

**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~~ ORDER GRANTING FINAL JUDGMENT AND ORDER
OF DISMISSAL APPROVING DIRECT PURCHASER CLASS
SETTLEMENT AND DISMISSING DIRECT PURCHASER
CLASS CLAIMS AGAINST TEVA PHARMACEUTICAL
INDUSTRIES LTD. AND TEVA PHARMACEUTICALS USA, INC.**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and in accordance with the terms of the Direct Purchaser Class Settlement Agreement with Teva Pharmaceutical Industries Ltd. and Teva Pharmaceuticals USA, Inc. (“Teva”), dated April 1, 2015, it is hereby ORDERED as follows:

1. This Final Judgment and Order of Dismissal hereby incorporates by reference the definitions in the Settlement Agreement among the parties to these actions on file with the Court (ECF No. 1513-1), and all capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Settlement Agreement.
2. The Court has jurisdiction over these actions, each of the parties, and all members of the Class for all manifestations of this case, including this Settlement.
3. The notice of settlement (in the form presented to this Court as Exhibit 1 to the Declaration of Rebecca A. Blake of Rust Consulting, Inc. Regarding Notice of Proposed Settlements (the “Notice”) directed to the members of the Class, constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the

Notice provided for individual notice to all Class members who were identified through reasonable efforts. Copies of the Notice of Proposed Settlement were disseminated via first-class U.S. mail to Class members identified from AstraZeneca's expert report based on its transaction records. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finds that the Notice provided Class members due and adequate notice of the Settlement, the Settlement Agreement, these proceedings and the rights of Class members to object to the Settlement.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the Direct Purchaser Class Settlement with Teva, and finds that the Settlement is, in all respects, fair, reasonable and adequate to Class members. Accordingly, the Settlement shall be consummated in accordance with the terms and provisions of the Settlement Agreement.

5. On December 11, 2013, this Court certified a class of: "[a]ll 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.

6. The Court has appointed American Sales Company, LLC ("ASC"), Meijer, Inc. and

Meijer Distribution, Inc. (together, “Meijer”), Value Drug Company (“Value”), Burlington Drug Company Inc. (“Burlington”), and Rochester Drug Co-Operative, Inc. (“RDC”) as class representatives (the “Class Representatives”).

7. The Court has found that Co-Lead Counsel, listed below, along with other Class Counsel, have fairly and adequately represented the interests of the Class and satisfied the requirements of Fed. R. Civ. P. 23(g):

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8. All claims against Teva in the following actions are hereby dismissed with prejudice, as provided in the Settlement Agreement:

In re: Nexium (Esomeprazole) Antitrust Litigation, No. 1:12-md-02409-WGY (D. Mass.)

Value Drug Company, et al. v. AstraZeneca et al., No. 1:12-cv-12293 (D.Mass.)

Rochester Drug Co-Operative, Inc. v. AstraZeneca, et. al., No. 12-cv-12299 (D. Mass.)

Meijer, Inc., et al. v. AstraZeneca, et al., No. 12-cv-12291 (D. Mass).

American Sales Company, LLC., et al. v. AstraZeneca, et. al., No. 12-cv-11711 (D. Mass.)

9. Upon this Settlement becoming final in accordance with paragraph 4 of the Settlement Agreement, Plaintiffs shall unconditionally, fully and finally release and forever discharge Teva and its past, present and future parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, officers, directors, management, supervisory boards, insurers, general or limited partners, employees, agents, trustees, associates, attorneys and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (the "Released Parties") from any and all manner of claims, rights, debts, obligations, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, including costs, expenses, penalties and attorneys' fees, accrued in whole or in part, in law or equity, that Plaintiffs or any member or members of the Direct Purchaser Class (including any of their past, present or future officers, directors, insurers, general or limited partners, divisions, stockholders, agents, attorneys, employees, legal representatives, trustees, parents, associates, affiliates, joint ventures, subsidiaries, heirs, executors, administrators, predecessors, successors and assigns, acting in their capacity as such) (the "Releasers"), whether or not they object to the Settlement, ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, arising out of or relating in any way to the alleged delayed entry of generic versions of Nexium (esomeprazole magnesium), including but not limited to any and all claims asserted or that could have been asserted against Teva in the MDL Action prior to the date of this Settlement, except as otherwise provided in the Settlement (the "Released Claims").

10. In addition, Plaintiffs and each Class member, on behalf of themselves and all other Releasers, hereby expressly waive, release and forever discharge, upon the Settlement becoming

final, any and all provisions, rights and benefits conferred by § 1542 of the California Civil Code, which reads:

Section 1542. General Release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor;

or by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each Class member may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of this paragraph 10, but each Class member hereby expressly waives and fully, finally and forever settles, releases and discharges, upon this Settlement becoming final, any known or unknown, suspected or unsuspected, asserted or un-asserted, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Class member also hereby expressly waives and fully, finally and forever settles, releases and discharges any and all claims it may have against any Released Party under § 17200, *et seq*, of the California Business and Professions Code or any similar, comparable or equivalent provision of the law of any other state or territory of the United States or other jurisdiction, which claims are expressly incorporated into the definition of Released Claims.

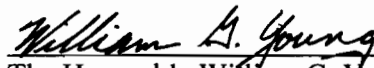
11. The releases set forth in paragraphs 9 and 10 of this Order shall not release any claims between Plaintiffs, Class members and the Released Parties under Article 2 of the Uniform Commercial Code (pertaining to Sales), the laws of negligence or product liability or implied warranty, breach of contract, breach of express warranty, or personal injury, or other claims unrelated to the Nexium antitrust allegations in this MDL Action.

12. By separate Order, this Court will address a petition to be filed by Direct Purchaser Class, End-Payor Class, and Individual Retailer Plaintiffs for reimbursement of costs and expenses incurred by counsel and other related disbursements to counsel, and allocate the remainder of the Settlement Fund among the three groups of plaintiffs.

13. The Court finds that this Final Judgment and Order adjudicates all of the claims, rights and liabilities of the parties to the Settlement Agreement (including the members of the Class), and is final and shall be immediately appealable. Neither this Order nor the Settlement Agreement nor any other Settlement-related document shall constitute any evidence or admission of liability by Teva or any other Released Party, nor shall either the Settlement Agreement or this Order or any other Settlement-related document be offered in evidence or used for any other purpose in this or any other matter or proceeding except as may be necessary to consummate or enforce the Settlement Agreement of the terms of this Order or if offered by any Released Party in responding to any action purporting to assert Released Claims.

IT IS SO ORDERED.

Dated: October 5, 2015


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