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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

In re Neurontin Antitrust Litigation	**Master File No. 02-1390**
THIS DOCUMENT RELATES TO:	
LOUISIANA WHOLESALE DRUG COMPANY, INC., MEIJER, INC. and MEIJER DISTRIBUTION, INC., on behalf of themselves and all others similarly situated,	**Civil Action No. 02-1830** **Civil Action No. 02-2731**
Plaintiffs,	
v.	
PFIZER, INC. and WARNER-LAMBERT CO.,	
Defendants.	

NOTICE OF MOTION IN SUPPORT OF CLASS PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT AND APPROVAL OF THE FORM AND MANNER OF NOTICE TO THE CLASS AND PROPOSED SETTLEMENT SCHEDULE

TO: ALL COUNSEL ON ATTACHED DISRIBUTION LIST

PLEASE TAKE NOTICE that on _____, 2014, at _____ or as soon thereafter as counsel may be heard, the undersigned attorneys for Class Plaintiffs in the above-captioned action shall move before United States District Court, District of New Jersey, Newark Office, M.L. King, Jr. Federal Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey, for the entry of a Preliminary Approval Order, which provides for: (i) preliminary approval by the Court of a proposed Settlement of the above-captioned action; (ii) approval of the proposed form and manner of notice to the Class; and, (iii) establishment of a proposed schedule leading up to and including the Fairness Hearing.

In support of this motion, Plaintiffs rely upon the Memorandum of Law in Support of Class Plaintiffs' Motion for Preliminary Approval of Proposed Settlement and Approval of the Form and Manner of Notice to the Class and Proposed Settlement Schedule, as well as Declaration of Richard J. Kilsheimer (the "Declaration"), submitted herewith.

A proposed form of Order is attached as Exhibit 2 to the Declaration.

Date: April 21, 2014

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MEMORANDUM OF LAW IN SUPPORT OF CLASS PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT AND APPROVAL OF THE FORM AND MANNER OF NOTICE TO THE CLASS AND PROPOSED SETTLEMENT SCHEDULE

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MISCELLANEOUS

Louisiana Wholesale Drug Company, Inc. ("LWD"), Meijer, Inc., and Meijer Distribution, Inc. (together, "Meijer", and, with LWD, collectively, "Plaintiffs"), on behalf of the previously-certified Class (as defined below), respectfully submit this Memorandum of Law in Support of Class Plaintiffs' Motion for Preliminary Approval of Proposed Settlement and Approval of the Form and Manner of Notice to the Class and Proposed Settlement Schedule.

Plaintiffs and Defendants Pfizer Inc. and Warner-Lambert Co. (together, "Defendants" or "Pfizer") agreed to settle this Class Action[1] for, the payment by Defendants of $190 million in cash, plus interest, to Plaintiffs and members of the Class, in exchange for dismissal of this litigation, with prejudice, and certain releases from the Class (the "Settlement"). The parties have set forth the terms of the Settlement in an agreement (the "Settlement Agreement"), which is attached as Exhibit 1 to the accompanying Declaration of Richard J. Kilsheimer ("Kilsheimer Decl.").

Plaintiffs now seek preliminary approval of the proposed Settlement and request that the Court begin the final approval process by approving the dissemination of notice to the Class and scheduling a final approval hearing (the "Fairness Hearing"). Defendants do not oppose Plaintiffs' motion for preliminary

[1] This Class Action consolidated the cases *Louisiana Wholesale Drug Company, Inc., et al. v. Pfizer, Inc. and Warner-Lambert*, No. 2:02-cv-01830-FSH (D.N.J.) and *Meijer, Inc.,et al. v. Pfizer, Inc. and Warner-Lambert*, No. 2:02-cv-02731 (D.N.J.).

approval.

I. BACKGROUND.

This Class Action was brought by the direct purchasers of the drug Neurontin from Defendants. Plaintiffs have alleged, among other things, that Defendants maintained and enhanced their monopoly power with respect to gabapentin anhydrous, a drug approved by the FDA for the treatment of epilepsy, in violation of the Sherman Act, 15 U.S.C. § 2, by, *inter alia*, maintaining their exclusivity for Neurontin, their branded gabapentin product, and thus delaying generic competition, through an overarching, multi-faceted scheme that included illegal off-label promotion, manipulation of the patent application process, violation of Hatch-Waxman Act procedures, repeated filing and maintenance of sham patent suits, and perpetration of fraud on the courts hearing those cases.

Plaintiffs have alleged that Defendants' conduct delayed the market entry of less expensive generic versions of Neurontin, thereby forcing members of the Class to pay artificially inflated prices for Neurontin and/or its AB-rated generic equivalents. Defendants have denied Plaintiffs' allegations and have asserted a number of defenses. The Court is familiar with the parties' factual and legal positions, having ruled on the extensive cross-motions for summary judgment. These motions touched upon virtually every aspect of this Class Action, which the parties have aggressively litigated for a dozen years.

On January 25, 2011, this Court certified a class (the "Class") consisting of:

> All persons or entities in the United States that purchased Neurontin from Pfizer at any time during the period of December 11, 2002 through August 31, 2008 and who have purchased generic gabapentin. Excluded from the Class are Defendants and each of their respective parents, employees, subsidiaries, affiliates, and franchisees, and all government entities.

Doc. No. 412 at ¶ 4.[2] This Court also designated LWD and Meijer as representatives of the Class (the "Class Representatives"), and appointed Class Counsel, including the appointment of Garwin Gerstein & Fisher LLP and Kaplan Fox & Kilsheimer LLP as Co-Lead Counsel. *Id.* at ¶¶ 6-7.

Plaintiffs and Defendants reached the proposed Settlement after intensive arms'-length negotiations, including multiple mediation sessions held with a skilled mediator; substantial fact and expert discovery including, among other things, the production and inspection of millions of pages of documents and numerous depositions of Defendants' employees and third-party witnesses; substantial briefing and argument before the Court on legal issues (including on motions to dismiss, class certification, sanctions, discovery, summary judgment and collateral estoppel); consultation with economic, scientific and other experts regarding legal, evidentiary and economic issues (including, for instance, the

[2] Also excluded from the Class are CVS Pharmacy Inc., Caremark, L.L.C., Rite Aid Corporation, Rite Aid HDQTRS Corp., Walgreen Co., American Sales Co, Inc., HEB Grocery Co. LP, Safeway Inc., SuperValu Inc., and The Kroger Co., in their own right as direct purchasers of Neurontin from Pfizer and as assignees limited to their purchases of Neurontin from Class members.

estimation of damages incurred by the Class); and numerous hearings and conferences before the Court.

The proposed Settlement provides for a cash payment by Defendants to Plaintiffs and the Class of $190 million plus interest, in exchange for dismissal of the litigation with prejudice and certain releases from the Class as fully set forth in paragraph 11 of the Settlement Agreement.[3]

The first step in the settlement approval process is the submission of the proposed Settlement to the Court for preliminary approval, followed by communication of the terms of the proposed Settlement to the Class for its consideration. If the Court grants Plaintiffs' motion, the terms of the proposed Settlement will be communicated to the Class through two forms of Court-approved notice: the "Mail Notice," which will be sent directly to Class members by U.S. mail, and through publication of the notice in a periodical likely to reach all (or substantially all) of the Class members (the "Publication Notice"). Defendants have reviewed and agreed to these proposed forms of notice.

Accordingly, this motion seeks entry of the proposed Preliminary Approval Order attached to the Kilsheimer Decl. as Exhibit 2, which provides for: (i)

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[3] The Settlement Agreement does not release any claims between Plaintiffs, Class members and the Released Parties (as the Released Parties are defined in paragraph 10 of the Settlement Agreement) concerning product liability, breach of contract, breach of warranty or personal injury. *See* Exhibit 1 to Kilsheimer Decl., Settlement Agreement, at paragraph 11. Nor does it release claims by the entities identified in footnote 2 above, which are excluded from the Class.

preliminary approval of the proposed Settlement; (ii) approval of the proposed form and manner of notice; and (iii) establishment of the proposed schedule leading up to and including the Fairness Hearing.

II. ARGUMENT.

A. The Court Should Grant Preliminary Approval to the Proposed Settlement.

"The law favors settlement, particularly in class actions and other complex cases where judicial resources can be conserved by avoiding formal litigation." *O'Brien v. Brain Research Labs, LLC*, 2012 U.S. Dist. LEXIS 113809, at *30-31(D.N.J. Aug. 8, 2012) (quoting *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995); *Sabol v. Hydroxatone LLC*, 2013 U.S. Dist. LEXIS 166520, at *26-27 (D.N.J. Nov. 22, 2013) (same).

Approval of class action settlements involves a two-step process. In step one, the Court considers whether to approve the settlement preliminarily for purposes of communicating the terms of the settlement to the proposed class. *See Manual for Complex Litigation (Fourth)* § 21.632 (2004) ("*MANUAL*"); *In re NFL Players' Concussion Injury Litigation*, 2014 U.S. Dist. LEXIS 4300, at *12 (E.D. Pa. Jan. 14, 2014) (same, quoting *MANUAL*); *In re GMC*, 55 F.3d at 785 ("Before sending notice of the settlement to the class, the court will usually approve the settlement preliminarily. This preliminary determination establishes an initial presumption of fairness.").

In the second step, after notice to the class and after each Class member is provided with an opportunity to object to the proposed settlement or otherwise be heard, the Court will determine whether the settlement is fair, reasonable, and adequate and whether the settlement should be finally approved under Fed. R. Civ. P. 23(e). *See* MANUAL at § 21.632. *See also In re Remeron Direct Purchaser Antitrust Litig.*, 2005 U.S. Dist. LEXIS 27013, at *8-10 (D.N.J. Nov. 9, 2005).

At the preliminary approval stage, a court "make[s] a preliminary evaluation of the fairness of the settlement." *Mazon v. Wells Fargo Bank, N.A.*, 2011 U.S. Dist. LEXIS 143629, at *4 (D.N.J. Dec. 14, 2011) (citing *In re Nasdaq Mkt. Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997)). "Preliminary approval is not binding, and it is granted unless a proposed settlement is obviously deficient." *Id.* at *4-5. Accordingly, in considering whether to grant preliminary approval, the Court is *not* required to make a final determination of the adequacy of the settlement or to delve extensively into its merits. *See In re Automotive Refinishing Paint Antitrust Litig.*, MDL 1426, 2004 U.S. Dist. LEXIS 29163, at *3-4 (E.D. Pa. May 10, 2004) (distinguishing between preliminary approval and final approval) (citing MANUAL at § 21.632). The fairness, reasonableness, and adequacy of a proposed class action settlement are questions reserved for the final approval stage. *Id.*

Additionally, because the purpose of preliminary approval is solely to obtain

authority for notifying the Class regarding the terms of the Settlement, and to set the stage for the final approval of the Settlement, no Class member's substantive rights will be prejudiced by preliminary approval. *Id.* Indeed, the Court will determine whether the settlement is fair, reasonable, and adequate and whether the settlement should be finally approved, under FED. R. CIV. P. 23(e), only after notice has been sent to Class members and Class members have been provided with an opportunity to object to the proposed settlement or otherwise be heard.

Preliminary approval should be granted "[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval." *Mazon*, 2011 U.S. Dist. LEXIS 143629 at *5 (citation omitted). Indeed, "[a] presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arms'-length negotiations between experienced, capable counsel after meaningful discovery." *Id.* at *5 (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005)).

Courts in the Third Circuit consider several factors in determining whether a proposed settlement falls within the range of possible approval and thus should be preliminarily approved. A court will preliminarily approve a class action settlement if it appears capable of possible final approval and the court finds that:

(1) the negotiations leading to the proposed settlement occurred at arms'-length; (2) there was sufficient discovery in the litigation for the plaintiff to make an informed judgment on the merits of the claims; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected. *In re GMC*, 55 F.3d at 785. *See also Mylan Pharms., Inc. v. Warner Chilcott Pub. Ltd. Co.*, 2014 U.S. Dist. LEXIS 21504, at *11 (E.D. Pa. Feb. 18, 2014) (same).

As discussed in more detail below, the proposed Settlement satisfies these factors, and this Court should grant preliminary approval.

1. The Proposed Settlement Is The Product of Good Faith, Extensive, Arms'-Length Negotiations.

That a proposed settlement was reached after a private mediation supports the inference of serious, arms'-length negotiations. *See In re Philips/Magnavox TV Litig.*, 2012 U.S. Dist. LEXIS 67287, at *30-31 (D.N.J. May 14, 2012). Such was the case here. The proposed Settlement resulted from extensive arms'-length negotiations, undertaken in good faith between Class Counsel and counsel for Defendants, over the course of the last three years. These negotiations included mediation sessions with a highly experienced mediator, Professor Eric Green, in December 2010, February 2013, February 2014 and March 2014. The mediation sessions actively involved not only Class counsel and counsel for Defendants, but also representatives of the parties (in person and by telephone).

The parties' settlement negotiations did not begin until after eight years of litigation, and then, after they commenced, spanned an additional three years. Over the course of this litigation, Plaintiffs and Defendants engaged in extensive discovery and motion practice, including the full briefing and ultimate denials of Defendants' motion to dismiss and motion for summary judgment and Plaintiffs' motion for partial summary judgment. As a result, the parties have had the opportunity to scrutinize the strengths and weaknesses of the pending claims and defenses, and to consider, among other issues, liability, causation and damages. Ultimately, the narrowing of issues that naturally occurred during pretrial motion practice and discovery enabled the parties to reach the proposed Settlement. Because of the extensive, arms'-length bargaining involved, there is no issue (or even a suggestion) of any collusive aspect to the proposed Settlement.

2. There Was More Than Sufficient Discovery and Investigation for Class Counsel to Make an Informed Decision.

Prior to filing suit on April 18, 2002, Class Counsel undertook a comprehensive investigation of the facts and law giving rise to the claims alleged. This investigation included, among other things, meeting with the named Class representatives, reviewing transactional data related to the purchase of Neurontin, and conducting extensive industry and economic research.

Since then, Plaintiffs and Defendants have engaged in extensive, and often

contentious, discovery and motion practice. In all, Plaintiffs reviewed and analyzed millions of pages of documents made available by Defendants, the other parties to this litigation and various non-parties. This case's record included filings, documents and information related to the multiple associated patent cases, and involved complex issues that bear upon patent and antitrust law (and how they intersect), and the Hatch-Waxman Act. Current and former executives and employees of Defendants, as well as third parties with knowledge of, and information about, the events described in Plaintiffs' complaint, were deposed. Plaintiffs, too, responded to extensive interrogatories, collected and produced voluminous records, and appeared for depositions.

Class Counsel also retained and worked with expert witnesses to evaluate scientific and economic issues relating to liability and damages. In turn, Class Counsel and their experts reviewed, analyzed and responded to reports prepared by Defendants' experts.

As a result of the foregoing, issues relating to liability and damages have been sufficiently developed such that Class Counsel can make an informed decision regarding the proposed Settlement.

3. The Proponents Of The Settlement Are Highly Experienced In Antitrust Litigation.

In approving class action settlements, courts have repeatedly deferred to the judgment of experienced counsel who have conducted arms'-length

negotiations. *See, e.g., Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 240 (D.N.J. 2005) ("Class Counsel's approval of the Settlement also weighs in favor of the Settlement's fairness") (citations omitted); *Fisher Bros. v. Phelps Dodge Indus., Inc.*, 604 F. Supp. 446, 452 (E.D. Pa. 1985) ("the professional judgment of counsel involved in the litigation is entitled to significant weight"); *Klingensmith v. Max & Erma's Rests., Inc.*, 2007 U.S. Dist. LEXIS 81029, at *19 (W.D. Pa. Oct. 23, 2007) (same).

The Class is represented by lawyers who have extensive antitrust class action experience, and who have been on the forefront of antitrust litigation, complex litigation in general, and litigation that pertains to the pharmaceutical industry specifically. Indeed, over the past fifteen years, Class Counsel have represented direct purchasers in numerous antitrust cases relating to the pharmaceutical and medical device industry.[4] Accordingly, Class Counsel is well

[4] *See, e.g., In re Cardizem CD Antitrust Litig.*, No. 99-md-1278 (E.D. Mich.); *In re Buspirone Patent & Antitrust Litig.*, No. 01-7951 (S.D.N.Y.); *In re Relafen Antitrust Litig.*, No. 01-12239 (D. Mass.); *In re Terazosin Hydrochloride Antitrust Litig.*, No. 99-MDL-1317 (S.D. Fla.); *In re Remeron Antitrust Litig.*, No. 03-0085 (D.N.J.); *In re Ciprofloxacin Hydrochloride Direct Purchaser Antitrust Litig.*, MDL No. 00-1383 (E.D.N.Y.); *In re K-Dur Antitrust Litig.*, No. 01-1652 (D.N.J.); *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-340 (D. Del.); *In re Modafinil Direct Purchaser Antitrust Litig.* (*King Drug of Florence, Inc. v. Cephalon, Inc.*), No. 06-1797 (E.D. Pa.); *In re Nifedipine Antitrust Litig.*, No. 03-MC-223 (D.D.C.); *In re Endosurgical Direct Purchaser Litig.*, No. 2:05-cv-08809 (C.D. Cal.); *In re Hypodermic Prods. Direct Purchaser Antitrust Litig.*, No. 05-1602 (D.N.J.); *Natchitoches Parish Hosp. Svc. Dist. v. Tyco*, No. 05-12024 (D. Mass); *In re: Lamictal Direct Purchaser Antitrust Litig.*, No. 12-995 (D.N.J.); *In re*

versed in the prosecution, evaluation, and settlement of this type of antitrust litigation.

Class Counsel strongly recommends the proposed Settlement as falling within the range of reasonableness. This Court should give such a recommendation significant weight in its analysis of whether to approve the proposed Settlement.

4. The Reaction of the Class to the Settlement

Third Circuit courts weighing preliminary approval consider the proportion of class members objecting to the proposed settlement, *see In re GMC*, 55 F.3d at 785-786. At this time, Class Counsel have neither received nor anticipated receiving any material objections to the proposed Settlement. This expectation is based upon the fact that, in over 14 years of litigating Hatch-Waxman Act antitrust cases on behalf of virtually the same classes, comprised of most, if not all, of the same class members as the case at bar, Class Counsel have never received an objection to any of the settlements reached in those cases they handled.

Lipitor Antitrust Litig., MDL No. 2332 (D.N.J.); *In re Prograf Antirust Litig.*, MDL Docket No. 2242 (D.Mass.); *In re Androgel Antitrust Litigation (II)*, MDL Docket No. 2084 (N.D.Ga.); *Rochester Drug Co-Operative, Inc., v. Braintree Laboratories, Inc.*, Civil Action No. 07-cv-0142 (D.Del.); *Meijer, Inc., et al., v. Abbott Laboratories*, Civil Action No. 07-cv-5985 (N.D.Ca.); *In re DDAVP Direct Purchaser Antitrust Litigation*, Civil Action No. 05-cv-2237 (S.D.N.Y.); *In re OxyContin Antitrust Litigation*, MDL No. 04-md-1603 (S.D.N.Y.).

B. The Court Should Approve the Proposed Form and Manner of Notice to the Class.

Federal Rule of Civil Procedure 23(e)(1) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the propos[ed settlement]." Proposed forms of the Mail Notice and the Publication Notice (collectively referred to below as the "Notices") are attached to the Kilsheimer Decl. as Exhibit 3 and Exhibit 4, respectively. Plaintiffs propose that the Mail Notice be sent to Class members at their last-known addresses, with the Publication Notice appearing in *The Pink Sheet*, an industry trade publication, at roughly the same time.[5]

The Class is a finite group of sophisticated businesses, consisting of approximately 57 members. The identity of Class members (with the exception of assignees) has already been determined using Defendants' transactional data, so it

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[5] *The Pink Sheet* describes itself as follows on its web site:

> ***"The Pink Sheet"*** provides in-depth coverage of the prescription pharmaceutical industry. Known as "The Bible" to the prescription pharmaceutical industry, this publication covers regulatory activities of the FDA, FTC and CMS; Congress; industry news, such as mergers and acquisition, new product introductions, and executive changes; and financial news, such as companies' sales/earning performance and stock activity. Its comprehensive coverage is vital for successful business development and commercialization strategies that drive profits.

http://www.pharmamedtechbi.com/publications/the-pink-sheet/about.

is highly likely that the direct mail method will be sufficient to reach all (or substantially all) Class members. Accordingly, the Publication Notice will act solely as a fail-safe, back-up measure, and in any event, publication in *The Pink Sheet* is likely to reach all, or nearly all, Class members.

This Court previously approved the same plan in providing notice to the Class of the Court's January 25, 2011 ruling granting class certification. *See* Agreed-Upon Order Concerning Form and Manner of Notice of Pendency of Class Action to the Direct Purchaser Class, entered February 7, 2011 (Doc. No. 423).

In addition, Co-Lead Counsel for the Class will post the Settlement Agreement on their websites at www.garwingerstein.com and www.kaplanfox.com, and on the website of the Claims Administrator at www.berdonclaims.com. The Notices fairly describe the proposed Settlement and its legal significance, thereby satisfying the requirements of Rule 23(e). *See Philips/Magnovox*, 2012 U.S. Dist. LEXIS 67287 at *39. Indeed, the proposed Notices together provide a description of the Class, and the procedural status of the litigation. Additionally, the Notices set forth the significant terms of the proposed Settlement, including the total amount of money Defendants have agreed to pay to the Class and the releases that Defendants will receive if the Settlement is finally approved. The Notices also outline the proposed Plan of Allocation which describes how the amount that each Class Member will be entitled to receive from

the Settlement Fund will be calculated. The Notices outline the court approval process for the proposed Settlement, counsel's request for attorneys' fees and reimbursement of expenses,[6] and counsel's request for proposed incentive awards of $100,000.00 for both of the Class Representatives (to compensate them for the substantial efforts made on behalf of the Class).[7] The proposed Notices also advise Class members of their rights under Rule 23, including the right to object to, and to be heard as to the reasonableness and fairness of, the proposed Settlement and Plan of Allocation.

The form and manner of notice that Plaintiffs propose will therefore satisfy the notice requirements of Rule 23(e), as well as the due process requirements which must be met in order to bind each member of the Class. *See Grimes v. Vitalink Communications Corp.*, 17 F.3d 1553, 1560-61 (3d Cir. 1994) (direct mail

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[6] Class Counsel shall, pursuant to the proposed schedule outlined below, submit an application for attorneys' fees and expenses to be reimbursed out of the settlement proceeds.

[7] This Court often grants incentive awards to class representatives in lengthy, complex cases like this one. *See, e.g.*, *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 479-480 (D.N.J. 2008) (awarding incentives to class representatives in "case of unprecedented intensity and duration"); *In re Remeron*, 2005 U.S. Dist. LEXIS 27013, at *50 (D.N.J. Nov. 9, 2008) (noting that "[t]he named plaintiffs spent a significant amount of their own time and expense litigating this action for the benefit of the Class. As recognized by numerous courts, such efforts should not go unrecognized").

notice found sufficient under Rule 23).[8]

C. The Court Should Approve the Proposed Final Settlement Schedule, Including Setting a Date for the Fairness Hearing.

Plaintiffs propose the following schedule for completing the approval process:

Dissemination of Notices to the Class in the form and manner proposed	Within 14 days of entry of the Order preliminarily approving the Settlement
Filing of Plaintiffs' motion for final approval of the Settlement and the Plan of Allocation	30 days before the date set for the Fairness Hearing
Submission of Class Counsel's application for Attorneys' Fees and Expenses, and Application for Incentive Awards to the Class Representatives	30 days before the date set for the Fairness Hearing
Deadline for Class Members to object to the Settlement and Fee Application	14 days before the date set for the Fairness Hearing

[8] Class members were given the chance to opt out of the class following notice of this Court's January 25, 2011 order certifying the class, and while the Court has discretion to give members of the previously-certified class another chance to opt out, *see* Rule 23(e)(4), there is no requirement to do so. Under similar circumstances, courts in antitrust cases like this one have consistently foregone a second opt-out period. *See, e.g., In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 745 (E.D. Pa. 2013) (finally approving settlement and noting that because "class members were given the chance to opt out when [the court] originally certified the class . . .[the court] declined to allow class members an additional opportunity to opt out of the class after receiving notice of the settlement"). Because Class members have had the chance to invoke their due process rights and opt out of the certified Class, and the Settlement still allows them to object to the terms of the Settlement, there should not be a second opt-out period now.

Fairness Hearing	To Be Determined By the Court[9]

Any class member who objects to the settlement may be heard at the Fairness Hearing.

Relatedly, Plaintiffs request that the Court approve the retention of Berdon Claims Administration LLC ("Berdon") as the Claims Administrator to oversee the dissemination of the Notices to the Class, and ultimately, the administration of the Settlement. As stated on its resume, which is reviewable at www.berdonclaims.com, Berdon has extensive experience in class action claims administration, including with respect to antitrust litigation in the pharmaceutical industry.

III. CONCLUSION.

For the foregoing reasons, this Court should preliminarily approve the proposed Settlement; approve the form and manner of the Notices; approve the retention of Berdon as the Claims Administrator; and set the final settlement schedule, including a date for the Fairness Hearing. A proposed Order is submitted herewith and is attached to the Kilsheimer Decl. as Exhibit 2.

[9] Due to the need to give notice to the Class of the terms of the Settlement, and their rights with respect to the Settlement, Class Counsel respectfully suggest that the Fairness Hearing be scheduled at least 90 days after preliminary approval.

Date: April 21, 2014

CLEMENTE MUELLER, PA

By: /s *Jonathan D. Clemente*
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