cash.
- 10.** The plan does not pay any commissions in connection with the acquisition of assets.
- This condition will be met in that the Settlement provides for a cash payment, and no commission is indicated under the terms of the Settlement.
- 11.** The authorizing fiduciary acting on behalf of the plan has acknowledged in writing that it is a fiduciary with respect to the settlement of the litigation on behalf of the plan.
- This condition has been met.
- 12.** The plan fiduciary maintains or causes to be maintained for a period of six years the records necessary to enable authorized persons to determine whether the conditions of this exemption have been met.
- This condition will be met.

In light of the above factors, it is fair to conclude that the Settlement on the terms described above meets the requirements of the Class Exemption.



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