

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE SUBOXONE (BUPRENORPHINE
HYDROCHLORIDE AND NALOXONE)
ANTITRUST LITIGATION**

MDL No. 2445

Master File No. 2:13-MD-2445-MSG

THIS DOCUMENT RELATES TO:

All Direct Purchaser Class Actions

**ORDER GRANTING DIRECT PURCHASER CLASS PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT, APPROVAL
OF THE FORM AND MANNER OF NOTICE TO THE CLASS AND PROPOSED
SCHEDULE FOR A FAIRNESS HEARING**

Upon review and consideration of Direct Purchaser Class Plaintiffs' Motion for Preliminary Approval of Proposed Settlement, Approval of the Form and Manner of Notice to the Class, and Proposed Schedule for a Fairness Hearing, the exhibits thereto, and any hearing thereon, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said motion is GRANTED as follows:

Jurisdiction

1. This Order hereby incorporates by reference the definitions in the Settlement Agreement among Defendant, Plaintiffs, and the Class¹, and all capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Settlement Agreement.

¹ The Class is defined in Paragraph 1 of the Settlement Agreement as:

All persons or entities in the United States and its territories who purchased branded Suboxone tablets directly from Reckitt Benckiser Pharmaceuticals, Inc. (now known as Indivior, Inc.) at any time during the period January 1, 2012 through March 14, 2013 ("the Class"). Excluded from the Class are Indivior Inc. (formerly known as Reckitt Benckiser Pharmaceuticals, Inc.), its officers, directors, management, employees, subsidiaries, and affiliates, and all federal governmental entities.

Nothing in this Order is intended to modify the terms of the Settlement Agreement. This Court has jurisdiction over each of the named plaintiffs, Burlington Drug Company, Inc. (“BDC”), Rochester Drug Co-Operative, Inc. (“RDC”), and Meijer, Inc. and Meijer Distribution, Inc. (collectively “Meijer”) (collectively, with the Class, “Plaintiffs”); and Indivior Inc., f/k/a Reckitt Benckiser Pharmaceuticals, Inc. (“Indivior” or “Defendant”), and jurisdiction over the litigation to which Plaintiffs and Defendant are parties.

Preliminary Approval of the Proposed Settlement

2. A court may finally approve a class action settlement “only after a hearing and only on finding that it is fair, reasonable, and adequate” after considering a variety of factors. Fed. R. Civ. P. 23(e)(2). However, in evaluating a settlement for preliminary approval, the Court is required to consider whether the proposed settlement will ultimately achieve final approval pursuant to the Rule 23(e)(2) factors. *See, e.g., In re Suboxone (Buprenorphine & Naloxone) Antitrust Litig.*, No. 13-md-2445, ECF No. 932 (Aug. 21, 2023 Order)(Goldberg, J.) at ¶ 10 “A court’s determination to preliminarily approve a proposed class settlement is a determination that there are no obvious deficiencies and the settlement falls within the range of reason.” *Checchia v. Bank of Am., N.A.*, 2023 U.S. Dist. LEXIS 26261, at *5 (E.D. Pa. Feb. 16, 2023) (internal quotation omitted).

3. For the reasons outlined in Plaintiffs’ Motion for Preliminary Approval, all factors weigh in favor of preliminarily approving the settlement. The Court finds that the proposed settlement — which includes one (1) total cash payment of \$385,000,000 by Defendant into an escrow account for the benefit of the Class (the “Settlement Fund”) in exchange for, *inter alia*, dismissal of the litigation between Plaintiffs and Defendant with prejudice and releases of certain claims, as set forth in the Settlement Agreement, was arrived at by arm’s-length negotiations by

highly experienced counsel, after extensive mediation, more than a decade of litigation, and as a jury trial was imminent — falls within a reasonable range. The proposed settlement is therefore hereby preliminarily approved, subject to further consideration at the Fairness Hearing provided for below.

Approval of the Plan of Notice to the Class and Plan of Allocation

4. Members of the Class have previously been given notice of the pendency of the litigation and the opportunity to exclude themselves from the Class. *See* ECF No. 683 (Jan. 21, 2021 Order). No Class Members requested exclusion. *See* ECF No. 736-1 (Apr. 28, 2021 Declaration of Tina Chiango Regarding Notice to the Direct Purchaser Class) at ¶ 2.

5. The proposed form of Notice to Class Members of the proposed Settlement (annexed as Exhibit B to the Settlement Agreement) satisfies the requirements of Rule 23(e) and due process, is otherwise fair and reasonable, and therefore is approved. Plaintiffs' Counsel shall cause the Notice substantially in the form attached to the Settlement Agreement to be disseminated within twenty-one (21) days of this Order via first-class mail to the last known address of each member of the Class, which is the best notice practicable under the circumstances and complies in all respects with the requirements of Fed. R. Civ. P. 23(c)(2) and due process.

6. The Court finds that because the prior notice of class certification, also disseminated by first class mail to all members of the Class on February 22, 2021 satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, and because the prior notice of class certification provided an opt-out period that closed on April 9, 2021, there is no need for an additional opt-out period pursuant to Fed. R. Civ. P. 23(e)(4).

7. Pursuant to the Class Action Fairness Act of 2005 (“CAFA”), Defendant shall serve notices as required no later than 10 days from the filing of the Settlement Agreement.

8. Members of the Class may object to the Settlement no later than **January 12, 2024**. Plaintiffs’ Counsel shall monitor and record any and all objections that are received.

9. The Court previously appointed RG/2 Claims Administration LLC (“RG/2”) to serve as the Notice Administrator (*see* ECF No. 683) and now reappoints RG/2 to serve as claims administrator to assist Plaintiffs’ Counsel in disseminating the Notice and to process claims. All expenses incurred by the claims administrator must be reasonable, are subject to Court approval, and shall be payable solely from the Settlement Fund, as outlined by the Settlement Agreement.

10. The proposed Plan of Allocation satisfies the requirements of Rule 23(e), is otherwise fair and reasonable, and is therefore preliminarily approved, subject to further consideration at the Final Fairness Hearing.

11. The Court appoints First State Trust Company as Escrow Agent for the purpose of administering the escrow account holding the Settlement Fund. All expenses incurred by the Escrow Agent must be reasonable, are subject to Court approval, and shall be payable solely from the Settlement Fund, as outlined by the Settlement Agreement. A copy of the Escrow Agreement executed by First State Trust Company and counsel is annexed as Exhibit D to the Settlement Agreement.

12. The Court approves the establishment of the Settlement Fund under the Settlement Agreement as a qualified settlement fund (“QSF”) pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder, and retains continuing

jurisdiction as to any issue that may arise in connection with the formation and/or administration of the QSF. Plaintiffs' Counsel are, in accordance with the Settlement Agreement, authorized to expend funds from the QSF for the payment of the costs of notice, payment of taxes, and settlement administration costs.

Final Fairness Hearing

13. A hearing on final approval (the "Fairness Hearing") shall be held before this Court at **10:00 a.m. on February 27, 2024**, in Courtroom 17A of the United States District Court for the Eastern District of Pennsylvania, James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, Pennsylvania, 19106.

14. At the Fairness Hearing, the Court will consider, *inter alia*: (a) the fairness, reasonableness and adequacy of the Settlement and whether the Settlement should be finally approved; (b) whether the Court should approve the proposed plan of distribution of the Settlement Fund among Class members; (c) whether the Court should approve awards of attorneys' fees and reimbursement of expenses to Direct Purchaser Class Counsel; (d) whether service awards should be awarded to the named Plaintiffs; and (e) whether entry of a Final Judgment and Order terminating the litigation between Plaintiffs and Defendant should be entered. The Fairness Hearing may be rescheduled or continued; in that event, the Court will furnish all counsel with appropriate notice. Plaintiffs' Counsel shall be responsible for communicating any such notice promptly to the Class by posting a conspicuous notice on the respective websites of Plaintiffs' Counsel: www.garwingerstein.com; www.faruqilaw.com; and www.hbsslaw.com.

15. Class members who wish to object with respect to the proposed Settlement must first file an Objection and, if intending to appear, a Notice of Intention to Appear, along with a

Summary Statement outlining the position(s) to be asserted and the grounds therefor together with copies of any supporting papers or briefs. Class members who are objecting must also send a copy of their objection via first class mail, postage prepaid, to the Clerk of the United States District Court for the Eastern District of Pennsylvania, James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, Pennsylvania, 19106 with copies to the following counsel:

On behalf of Plaintiffs:

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On behalf of Defendant:

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16. To be valid, any such Objection and/or Notice of Intention to Appear and Summary statement must be filed no later than **January 12, 2024**. Except as herein provided, no person or entity shall be entitled to contest the terms of the proposed Settlement. All persons

and entities who fail to file an Objection as provided above shall be deemed to have waived any such objections by appeal, collateral attack or otherwise. No persons or entities who, despite filing a timely Objection, fail to file a timely Notice of Intention to Appear and Summary Statement will be heard at the Fairness Hearing.

17. All briefs and materials in support of the final approval of the settlement and the entry of Final Judgment proposed by the parties to the Settlement Agreement shall be filed with the Court by **February 2, 2024**.

18. All briefs and materials in support of the application for an award of attorneys' fees and reimbursement of expenses, and service awards for the named Plaintiffs, shall be filed with the Court by **December 29, 2024**.

19. All proceedings in the action between Plaintiffs and Defendant are hereby stayed until such time as the Court renders a final decision regarding the approval of the Settlement and, if the Court approves the Settlement, enters Final Judgment and dismisses such actions with prejudice.

20. Neither this Order, nor the Settlement Agreement, nor any other Settlement-related document, nor anything contained herein or therein or contemplated hereby or thereby, nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein or in any other Settlement-related document, shall constitute, be construed

as or be deemed to be evidence of or an admission or concession by Defendant as to the validity of any claim that has been asserted by Plaintiffs against Defendant or as to any liability by Defendant as to any matter set forth in this Order.

SO ORDERED this 30th day of October, 2023

/s/ Mitchell S. Goldberg

The Honorable Mitchell S. Goldberg
United States District Judge