

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

IN RE: LOESTRIN 24 FE ANTITRUST
LITIGATION

MDL No. 2472

THIS DOCUMENT RELATES TO:
Direct Purchaser Actions

Master File No. 1:13-md-2472-S-PAS

**MEMORANDUM IN SUPPORT OF DIRECT PURCHASER CLASS
PLAINTIFFS' MOTION FOR ORDER APPROVING DISTRIBUTION
OF THE NET SETTLEMENT FUND**

In accordance with the Order Granting Direct Purchaser Class Plaintiffs' Unopposed Motion for Final Approval of Settlement, Approval of Proposed Plan of Allocation, Adoption of Report and Recommendation of Magistrate Judge, and Order of Dismissal With Prejudice (ECF No. 1462) ("Final Approval Order"), Direct Purchaser Class Plaintiffs, by undersigned counsel ("Class Counsel"), respectfully move for an order (i) approving the administrative determinations of the Court-approved claims administrator, RG/2 Claims Administration LLC ("RG/2"), concerning the claims submitted in this case; (ii) approving and authorizing the distribution of the "Net Settlement Fund," as defined in the Plan of Allocation (ECF No. 1411-8), including additional monies to be transferred into the Net Settlement Fund for distribution by Class Counsel (as set forth below), to Claimants whose claim forms have been approved by RG/2 or to the Claimants' assignees, in accordance with the Claimants' instructions; (iii) approving payments to RG/2 and to Econ One, the economic consultant retained by Class Counsel to assist RG/2 with the claims administration process,¹ for fees and expenses incurred or to be incurred in connection with the claims administration process; and (iv) finally barring any

¹ Econ One's Managing Director, Dr. Jeffrey J. Leitzinger, was the expert economist for the Direct Purchaser Class Plaintiffs during the litigation.

further or additional claims against the Net Settlement Fund. A proposed Order is filed herewith.

The basis for this Motion is as follows:

1. On September 1, 2020, the Court granted final approval of Direct Purchaser Class Plaintiffs' settlement with Defendants.² *See* Final Approval Order.

2. In the Final Approval Order, the Court approved the Plan of Allocation, which set forth the procedures and methods to be used by Class Counsel and RG/2 to allocate and distribute the Net Settlement Fund to Claimants who submit valid claims. Final Approval Order at ¶ 15 (the Plan of Allocation was submitted at ECF No. 1411-8).

3. Pursuant to Paragraph 17 of the Final Approval Order, RG/2 and Class Counsel were authorized to begin the claims administration process in accordance with the Court-approved Plan of Allocation. Final Approval Order at ¶ 17.

4. In accordance with the Plan of Allocation, on or about October 21, 2020, after the 30-day appeal period expired regarding the Final Approval Order,³ RG/2 sent claim forms to each Class member by U.S. First-Class Mail. *See* Declaration of Tina Chiango in Support of Direct Purchaser Class Plaintiffs' Motion for Order Approving Distribution of the Net Settlement Fund ("RG/2 Decl.") (filed herewith), at ¶ 5. The claim forms were mailed to the same Class member addresses successfully used to mail the April 6, 2020 Notice of Settlement. *Id.* Claim forms were also emailed to Class members for whom email addresses were identified. None of

² "Defendants" are Allergan, plc; Warner Chilcott Co., LLC f/k/a Warner Chilcott Co., Inc.; Warner Chilcott (US), LLC; Warner Chilcott Sales (US), LLC; Warner Chilcott plc n/k/a Allergan WC Ireland Holdings Ltd.; Warner Chilcott Holdings Co. III, Ltd.; Warner Chilcott Corp.; and Warner Chilcott Laboratories Ireland Limited; and Watson Laboratories, Inc. and Watson Pharmaceuticals, Inc.

³ The Final Approval Order was entered on September 1, 2020, (ECF No. 1462), and the appeal period expired 30 days later, on October 1, 2020. *See* Fed. R. App. Proc. 4(a)(1)(A) ("the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.").

the mailed claim forms was returned as undeliverable. *Id.* & n.3. An unpopulated version of the claim form (*i.e.*, a claim form without prepopulated purchase totals) was also posted on the settlement website, <https://www.loestrin24antitrustlitigation.com/notice.html>. *Id.* An unpopulated version of the claim form is attached as Exhibit A to the RG/2 Decl.

5. Each Class member's claim form included the following prepopulated figures, which were calculated by Econ One using the sales data produced during the litigation by Defendants and the generic Loestrin 24 Fe manufacturers⁴: (i) each Class member's net brand Loestrin 24 Fe direct purchases from September 1, 2009 through July 18, 2013; (ii) each Class member's net brand Minastrin 24 Fe direct purchases for the period from July 24, 2013 through March 14, 2017; (iii) each Class member's net generic Loestrin 24 Fe direct purchases for the period from January 6, 2014 through March 14, 2017; and (iv) each Class member's preliminary estimated weighted *pro rata* percentage of the Net Settlement Fund, based on a weighted calculation of each Class member's total qualifying purchases of brand Loestrin 24 Fe, generic Loestrin 24 Fe, and brand Minastrin 24 Fe ((i)-(iii) above) and the net total qualifying purchases of brand Loestrin 24 Fe, generic Loestrin 24 Fe, and brand Minastrin 24 Fe by all Class members, as set forth in the Plan of Allocation. RG/2 Decl. at ¶ 4; *id.* at Ex. A, at p.4 ("Initial Estimate of Your Purchase Volumes and *Pro Rata* Share of the Net Settlement Fund" section of the claim form).

6. During the claims administration process, RG/2 (i) evaluated all submitted claim forms; (ii) followed up with Class members who had not submitted claim forms; (iii) with the help of Econ One and Class Counsel, evaluated any accompanying data submitted therewith; and

⁴ As set forth in the Plan of Allocation, the relevant manufacturers of generic Loestrin 24 Fe are Amneal (which purchased Watson's ANDA for generic Loestrin 24 Fe), Mylan, Generics Bidco 24, Northstar, Teva/Barr, Actavis, and Lupin. *See* ECF No. 1411-8 at 2 n.3.

(iv) received from Econ One the calculated *pro rata* share of the Net Settlement Fund due to each Claimant who submitted a valid and approved claim, in accordance with the Plan Allocation. *Id.* at ¶¶ 7-10, 12.

7. RG/2 has determined that 44 Claimants submitted valid claims (“Accepted Claims”) and are eligible for participation in the Net Settlement Fund. *Id.* at ¶ 9 & Ex. B. The 44 Accepted Claims include (a) 40 valid claim forms that were timely submitted (i.e., postmarked on or before the November 20, 2020 deadline for claim form submission); (b) three valid claim forms that were submitted by Claimants who sought and received from Class Counsel, pursuant to paragraph 1.3 of the Plan of Allocation, 45-day extensions of the deadline for submission of claim forms, and who submitted their claim forms on or before the extended deadline for claim form submission (i.e., their claim forms were timely given the 45-day extensions these Claimants received); and (c) one claim form submitted after the November 20, 2020 deadline for claim form submission by a Claimant who did not receive an extension for the claim form submission deadline, but which is otherwise valid and has been accepted pursuant to paragraph 3.3 of the Plan of Allocation, which provides that Late Approved Claims may be accepted. *Id.* at ¶ 9. Two of these 44 Claimants have assigned their claims and directed the Claims Administrator to pay their claims to their assignees. *Id.* at ¶ 10 n.5.

8. The 44 Claimants who submitted Accepted Claims are listed in Exhibit B to the RG/2 Decl.

9. In addition, RG/2 received and rejected claim forms submitted by Claims Compensation Bureau (“CCB”) on behalf of 37 entities that were not eligible to participate in the settlement because these entities are not Class members, did not provide RG/2 with valid assignments from Class members allowing them to participate in the Net Settlement Fund, and did not submit documentation of any qualifying purchases. *Id.* at ¶ 12. On March 17, 2021,

RG/2 notified CCB that all 37 claims were finally rejected and that “CCB’s clients, including Parkview Health Systems, may appeal this rejection to the Court in accordance with Sections 7.1 and 7.2 of the Court-approved Plan of Allocation, which is available here:

<https://www.loestrin24antitrustlitigation.com/courtdocuments.html>. Please note that section 7.2 of the Plan of Allocation states: ‘Any such appeal by a Claimant must be submitted in writing to the Court, with copies to the Claims Administrator and Class Counsel, within 21 days of the Claims Administrator’s final rejection notification to the Claimant.’” *Id.* More than 21 days (indeed, more than three months) has passed since CCB was notified that all of the claims it submitted were finally rejected and, to date, RG/2 has received no further communication from CCB or any of these claimants regarding the rejected claims. *Id.* None of these claimants has filed an appeal with the Court.

10. Eight Class members have not submitted claim forms. None of the claim forms mailed to these Class members has been returned to RG/2 as undeliverable. *Id.* at ¶ 7. As set forth in the RG/2 Decl., RG/2 made repeated efforts to contact these Class members by phone and email. *Id.* at ¶ 8.

11. Based on estimates prepared by Econ One, the eight Class members that did not submit claim forms collectively would have been allocated approximately .08% of the Net Settlement Fund. *Id.* at ¶ 7.

12. On April 15, 2021, in accordance with Direct Purchaser Class Plaintiffs’ Notice Regarding Claims Administration (ECF No. 1465 (posted at <https://www.loestrin24antitrustlitigation.com/courtdocuments.html>)), RG/2 sent additional letters to the Class members who had submitted claims. *Id.* at ¶ 11. These letters were mailed and emailed using the contact information obtained through the claims administration process, including using the contact information Class members provided on their submitted claim forms.

Id. Each letter included a corrected current estimate of the Class member's *pro rata* share of the Net Settlement Fund, and the letter mailed to those Class members whose claim form included an incorrect figure for net direct purchases of brand Loestrin 24 Fe also included a corrected calculation of these Class members' net brand Loestrin 24 direct purchases. *Id.* These letters were in the form previously submitted to the Court at ECF Nos. 1465-1 and 1465-2, and are attached hereto as Exhibits C and D to the RG/2 Decl. The letters sent to those Class members whose claim form included an incorrect figure for net direct purchases of brand Loestrin 24 Fe stated: "*If you wish to contest the above corrected calculations, and instead submit your own purchase data, you must do so in writing by sending a letter to the Claims Administrator postmarked within 30 days, by May 15, 2021. You must submit any supporting data by the same date. You may submit this information by email.*" *Id.* at Ex. C (emphasis in original). To date, RG/2 has not received any communication from any Class member contesting the corrected calculations included in the letters mailed on April 15, 2021. *Id.* at ¶ 11.

13. The Net Settlement Fund included \$77,283,671.59 as of June 1, 2021. *Id.* at ¶ 16. RG/2 does not currently anticipate owing taxes in connection with the claims administration or the Net Settlement Fund. *Id.* at ¶ 17.

14. The litigation fund (i.e., the fund created by Class Counsel to pay expenses of the litigation) includes a balance of \$56,995.40. There are outstanding invoices from the Court reporter totaling approximately \$487.18⁵ to be paid from the litigation fund, meaning that approximately \$56,508.22 (\$56,995.40 - \$487.18) will remain in the litigation fund after these invoices are paid. Class Counsel has already been reimbursed for contributions to the litigation fund, in accordance with paragraph 21.a of Final Approval Order, and so the balance of the

⁵ Class Counsel is confirming the exact amount owed to the Court reporter.

litigation fund will be transferred to the Net Settlement Fund and distributed to Claimants, plus approximately \$6.50 in interest.⁶

15. RG/2 states that it has incurred \$25,017 in unpaid professional fees and expenses for administering the claims in these settlements and anticipates incurring an additional \$6,614 in fees and expenses for distributing the remaining Net Settlement Funds to those Claimants who filed the Accepted Claims and completing the administration of this Settlement. *Id.* at ¶ 13.

16. In addition, Econ One incurred \$25,886.50 in unpaid professional fees in connection with the claims administration process. *Id.* at ¶ 14. This amount does not include work done to correct the initial, incorrect estimates of Class members' net direct purchases and shares. *Id.*

Based upon the foregoing, Direct Purchaser Class Plaintiffs, by and through Class Counsel, respectfully request that the Court (a) authorize RG/2 to distribute to the claimants who submitted the 44 valid, accepted claim forms (listed in Exhibit B to the RG/2 Decl.) their respective *pro rata* shares of the Net Settlement Fund, which shall include the balance of the litigation fund after the invoices to the Court reporter are paid (approximately \$56,508.22) plus approximately \$6.50 in interest; and (b) approve the payment of the amounts set forth above to RG/2 in the amount of \$31,631 (\$25,017 in unpaid fees and expenses plus \$6,614 in future fees and expenses), and to Econ One in the amount of \$25,886.50 for fees and expenses associated with the administration of the settlements, plus any taxes owed. Direct Purchaser Class Plaintiffs also respectfully request that the Court finally and forever bar any further or additional claims against the Net Settlement Fund. A proposed order is submitted herewith.

⁶ The interest is on the amount remaining in the litigation fund from November 12, 2020, when Court-approved fees and expenses (which included the amount remaining in the litigation fund) were withdrawn from the Net Settlement Fund, to date.

Dated: June 25, 2021

Respectfully submitted,

/s/ David F. Sorensen

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*Co-Lead Counsel for the Direct Purchaser
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CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2021, I caused the above to be filed by CM/ECF system.

This filing will also be posted at <https://www.loestrin24antitrustlitigation.com/>.

/s/ David F. Sorensen

David F. Sorensen