

**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 (Direct)

**DIRECT PURCHASER PLAINTIFFS' [PROPOSED] PLAN OF
ALLOCATION FOR THE DIRECT PURCHASER CLASS**

The direct purchaser plaintiffs, on behalf of the previously certified class of direct purchasers,¹ hereby submit this proposed plan of allocation (“Allocation Plan”) to apportion the \$58 million settlement with defendants Shire LLC and Shire US, Inc. (“Shire”), plus interest and net of any Court-approved attorneys’ fees (including a proportionate share of interest), reimbursement for litigation expenses incurred through the date of settlement, incentive awards to the class representatives, and settlement administration costs (the “Net Settlement Fund”), among members of the Direct Purchaser Class (“Class Members”).

The proposed Allocation Plan is identical to that approved for and used to apportion the direct purchasers’ 2020 settlement with defendants Actavis Elizabeth LLC, Actavis LLC, and Actavis Holdco US, Inc. (“Actavis”)² and similar to allocation plans that have been approved in similar class actions brought by direct purchasers to recover overcharges arising from impaired

¹ The Court previously certified the following “class” or “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.

ECF No. 343 at 23.

² See Direct Purchaser Pls.’ Proposed Plan of Allocation, ECF No. 480-7; Final Approval Order, ECF No. 551.

generic competition.³ It allocates the Net Settlement Fund based on each Class Member's *pro rata* share of the total net unit purchases of brand and/or generic Intuniv made directly from Shire and/or Actavis during the relevant period.

The direct purchasers' expert economist, Dr. Jeffrey J. Leitzinger, has already calculated each Claimant's⁴ *pro rata* share of the Net Settlement Fund using sales data for brand and generic Intuniv produced by Shire and Actavis during the course of the litigation and any additional information submitted by Class Members during administration of the earlier settlement with Actavis.⁵ But Claimants will also have the option of submitting their own records or data showing their net unit purchases of brand and/or generic Intuniv during the relevant periods and documentation showing any relevant assignment agreements. Dr. Leitzinger will

³ See, e.g., *In re Ranbaxy Generic Drug Application Antitrust Litig.*, No. 19-md-2878 (D. Mass.), ECF Nos. 590-5, 613 (approved Sept. 19, 2022); *In re Glumetza Antitrust Litig.*, No. 19-cv-5822 (N.D. Cal.), ECF No. 654-7, 706 (approved Sept. Feb. 3, 2022); *In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, No. 18-md-2819 (E.D.N.Y.), ECF Nos. 490-7, 562 (approved Oct. 7, 2020); *In re Loestrin 24 Fe Antitrust Litig.*, No. 13-md-2472 (D.R.I.), ECF Nos. 1396-8, 1462 (approved Sept. 1, 2020); *In re Lidoderm Antitrust Litig.*, No. 14-md-2521 (N.D. Cal.), ECF Nos. 1004-5, 1004-6, 1054 (approved Sept. 20, 2018); *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 14-md-2503 (D. Mass.), ECF Nos. 1163-4, 1179 (approved July 18, 2018); *In re Aggrenox Antitrust Litig.*, No. 14-md-2516 (D. Conn.), ECF Nos. 733-8, 740 (approved Dec. 19, 2017); *King Drug Co. of Florence, Inc. v. Cephalon, Inc.*, No. 06-cv-1797 (E.D. Pa.), ECF Nos. 864-17, 870 (approved Oct. 15, 2015).

⁴ A "Claimant" is any entity that timely submits a completed claim form. A Claimant's *pro rata* 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 brand or generic Intuniv during the relevant time periods (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 assignments from class members would be determined in the same fashion as allocation for class members. In these cases, the volumes of brand and/or generic 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/or generic purchase volumes would be reduced by the same amount). See Decl. of Jeffrey J. Leitzinger, Ph.D., Related to Proposed Allocation Plan & Net Settlement Fund Allocation for Shire Settlement ¶ 5 n.6 (filed herewith) ("Leitzinger Decl."). 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.

⁵ See *id.* ¶ 6. Dr. Leitzinger previously submitted two expert declarations and two expert reports in this matter addressing, among other issues, damages and class certification. See Decl. of Jeffrey J. Leitzinger, Ph.D., Nov. 1, 2018, ECF No. 199-1; Rebuttal Decl. of Jeffrey J. Leitzinger, Ph.D., Mar. 18, 2019, ECF No. 232-1; Expert Report of Jeffrey J. Leitzinger, Ph.D., Mar. 29, 2019, ECF No. 301-17; Rebuttal Report of Jeffrey J. Leitzinger, Ph.D., June 24, 2019. Dr. Leitzinger also submitted a declaration in connection with the Actavis settlement in 2020. See Decl. of Jeffrey J. Leitzinger, Ph.D. Related to Proposed Allocation Plan & Net Settlement Fund Allocation, Aug. 28, 2020, ECF No. 480-8.

review any such submissions and confer with the Settlement Administrator regarding the final calculations, which may include making any appropriate adjustments.⁶

Throughout this Allocation Plan, “purchases” refers to gross unit purchases of brand and generic Intuniv made directly from Shire and/or Actavis during the relevant time periods, net of any returns and net of any purchases for which a Claimant has assigned its rights to recovery in this litigation. The unit of purchase is a pill (tablet). A Claimant’s *pro rata* share will be based only on purchases made directly from Shire and Actavis and will not include purchases from other entities.

The proposed Allocation Plan is practical and efficient, using the Court-approved methodology and data already used to allocate the Actavis settlement funds.⁷ It is also a fair and reasonable way to allocate the Net Settlement Fund to all Class Members.⁸

THE ALLOCATION PLAN

The Allocation Plan used to apportion shares of the 2020 Actavis settlement and which the direct purchasers propose using here (to the extent that any Claimant requires modifications to the prior allocations) works as follows.

1.1 At the appropriate time and after receiving Court approval to do so, the Settlement Administrator, working with Dr. Leitzinger’s firm Econ ONE Research, Inc. (“Econ One”), will prepare a separate, individualized claim form (the “Claim Form”) for each Class Member. The Claim Form will be pre-populated with each Class Member’s total net purchases of (a) brand Intuniv made directly from Shire from November 15, 2012 through February 29, 2016, and (b) generic Intuniv made directly from Actavis from December 1, 2014 through June 1, 2015, as

⁶ See Leitzinger Decl. ¶ 7.

⁷ See *id.* ¶ 8.

⁸ See *id.*

calculated by Dr. Leitzinger based on transactional sales data produced in discovery and any additional documentation submitted in connection with the Actavis settlement.⁹

The Claim Form will (a) request that the Class Member verify the accuracy of the information contained in the Claim Form, and (b) 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 the Claim Form to verify its accuracy and timely return it to the Settlement Administrator.¹⁰ 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, a 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. The Claim Form will include the release language contained in the Settlement Agreement between the Direct Purchaser Class and Shire. Each Claimant will be required to execute and return the Claim Form to receive any distribution from the Net Settlement Fund.

1.3 *Timeliness.* The submission of the Claim Form to the Settlement Administrator (with any necessary supporting documentation and data if the Claimant disagrees with the information contained in its Claim Form) will be deemed timely if it is received or postmarked within 30 days of the date the Claim Forms were mailed. At Class Counsel's discretion, this

⁹ See *id.* ¶¶ 3–6.

¹⁰ To help the Claimant verify that the purchase totals contained in the Claim Form are accurate, the National Drug Codes ("NDCs") for brand Intuniv and generic Intuniv sold by Actavis 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. They allow Claimants to understand precisely what purchases are being considered for purposes of allocation.

deadline may be extended by up to 45 days without additional approval of the Court. Class Counsel may also seek further extensions of the deadline by order of the Court after any such initial extension.

2. Calculation of *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 the sum of the Claimant's combined total net unit purchases of (a) brand Intuniv directly from Shire from November 15, 2012 through February 29, 2016, and (b) generic Intuniv purchases directly from Actavis from December 1, 2014 through June 1, 2015.¹¹

2.2 The allocation computation will be based on the following information (whether from the data produced in discovery or submitted by Claimants during administration of the Actavis settlement): (a) total net brand Intuniv purchases from November 15, 2012 through February 29, 2016; (b) total net generic Intuniv purchases from December 1, 2014 through June 1, 2015; and (c) the combined total of net unit purchases of brand Intuniv from November 15, 2012 through February 29, 2016 and generic Intuniv from December 1, 2014 through June 1, 2015 made by all Claimants with valid, accepted Claim Forms.¹²

2.3 According to Dr. Leitzinger's prior damages calculations, the class suffered the same per-unit overcharge on generic purchases as on brand purchases.¹³ Accordingly, the Allocation Plan gives equal weight to brand Intuniv and generic Intuniv purchases. In addition, brand and generic Intuniv were sold in 1-mg, 2-mg, 3-mg, and 4-mg strengths during the relevant period.¹⁴ The per-tablet list price does not vary by strength, so each tablet of brand Intuniv is

¹¹ *Id.* ¶ 3.

¹² *Id.* ¶ 5.

¹³ *Id.* ¶ 5 n.7.

¹⁴ *Id.*

weighted the same regardless of strength and each tablet of generic Intuniv is weighted the same regardless of strength, i.e., for example, a purchase of a 1-mg tablet would give rise to the same allocation as a purchase of a 4-mg tablet.¹⁵

2.4 To calculate the *pro rata* share of the Net Settlement Fund for each Claimant, the Settlement Administrator, working with Dr. Leitzinger, will take (a) each Claimant's combined total net unit purchases of brand Intuniv from November 15, 2012 through February 29, 2016 and generic Intuniv from December 1, 2014 through June 1, 2015, and divide it by (b) the combined total net unit purchases by all Claimants who timely submit valid, accepted Claim Forms of brand Intuniv from November 15, 2012 through February 29, 2016 and generic Intuniv from December 1, 2014 through June 1, 2015.¹⁶ This calculation will yield each Claimant's *pro rata* share of the Net Settlement Fund.¹⁷ Using data produced in discovery and in connection with the Actavis settlement, Dr. Leitzinger has already performed a computation of each Class Member's net brand and generic Intuniv purchases and can use these figures to calculate the *pro rata* shares of the Net Settlement Fund due to each Class Member.¹⁸ Should any Class Member fail to submit a claim, or should any Class Member document and submit an alternative amount of purchases that is approved by the Settlement Administrator (in consultation with Dr. Leitzinger and Class Counsel), that Class Member's shares will be recalculated accordingly.¹⁹

3. Processing of Claims

3.1 All Claims will be reviewed and processed by the Settlement Administrator,

¹⁵ *Id.*

¹⁶ *Id.* ¶ 5.

¹⁷ *Id.*

¹⁸ *Id.* ¶ 6.

¹⁹ *Id.* ¶ 7. Claimants' shares will also be recalculated, as necessary to account for assignments. *See supra* note 4.

with assistance from Dr. Leitzinger and his staff at Econ One as required and appropriate.

3.2 *Acceptance and Rejection.* The Settlement Administrator shall first determine whether a Claim Form received is timely, properly completed, and signed. If a Claim Form is incomplete, the Settlement Administrator shall communicate with the Claimant via U.S. First-Class Mail, email, or telephone regarding the deficiency. Claimants will then have 21 days from the date they are contacted by the Settlement Administrator regarding the deficiency to cure it. If any Claimant fails to correct the deficiency within this time, the claim may be rejected and the Claimant shall be notified by letter (a) stating the reason for the rejection and (b) informing the Claimant of its right to seek review of the decision by the Court via the appeals process described in § 7.2 below and the procedure for doing so.

3.3 All late Claims Forms that are otherwise complete will be processed by the Settlement Administrator but marked as “Late Approved Claims.” If Class Counsel conclude that, in their judgment, any such “Late Approved Claims” should ultimately not be accepted,²⁰ the Claimant will be so notified, and then may seek review by the Court via the appeals process described in § 7.2 below.

3.4 *The Pro Rata Distribution Calculation.* The Settlement Administrator, in conjunction with Dr. Leitzinger, will be responsible for determining the total amount each Claimant will receive from the Net Settlement Fund. Once the Settlement Administrator has determined which Claimants’ claims are approved, the Settlement Administrator will work with

²⁰ Cf. *Kuehbeck v. Genesis Microchip Inc.*, No. C02-05344, 2007 WL 2382030, at *1 (N.D. Cal. Aug. 17, 2007) (authorizing distribution to timely filed claims and valid claims that were submitted late). This Court has approved similar provisions in other generic suppression cases. See, e.g., Order Granting Direct Purchaser Class Pls.’ Mot. for Prelim. Approval of Proposed Settlement with Def. Actavis, Approval of the Form & Manner of Notice to the Class & Proposed Schedule for a Fairness Hr’g, ECF No. 493 (approving a similar provision regarding late claims); Prelim. Approval Order, *In re Ranbaxy Generic Drug Application Antitrust Litig.*, No. 19-md-2878 (D. Mass. Sept. 19, 2022), ECF No. 613; Prelim. Approval Order, *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 14-md-02503, ECF No. 1179 (D. Mass. July 18, 2018) (same).

Dr. Leitzinger to calculate each Claimant's *pro rata* share of the Net Settlement Fund as determined by the calculation described above in § 2.²¹

4. Processing Challenged Claims

4.1 The Settlement Administrator, in conjunction with Dr. Leitzinger and Class Counsel, shall review any and all written challenges by Claimants to the determinations of the Settlement Administrator. If, upon review of a challenge and supporting documentation, the Settlement Administrator decides to amend or modify its determination of any Claimant's net unit purchases, distribution amount, and or *pro rata* share of the Net Settlement Fund, it shall advise the Claimant that made the challenge. These determinations shall be final, subject to the appeals process described in § 7.2 below.

4.2 Where the Settlement Administrator determines that a challenge requires additional information or documentation, it will so advise the Claimant and provide that Claimant an opportunity to cure the deficiency within 21 days. 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 and/or email, which notification shall be deemed final subject to any appeal and decision by the Court.

4.3 If the Settlement Administrator 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, which 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 Settlement Administrator reviews all submitted claims and works with

²¹ Leitzinger Decl. ¶ 7.

Dr. Leitzinger to determine the amount each Claimant is entitled to receive from the Net Settlement Fund, the Settlement Administrator will prepare a final report for the Court's review and approval. The report will explain the tasks and methodologies employed by the Settlement 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 Settlement 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 Settlement 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 Settlement Administrator, the Settlement Administrator shall issue a check or wire payable to each Claimant that has submitted a complete and valid Claim Form.

6.2 It is anticipated that the entire Net Settlement Fund will be distributed in a single distribution. However, subject to further order of the Court, any monies from the Net Settlement Fund that remain unclaimed after the first distribution shall, if economically feasible, be distributed to Claimants in an additional distribution or distributions based on the same calculations of the Claimants' *pro rata* combined total of brand and/or generic Intuniv 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), 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.²²

7. Resolution of Disputes

7.1 In the event of any disputes between Claimants and the Settlement Administrator on any subject (e.g., timeliness, required completeness or documentation of a claim, or the calculation of the Claimant's unit purchases, share of the net settlement fund, and/or amount payable), the decision of the Settlement 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 Settlement 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 Settlement Administrator and Class Counsel, within 21 days of the Settlement Administrator's final rejection notification to the Claimant.

²² In the experience of Class Counsel, based on numerous prior distributions in similar cases, all net settlement proceeds are typically distributed in a single distribution, obviating the need for additional distributions or for any *cy pres* payments.