

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MYLAN PHARMACEUTICALS, INC., *et al.*, :
 :
 Plaintiffs, : Civ. No. 12-3824
 : Indirect Purchaser Action
 v. :
 :
 WARNER CHILCOTT PUBLIC LIMITED :
 COMPANY, *et al.*, :
 :
 Defendants. :

**INDIRECT PURCHASER PLAINTIFFS' UNOPPOSED MOTION
FOR DISTRIBUTION OF THE NET SETTLEMENT FUND**

1. In accordance with the Court's January 28, 2015 Final Approval Order (ECF No. 679) approving the Settlement¹ of the Indirect Purchaser Plaintiffs' action brought on behalf of themselves and a Class² of similarly situated persons, and the Plan of Allocation³ approved

¹ "Settlement" means the terms and conditions of the Settlement Agreement dated July 11, 2014, that was filed as Exhibit 1 in support of the Notice of Indirect Purchaser Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, Memorandum in Support of Indirect Purchaser Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement, and Declaration of Walter W. Noss in Support of Indirect Purchaser Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval") (ECF No. 657-3).

² The Class certified by the Court is defined as:

All persons and entities in the United States who reimbursed for, or indirectly purchased, other than for resale, branded Doryx at any time during the period September 21, 2008 to May 30, 2014 ("Class Period"). Excluded from the Indirect Purchaser Class are: (1) Defendants and their directors, officers, employees, subsidiaries or affiliates; (2) fully-insured health plans, *i.e.*, plans that purchased 100% of the Plan's reimbursement obligations to its members; (3) all federal, state and municipal government entities, except for government funded employee benefit plans; (4) insured individuals covered by plans imposing a flat dollar co-pay that was the same dollar amount for generic as for brand drug purchases; and (5) insured or uninsured individuals who purchased branded Doryx with a coupon and never purchased branded Doryx without a coupon. Also excluded are purchases made through Prisons, Federal Facilities, Clinics (as defined by IMS), and/or Medicaid programs.

therein, Indirect Purchaser Plaintiffs, by Class Counsel,⁴ respectively move for an order: (i) approving the administrative determinations of settlement administrator, The Garden City Group, Inc. (“GCG”) concerning the claims filed in this case; (ii) approving the distribution of the Net Settlement Fund⁵ to Class members and/or their assignees whose Claim Forms have been approved; (iii) approving the payment to GCG of fees and expenses associated with administration of the Settlement; and (iv) finally and forever barring further claims against the Settlement Fund.⁶ The basis for this motion is as follows:

2. On September 4, 2014, the Court issued an Order (ECF No. 663) giving preliminary approval to the Settlement between Plaintiffs, individually and on behalf of the Class they represent, and Defendants in this action (“Preliminary Approval Order”). The Preliminary Approval Order provided for the establishment of a settlement fund of \$8 million to be funded by Warner Chilcott.

3. On January 28, 2015, the Court gave final approval to the Settlement and the Plan of Allocation, which described the procedures and methods for GCG to allocate and distribute the Net Settlement Fund to Class members. Final Approval Order at 16, ECF No. 679. The

Order at 4, Jan. 28, 2015, ECF No. 679.

³ The “Plan of Allocation” means the plan approved by the Court that was attached Exhibit 3 to the Motion for Preliminary Approval (ECF No. 657-8). *See also* Final Approval Order at 10-11, ECF No. 679 (Court approves Plan of Allocation).

⁴ “Class Counsel” refers to counsel appointed by the Court as co-lead counsel for the Class. *See* Final Approval Order at 6, ECF No. 679.

⁵ “The Net Settlement Fund” is the amount remaining after attorneys’ fees, reimbursement of litigation expenses, Class Representative incentive awards, and the Settlement administration costs approved by the Court are deducted. Final Approval Order at 11, ECF No. 679.

⁶ The Settlement Fund is the designated account which holds the \$8 million Defendants paid pursuant to the Settlement Agreement. Settlement Agreement at 9-11, ECF No. 657-3.

Court has retained jurisdiction over the action, the parties, and Class members. Final Approval Order at 15, ECF No. 679.

4. As explained in the accompanying Declaration of Jennifer M. Keough, Chief Operating Officer of GCG, dated November 5, 2015 (“Keough Decl.”) (attached hereto), GCG worked with Class Counsel to: (i) mail the Notice of Proposed Class Action Settlement (the “Notice”) and the Proof of Claim and Release form; (ii) created and maintained a toll-free hotline and case-specific website, and updated each during the course of the administration; (iii) caused the Summary Notice to be published in print media and a press release; (iv) conducted an internet advertising campaign; (v) supplemented the media program with direct mail efforts to dermatologists and third party payors; (vi) received any requests for exclusion; and (vii) received and processed Proofs of Claim. *Id.* at ¶2.

5. GCG caused the Notice Packet to be mailed to potential TTP Claimants. The Notice Packet was also available on the settlement website and via the toll-free hotline established for the Settlement. *Id.* at ¶4.

6. Each Class Member who wished to participate in the settlement was required to complete and submit to GCG a properly executed Proof of Claim postmarked no later than March 30, 2015, together with acceptable supporting documentation. *Id.* at ¶5.

7. A total of 266, or approximately 47% of the Proofs of Claim submitted were not signed, did not include the required supporting documentation, included in their dataset drug codes for drugs other than branded Doryx, or submitted claims that were otherwise deficient. *Id.* at ¶10. GCG provided these claimants sufficient opportunity to cure these deficiencies. *Id.* The deficiency process involved letters, emails, and telephone calls to encourage claimants to rectify

their otherwise deficient submissions in order to participate in the Settlement. *Id.* GCG received 168 responses, including many new or revised datasets. *Id.* at ¶14.

8. Through November 3, 2015, GCG received 13 Proofs of Claim that were postmarked after the March 30, 2015 submission deadline established by the Court. *Id.* at ¶15. Eleven of these claims have been found to be eligible and have been accepted by GCG. *Id.* Plaintiffs request, in order to set a final cut-off, that the Court order that no Proof of Claim received after November 3, 2015 is eligible for payment for any reason whatsoever.

9. GCG processed 570 Proofs of Claim that were received in connection with the Settlement along with the corresponding data and additional updates received as result of GCG's deficiency outreach process. *Id.* at ¶20. GCG has determined that 483 of these claims are acceptable and that 87 should be rejected because they are ineligible or they have unresolved fatal deficiencies. *Id.* The 483 claims represent an aggregate calculated claim total of \$417,247,190.47. *Id.* at ¶22.

10. A list of the Proofs of Claims submitted and their ultimate disposition is contained in the Administrator's Report attached to the Keough Decl. as Exhibit B. Exhibit B-1 of the Keough Decl., entitled "Timely Eligible Claims," lists all timely filed, provisionally acceptable Proofs of Claim, and states their calculated claim totals. Exhibit B-2 of the Keough Decl., entitled "Late, but Otherwise Eligible, Claims," lists all late filed, provisionally accepted Proofs of Claim, and states their Calculated Claim Totals. Exhibit B-3 of the Keough Decl., entitled "Rejected or Ineligible Claims," lists all wholly rejected or ineligible Proofs of Claim, and states the reason for their rejection or ineligibility.

11. In accordance with the Court-approved Plan of Allocation, after the Administration Expenses are deducted from the Settlement Fund, the Net Settlement Fund will

be allocated *pro rata* to each Authorized Consumer Claimant and Authorized TPP Claimant by multiplying the Net Settlement Fund by the amount of the Authorized Consumer Claimant's or Authorized TPP Claimant's claim and then dividing by the aggregate amount of all eligible claims. Keough Decl. at ¶23. Upon approval by the Court, GCG will prepare and mail checks to authorized claimants for their *pro rata* share of the Net Settlement Fund. *Id.*

12. GCG incurred \$384,993.27 in professional fees and expenses for administering the claims in this Settlement, which includes fees and expenses necessary to complete the initial distribution of checks, file the necessary tax returns, respond to Claimant inquiries, and close the administration of this Settlement. *Id.* at ¶24. GCG invoices are attached as Exhibit C to the Keough Decl.

13. Plaintiffs respectfully request that the Court approve the Net Settlement Fund allocation determinations as set forth in Exhibit B of the Keough Decl. and authorize GCG to distribute to each claimant its *pro rata* share of the Net Settlement Fund and approve GCG's claims administration expenses. Plaintiffs also respectfully request that the Court finally and forever bar further claims against the Settlement Fund. A proposed order is attached.

14. Defendants do not oppose this motion. Defendants make no concessions regarding the validity of Plaintiffs' claims or their methodology for distribution other than for settlement purposes.

DATED: November 20, 2015

Respectfully submitted,

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

/s/ Walter W. Noss

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International Union of Operating Engineers Local
132 Health and Welfare Fund, and Laborers Health
and Welfare Trust Fund for Northern California*

CERTIFICATE OF SERVICE

The undersigned certifies that on November 20, 2015, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court for the Eastern District of Pennsylvania using the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

/s/ Walter W. Noss

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