COHN LIFLAND PEARLMAN HERRMANN & KNOPF LLP
Peter S. Pearlman
Park 80 West – Plaza One
250 Pehle Avenue, Suite 401
Saddle Brook, New Jersey 07663
(201) 845-9600 (telephone)
(201) 845-9423 (fax)
psp@njlawfirm.com

(Additional counsel on signature page)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: LIPITOR ANTITRUST LITIGATION	MDL No. 2332
This document relates to:	Master Docket No. 3:12-cv-2389 (PGS/JBD)
Direct Purchaser Class Actions	

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

Drogueria Betances, LLC, Professional Drug Company, Inc., Rochester Drug Co-Operative, Inc., Stephen L. LaFrance Holdings, Inc., and Value Drug Company (collectively the "Named Plaintiffs" or "Direct Purchaser Class Plaintiffs"), on behalf of the proposed settlement Class,[1] hereby submit this

[1] The "Class" is defined as follows:

proposed Plan of Allocation to allocate the settlement funds received in the settlement with Pfizer Inc., Pfizer Manufacturing Ireland, Warner-Lambert Co., and Warner-Lambert Co. LLC (collectively, "Pfizer"), 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 purchases of brand and generic Lipitor tablets purchased directly

---

All persons or entities in the United States and its territories who purchased Lipitor or its AB-rated bioequivalent generic products directly from any of Defendants at any time during the period June 28, 2011 through May 28, 2012 (the "Class Period").

Excluded from the Class are the Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, all federal governmental entities, and all persons or entities that (i) purchased Lipitor directly from Pfizer for the first time during the Class Period after November 30, 2011, but did not purchase generic Lipitor directly from Ranbaxy during the Class Period; and (ii) all persons or entities that purchased Lipitor directly from Pfizer after November 30, 2011 that did not also purchase generic Lipitor after November 30, 2011.

Also excluded from the Class for purposes of this Settlement Agreement are the following entities: CVS Pharmacy, Inc. (which includes Caremark), Rite Aid Corporation, Rite Aid Hdqtrs. Corp., Walgreen Co. (which includes Kerr Drug), The Kroger Co. (which includes Peytons), Safeway Inc., SuperValu Inc., Meijer, Inc. and Meijer Distribution, Inc., Giant Eagle, Inc., and H-E-B L.P. ("Retailer Plaintiffs").

from Pfizer, Ranbaxy, or Watson.[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.[3]

Plaintiffs' expert, economist Jeffrey J. Leitzinger, Ph.D., can calculate each Class member's (and eventually, each Claimant's[4]) percentage share of the Net

---

[2] *See* Declaration of Jeffrey J. Leitzinger, Ph.D. Related to Proposed Allocation Plan and Net Settlement Fund Allocation, dated February 13, 2024 ("Leitzinger Allocation Decl."), at ¶ 3 (filed herewith). "Ranbaxy" means, collectively, Ranbaxy Inc., Ranbaxy Laboratories Limited, and Ranbaxy Pharmaceuticals, Inc. "Watson" is Watson Pharmaceuticals, Inc.

[3] *See*, *e.g.*, *In re Novartis and Par Antitrust Litig.*, 1:18-cv-4361, ECF Nos. 587-2, 635 (S.D.N.Y.) (*pro rata* shares of settlement fund computed on basis of claimants' brand and generic purchases); *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 Namenda Direct Purchaser Antitrust Litig.*, 1:15-cv-7488, ECF Nos. 919-2, 947 (S.D.N.Y.) (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, 1054 (N.D. Cal.) (same); *In re Aggrenox Antitrust Litig.*, No. 14-md-02516, ECF Nos. 733-8, 739 (D. Conn.) (*pro rata* shares of settlement fund computed on basis of purchases); *King Drug of Florence, Inc. v. Cephalon, Inc.*, No. 2:06-cv-01797, ECF Nos. 864-17, 870 (E.D. Pa.) (same); *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 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).

[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

Settlement Fund using sales data for brand and generic Lipitor produced by Pfizer, Ranbaxy, and Watson in this litigation.[5] Claimants will also have the option of submitting their own records or data showing their net unit purchases of brand or generic Lipitor during the relevant periods described below in, *inter alia*, Section 2.1, and will be required to submit data and documentation regarding any relevant assignment agreement. Dr. Leitzinger and his staff at Econ One Research, Inc. ("Econ One") will review any such submissions and confer with the Claims

---

not purchase brand or generic Lipitor 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 way as allocation for Class members. In such cases, the volumes of brand and generic Lipitor purchases used to determine the allocation would be the volumes assigned to the Claimant by an otherwise eligible Class member (and the assignor Class member's brand and generic Lipitor purchase volumes would be reduced by the same amount). Leitzinger Allocation Decl. at ¶ 5 n.7. 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* Leitzinger Allocation Decl. at ¶¶ 5-6. Dr. Leitzinger previously submitted two reports in this matter, which addressed, among other issues, damages and class certification. *See* Declaration of Jeffrey J. Leitzinger, Ph.D., dated January 10, 2023 ("Report" or "Leitzinger Report"); Rebuttal Declaration of Jeffrey J. Leitzinger, Ph.D., dated March 20, 2023 ("Rebuttal" or "Leitzinger Rebuttal").

Administrator and Lead Class Counsel regarding the final calculations, which may include making any necessary and appropriate adjustments. *See* Leitzinger Allocation Decl. at ¶ 7.

Throughout this Allocation Plan, "purchases" refers to purchases, net of returns or assignments, made directly from Pfizer, Ranbaxy, or Watson during the relevant time periods or purchases that are covered by a Claimant's assignment from a Class member covering purchases made directly from Pfizer, Ranbaxy, or Watson during the relevant time periods.[6] *Id.* at ¶ 3 n.4 The unit of purchase is a tablet of brand or generic Lipitor. *Id*.

As explained more fully below, Claimants' *pro rata* shares will be based only on purchases of Lipitor and/or generic Lipitor made directly from Pfizer, Ranbaxy, or Watson (or covered by an assignment from a Class member) during the relevant time periods. *See id*. at ¶ 3.

The proposed Allocation Plan is practical and efficient, using computerized sales data already obtained from Pfizer, Ranbaxy, and Watson 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]

---

[6] To be clear, "purchases" do not include branded or generic Lipitor purchased, directly or indirectly, from any entity other than Pfizer, Ranbaxy, or Watson.

[7] *See* Leitzinger Allocation Declaration at ¶ 8.

[8] *See id.* at ¶ 8.

THE ALLOCATION PLAN

The Allocation Plan works as follows:

1.1 At the appropriate time and after receiving Court approval, the Claims Administrator, working with Dr. Leitzinger's firm Econ One, will provide a separate, individualized claim form (the "Claim Form") for each Class member. The Claim Form will expressly set forth the Class member's purchases of branded and generic Lipitor from Pfizer, Ranbaxy, or Watson during the relevant period for such purchases, specifically: (a) net branded Lipitor direct purchases from Pfizer from June 28, 2011 through May 29, 2014;[9] and (b) net generic Lipitor direct purchases from Ranbaxy or Watson for the period from November 30, 2011 through May 28, 2012.[10] Dr. Leitzinger can calculate these figures using the sales data produced during discovery by the Pfizer, Ranbaxy, and Watson.[11] The Claim Form will request that the Class member verify the accuracy of the information

[9] June 28, 2011 is the beginning of the Class Period and the beginning of the overcharge period Dr. Leitzinger analyzed in his prior reports. May 29, 2014 is the end of the period for which Dr. Leitzinger measured overcharges on brand Lipitor in his prior reports. *Id.* at ¶ 3(a).

[10] November 30, 2011 is the first date on which generic Lipitor was sold according to the sales data produced in this litigation, and May 28, 2012 is the end of the period for which Dr. Leitzinger measured overcharges on generic Lipitor in his prior reports. Leitzinger Allocation Decl. at ¶ 3(b).

[11] *See* Leitzinger Allocation Declaration at ¶¶ 5-6 (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).

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 Pfizer. 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

[12] In order to help the Claimant verify that the purchase totals contained in the Claim Form are accurate, the brand and generic Lipitor 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.

disagrees with the information contained in its Claim Form) will be deemed timely if it is received or postmarked within 60 days of the date Claim Forms are mailed.

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) branded Lipitor direct purchases from Pfizer from June 28, 2011 through May 29, 2014; and (b) generic Lipitor direct purchases from Ranbaxy or Watson from November 30, 2011 through May 28, 2012; net of any returns or assignments.[13] The Net Settlement Fund is then allocated to each Claimant based upon its percentage 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 branded Lipitor purchases from Pfizer from June 28, 2011 through May 29, 2014; and (b) each Claimant's net generic Lipitor purchases from Ranbaxy or Watson from November 30, 2011

[13] Leitzinger Allocation Declaration at ¶ 5. The dates utilized in this Plan of Allocation are explained above in Section 1.1 and footnotes 9-10.

[14] Leitzinger Allocation Declaration at ¶ 5(f).

through May 28, 2012.[15]

2.3 According to Dr. Leitzinger's prior damages calculations, the Class suffered a lower average per-unit overcharge on generic purchases than it did on brand purchases. According to Dr. Leitzinger's calculations, the average per-unit overcharge on generic purchases is 95% of the average per-unit overcharge on brand Lipitor purchases.[16] Accordingly, the Allocation Plan weighs each generic Lipitor purchase as .95 (or 95%) of a brand Lipitor purchase.[17]

2.4 To calculate the *pro rata* share for each Claimant of the Net Settlement Fund, the Claims Administrator, working with Dr. Leitzinger, will take (a) each Claimant's weighted combined total net purchases of branded Lipitor from Pfizer from June 28, 2011 through May 29, 2014 and generic Lipitor from Ranbaxy or Watson from November 30, 2011 through May 28, 2012, (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

---

[15] *Id.* at ¶ 5. Claimants that have filed based on an assignment from a Class member must submit documentation of the assignment and data showing the purchases covered by any such assignment with their Claim. In addition, Class members that have assigned part or all of their claim by entering assignment agreements with the Retailer Plaintiffs shall have their purchase totals reduced by the volumes covered by such assignments and shall be required to submit data with their claims showing the volumes covered by such assignments and copies of the relevant assignments.

[16] *Id.* at ¶ 5.d.

[17] *Id.*

Claimants who timely submit valid, accepted Claim Forms of brand Lipitor from Pfizer from June 28, 2011 through May 29, 2014, and generic Lipitor from Ranbaxy or Watson from November 30, 2011 through May 28, 2012. This calculation will yield each Claimant's *pro rata* share of the Net Settlement Fund.[18] Using data produced in discovery, Dr. Leitzinger has already performed a preliminary computation of net brand Lipitor purchases from Pfizer (June 28, 2011 through May 29, 2014) and net generic Lipitor purchases from Ranbaxy or Watson (November 30, 2011 through May 28, 2012) for each Class member and can use these figures to calculate 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. Leitzinger and Lead Class Counsel), the Claimant's shares will be recalculated 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).

---

[18] *Id*. at ¶ 5.

[19] *See id*. at ¶ 6. The allocation percentages will be calculated using the same methodology Dr. Leitzinger used in calculating shares in Exhibit 12 of the Leitzinger Report. Leitzinger Allocation Declaration at ¶ 6.

[20] *See id*. at ¶ 7.

3. Processing of Claims.

3.1 All Claims will be reviewed and processed by the Claims Administrator, with assistance from Dr. Leitzinger and his staff at Econ One 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.

3.3 All late Claims Forms that are otherwise complete will be processed by the Claims Administrator but marked as "Late Approved Claims." If Lead Class 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. Leitzinger and his staff at Econ One, in conjunction with the Claims Administrator and Lead Class 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, Econ One 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]

---

[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 generic suppression 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* Leitzinger Allocation Declaration at ¶¶ 5-7.

4. Processing Challenged Claims.

4.1 The Claims Administrator, in conjunction with Dr. Leitzinger and his staff at Econ One and Lead 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 and Dr. Leitzinger 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 Section 7.2 below.

4.2 Where the Claims Administrator, in conjunction with Dr. Leitzinger and his staff at Econ One, 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. Leitzinger and his staff at Econ One, 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. Leitzinger 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 Econ One 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 Pfizer 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 branded and generic Lipitor 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), Lead Class 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]

7. Resolution of Disputes.

7.1 In the event of any disputes between Claimants and the Claims

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

Administrator on any subject (*e.g.*, timeliness, required completeness or documentation of a claim, or the calculation of the Claimant's unit purchases of branded or generic Lipitor, 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 Lead Class Counsel, within 14 days of the Claims Administrator's final rejection notification to the Claimant.

Dated: February 14, 2024

Respectfully submitted,

/s/ Peter S. Pearlman

COHN LIFLAND PEARLMAN HERMANN & KNOPF LLP
Peter S. Pearlman
Park 80 West, Plaza One
250 Pehle Avenue, Suite 401
Saddle Brook, NJ 07663
psp@njlawfirm.com

CARELLA, BYRNE, CECCHI, OLSTEIN BRODY, & AGNELLO, P.C.
James Cecchi
5 Becker Farm Road
Roseland, NJ 07068
Tel.: (973) 994-1700
jcecchi@carellabyrne.com

Liaison Counsel for the Direct Purchaser Class Plaintiffs

GARWIN GERSTEIN & FISHER LLP
Bruce E. Gerstein
Kimberly Hennings
88 Pine Street, 28th Floor
New York, NY 10005
bgerstein@garwingerstein.com
khennings@garwingerstein.com

BERGER MONTAGUE PC
David F. Sorensen
Caitlin G. Coslett
1818 Market Street, Suite 3600
Philadelphia, PA 19103
dsorensen@bm.net
ccoslett@bm.net

HAGENS BERMAN SOBOL SHAPIRO LLP
Thomas M. Sobol
Gregory T. Arnold
55 Cambridge Parkway, Suite 301
Cambridge, MA 02142
tom@hbsslaw.com
grega@hbsslaw.com

Interim Lead Counsel for the Direct Purchaser Class Plaintiffs

Stuart E. Des Roches
Andrew W. Kelly
ODOM & DES ROCHES LLP
650 Poydras Street, Suite 2020
New Orleans, LA 70130
Tel: (504) 522-0077

Susan Segura
David C. Raphael
Erin R. Leger
SMITH SEGURA RAPHAEL & LEGER LLP
221 Ansley Blvd
Alexandria, LA 71303
Tel: (318) 445-4480

Peter Kohn
FARUQI & FARUQI LLP
1617 JFK Blvd, Suite 1550
Philadelphia, PA 19103
Tel: (215) 277-5770

Russell Chorush
HEIM PAYNE & CHORUSH
1111 Bagby Street, Suite 2100
Houston, TX 88002
Tel: (713) 221-2000

Additional Counsel for the Direct Purchaser Class Plaintiffs