

Exhibit 6

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

IN RE AGGRENEX ANTITRUST LITIGATION	Master Docket No. 3:14-md-02516-(SRU)
	Judge Stefan R. Underhill

**PLAN OF ALLOCATION FOR THE
DIRECT PURCHASER CLASS**

I. INTRODUCTION

Direct Purchaser Class Plaintiffs Miami Luken Inc., (“Miami Luken”), Rochester Drug Co-Operative, Inc. (“RDC”), American Sales Company, LLC (“American Sales”) and Cesar Castillo, Inc. (“Castillo”) (collectively “DPC Plaintiffs”) on behalf of the previously-certified Class,¹ hereby submit this proposed Plan of Allocation to allocate the \$146 million settlement with the Defendants² among class members, (including any interest accrued), net of Court approved attorneys’ fees, named plaintiff incentive awards, and court approved expenses (“Net Settlement Fund”).

The Proposed Plan of Allocation (“Allocation Plan”) would allocate the Net Settlement Fund based on each class member’s *pro rata* share of branded Aggrenox purchases. This is basically the same method of allocation that has been approved in many prior, similar

¹ By order dated September 12, 2016, this Court defined the class (the “Class”) as follows:

All persons or entities in the United States and its territories and possessions including the Commonwealth of Puerto Rico who directly purchased branded Aggrenox in any form from any of the Defendants from December 1, 2009 through June 30, 2015 (the “Class Period”), or their assignees (the “Class”). Excluded from the Class are Defendants and their officers, directors, management and employees, predecessors, subsidiaries and affiliates, and all federal governmental entities. Also excluded from the Class are CVS Pharmacy, Inc., Rite Aid Corporation, Rite Aid Hdqtrs. Corp., Walgreen Co., The Kroger Co., Safeway Inc., HEB Grocery Company L.P. and Albertson’s LLC and their officers, directors, management and employees, predecessors, subsidiaries and affiliates who have brought individual claims as direct purchasers or assignees of direct purchasers to the extent they have valid assignments as more fully described in paragraph 10 of the Settlement Agreement (“Retailer Plaintiffs”).

Dkt No. 685 ¶1.

² “Defendants” are Boehringer Ingelheim Pharma GmbH & Co. KG, Boehringer Ingelheim International GmbH and Boehringer Ingelheim Pharmaceuticals, Inc. (“Boehringer”); and Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries, Ltd., Barr Pharmaceuticals, Inc. (n/k/a Barr Pharmaceuticals, LLC), Barr Laboratories Inc., Duramed Pharmaceuticals Inc. (n/k/a Teva Women’s Health Inc.), and Duramed Pharmaceutical Sales Corp. (n/k/a Teva Sales and Marketing, Inc.) (“Teva”) (collectively “Defendants”).

settlements in similar cases brought by direct purchasers to recover overcharges arising from impaired generic competition.³ It is also the method that was described in the Court-approved notice that was mailed to Class members on October 4, 2017. A copy of the notice sent to the class is attached as Exhibit 1 to the Affidavit of Michael Rosenbaum Regarding Lack of Requests for Exclusion and Objections to the Settlement.⁴ That notice provides that each class member's "share of the Net Settlement Fund will depend on the amount of Aggrenox® [the class member] directly purchased from Defendants between December 1, 2009 through June 30, 2015." *Id.* at 7.

The damages expert for the DPC Plaintiffs, economist Dr. Jeffrey J. Leitzinger, has calculated class members' allocated shares based on transactional sales data for branded Aggrenox obtained from Boehringer. *See* Declaration of Jeffrey J. Leitzinger, Ph.D. Related to Proposed Allocation Plan and Net Settlement Fund Allocation ("Leitzinger Decl.") ¶¶3-7. Class members will also have the option of submitting their own records, and Dr. Leitzinger will review and then confer with the claims administrator regarding the final calculations.

Dr. Leitzinger prepared an allocation methodology based upon a modified version of the model he employed to compute aggregate damages to the class as a whole. *See* Leitzinger

³ *See, e.g., In re K-Dur Antitrust Litig.*, No. 01-1652, Dkt No. 1058 (*pro rata* shares of settlement fund computed on basis of class members' purchases of brand); *King Drug of Florence, Inc. v. Cephalon, Inc.*, No. 06-1797, Dkt No. 864-17 (same); *In re Prograf Antitrust Litig.*, No.11-md-2242 (D. Mass.), Dkt No. 678 at 5; *In re Doryx Antitrust Litig. (Mylan Pharms., Inc., v. Warner Chilcott Public Ltd.)*, No. 12-cv-3824 (E.D. Pa.), Dkt No. 452-3, at 2 (same); *In re Skelaxin Antitrust Litigation*, No. 12-cv-83 (E.D. Tenn.), Dkt No. 788 at 6 (same); *In re DDAVP Direct Purchaser Antitrust Litig.*, No. 05-cv-2237 (S.D.N.Y.), Dkt No. 101 at 19-20 (S.D.N.Y.) (same); *In re Miralax Antitrust Litig.*, No. 07-cv-142 (D. Del.), Dkt No. 240, at 18 (same); *In re Prograf Antitrust Litig.*, No.11-md-2242 (D. Mass.), Dkt No. 667-2, at 2 (same); *In re Metoprolol Succinate Direct Purchaser Antitrust Litig.*, No.06-cv-52 (D. Del.), Dkt No. 192 at 18 (same); *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-cv-340 (D. Del.), Dkt No. 536-1 at 19 (same); *In re Wellbutrin XL Antitrust Litig.*, No. 08-cv-2431 (E.D. Pa.), Dkt No. 481-1 at 16 (same).

⁴ Mr. Rosenbaum's affidavit is itself attached as an exhibit to the Second Declaration of Bruce E. Gerstein filed herewith.

Declaration at ¶¶3-7. The proposed Allocation Plan is (a) practical and efficient as it uses sales data obtained from Boehringer regarding sales of branded Aggrenox to class members; and (b) consistent with the relative overcharges suffered by each Class member, and thus fair to all members of the Settlement Class. *Id.* at ¶7. Further, because most of the data necessary to carry out the Allocation Plan is already in Dr. Leitzinger's possession, he was able to compute preliminary allocation shares to each Class member.

II. ALLOCATION PLAN

The Allocation Plan (the "Plan") is set out in detail in the Leitzinger Declaration.

In summary, it works as follows:

- 1.1 The Court-appointed Claims Administrator, Berdon Claims Administration LLC ("Berdon"), working with Dr. Leitzinger's firm Econ One, will provide a separate individualized Claim Form for each Class member, in substantially the form attached as an exhibit to the Declaration of Bruce E. Gerstein. The Claim Form will contain branded Aggrenox purchase information specifically for that Class member for the period between December 1, 2009 through June 30, 2015, taken from transactional sales data produced by Defendants. Leitzinger Declaration at ¶¶4-6. Berdon, working in conjunction with Econ One and Class Counsel, shall distribute an individualized Claim Form to each Class member by First Class Mail within forty-five (45) days of the Final Approval of the Settlement and Allocation Plan. The Claim Form will include information identifying each Class member by its name and address including a list of related entities, as well as an estimate of each Class member's purchases of branded Aggrenox. The Claim Form will

specifically request that each Class member verify the accuracy of the information contained in the Claim Form and will provide instructions for challenging any of the figures or computations contained in the Claim Form. If a Class member agrees that the information contained in the Claim Form is accurate, it will be asked to sign the Claim Form verifying its accuracy, and timely mail it to Berdon. If a Class member believes that the information contained in its Claim Form is not accurate, that Class member may submit its own purchase records pursuant to the procedures described below.

- 1.2 The Claim Form will request the entity's full name and mailing address appropriate for correspondence regarding the distribution of the Net Settlement Fund, and the identity and contact information for the person responsible for overseeing the claims process for the Claimant. All entities that timely submit executed Claim Forms are referred to herein as "Claimants." Finally, the Claim Form will include the release language set out in the parties' Settlement Agreement, and will require each Claimant to execute the release as a condition of receiving any distribution from the Net Settlement Fund.
- 1.3 *Timeliness.* The submission of the Claim Form to the Claims Administrator (with any necessary supporting documentation if the Claimant does not agree with the information contained in its Claim Form) will be deemed timely if it is received or postmarked within 90 (ninety) days of the Final Approval of the Settlement and Allocation Plan (*i.e.*, 45 days after the Claim Forms are mailed to all Class members). At

Class Counsel's discretion, this deadline may be extended another 45 days without approval of the Court. Class Counsel may also seek further extensions of the deadline by order of the Court after any initial extension.

2. Calculation of *Pro Rata* Shares of the Net Settlement Fund.

- 2.1 Each Claimant's allocated share of the Net Settlement Fund will be set in proportion to each Claimant's actual purchases of branded Aggrenox during the period from December 1, 2009 through June 30, 2015.
- 2.2 The allocation computation will be based on the following information (whether from the transactional data already produced in discovery or from submissions by the Claimants): each Claimant's total net purchases of branded Aggrenox for the period from December 1, 2009 through June 30, 2015.
- 2.3 To calculate the *pro rata* share for each Claimant of the Net Settlement Fund, the Claims Administrator, working with Dr. Leitzinger, will take the total net purchases of branded Aggrenox for each Claimant and divide it by the total purchases of branded Aggrenox for all Claimants. Each Claimant's share yields its *pro rata* share of the Net Settlement Fund. Based on the transactional data produced in discovery, Dr. Leitzinger performed a preliminary computation of *pro rata* shares for each potential Claimant. However, if any Class member fails to submit a claim or documents and submits an alternative amount of purchases (based on the Claimant's own data) that is approved by the Claims Administrator, the shares will be re-calculated accordingly.

2.4 The final calculations will then be applied to the Net Settlement Fund to determine each Claimant's allocated share.

3. Processing of Claims.

3.1 All Claims will be reviewed and processed by the Claims Administrator with assistance from Dr. Leitzinger and his staff at Econ One.

3.2 *Acceptance and Rejection.* The Claims Administrator shall first determine whether a Claim Form received is timely, properly completed, and signed. If a Claim Form is incomplete, the Claims Administrator shall communicate with the Claimant via First Class Mail, email or telephone regarding the deficiency. Claimants will then have 25 days from the date they are contacted by the Claims Administrator regarding the deficiency to cure any such deficiency. If any Claimant fails to correct the deficiency within this time, the claim may be rejected and the Claimant shall be notified of such rejection by letter stating the reason for rejection.

3.3 All timely Claim Forms that are properly completed shall be approved by the Claims Administrator (the "Approved Claims"). All late Claims Notices that are otherwise complete will be processed by the Claims Administrator, but marked as "Late Approved Claims." If Class Counsel conclude that, in their judgment, any such "Late Approved Claims" should ultimately not be accepted,⁵ the Claimant will be so notified within 30 days of the extended 45-day deadline period set forth in paragraph 1.3, and

⁵ Cf. *Kuehbeck v. Genesis Microchip Inc.*, No. C02-05344 JSW, 2007 WL 2382030, at *1 (N.D. Cal. Aug. 17, 2007) (authorizing distribution to timely filed claims and approved claims that were submitted late).

then may seek review by the Court via the appeals process described below.

3.4 *The Pro Rata Distribution Calculation.* The Claims Administrator, in conjunction with Dr. Leitzinger, will be responsible for determining the total amount each Claimant will receive, after deductions for claims administration expenses, from the Net Settlement Fund. Once the Claims Administrator has determined the number of Approved Claims, it will calculate each Claimant's *pro rata* share of the Net Settlement Fund as determined by the calculation described above.

4. Processing Challenged Claims.

4.1 The Claims Administrator, in conjunction with Dr. Leitzinger and Class Counsel, shall review any and all written challenges by Claimants to the determinations of the Claims Administrator. If upon review of a challenge and supporting documentation, the Claims Administrator decides to amend or modify its determination of the distribution amounts to a Claimant, it shall advise those Claimants who made the challenge. These determinations shall be final, subject to the appeals process described below. To assist Claimants, the Claims Administrator will provide Claimants with the National Drug Codes ("NDCs") for the branded Aggrenox products that will be considered for purposes of allocation. The NDC codes are standard codes maintained by the FDA and used in the pharmaceutical industry to identify specific pharmaceutical products, and will allow Claimants to understand precisely what purchases are being considered for purposes of allocation. This information will be compiled

in conjunction with Dr. Leitzinger and Class Counsel, and will be made available on the Claims Administrator's website.

4.2 Where the Claims Administrator determines that a challenge requires additional information or documentation, it will so advise the Claimant and provide that Claimant an opportunity to cure the deficiency within 25 days. If that Claimant fails to cure the deficiency within that time, the challenge will be rejected and the claimant will be notified of the rejection by mail, which notification shall be deemed final.

4.3 If the Claims Administrator concludes that it has enough information to properly evaluate a challenge and maintains that its initial determinations were correct, it will so inform the Claimant in writing, which notification shall be deemed final.

5. Report to Court Regarding Distribution of Net Settlement Fund.

5.1 After the Claims Administrator determines how much each Claimant is entitled to receive from the Net Settlement Fund, it will prepare a final report and affidavit to the Court for the Court's final review and approval of the Claims Administrator's determinations. The affidavit will explain the tasks and methodologies employed by the Claims Administrator in processing the claims and administering the Allocation Plan. It will also contain a list of each claimants' final *pro rata* percentage share of the Net Settlement Fund, as well as a list of Class members (if any) who filed Claim Forms which were rejected and the reasons any respective claims were rejected as well as a list of any challenges to the estimated distribution amounts that were rejected and the reasons why

they were rejected. Finally, the final report shall contain an accounting of the expenses associated with the Allocation Plan, including bills from Econ One and Berdon, any taxes that are due and owing, and any other fees or expenses associated with the settlement allocation process.

6. Payment to the Claimants.

6.1 Upon Court approval of the final report and declaration of the Claims Administrator, the Claims Administrator shall issue a check payable to each Claimant in the amount approved by the Court.

7. Resolution of Disputes.

7.1 In the event of any disputes between Claimants and the Claims Administrator on any subject (*e.g.*, timeliness, or required completeness or documentation of a claims, or the calculation of any amounts payable), the decision of the Claims Administrator shall be final, subject to the Claimant's right to seek review by the Court. In notifying a Claimant of the final rejection of a Claim or a challenge thereto, the Claims Administrator shall notify the Claimant of its right to seek such review by issuing notice to the Claims Administrator and Class Counsel.

7.2 Any such appeal by a Claimant must be submitted in writing to the Court, with copies to the Claims Administrator and Class Counsel, within 20 days of the Claims Administrator's mailing of the final rejection notification letter to the Claimant.

7.3 In the highly unlikely event that the number or complexity of disputes warrants it, Class Counsel may request that the Court appoint a Special Master or Examiner, as appropriate, to resolve any disputes. We say

“highly unlikely” because Class Counsel cannot recall any instance in a prior, similar case, in which any Claimant sought court review of its allocated share or where a Special Master was required.