

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

In re WELLBUTRIN XL)	
ANTITRUST LITIGATION)	Civil Action No.: 2:08-cv-2433
THIS DOCUMENT RELATES TO:)	
INDIRECT PURCHASER ACTIONS)	Honorable Mary A. McLaughlin

FILED

FEB 23 2013

MICHAEL J. K...
CLERK

**ORDER GRANTING PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF ENDPAYER CLASS SETTLEMENT,
AND APPROVING PROPOSED FORM OF NOTICE**

WHEREAS, the Court appointed Plaintiffs Aetna of California, Inc. ("Aetna"), Plumbers and Pipefitters Local 572 Health and Welfare Fund ("Local 572"), IBEW-NECA Local 505 Health and Welfare Plan ("Local 505") and Painters District Council No. 30 Health and Welfare Fund ("Painters") (collectively, "Plaintiffs") as Class Representatives of a Class that the Court certified on August 15, 2011,¹ defined as follows:

(1) All persons or entities who purchased an AB-rated generic bioequivalent of Wellbutrin XL ("generic XL") at any time during the "Class Period" (hereafter defined) in California, Florida, Nevada, New York, Tennessee and Wisconsin; and

(2) All entities that purchased 150 mg or 300 mg Wellbutrin XL before an AB-rated generic bioequivalent was available for such dosages AND purchased generic XL in the same state after generic XL became available in California, Florida, Nevada, New York, Tennessee and Wisconsin.

For purposes of the Class definition, persons and entities purchased Wellbutrin XL or generic XL if they paid some or all of the retail purchase price.

¹ *In re Wellbutrin XL Antitrust Litig.*, 282 F.R.D. 126 (E.D. Pa. 2011). (Dkt. No. 354).

Excluded from the Class are “flat co-payers” meaning natural persons whose only purchases of generic XL were made pursuant to contracts with third party payers (“TPP”) whereby the amount paid by the natural person for generic XL was the same regardless of the retail purchase price.

The Class Period begins November 14, 2005 and ends on April 29, 2011 (the “Class”).

WHEREAS, Plaintiffs and Defendant Valeant Pharmaceuticals, Inc. (“Valeant” or “Defendant”) have entered into a Settlement Agreement dated as of February 12, 2013 (the “Settlement Agreement”) (attached as Exhibit “A” to the Declaration of Peter St. Phillip in Support of Plaintiffs’ Motion for Preliminary Approval of the Settlement (“St. Phillip Decl.”));

WHEREAS, Plaintiffs have filed a Motion for Preliminary Approval of Settlement under FED. R. CIV. P. 23(e), Approval of the Proposed Form of Notice and Authorization to Disseminate Notice to the Class (the “Motion”);

WHEREAS, the Court has considered the Motion and the following materials filed in its support:

- Settlement Agreement (Ex. A to St. Phillip Decl.);
- Notice of Class Certification and Partial Proposed Biovail Settlement (Ex. B to St. Phillip Decl.);
- Summary Notice of Class Action Settlement (Ex. C to St. Phillip Decl.);
- Claim Forms (Ex. D to St. Phillip Decl.);
- Affidavit of Bob Gero (Ex. E to St. Phillip Decl.);
- Notice Proposal (Ex. F to St. Phillip Decl.);
- Escrow Agreement (Ex. G. to St. Phillip Decl.);

- Affidavit of Kenneth Wexler (Ex. H to St. Phillip Decl.);
- Declaration of Third Party Payer Allocation Counsel, Pamela B. Slate, In Support of the Allocation of Settlement Proceeds to Third Party Payer Class Members (Ex. I to St. Phillip Decl.);
- Declaration of Consumer Allocation Co-Counsel Wells Wilkinson In Support of the Allocation of Settlement Funds to Consumer Class Members (Ex. J to St. Phillip Decl.);
- Declaration of Matthew B. Sears of Class Action Settlement Services, LLC (Ex. K to the St. Phillip Decl.); and
- Memorandum In Support of Plaintiffs' Motion for Preliminary Approval of Settlement and Proposed Form of Notice

and

WHEREAS, the Court finds, subject to final determination following a hearing on notice to potential class members, that the Settlement Agreement and its accompanying Plan of Allocation were entered into at arm's length and their terms are sufficiently fair, reasonable and adequate for purposes of preliminary approval pursuant to FED. R. CIV. P. 23(e); notice of the settlement as proposed by Plaintiffs shall be provided to the Class (as defined in this Order) and a final approval hearing ("Fairness Hearing") should be held as provided in this Order;

NOW, THEREFORE, IT IS HEREBY ORDERED that:

Jurisdiction

1. This Court has jurisdiction over this action and over the parties to the Settlement Agreement and non-settling Defendants SmithKline Beecham Corporation, d/b/a GlaxoSmithKline ("GSK").

Preliminary Approval of Settlement Agreement

2. The proposed Settlement Agreement is preliminarily approved, subject to a final determination following a hearing pursuant to FED. R. CIV. P. 23(e).

Appointment of Claims Administrator

3. Class Action Settlement Services, LLC (“Claims Administrator”) is appointed Claims Administrator for the settlement. The Claims Administrator will be responsible for: (a) establishing a Post Office Box and information telephone line (to be included in the Settlement Notice and Summary Notice) for the purpose of communicating with Class members; (b) accepting and maintaining documents sent from the Class members including exclusion requests, Claim Forms, and other documents relating to claims administration; and (c) administering claims for allocation of funds among Class members.

Appointment of Notice Administrator

4. Heffler Claims Administration (“Heffler”) (“Notice Administrator”) is appointed Notice Administrator for the Settlement and is approved to disseminate notice to the Class, establish a settlement website, and administer the Notice Program referenced *infra* at Paragraph 6.

Appointment of Escrow Agent

5. Signature Bank is appointed Escrow Agent for the Settlement and is approved to hold and invest the escrow funds under the terms set forth in the Escrow Agreement (Ex. G to the St. Phillip Decl.).

Notice to Potential Class Members

6. The Court approves the Notice of Pendency and Proposed Settlement of Class Action (the “Settlement Notice”) and the Summary Notice of Class Action Settlement for publication (“Summary Notice”), attached as Exhibits B and C to the St. Phillip Decl., and finds that they are the best notice practicable under the circumstances, due and sufficient notice to all persons entitled thereto, and therefore satisfy the requirements of due process and FED. R. CIV. P. 23(e).

7. The Notice Program, as detailed in Exhibits E and F to the St. Phillip Decl. satisfies the requirements of due process FED. R. CIV. P. 23(e), and is otherwise fair and reasonable, and thus is approved for dissemination to the Class. The Settlement Administrator shall cause a copy of the Settlement Notice and Claim Forms, in the form provided as Exhibits B, C, and D to the St. Phillip Decl., to be provided to all persons who request it. The Settlement Notice and Proof of Claim form shall state that, to be timely, Proof of Claim forms must be received by the Claims Administrator no later than 180 days from the date of entry of this Order.

8. The Notice Administrator shall also cause a website to be established for the purpose of this settlement, www.wx1classaction.com (the “Settlement Website”) within 45 days after the entry of this Order. The Settlement Notice and the Summary Notice will direct Settlement Class members to the Settlement Website, and the Notice Administrator shall make available on the Settlement Website: (i) the Settlement Notice; (ii) Claim Forms; (iii) relevant court documents; and (iv) a list of critical dates and deadlines in the settlement process.

9. Class members will be advised in the Settlement Notice and Summary Notice of their right to exclude themselves from the Class and instructed in the Settlement Notice, in summary form

in the Summary Notice, and on the Settlement Website as to the procedure for submitting a request for exclusion.

Claim Forms

10. The Court approves the Claim Forms attached as Exhibit D to the St. Phillip Decl.

Fairness Hearing

11. No later than 7 days before the date of the Fairness Hearing, Class Counsel shall cause to be filed with the Clerk of the Court, and served upon counsel for Defendant, one or more affidavits or declarations of the Notice Administrator evidencing that the Notice Plan was administered, showing that notice was provided to the Class members in accordance with this Order. The Settlement Administrator shall maintain accurate records of the individual Class members to which the Administrator mails a Settlement Notice and Claim Form, and of any such mailed notice packets that are returned to the Notice Administrator as undeliverable.

12. The Fairness Hearing shall be held in this Court for the purpose of considering: (1) whether the proposed settlement is fair, reasonable and adequate and should be granted final approval by the Court; (b) whether to approve the proposed plan of allocation and distribution of settlement funds; and (c) whether Class Counsel's application for attorneys' fees and expenses, and for any incentive awards for the Class Representatives, should be granted. However, the Fairness Hearing may be adjourned by the Court without further notice to the Class other than that which may be posted at the Court and/or on the Court's and Claim Administrator's websites.

13. Class Counsel shall file their motion for final approval of the settlement, together with any request for attorneys' fees, incentive awards, and reimbursement of costs and expenses no fewer

than 15 days before the date provided herein as the last day for Class members to object to the Settlement or Class Counsel's Fee and Expense Application.

14. Persons wishing to object to the proposed settlement and/or be heard at the Fairness Hearing shall follow the following procedures:

- a. To object, a Class member individually or through counsel, must mail a written objection along with a summary statement outlining the position to be asserted and the grounds therefore together with copies of any supporting papers or briefs, via first class mail, postage prepaid, postmarked no later than May 31, 2013, 2013 to the Clerk of the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Philadelphia PA 19106-1729 with copies to the following counsel:

On behalf of Plaintiffs and the Class:

Kenneth A. Wexler
Amber M. Nesbitt
Justin N. Boley
Wexler Wallace, LLP
55 W. Monroe Street, Suite 3300
Chicago, IL, 60603
Telephone: (312) 346-2222
Fax: (312) 346-0022

Richard W. Cohen
Lowey Dannenberg Cohen & Hart, P.C.
One North Broadway
White Plains, NY 10601-2310
Tel: (914) 997-0500
Fax: (914) 997-0035

On behalf of Valeant Defendants:

Andrew D. Lazerow
Covington & Burling LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
(202) 662-6000

- b. Any Class member who files and serves a written objection by the deadline may also appear at the Fairness Hearing, either in person or through a lawyer hired at the Class member's expense, to object to the fairness, reasonableness or adequacy of the proposed settlement. Any lawyer representing a Class member for the purpose of making objections must also file a Notice of Appearance with the Clerk contemporaneously with the filing of any objection, and must also serve copies by mail to the counsel listed above.
- c. Class members or their lawyers intending to appear at the Fairness Hearing must serve on Class Counsel and Counsel for Defendants, and file with the Clerk, a Notice of Intent to Object, which includes (1) the name, address, and telephone number of the Settlement Class member and, if applicable, the name, address and telephone number of their attorney (who must file a Notice of Appearance); (2) the objection, including any papers in support thereof; and (3) the name and address of any witnesses to be presented at the Fairness Hearing, together with a statement as to the matters on which they wish to testify and a summary of the proposed testimony.
- d. Any Settlement Class member who files and serves a written objection by the deadline shall be subject to the jurisdiction of this Court for purposes of any discovery applications by Class Counsel of such Settlement Class member for documents or testimony of such Settlement Class member either by deposition or appearance at the Fairness Hearing.

- e. Any Settlement Class member who does not timely file and serve a Notice of Intent to Object, and any witness not identified in the Notice of Intent to Object, shall not be permitted to object or appear at the Fairness Hearing, except for good cause shown, and shall be deemed to have waived, forfeited, and shall be barred from raising, any objection by appeal, collateral attack or otherwise to the proposed settlement made at the Fairness Hearing, will not be heard at the Fairness Hearing, and shall be bound by the terms of the settlement and all orders of the Court.
- f. In the event the Fairness Hearing is rescheduled or continued, the Court will furnish all counsel with appropriate notice, and Class Counsel shall be responsible for communicating any such notice promptly to the Class by posting conspicuous notice on the website established by the claims administrator for the purpose of advising the Class about settlement.

15. The schedule by which the events referenced in ¶¶ 6-14 above shall occur is as follows:

	Event	Timing
1	Motion for preliminary approval filed	February 15, 2013
2	Notice and claim form to be mailed and posted on www.wxclassaction.com	March 8, 2013
3	Summary notice to be published	April 1, 2013

	Event	Timing
4	Deadline for filing motions for final approval and for attorneys' fees and reimbursement of expenses	May 15, 2013
5	Postmark deadline for requests for exclusion, objections and notices of intent to appear at Fairness Hearing	May 31, 2013
6	Deadline for responding to any objections	June 10, 2013
7	Fairness hearing	June 18, 2013, at 9:30 a.m.
8	Postmark deadline for filing claims	May 31, 2013

16. All proceedings in this action against Valeant Defendants only are hereby stayed until such time as the Court renders a final decision regarding the final approval of the settlement and, if it finally approves the settlement, enters final judgment and dismisses the action with prejudice; however, this Order shall have no impact on Plaintiffs' ability to obtain Valeant Defendants' cooperation in the litigation proceeding against Defendant GSK as set forth in the Settlement Agreement.

17. In the event that the settlement does not become final as to Valeant Defendants, then litigation of this action will resume in a reasonable manner to be approved by the Court upon joint application by the Plaintiffs and Valeant Defendants as necessary.

18. In the event the Settlement Agreement and the settlement are terminated and/or rescinded in accordance with the applicable provisions of the Settlement Agreement, the

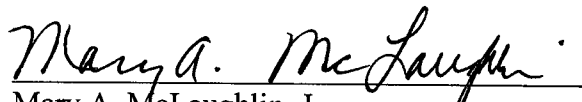
Settlement Agreement, the settlement, and all related proceedings shall, except as expressly provided to the contrary in the Settlement Agreement, become null and void, shall have no further force and effect, and Plaintiffs shall retain full rights to assert any and all causes of action against Valeant Defendants and any other released party, and Valeant Defendants shall retain any and all defenses and counterclaims hereto. This action shall hereupon revert forthwith to its respective procedural and substantive status prior to the date of execution of the Settlement Agreement and shall proceed as if the Settlement Agreement and all other related orders and papers had not been executed by Plaintiffs and Valeant Defendants.

19. Neither the Settlement Agreement nor any other settlement-related document nor anything contained therein or contemplated thereby no any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or in any other settlement-related document shall constitute, be construed as, or be deemed to be evidence of or an admission or concession by Valeant Defendants as to the validity of any claim that has been or could have been asserted against Valeant Defendants or as to any liability by Valeant Defendants as to any matter set forth in this Order.

IT IS SO ORDERED.

Date: February 22, 2013

BY THE COURT:


Mary A. McLaughlin, J.