

**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 Cases

**PLAINTIFFS’ MOTION FOR REIMBURSEMENT OF EXPENSES,
PAYMENT OF ADMINISTRATION AND NOTICE COSTS, AND AWARDED
INCENTIVE AWARDS TO THE CLASS REPRESENTATIVES FOR
THE DIRECT PURCHASER CLASS AND END-PAYOR CLASS**

For the reasons set forth in the accompanying memorandum of law and the Declarations of Lead Counsel for the Direct Purchaser Class, Bruce E. Gerstein, David F. Sorensen, and Thomas M. Sobol and accompanying papers and declarations; Scott E. Perwin, Monica L. Rebuck, and Moira Cain-Mannix for the Individual Retailer Plaintiffs; Kenneth A. Wexler for the End-Payor Class; and Michael Rosenbaum of Berdon Claims Administration LLC as Escrow Agent, Plaintiffs¹ respectfully move this Court for an order, subject to the finality of Plaintiffs’ respective Settlement Agreements with Teva:

¹ “Plaintiffs” are, collectively (a) American Sales Company, LLC, Meijer, Inc. and Meijer Distribution, Inc., Value Drug Company, Burlington Drug Company Inc., and Rochester Drug Co-Operative, Inc. on behalf of themselves and the certified Direct Purchaser Class (collectively, the “Direct Purchaser Class”); (b) United Food and Commercial Workers Unions and Employers Midwest Health Benefits Fund, Allied Services Division Welfare Fund, Fraternal Order of Police Miami Lodge 20 Insurance Trust Fund, New York Hotel Trades Council & Hotel Assoc. of New York City, Inc. Health Benefits Fund, Laborers International Union of North America Local 35 Health Care Fund, International Brotherhood of Electrical Workers Local 595 Health and Welfare Fund, Laborers International Union of North America Local 17 Health Care Fund, International Union of Machinists and Aerospace Workers District No. 15 Health Fund, Michigan Regional Council of Carpenters Employee Benefits Fund, and A.F. of L-A.G.C. Building Trades Welfare Plan on behalf of themselves and the certified End-Payor Class, (collectively, the “End-Payor Class”); (c) 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

- a. reimbursing \$3,655,083.31 (three million, six hundred fifty-five thousand, eighty-three dollars and thirty-one cents) to Direct Purchaser Class Plaintiffs' counsel for expenses incurred in the prosecution of this case through trial;
- b. reimbursing \$2,665,627.36 (two million, six hundred sixty-five thousand, six hundred twenty-seven dollars and thirty-six cents) to Individual Retailer Plaintiffs' counsel for expenses incurred in the prosecution of this case through trial;
- c. reimbursing \$2,563,288.86 (two million, five hundred sixty-three thousand, two hundred eighty-eight dollars and eighty-six cents) to End-Payor Class Plaintiffs' counsel for expenses incurred in the prosecution of this case through trial;
- d. paying \$4,443.80 (four thousand four hundred forty-three dollars and eighty cents) to cover the unpaid Direct Purchaser Class notice expenses incurred in connection with the Teva Settlement;
- e. paying \$1,500.00 (one thousand five hundred dollars) to cover the unpaid annual escrow fee incurred in connection with the Teva Settlement;
- f. paying \$1,479,423.04 (one million, four hundred seventy-nine thousand, four hundred twenty-three dollars and four cents) to cover the End-Payor Class administrative and notice expenses associated with this litigation and the Teva Settlement;
- g. awarding incentive awards of \$50,000.00 (fifty thousand dollars) to each of the five Direct Purchaser Class Representatives: (1) American Sales Company, LLC; (2) Meijer, Inc. and Meijer Distribution, Inc.; (3) Value Drug Company; (4) Burlington

Pharmacy and Eckerd Corporation, Walgreen Co., HEB Grocery Company LP, Safeway Inc., SuperValu, Inc., The Kroger Co., and Giant Eagle, Inc. (collectively, the "Individual Retailer Plaintiffs").

Drug Company Inc.; and (5) Rochester Drug Co-Operative, Inc., from the proceeds of the Teva Settlement Fund allocated to the Direct Purchaser Class; and

- h. awarding service awards of \$5,000.00 (five thousand dollars) to each of the ten End-Payor Class Representatives: (1) United Food and Commercial Workers Unions and Employers Midwest Health Benefits Fund; (2) Fraternal Order of Police of Miami Lodge 20, Insurance Trust Fund; (3) New York Hotel Trades Council & Hotel Association of New York City, Inc. Health Benefits Fund; (4) Laborers International Union of North America Local 35 Health Care Fund; (5) International Brotherhood of Electrical Workers Local 595 Health and Welfare Fund; (6) Laborers International Union of North America Local 17 Health Care Fund; (7) International Association of Machinists and Aerospace Workers District No. 15 Health Fund; (8) A.F. of L. – A.G.C. Buildings Trades Welfare Plan; (9) Michigan Regional Council of Carpenters Employee Benefits Fund; and (10) Allied Services Division Welfare Fund, from the proceeds of the Teva Settlement Fund allocated to the End-Payor Purchaser Class;

from the proceeds of the Settlement Fund with Teva Pharmaceutical Industries Ltd. and Teva Pharmaceuticals USA, Inc. (“Teva Settlement Fund”).²

The balance in the Teva Settlement Fund as of September 9, 2015 is \$24,004,760.83 (twenty-four million four thousand seven hundred sixty dollars and eighty-three cents).

The Direct Purchaser Class and End-Payor Class have separately moved for final approval of their respective settlements with Teva. *See* ECF Nos. 1558, 1565.³

² The Teva Settlement Fund includes all interest earned since deposit of the Settlement Fund Amount of \$24,000,000.00 (twenty-four million dollars). *See* Rosenbaum Decl.

³ The End-Payor Class previously moved for service awards to Class Representatives from

Teva takes no position on this motion. A proposed order granting these requests accompanies this Motion.

Dated: September 28, 2015

Respectfully submitted,

/s/ Bruce E. Gerstein

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the amount of the Teva Settlement Fund allocated to the End-Payor Class on September 9, 2015.
ECF No. 1562.

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CERTIFICATE OF SERVICE

I, Bruce E. Gerstein, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: September 28, 2015

/s/ Bruce E. Gerstein