

**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)

**MEMORANDUM IN SUPPORT OF DIRECT PURCHASER CLASS PLAINTIFFS'
UNOPPOSED MOTION TO DISTRIBUTE NET SETTLEMENT FUND**

Plaintiffs Meijer, Inc., Meijer Distribution, Inc, and QK Healthcare Inc., individually and on behalf of the certified direct purchaser class, respectfully move the Court for entry of an Order (i) approving the determinations of the Court-approved settlement administrator, A.B. Data, Ltd., concerning the claims submitted in connection with the direct purchaser class's settlement with defendants Shire plc, Shire LLC, and Shire U.S., Inc. ("Shire"); (ii) approving and authorizing payments totaling \$46,843.56 from the settlement fund to A.B. Data and Econ One, the economic consultant retained by lead class counsel to assist A.B. Data with claims administration, for fees and expenses incurred or to be incurred in connection with the settlement administration process; (iii) approving and authorizing the distribution of the net settlement fund, less administration-related costs and federal and state taxes owed on the fund for the 2024 and 2025 tax years, *pro rata* to the 47 approved claimants; and (iv) finally and forever barring any further or additional claims against the net settlement fund.

I. SETTLEMENT APPROVAL

On July 2, 2024, the Court granted preliminary approval of the proposed settlement between the direct purchaser class and Shire providing for the payment of \$58 million in cash to the class in exchange for dismissal of the direct purchaser actions with prejudice and the

provision of releases set forth in the parties' settlement agreement.¹ The preliminary approval order approved the form and manner of settlement notice to the direct purchaser class and appointed A.B. Data as settlement administrator and Huntington National Bank as escrow agent.²

On November 6, 2024, the Court granted final approval of the settlement.³ The final approval order also approved the direct purchasers' proposed allocation plan, which set forth the procedures and methods to be used by lead class counsel and A.B. Data to allocate and distribute the net settlement fund to claimants that submitted valid claims, and authorized lead class counsel and A.B. Data to begin administration and distribution of claim forms and the net proceeds of the settlement in accordance with the allocation plan.⁴ Pursuant to the final approval order, the Court has retained jurisdiction over this action and all parties in this action, including all class members, for all matters relating to the settlement.⁵

II. CLAIMS ADMINISTRATION

A. Dissemination of Claim Forms

Following entry of the final approval order, lead class counsel worked with A.B. Data and Econ One to prepare the settlement claim form and to calculate each class member's total net unit purchases of brand and generic Intuniv based on transactional sales data produced by Shire and Actavis in the litigation and assignments and data submitted in connection with the Actavis settlement.⁶ A separate, individualized claim form was prepared for each class member and

¹ Order Granting Direct Purchaser Class Pls.' Unopposed Mot. for Prelim. Approval of Settlement with Shire, ECF No. 742.

² *Id.* ¶¶ 7–12.

³ Order Granting Final Approval of Direct Purchaser Class Pls.' Settlement with Shire, ECF No. 750.

⁴ *Id.* ¶ 10.

⁵ *Id.* ¶ 19.

⁶ Decl. of Eric Miller in Supp. of Direct Purchaser Class Pls.' Mot. to Distribute Net Settlement Fund ¶¶ 9–10 (“Miller Decl.”) (filed herewith).

populated with that class member's (i) name and address and (ii) estimated net direct purchases of brand and generic Intuniv during the relevant periods.⁷ The claim form instructed class members to review the form and, if they wished to receive their *pro rata* percentages of the net settlement fund, to sign and return it by January 6, 2025.⁸ Class members were given the option to either (i) agree to the pre-populated volumes of brand and generic Intuniv purchases, or (ii) provide their own purchase data supporting a claim for a different amount.⁹ An unpopulated version of the claim form distributed to class members is attached as Exhibit 1 to the accompanying declaration of Eric Miller.

B. Accepted Claims

A.B. Data received claims from 47 of the 50 known members of the direct purchaser class, all of which were valid and accepted.¹⁰ A.B. Data and lead class counsel, in consultation with Econ One, evaluated all returned claim forms and any documentation submitted in support and worked with claimants to address any missing or deficient information.¹¹ After all deficiencies had been remedied, Econ One calculated the *pro rata* share of the net settlement fund due to each claimant that submitted a valid and approved claim form in accordance with the allocation plan.¹²

One class member, Walmart, submitted a previously unknown assignment of rights from another known class member and data substantiating the qualifying purchases of brand and

⁷ *Id.* ¶ 10; Direct Purchaser Pls.' Plan of Allocation for the Direct Purchaser Class ¶ 1.1 ("Allocation Plan").

⁸ Miller Decl. ¶ 13.

⁹ *Id.*; Allocation Plan ¶ 1.1.

¹⁰ Miller Decl. ¶ 14.

¹¹ Miller Decl. ¶ 16; Allocation Plan ¶¶ 3.1–3.3.

¹² Miller Decl. ¶ 16; Allocation Plan ¶ 3.4.

generic Intuniv covered by that assignment.¹³ In accordance with the allocation plan, Econ One adjusted the class members' *pro rata* shares to reflect this assignment by adding the volumes of assigned qualifying brand and generic Intuniv purchases to the assignee class member's purchase volumes and reducing the assignor class member's brand and generic Intuniv purchase volumes by the same amounts.¹⁴

Claims administration is now complete, and A.B. Data and lead class counsel have determined that 47 claimants submitted valid claims and are eligible, with the Court's approval, to receive a *pro rata* share of the net settlement fund.¹⁵ The eligible claimants include 94% of the 50 class members and represent over 99% of the alleged overcharges.¹⁶ A list of the approved claimants and their *pro rata* shares is included as Exhibit 2 to the Miller Declaration.

C. Unreturned Claim Forms

Three class members—Advanced Scientific Supply, DMS Pharmaceutical, and Masters Specialty Pharmaceutical—did not submit claim forms.¹⁷ As detailed in the Miller Declaration, A.B. Data and lead class counsel confirmed that each of these entities had received a claim form by mail and/or email and made reasonable efforts to contact them by both phone and email.¹⁸ None of these three class members submitted a claim for the 2020 Actavis settlement or responded to Shire's 2024 discovery requests to absent class members.¹⁹ Lead class counsel made extensive efforts to contact Advanced Scientific Supply and DMS Pharmaceutical on both

¹³ *Id.* ¶ 15.

¹⁴ *Id.*; Allocation Plan ¶ 2.1.

¹⁵ Miller Decl. ¶ 17.

¹⁶ *See id.* ¶ 20.

¹⁷ *Id.* ¶ 18.

¹⁸ *Id.* ¶ 19.

¹⁹ *Id.*

occasions, including doing exhaustive searches for alternative contact information, but were unsuccessful.²⁰ Masters Specialty Pharmaceutical affirmatively indicated to lead class counsel, both in connection with the Actavis settlement and absent class member discovery, that it had no interest in participating in this litigation.²¹ Based on Econ One's estimates, these three class members collectively would have been allocated 0.58% of the net settlement fund.²²

D. Challenged Claims

Five class members disputed the pre-populated estimates of qualifying net direct brand and/or generic Intuniv purchases in their claim forms and submitted their own purchase records supporting alternative amounts.²³ For three of the five class members that challenged the pre-populated estimates, Econ One reviewed the data submitted, determined it was valid, and, after conferring with lead class counsel, modified its determination of these class members' total qualifying purchases accordingly.²⁴ The two other class members that initially disputed the pre-populated totals ultimately agreed to accept them.²⁵

E. Rejected Claims

A.B. Data received two claim forms from non-class members without documented assignments. Both claims were submitted by individuals, ostensibly for prescriptions of Intuniv purchased from local pharmacies, and neither provided documentation supporting any qualifying direct purchases.²⁶ On February 3, 2025, A.B. Data sent letters to each of these individual claimants by email advising that, based on the information provided in their claim forms, they

²⁰ *Id.*

²¹ *Id.*

²² *Id.* ¶ 20.

²³ *Id.* ¶ 21.

²⁴ *Id.*; *see also* Allocation Plan ¶ 4.1.

²⁵ Miller Decl. ¶ 21.

²⁶ *Id.* ¶ 22.

were not class members and ineligible to participate in the settlements and, therefore, their claims had been rejected.²⁷ The letters explained that the claimants were entitled to appeal the rejections of their claims to the Court, explained the procedure for doing so, and indicated that any appeal had to be postmarked by February 24, 2025.²⁸ Neither claimant appealed.²⁹ Copies of the final rejection letters are attached as Exhibit 3 to the Miller Declaration.

F. Net Settlement Fund

The balance of the settlement account as of April 11, 2025 was \$38,476,283.41.³⁰ A.B. Data has paid a total of \$157,315.00 in federal and state taxes owed on the settlement fund for the 2024 and 2025 and confirms that no additional taxes are owed.

A.B. Data has incurred \$24,372.16 in unpaid professional fees and expenses for settlement notice and claims administration and anticipates incurring an additional \$9,283.90 in fees and expenses to complete distribution of the net settlement fund to the approved claimants, respond to claimant inquiries, and close administration of the settlement.³¹

Econ One has incurred \$13,187.50 in unpaid professional fees and expenses for reviewing the claim forms and supporting documentation and calculating class members' *pro rata* shares of the net settlement fund.³²

Less the above-referenced expenses for settlement administration and 2024–2025 tax payments, the net settlement fund of \$38,429,439.85 (which includes all interest accrued to date),

²⁷ *Id.* ¶ 23 & Ex. 3.

²⁸ *Id.* ¶ 23 & Ex. 3.

²⁹ *Id.* ¶ 23.

³⁰ *Id.* ¶ 27.

³¹ *Id.* ¶ 24.

³² *Id.* ¶ 25.

along with any additional interest accrued before its distribution, with the Court's permission, will be distributed *pro rata* to the 47 approved claimants.

III. CONCLUSION

Based on the foregoing, the direct purchaser class plaintiffs respectfully request that the Court (i) approve the administrative determinations of A.B. Data concerning the claims submitted in connection with the Shire settlement; (ii) approve and authorize payments of \$33,656.06 to A.B. Data and \$13,187.50 to Econ One, the economic consultant retained by class counsel to assist A.B. Data with the claims administration process, for fees and expenses incurred and to be incurred in connection with the claims administration process; (iii) approve and authorize the distribution of the net settlement fund, less administration-related costs and tax payments for the 2024 and 2025 tax years, *pro rata* to the 47 approved claimants; and (iv) finally and forever bar any further or additional claims against the net settlement fund.

Dated: April 14, 2025

Respectfully submitted,

/s/ Thomas M. Sobol

Thomas M. Sobol (BBO #471770)
Abbye R. Klamann Ognibene (BBO #708584)
Rachel A. Downey (BBO #706639)
Claudia Morera (BBO #709507)
HAGENS BERMAN SOBOL SHAPIRO LLP
1 Faneuil Hall Square, 5th Floor
Boston, MA 02109
(617) 482-3700
tom@hbsslaw.com
abbyeo@hbsslaw.com
claudiam@hbsslaw.com
racheld@hbsslaw.com

Lead Counsel for the Direct Purchaser Class

John D. Radice
Kenneth Pickle
Clark Craddock
April D. Lambert

Joseph H. Meltzer
Terence S. Ziegler
KESSLER TOPAZ MELTZER & CHECK, LLP
280 King of Prussia Road

RADICE LAW FIRM, P.C.
475 Wall Street
Princeton, NJ 08540
(646) 245-8502
jradice@radicelawfirm.com
kpickle@radicelawfirm.com
ccraddock@radicelawfirm.com
alambert@radicelawfirm.com

Linda P. Nussbaum
Peter Moran
NUSSBAUM LAW GROUP, P.C.
1133 Avenue of the Americas, 31st Floor
New York, NY 10036
(917) 438-9189
lnussbaum@nussbaumpc.com
pmoran@nussbaumpc.com

Peter Kohn
Joseph T. Lukens
FARUQI & FARUQI LLP
One Penn Center, Suite 1550
1617 John F. Kennedy Boulevard
(212) 277-5770
pkohn@faruqilaw.com
jlukens@faruqilaw.com

David F. Sorensen
Caitlin G. Coslett
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 875-3000
dsorensen@bm.net
ccoslett@bm.net

Radnor, PA 19087
(610) 667-7706
jmeltzer@ktmc.com
tziegler@ktmc.com

Sharon K. Robertson
Donna M. Evans (BBO #554613)
COHEN MILSTEIN SELLERS & TOLL PLLC
88 Pine Street, 14th Floor
New York, NY 10005
(212) 838-7797
srobertson@cohenmilstein.com
devans@cohenmilstein.com

Joseph M. Vanek
Paul E. Slater
David P. Germaine
John P. Bjork
SPERLING & SLATER, LLC.
55 W. Monroe, Suite 3200
Chicago, IL 60603
(312) 641-3200
jvanek@sperling-law.com
pslater@sperling-law.com
dgermaine@sperling-law.com
jbjork@sperling-law.com

Steve D. Shadowen
Richard M. Brunell (BBO #544236)
Tina J. Miranda
HILLIARD SHADOWEN LLP
1717 W. Sixth St., Suite 370
Austin, TX 78703
(855) 344-2398
steve@hilliardshadowenlaw.com
rbrunell@hilliardshadowenlaw.com
tmiranda@hilliardshadowenlaw.com

Additional Counsel for the Direct Purchaser Class

CERTIFICATE OF SERVICE

I hereby certify that, on this date, the foregoing document was served by filing it on the Court's CM/ECF system, which will deliver notification of filing to all counsel of record.

Dated: April 14, 2025

/s/ Thomas M. Sobol
Thomas M. Sobol