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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:

Civil Action No. 02-1830

Civil Action No. 02-2731

**LOUISIANA WHOLESALE DRUG
COMPANY, INC., MEIJER, INC. and
MEIJER DISTRIBUTION, INC., on
behalf of themselves and all others
similarly situated,**

Plaintiffs,

v.

**PFIZER, INC. and WARNER-
LAMBERT CO.,**

Defendants.

**PLAN OF ALLOCATION FOR
DIRECT PURCHASER CLASS**

I. INTRODUCTION

Louisiana Wholesale Drug Company, Inc. (“LWD”), Meijer, Inc., and Meijer Distribution, Inc. (together, “Meijer”, and, with LWD, collectively, “Plaintiffs”),¹ on behalf of the previously-certified Class,² propose to allocate the settlement funds, net of Court approved attorneys’ fees, named plaintiff incentive awards, and court approved expenses (“Net Settlement Fund”) using a modified version of the methodology employed by Plaintiffs’ economist Dr. Gary French to calculate aggregate overcharge damages to the Class. Dr. French submitted multiple reports during the course of this litigation in which he, among other

¹ This Court appointed LWD and Meijer as representatives of the Class (the “Class Representatives”). Doc. No. 412 at ¶ 6.

² 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. 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.

things, set out his computations of aggregate damages to the Direct Purchaser Class.

Dr. French prepared an allocation methodology based upon a modified version of the model he employed to compute aggregated damages to the class as a whole. *See* Declaration of Gary French, Ph.D. Related to Proposed Allocation Plan and Net Settlement Fund Allocation (the “French Declaration”), attached hereto as Exhibit “A”, at ¶¶ 7-9. He prepared a method that is (a) practicable given the available data and information, (b) efficient in terms of cost and time, and (c) consistent with the relative injuries suffered by each of the Claimants, 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 (the “Plan”) is already in Dr. French’s possession, he computed preliminary allocation shares to each Class member and set them out in Table 1 to the French Declaration.

II. ALLOCATION PLAN

The allocation plan (the “Plan”) is set out in detail in the French Declaration.

In summary, it works as follows:

- 1.1 The Claims Administrator selected by Class Counsel and appointed by the Court, Berdon Claims Administration LLC (“Berdon”), working with Dr. French’s firm Nathan Associates, Inc., will provide a separate individualized Claim Form for each

Class member, in substantially the form attached hereto as Exhibit “B”, based on information contained in the available transactional databases of defendants Pfizer, Inc. and Warner-Lambert Co. (together, “Defendants”) and certain generic suppliers. French Declaration at ¶ 8. Berdon, working in conjunction with Nathan Associates 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 qualifying purchases of Neurontin and generic gabapentin.

- 1.2 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 the Claims

administrator. If a Class member believes that the information contained in its Claim Form is not accurate, that Class member may, *e.g.*, submit its own purchase records in order to dispute that information pursuant to the procedures described below.

- 1.3 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." Some Claimants may be required to provide documentation of a purchase of generic gabapentin during the Class Period in order to be deemed eligible Class members.³ 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.

³ Purchases of generic gabapentin from wholesalers or other indirect suppliers that are used to establish eligibility will not be included in the calculation of the *pro rata* shares of the Net Settlement Fund.

1.4 *Timeliness.* The submission of the Claim Form to the Claims Administrator (with any necessary supporting documentation if the Claimant is disputing 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 The distribution that each Claimant derives from the Net Settlement Fund will be set in proportion to each Claimant's actual purchases of branded and generic gabapentin during the Class Period.

2.2 In particular, 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 (a) total dollar volume purchases

of Neurontin capsules and/or tablets from Pfizer in any and all dosage strengths for the period January 1, 2003 to September 30, 2004 for capsules and from November 1, 2003 through October 31, 2004 for tablets; and (b) total dollar volume purchases of generic gabapentin directly from a gabapentin supplier whether capsules and/or tablets in any and all dosage strengths from October 1, 2004 for capsules and November 1, 2004 for tablets through August 31, 2008 for both capsules and tablets. The total dollar volume of “a” and the total dollar volume of “b” will then be summed.

2.3 To get the *pro rata* share for each Claimant of the Net Settlement Fund, the Claims Administrator will take the sum of “a” and “b” above for each Claimant and divide it by the total of “a” and “b” for all Claimants combined. Each Claimant’s percentage share of all Claimants’ purchases of Neurontin and generic gabapentin would reflect its *pro rata* share of the Net Settlement Fund. Based on the transactional data produced in discovery, Dr. French performed a preliminary computation of *pro rata* shares for each potential Claimant. That information is shown in Table 1 (attached to the French Declaration).

However, if any Class member fails to submit a claim or documents and submits alternative purchases, then the Claims Administrator will substitute the alternative purchases (if they are verified in the judgment of the Claims Administrator) and re-calculate the percentage share of each Claimant in Table 1.

2.4 The re-calculated percentage shares of all purchases of Neurontin and generic gabapentin during the Class Period will be applied to the Net Settlement Fund to determine the portions of the Fund to be remitted to each Claimant.

3. Processing of Claims.

3.1 All Claims will be reviewed and processed by the Claims Administrator with assistance from Dr. French and his staff at Nathan Associates.

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 Claimants 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 deemed approved by the Claims Administrator (the “Approved Claims”). All late Claims Notices that are otherwise complete will be processed by the Claims Administrator, but segregated as “Late Approved Claims.” Class Counsel may decide to accept Late Approved Claims, in which case they will be treated as any other Approved Claim. The Court will determine ultimately whether to accept any Late Approved Claims that are rejected by Class Counsel.

3.4 *The Pro Rata Distribution Calculation.* The Claims Administrator, in conjunction with Dr. French, will be responsible for determining the total amount each Claimant will receive 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. French 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. In order to avoid unnecessary challenges based on erroneous search criteria, the Claims Administrator will provide Claimants with a list identifying each eligible type of Neurontin and generic gabapentin, including description and unique product ID, as used in the industry. This information will be compiled in conjunction with Dr. French 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 Nathan Associates 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 unlikely event that the number or complexity of disputes warrants, Class Counsel may request that the Court appoint a Special Master or Examiner, as appropriate, to resolve any disputes. For the Court's information, in the multiple prior cases in which an Allocation Plan substantially similar to the one proposed here was effectuated, no disputes requiring Court (or Special Master) have arisen.

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Respectfully submitted,

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