

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: NEXIUM (ESOMEPRAZOLE)
ANTITRUST LITIGATION

MDL No. 2409

Civil Action No. 1:12-md-02409-WGY

This Document Relates To:

All Direct Purchaser Class Actions

~~PROPOSED~~ ^{WGY} ORDER PRELIMINARILY APPROVING DIRECT
PURCHASER CLASS SETTLEMENT WITH TEVA
PHARMACEUTICAL INDUSTRIES, LTD. AND TEVA
PHARMACEUTICALS USA, INC. ("TEVA"),
AUTHORIZING NOTICE TO THE CLASS, AND SETTING HEARING

Upon review and consideration of the Settlement Agreement with Teva dated April 1, 2015 and the exhibits thereto (collectively, the "Teva Settlement Documents"), Direct Purchaser Class Plaintiffs' ("Plaintiffs" or the "Class") Motion for Preliminary Approval of Proposed Settlement with Teva and for Approval of the Form and Manner of Notice to the Class, the attachments to such motion, Declaration of the Notice Administrator, Rebecca A. Blake of Rust Consulting, Inc. ("Blake Declaration"); and the Proposed Notice to the Direct Purchaser Class (substantially in the form attached as Exhibit A to the Blake Declaration), IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Upon review of the record, the Court finds that the proposed settlement is sufficiently fair, reasonable, and adequate, and in the best interests of the members of the Class, and within a range that responsible and highly experienced counsel could accept considering all relevant risks and factors of litigation, and is hereby **PRELIMINARILY APPROVED**, subject to a final determination following a hearing, after notice to the Class, to be scheduled at a later date.

2. The proposed settlement is on behalf of:

All persons or entities in the United States, including U.S. territories, who purchased Nexium directly from AstraZeneca at any time during the

period from August 27, 2008 through December 11, 2013 (the “Direct Purchaser Class”). Excluded from the Direct Purchaser Class are the Defendants, their officers, directors, management, employees, subsidiaries, and affiliates, and all federal governmental entities.

Also excluded from the Class are:

CVS Pharmacy Inc., Rite Aid Corporation and Rite Aid Hdqtrs Corp., The Jean Coutu Group (PJC) USA, Inc., Maxi Drug, Inc., d/b/a Brooks Pharmacy and Eckerd Corporation, Walgreen Co., HEB Grocery Company LP, Safeway Inc., SuperValu, Inc., The Kroger Co., and Giant Eagle, Inc. in their own right as direct purchasers of Nexium from AstraZeneca, and as assignees limited to their purchases of Nexium from Class members.

3. The Court has found that the Class meets all the requirements of FED. R. CIV. P. 23. The Class, made up of sophisticated business entities, had a full and fair opportunity to request exclusion at the time of class certification and therefore, the Court finds that a discretionary second opt-out period pursuant to recently-amended Rule 23(e)(3) is unnecessary.¹

4. Upon review of the record, the Court finds that the proposed Settlement between the Plaintiffs, the Class and Defendants, which was arrived at by arm’s-length negotiations by highly experienced counsel, falls within the range of possible approval and is hereby preliminarily approved, subject to further consideration at the Fairness Hearing provided for below.

5. All proceedings in the Direct Purchaser Class Action against Teva are hereby stayed until such time as the Court renders a final decision regarding the approval of the Settlement and, if it approves the Settlement, enters final judgment and dismisses the action against Teva with prejudice.

¹ Pursuant to this Court’s Order dated December 27, 2013, a “Notice of Pendency of Class Action” in a form approved by the Court, was sent to putative class members. Opt-out elections were required to be postmarked by February 2, 2014. No parties/entities elected to opt-out of the class other than those prosecuting the *Walgreen* (No. 13-cv-10337-WGY), *Giant Eagle* (No. 13-cv-11305-WGY), and *Rite Aid* (No. 13-cv-12074-WGY) actions. See ECF No. 862.

6. In the event that the Settlement does not become final pursuant to paragraph 4 of the Settlement, then, subject to approval of the Court, litigation of the Class Action will resume in a reasonable manner to be approved by the Court upon joint application by the parties hereto.

7. In the event the Settlement Agreement and the Settlement is terminated in accordance with the provisions of the Settlement Agreement, the Settlement Agreement, the Settlement, and all related proceedings shall, except as expressly provided to the contrary in the Settlement Agreement, become null and void, shall have no further force and effect, and Plaintiffs shall retain full rights to assert any and all causes of action Teva, and Teva shall retain any defenses thereto.

8. Neither this order nor the Settlement Agreement nor any other Settlement-related document or anything contained herein or therein or contemplated hereby or thereby nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein, shall constitute, be construed as or be deemed to be evidence of or an admission or concession by Teva as to the validity of any claim that has been or could have been asserted against Teva or as to any liability Teva or as to any matter set forth in this Order.

9. Berdon LLP is hereby appointed Escrow Agent.

10. The proposed form of Notice to the Direct Purchaser Class Members, substantially in the form of Exhibit A to the Blake Declaration, and the proposed method of dissemination thereof (direct mail) satisfy the requirements of Rule 23(e) of the Federal Rules of Civil Procedure and due process, are otherwise fair and reasonable, and therefore are **APPROVED**.

11. The Notice Administrator shall complete mailing of the Settlement Notice to the Class by the later of June 26 2015 or fourteen (14) days after the Court grants preliminary approval of the proposed Settlement.

12. Class members who wish to object or otherwise be heard with respect to the proposed Settlement must do so in writing to the Clerk of the U.S. District Court for the District of Massachusetts, United States Courthouse, 1 Courthouse Way, Boston, MA 02210, with copies to the following counsel:

On behalf of the Direct Purchaser Class Counsel, Direct Purchaser Plaintiffs, and the Direct Purchaser Class:

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On behalf of Teva:

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To be valid, any such Objection to the Settlement and/or Notice of Intention to Appear and Summary Statement must be postmarked no later than the later of Aug 10, 2015 or 45 days following mailing of the Settlement Notice to the Direct Purchaser Class. Except as herein provided, no person or entity shall be entitled to contest the terms of the proposed Settlement. All persons and entities who fail to file a Notice of Intention to Appear as well as a Summary Statement as provided above shall be deemed to have waived any such objections by appeal, collateral attack or otherwise, and will not be heard at the Fairness Hearing.

13. Direct Purchaser Class Plaintiffs shall move for Final Approval of the Settlement no later than the later of 9/9 /2015 or 30 days after the deadline for Class Members to Object to the Settlement.

14. A hearing on final approval (the "Fairness Hearing") shall be held before this Court on September 29, 2015 (a date no earlier than the later of 9/24 /2015 or 90 days after mailing of the Settlement Notice is complete), at 2:00 p.m Eastern Time, in Courtroom 18 of the United States District Court for the District of Massachusetts, United States Courthouse, 1 Courthouse Way, Boston, MA 02210. At the Fairness Hearing, the Court will consider, *inter alia*, (a) the fairness, reasonableness and adequacy of the Settlement and whether the Settlement should be finally approved, and (b) whether entry of a final judgment terminating the litigation against Teva should be entered. The Fairness hearing may be rescheduled or continued: in this event, the Court will furnish all counsel with appropriate notice. Plaintiffs' counsel shall be responsible for communicating any such notice promptly to the Direct Purchaser Class by posting conspicuous notice on its website.

SO ORDERED this day 12th day of June, 2015.



William G. Young
United States District Judge
U.S. District Court for the District of Massachusetts