

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE INTUNIV ANTITRUST
LITIGATION

This Document Relates to:
Direct Purchaser Actions

Civil Action No. 16-cv-12653-ADB (Lead)

**ORDER GRANTING DIRECT PURCHASER CLASS PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT WITH SHIRE,
APPOINTMENT OF CLASS REPRESENTATIVES FOR SETTLEMENT PURPOSES,
APPROVAL OF FORM AND MANNER OF NOTICE TO THE CLASS,
APPOINTMENT OF SETTLEMENT ADMINISTRATOR AND ESCROW AGENT,
AND PROPOSED SCHEDULE FOR A FAIRNESS HEARING**

Upon review and consideration of Direct Purchaser Class Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement with Shire, Appointment of Class Representatives for Settlement Purposes, Approval of Form and Manner of Notice to the Class, Appointment of Settlement Administrator and Escrow Agent, and Proposed Schedule for a Fairness Hearing, the exhibits thereto, and any hearing thereon, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

Jurisdiction

1. This Court has jurisdiction over the named plaintiffs QK Healthcare, Inc. ("QKH") and Meijer, Inc. and Meijer Distribution, Inc. ("Meijer") (collectively, "Plaintiffs"), individually and on behalf of the certified Direct Purchaser Class in this action as defined below ("Direct Purchaser Class"), and Shire plc, Shire LLC, and Shire US, Inc. ("Shire"), and jurisdiction over the litigation to which Plaintiffs and Shire are parties.¹

¹ This Order hereby incorporates by reference the definitions in the Settlement Agreement among Plaintiffs, individually and on behalf of the Direct Purchaser Class, and Shire. All capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Settlement Agreement.

**Appointment of QKH and Meijer as Class Representatives
for Purposes of the Settlement**

2. On September 24, 2019, the Court issued an order pursuant to [Fed. R. Civ. P. 23](#) certifying the following Direct Purchaser Class:

All persons or entities in the United States and its territories, or subsets thereof, that purchased Intuniv and/or generic Intuniv in any form directly from Shire or Actavis, including any predecessor or successor of Shire or Actavis, from October 19, 2012 through June 1, 2015 (the “Class”). Excluded from the Class are Shire, Actavis, and any of their officers, directors, management, employees, subsidiaries, and affiliates, as well as governmental entities.

In the same order, the Court appointed Thomas M. Sobol and Lauren G. Barnes Hagens Berman Sobol Shapiro LLP as Lead Counsel for the Direct Purchaser Class.

3. On July 24, 2020, the Court permitted Meijer to intervene as party in this action ([ECF No. 462](#)). Pursuant to [Fed. R. Civ. P. 24\(a\)](#) and (b), the Court determines that intervention by QKH is also justified and appropriate. As a member of the Direct Purchaser Class, QKH has claims of law and fact in common with its fellow class members, and intervention is needed to protect its interests. QKH is therefore added as party in this litigation for purpose of the Settlement.

4. Pursuant to [Fed. R. Civ. P. 23\(a\)\(4\)](#), the Court determines, in connection with and solely for purposes of Settlement, that QKH and Meijer will fairly and adequately protect the interests of the Direct Purchaser Class. QKH’s and Meijer’s interests in connection with Settlement do not conflict with the interests of absent members of the Direct Purchaser Class. All of the Direct Purchaser Class members share a common interest in proving the alleged anticompetitive conduct and recovering the overcharge damages sought in the complaints filed by Meijer and others on behalf of the Direct Purchaser Class. Meijer has previously been appointed as a direct purchaser class representative in many other pharmaceutical antitrust

cases, including cases in this District, and has never been found to be inadequate. *See, e.g., In re Asacol Antitrust Litig.*, No. 15-cv-12730, [2017 WL 4118967](#), at *1–2 (D. Mass. Sept. 14, 2017); *In re Nexium (Esomeprazole) Antitrust Litig.*, [296 F.R.D. 47, 53–54](#) (D. Mass. 2013). QKH is a member of the class, participated in discovery as an absent class member, and has never been found to be an inadequate class representative. Accordingly, in connection with and solely for purposes of Settlement, the Court appoints QKH and Meijer as representatives of the Class.

Preliminary Approval of the Proposed Settlement

5. “[T]he approval of a settlement agreement is a two-step process, which first requires the court to make a preliminary determination regarding the fairness, reasonableness, and adequacy of the settlement terms. It is only after the second step, a fairness hearing has taken place, however, that the court may ‘approve’ the settlement agreement.” *Hochstadt v. Boston Sci. Corp.*, [708 F. Supp. 2d 95, 97 n.1](#) (D. Mass. 2010) (citing *Manual for Complex Litigation* § 13.14 (4th ed. 2004)). “It is inherently difficult to determine the fairness and adequacy of a proposed settlement in the preliminary review context where the parties have advanced a settlement in lieu of litigation. Courts and commentators, nevertheless, have developed a presumption that the settlement is within the range of reasonableness when certain procedural guidelines have been followed.” *In re M3 Power Razor*, [270 F.R.D. 45, 62](#) (D. Mass. 2010). These are: “(1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” *In re Lupron Mtkg. & Sales Pracs. Litig.*, [345 F. Supp. 2d 135, 137](#) (D. Mass. 2004). The fourth factor is more often relevant for purposes of final approval, after notice has issued and class members have been given an opportunity to object to a settlement. *See id.* at 138. The Settlement satisfies this standard.

6. The Court finds that the Settlement—which includes a cash payment of \$58 million by Shire into an escrow account for the benefit of the Class (the “Settlement Fund”) in exchange for, *inter alia*, dismissal of the litigation on behalf of the Direct Purchaser Class against Shire with prejudice and releases of claims filed or that could have been filed against Shire by Plaintiffs—as set forth in the Settlement Agreement, was arrived at by arm’s-length negotiations by highly experienced counsel after more than seven years of litigation, full fact and expert discovery, and rulings on summary judgment, *Daubert*, and other pretrial motions, as well as extensive mediation with a mediator who is a former federal judge and has many years of experience in settling antitrust cases, falls within the range of possibly approvable settlements. The Settlement is therefore preliminarily approved, subject to further consideration at the Fairness Hearing provided for below.

Approval of the Plan of Notice to the Class

7. The proposed form of Notice, which informs Direct Purchaser Class members of the Settlement, annexed to the Settlement Agreement as **Exhibit B**, satisfies the requirements of Fed. R. Civ. P. 23(e) and due process, is otherwise fair and reasonable, and is therefore approved. Class Counsel shall cause the Notice, substantially in the form attached as Exhibit B to the Settlement Agreement, to be disseminated within 15 days of this Order via First-Class Mail to the last known address of each member of the Class. Class Counsel shall also exercise best efforts to cause the Notice to be disseminated to all members of the Direct Purchaser Class by email. Email notice may be sent to the email addresses of the Class members’ counsel or other appropriate recipients. Class Counsel shall notify the Court 15 days before the date to submit objections pursuant to ¶ 9 below that notice has been effectuated.

8. Members of the Direct Purchaser Class have previously been given notice of the pendency of the litigation and the opportunity to exclude themselves from the Class. The notice of class certification, disseminated by First-Class Mail to all members of the Direct Purchaser Class on January 24, 2020, provided an opt-out period that closed on February 28, 2020, and the Claims Administrator certified that no opt-out requests were received as of March 10, 2020. *See* [ECF 401-1](#). The prior notice satisfied the requirements of [Fed. R. Civ. P. 23\(c\)\(2\)\(B\)](#) and due process. In addition, members of the Direct Purchaser Class received notice of the prior settlement with former defendants Actavis Elizabeth LLC, Actavis LLC, and Actavis Holdco U.S., Inc. (“Actavis”) in 2020. Accordingly, the Court finds that there is no need for an additional opt-out period pursuant to [Fed. R. Civ. P. 23\(e\)\(4\)](#). *See* Prelim. Approval Order at 4, *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 14-md-2503 (D. Mass. [Mar. 12, 2018](#)), [ECF No. 1095](#) (holding that there is “no need for an additional opt-out period”); *see also* Prelim. Approval Order at 2, *In re Nexium (Esomeprazole) Antitrust Litig.*, No. 12-md-2409 (D. Mass. June 12, 2015), [ECF No. 1536](#) (“[A] discretionary second opt-out period pursuant to recently-amended Rule 23(e)(3) is unnecessary.”); Prelim. Approval Order at 1, *In re Carbon Black Antitrust Litig.*, No. 03-cv-10191 (D. Mass. Nov. 29, 2006), [ECF No. 297](#) (finding no need for additional opt-out opportunity “[i]n light of the previous notice to class members of the pendency of this action and the certification of the class, which complied fully with the requirements of Rule 23 and due process”).

9. Shire shall serve notices on the appropriate federal and state officials under the Class Action Fairness Act [28 U.S.C. § 1715](#) no later than 20 days from the date Plaintiffs have filed the Settlement Agreement and Motion for Preliminary Approval with the Court. Shire shall contemporaneously provide Lead Counsel with copies of any such notices.

10. Members of the Direct Purchaser Class may object to the Settlement no later than September 4, 2024 (45 days from the dissemination of the Notice). Class Counsel or their designee shall monitor and record any and all objections that are received.

11. The Court appoints A.B. Data, Ltd. (“A.B. Data”), which was responsible for service of the notice of class certification and notice of the Actavis settlement, to serve as Settlement Administrator and to assist Class Counsel in disseminating the Notice. All expenses incurred by the Settlement Administrator must be reasonable. Such expenses are subject to Court approval other than as provided for in the Settlement Agreement and shall be payable solely from the Settlement Fund.

12. The Court appoints The Huntington National Bank for the purpose of serving as the Escrow Agent holding the Settlement Fund. All expenses incurred by the Escrow Agent, if any, must be reasonable. Such expenses are subject to Court approval other than as provided for in the Settlement Agreement and shall be payable solely from the Settlement Fund. A copy of the Escrow Agreement executed by The Huntington National Bank and counsel is annexed as **Exhibit D** to the Settlement Agreement.

Final Fairness Hearing

13. A hearing on final approval (the “Fairness Hearing”) shall be held before this Court at 9:15 AM on November 6, 2024 (date certain 90 days from service of CAFA notice), at the John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Courtroom 17, 5th Floor, Boston, MA 02210. At the Fairness Hearing, the Court will consider, *inter alia*: (a) the fairness, reasonableness, and adequacy of the Settlement and whether it should be finally approved; (b) whether the Court should approve the proposed plan of allocation of the Settlement Fund among Direct Purchaser Class members; (c) whether the Court should approve

awards of attorneys' fees and reimbursement of expenses to Class Counsel, as well as incentive awards of \$50,000 each to QKH and Meijer; and (d) whether entry of a final judgment terminating the litigation between Plaintiffs and Shire should be entered. The Fairness Hearing may be rescheduled or continued; in this event, the Court will furnish all counsel with appropriate notice. Lead Counsel shall be responsible for communicating any such notice promptly to the Class by posting a conspicuous notice on the following website established by the Claim Administrator: www.IntunivAntitrustSettlement.com.

14. Class members who wish to (a) object with respect to the Settlement and/or (b) appear in person at the Fairness Hearing must first send an objection and, if intending to appear, a notice of intention to appear, along with a statement of the position(s) to be asserted and the grounds therefore together with copies of any supporting papers or briefs, via First-Class Mail, postage prepaid, to the Clerk of the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210, with copies to the following counsel:

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15. To be valid, any such objection and notice of intention to appear and statement must be postmarked no later than September 5, 2024 (45 days from the date of mailing of the Notice). Except as herein provided, no person or entity shall be entitled to contest the terms of the Settlement. All persons or entities who fail to file a notice of intention to appear and statement may not be heard at the Fairness Hearing. All persons or entities who fail to file an objection shall be deemed to have waived any such objections by appeal, collateral attack, or otherwise.

16. All briefs and materials in support of the application for an award of attorneys' fees, reimbursement of expenses, and class representative incentive awards shall be filed with the Court by August 22, 2024 (14 days prior to the expiration of the deadline for Class members to object to the Settlement and/or attorneys' fees, expenses, and incentive awards).

17. All briefs and materials in support of final approval of the Settlement and entry of final judgment proposed by the parties to the Settlement Agreement shall be filed with the Court by September 19, 2024 (14 days after the expiration of the deadline for Class members to object to the Settlement and/or attorney's fees, expenses, and incentive awards).

18. All proceedings in the action between Plaintiffs and the Direct Purchaser Class and Shire 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.

19. 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 in any action or proceeding of

any kind whatsoever, civil, criminal, or otherwise, before any court, administrative agency, regulatory body, or any other body or authority, present or future, by Shire, including, without limitation, that Shire engaged in any conduct or practices that violate any antitrust statute or other law.

SO ORDERED.

July 2, 2024

/s/ Allison D. Burroughs

HON. ALLISON D. BURROUGHS
U.S. DISTRICT JUDGE