

EXHIBIT 2

**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

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

Direct Purchaser Class Plaintiffs Burlington Drug Company, Inc., Rochester Drug Co-Operative, Inc., and Meijer, Inc. and Meijer Distribution, Inc. (collectively the "Plaintiffs" or "Direct Purchaser Class Plaintiffs"), on behalf of the Class,¹ hereby submit this proposed Plan of Allocation to allocate the settlement funds received in the settlement with Indivior Inc. (formerly known as Reckitt Benckiser Pharmaceuticals, Inc.), plus any interest earned on the settlement funds, and net of Court-approved attorneys' fees, any Court-approved named plaintiff service awards, and Court-approved expenses, including settlement-related costs and expenses (the "Net Settlement Fund").

The proposed Plan of Allocation ("Allocation Plan") allocates the Net Settlement Fund based on each Class member's *pro rata* share of weighted combined net unit purchases of

¹ The Class is defined as follows:

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.

ECF Nos. 587, 588 (certifying the Class).

branded Suboxone Tablets and Film, in the 8 mg of buprenorphine/2 mg of naloxone strength and in the 2 mg of buprenorphine/.5 mg of naloxone strength, purchased directly from Reckitt Benckiser Pharmaceuticals, Inc. (now known as Indivior Inc.) (“Reckitt”).² This proposal is similar to allocation plans that have been approved in settlements of similar class actions brought by direct purchasers to recover overcharges arising from allegedly impaired generic competition, including in the *Namenda* and *TriCor* cases, similar antitrust cases involving allegations of an illegal “Hard Switch.”³

Plaintiffs’ expert, economist Russell L. Lamb, Ph.D., can calculate each Class member’s (and eventually, each Claimant’s⁴) percentage share of the Net Settlement Fund using Reckitt’s

² See Declaration of Russell L. Lamb, Ph.D. Related to Proposed Settlement Allocation Plan, dated October 24, 2023 (“Lamb Allocation Decl.”), at ¶ 4 (filed herewith). These are the strengths of Suboxone for which Dr. Lamb measured damages in his prior reports. *Id.* at ¶ 3.

³ *In re TriCor Direct Purchaser Antitrust Litig.*, No. 1:05-00340, ECF Nos. 536-1, 543 (D. Del.) (*pro rata* shares of settlement fund computed on basis of claimants’ unit purchases in a product hop case); *In re Namenda Direct Purchaser Antitrust Litig.*, 1:15-cv-7488, ECF Nos. 919-2, 947 (S.D.N.Y.) (same). See also, e.g., *King Drug of Florence, Inc. v. Cephalon, Inc.*, No. 2:06-cv-01797, ECF Nos. 864-17, 870 (E.D. Pa.) (*pro rata* shares of settlement fund computed on basis of claimants’ purchases); *In re Doryx Antitrust Litig. (Mylan Pharms., Inc. v. Warner Chilcott Public Ltd.)*, No. 2:12-cv-03824, ECF Nos. 452-3, 665 (E.D. Pa.) (same); *In re Novartis and Par Antitrust Litig.*, 1:18-cv-4361, ECF Nos. 587-2, 635 (S.D.N.Y.) (same); *In re Intuniv Antitrust Litig.*, 1:16-cv-12653, ECF Nos. 480-7, 551 (D. Mass.) (same); *In re Loestrin 24 FE Antitrust Litig.*, 1:13-md-02472, ECF Nos. 1411-8, 1462 (D.R.I.) (same); *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, 1:14-md-02503-DJC, ECF Nos. 1163-4, 1179 (D. Mass.) (same); *In re Lidoderm Antitrust Litig.*, 3:14-md-02521-WHO, ECF Nos. 1004-5, 1004-6, 1054 (N.D. Cal.) (same); *In re Aggrenox Antitrust Litig.*, No. 14-md-02516, ECF Nos. 733-8, 740 (D. Conn.) (same).

⁴ A “Claimant” is any entity that timely submits a completed claim form. A Claimant’s percentage share will be zero if that Claimant timely submits a claim form but that Claimant’s claim is rejected because, for example, the Claimant did not purchase branded Suboxone Tablets or branded Suboxone Film during the relevant time period (described below) and does not have any valid assignment covering any such direct purchases. Allocations to Claimants whose right to settlement allocation arises by virtue of assignment from Class members would be determined in the same fashion as allocation for Class members. In such cases, the volumes of branded Suboxone Tablet and branded Suboxone Film purchases used to determine the allocation would be the volumes assigned to the Claimant by an otherwise eligible Class member (and the

sales data showing its sales of branded Suboxone, data that was previously produced in this litigation.⁵ Claimants will also have the option of submitting their own records or data showing their net unit purchases of branded Suboxone Tablets and branded Suboxone Film during the relevant periods described below in, *inter alia*, Section 1.1, along with data regarding any relevant assignment agreement. Dr. Lamb and his staff at Monument Economics Group will review any such submissions and confer with the Claims Administrator and Plaintiffs' Counsel regarding the final calculations, which may include making any necessary and appropriate adjustments. *See* Lamb Allocation Decl. at ¶ 5.

Throughout this Allocation Plan, “purchases” refers to purchases, net of returns or assignments, made directly from Reckitt during the relevant time periods or purchases that are covered by a Claimant's assignment from a Class member covering purchases made directly from Reckitt during the relevant time periods, in the 8 mg of buprenorphine/2 mg of naloxone strength or the 2 mg of buprenorphine/.5 mg of naloxone strength of branded Suboxone.⁶ *Id.* at ¶

assignor Class member's branded Suboxone Tablet and branded Suboxone Film purchase volumes would be reduced by the same amount). Lamb Allocation Decl. at ¶ 4 n.9. As the Claim Form will make clear, data submitted by a Claimant who files a Claim Form based on an assignment may be shared with the Claimant's assignor Class member during the claims administration process. In addition, if the assignor Class member and Claimant filing by assignment from that assignor Class member cannot reach agreement about the Claimant's right to recover, including agreement regarding the purchase volumes covered by such assignment, then the disputed share of the Net Settlement Fund shall be placed into escrow and the assignee Claimant and the assignor Class member shall make application to the Court for any such monies held in escrow.

⁵ *See* Lamb Allocation Decl. at ¶¶ 4-5. Dr. Lamb previously submitted four reports in this matter, which addressed, among other issues, damages and class certification. *See* Expert Report Russell L. Lamb, Ph.D., dated September 18, 2018 (“Lamb Class Report”); Expert Rebuttal Declaration of Russell L. Lamb, Ph.D., dated January 11, 2019 (“Lamb Class Rebuttal”); Expert Merits Report of Russell L. Lamb, Ph.D., dated November 30, 2018 (“Lamb Merits Report”); and Expert Merits Rebuttal Report of Russell L. Lamb, Ph.D., dated April 25, 2019 (“Lamb Merits Rebuttal”).

⁶ To be clear, “purchases” do not include branded Suboxone purchased from any entity other

4 n.9. The unit of purchase is a branded Suboxone tablet or film strip. *Id.*

As explained more fully below, each Claimants' *pro rata* shares will be based only on purchases of Suboxone Tablets and Suboxone Film made directly from Reckitt (or covered by an assignment from a Class member) during the relevant time periods. *See id.* at ¶ 4.

The proposed Allocation Plan is practical and efficient, using sales data already obtained from Reckitt during discovery.⁷ It also is a reasonable way to allocate the Net Settlement Fund and is fair to all members of the Class.⁸

THE ALLOCATION PLAN

The Allocation Plan works as follows:

1.1 The Claims Administrator, working with Dr. Lamb's firm Monument Economics Group, will provide a separate, individualized claim form (the "Claim Form") for each Class member. *See id.* at ¶ 5. The Claim Form will expressly set forth the Class member's (a) purchases of Suboxone Tablets during the period of January 1, 2012 through March 14, 2013⁹ and (b) purchases of Suboxone Film during the period of September 1, 2012 through July 31, 2015.¹⁰ Dr. Lamb can calculate these figures using the sales data produced during discovery by

than Reckitt. In addition, "purchases" in this Plan of Allocation are branded Suboxone purchases (not generic Suboxone purchases).

⁷ *See* Lamb Allocation Declaration at ¶¶ 5-6.

⁸ *See id.* at ¶ 6.

⁹ January 1, 2012 through March 14, 2013 is the period during which Dr. Lamb measured Class damages on branded Suboxone Tablet purchases. *Id.* at ¶ 4, n.7. March 14, 2013 is the last date on which Reckitt sold Suboxone Tablets to Class members. *Id.*

¹⁰ September 1, 2012 is the first date on which Dr. Lamb measured Class damages on branded Suboxone Film purchases. *Id.* at ¶ 4, n.8. July 31, 2015 is the end date of the Suboxone Film data that Reckitt produced in this case, which was previously used to calculate damages. *Id.*

Reckitt.¹¹ The Claim Form will request that the 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 in the Claim Form is accurate, it will be asked to sign and return the Claim Form to the Claims Administrator.¹² If a Class member believes that the information contained in its Claim Form is not accurate, that Class member may submit its own purchase data pursuant to the procedures described below.

1.2 The Claim Form will request the Claimant's full name and mailing address 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. In addition, the Claim Form will include the release language contained in the Settlement Agreement with Indivior Inc. Each Claimant will be required to execute the Claim Form in exchange for 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 disagrees with the information contained in its Claim Form) will be deemed timely if it is received or postmarked within 45 days of the date Claim Forms are mailed.

¹¹ See Lamb Allocation Declaration at ¶¶ 4-5 (explaining that these totals can be calculated from the sales data produced in this case, and that he has already performed preliminary calculations of each Class member's net purchases).

¹² In order to help the Claimant verify that the purchase totals contained in the Claim Form are accurate, the Suboxone Tablets and Suboxone Film National Drug Codes ("NDCs") will be listed on the Claim Form. The NDCs are standard codes maintained by the FDA and used in the pharmaceutical industry to identify specific pharmaceutical products and allow Claimants to understand precisely what purchases are being considered for purposes of allocation. The relevant Suboxone Tablet NDCs are: 12496-1306-2 and 12496-1283-2. The relevant Suboxone Film NDCs are: 12496-1208-3 and 12496-1202-3.

2. Calculation of Weighted *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 weighted combined total purchase volumes of (a) purchases of Suboxone Tablets during the period of January 1, 2012 through March 14, 2013 and (b) purchases of Suboxone Film during the period of September 1, 2012 through July 31, 2015; net of any returns or assignments.¹³ The Net Settlement Fund is then allocated to each Claimant based upon its *pro rata* share of the total purchase volumes across all Claimants who submit valid, accepted Claims Forms.¹⁴

2.2 The allocation computation will be based on the following information (whether from the data already produced in discovery or from submissions by Claimants): (a) each Claimant's net Suboxone Tablet purchases from Reckitt from January 1, 2012 through March 14, 2013; (b) each Claimant's net Suboxone Film purchases from Reckitt from September 1, 2012 through July 31, 2015; (c) the combined total of net unit purchases of Suboxone Tablets purchases from Reckitt from January 1, 2012 through March 14, 2013 made by all Claimants with valid, accepted Claim Forms; (d) the combined total of net Suboxone Film purchases from Reckitt from September 1, 2012 through July 31, 2015.¹⁵

2.3 According to Dr. Lamb's prior damages calculations, 4.78% of the Class's aggregate damages were attributable to overcharges on the Class's purchases of Suboxone Tablets; while 95.22% of the Class's aggregate damages were attributable to overcharges on the

¹³ Lamb Allocation Declaration at ¶ 4. The dates utilized in this Plan of Allocation are explained above in Section 1.1 and footnotes 9-10.

¹⁴ Lamb Allocation Declaration at ¶ 5.

¹⁵ *Id.* at ¶ 4. Claimants that have filed based on an assignment from a Class member must submit data showing the purchases covered by any such assignment with their Claim.

Class's purchases of Suboxone Film.¹⁶ Accordingly, the Allocation Plan allocates 4.78% of the Net Settlement Fund to the Class's purchases of Suboxone Tablets, and allocates 95.22% of the Net Settlement Fund to the Class's purchases of Suboxone Film.¹⁷

2.4 To calculate the *pro rata* share for each Claimant of the Net Settlement Fund, the Claims Administrator, working with Dr. Lamb, will take (a) each Claimant's weighted combined total net purchases of Suboxone Tablets from Reckitt from January 1, 2012 through March 14, 2013 and Suboxone Film from Reckitt from September 1, 2012 through July 31, 2015, (b) remove any purchases for which the rights to damages in this litigation have been assigned by agreement, and divide it by (c) the weighted combined total purchases by all Claimants who timely submit valid, accepted Claim Forms of Suboxone Tablets from Reckitt from January 1, 2012 through March 14, 2013 and Suboxone Film from Reckitt from September 1, 2012 through July 31, 2015. This calculation will yield each Claimant's *pro rata* share of the Net Settlement Fund.¹⁸ Using data produced in discovery, Dr. Lamb has already performed a preliminary computation of the percentage shares of the Net Settlement Fund due to each Class member.¹⁹ Should any Class member fail to submit a claim or should any Claimant document and submit an alternative amount of purchases that is approved by the Claims Administrator (in consultation with Dr. Lamb and Plaintiffs' Counsel), the Claimant's shares will be recalculated

¹⁶ See *id.* at ¶ 3; Lamb Merits Report at ¶¶ 244-247, Table 6 (previously filed at ECF No. 699-6). These figures are based on Dr. Lamb's "No Hard Switch Scheme No Delay" calculations, described at length in Dr. Lamb's prior reports. The Court held that Dr. Lamb's damages calculations were admissible and supported class certification. *In re Suboxone Antitrust Litig.*, 421 F. Supp. 3d 12, 44-45, 65 (E.D. Pa. 2019) (granting motion for class certification and denying motion to exclude Dr. Lamb's opinions).

¹⁷ Lamb Declaration at ¶ 4.

¹⁸ *Id.* at ¶ 4.

¹⁹ See *id.* at ¶ 5.

accordingly.²⁰

2.5 The final calculations of each Claimant's *pro rata* share will then be applied to the Net Settlement Fund to determine each Claimant's allocated share (in dollars).

3. Processing of Claims.

3.1 All Claims will be reviewed and processed by the Claims Administrator, with assistance from Dr. Lamb and his staff at Monument Economics Group as required and appropriate.

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. The Claims Administrator may also contact Claimants requesting additional documentation or other materials. Claimants will have 14 days from the date they are contacted by the Claims Administrator regarding any question, requests for additional information, deficiency, or any other issue to provide a complete response, the requested documentation or other materials, and/or to cure any such deficiency. If a Claimant fails to adequately respond and/or correct any deficiency within 14 days, its claim may be rejected and the Claimant shall be notified by letter stating the reason for rejection. The Claims Administrator will then review all completed, non-deficient Claim Forms to determine whether each will be accepted or rejected and will notify any Claimants whose Claim Forms are rejected by letter stating that the Claimant's Claim Form is rejected and stating the reason for rejection. Any Claimant whose Claim Form is rejected may seek review by the Court via the appeals process described in Section 7.2 below.

²⁰ See *id.* at ¶ 5.

3.3 All late Claims Forms that are otherwise complete will be processed by the Claims Administrator but marked as “Late Approved Claims.” If Plaintiffs’ Counsel conclude that, in their judgment, any such “Late Approved Claims” should ultimately not be accepted,²¹ the Claimant will be so notified, and then may seek review by the Court via the appeals process described in Section 7.2 below.

3.4 *The Pro Rata Distribution Calculation.* Dr. Lamb and his staff at Monument Economics Group, in conjunction with the Claims Administrator and Plaintiffs’ Counsel, will be responsible for determining the total amount each Claimant will receive from the Net Settlement Fund. Once the Claims Administrator has determined which claims are approved, Monument Economics Group will work with the Claims Administrator to calculate each Claimant’s *pro rata* share of the Net Settlement Fund as determined by the calculation described above in Section 2.²²

4. Processing Challenged Claims.

4.1 The Claims Administrator, in conjunction with Dr. Lamb and his staff at Monument Economics Group and Plaintiffs’ 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 and Dr. Lamb decide to amend or modify their determination, the Claims Administrator shall advise the Claimant who made the challenge. These determinations shall be final, subject to the appeals process described in

²¹ Cf. *Kuehbeck v. Genesis Microchip Inc.*, 2007 WL 2382030, at *1 (N.D. Cal. Aug. 17, 2007) (authorizing distribution to timely filed claims and valid claims that were submitted late). Courts have approved similar provisions in similar impaired generic competition cases. See, e.g., *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, 1:14-md-02503-DJC, ECF Nos. 1163-4 at § 3.3, 1179 (D. Mass.) (approving a similar provision regarding late claims); *In re Lidoderm Antitrust Litig.*, 3:14-md-02521-WHO, ECF Nos. 1004-5 at § 3.3, 1054 (N.D. Cal.) (same).

²² See Lamb Allocation Declaration at ¶ 5.

Section 7.2 below.

4.2 Where the Claims Administrator, in conjunction with Dr. Lamb and his staff at Monument Economics Group, determines that a challenge requires additional information or documentation, the Claim Administrator will so advise the Claimant and provide that Claimant an opportunity to cure the deficiency within 14 days, as set forth in Section 3.2 above. If that Claimant fails to cure the deficiency within that time, the challenge may be rejected and the Claimant will be notified of the rejection of its challenge by mail, which notification shall be deemed final subject to any appeal and decision by the Court.

4.3 If the Claims Administrator, in conjunction with Dr. Lamb and his staff at Monument Economics Group, 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. Such notification shall be deemed final subject to any appeal and decision by the Court.

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

5.1 After the Claims Administrator reviews all submitted claims and works with Dr. Lamb to determine the amount each Claimant is entitled to receive from the Net Settlement Fund, the Claims Administrator will prepare a final report for the Court's review and approval. The report 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) a list of Class members or other Claimants (if any) who filed Claim Forms that were rejected and the reasons, (b) a list of challenges (if any) to the estimated distribution amounts that were rejected and the reasons, and (c) the date any such Claimant whose challenge was rejected was informed by the Claims Administrator for purposes of calculating the timeliness of

any appeal using the procedures set forth below. Finally, the final report shall contain an accounting of the expenses associated with the Allocation Plan, including bills from Monument Economics Group and the Claims Administrator, 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, with Court approval, a check or wire payable to each Claimant who has submitted a complete and valid Claim Form, including to each Claimant that filed a Late Approved Claim.

6.2 Subject to further order of the Court, any monies from the Net Settlement Fund that remain unclaimed after any initial distribution or additional monies received at a later date pursuant to the Settlement with Indivior Inc. shall, if economically feasible, be distributed (with Court approval) to Claimants in an additional distribution or distributions on the basis of the same calculations of the Claimants' *pro rata* weighted combined total of Suboxone Tablets and Suboxone Film purchases described above.

6.3 Insofar as the Net Settlement Fund includes residual funds after distribution or distributions as set forth in the preceding sections that cannot be economically distributed to the Claimants (because of the costs of distribution as compared to the amount remaining), Plaintiffs' Counsel shall make an application to the Court for such sums to be used to make *cy pres* payments for the benefit of members of the Class.²³

²³ In the experience of Plaintiffs' Counsel, based on numerous prior distributions in similar cases, an application for a *cy pres* distribution is unlikely.

7. Resolution of Disputes.

7.1 In the event of any disputes between Claimants and the Claims Administrator on any subject (*e.g.*, timeliness, required completeness or documentation of a claim, or the calculation of the Claimant's unit purchases of Suboxone Tablets and Suboxone Film, share of the net settlement fund, and/or amount 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.

7.2 Any such appeal by a Claimant must be submitted in writing to the Court, with copies to the Claims Administrator and Plaintiffs' Counsel, within 14 days of the Claims Administrator's final rejection notification to the Claimant.

Dated: October 25, 2023

Respectfully Submitted,

/s/ Bruce E. Gerstein

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