

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE REMERON DIRECT PURCHASER
ANTITRUST LITIGATION

Master Docket No. 03-CV-0085 (FSH)

THIS DOCUMENT RELATES TO:
ALL ACTIONS

~~REMERON~~ ORDER CERTIFYING CLASS IN LIGHT OF SETTLEMENT,
PRELIMINARILY APPROVING PROPOSED SETTLEMENT,
AUTHORIZING NOTICE TO THE CLASS AND SETTING HEARING

Upon review and consideration of the Settlement Agreement dated August 24, 2005 and the exhibits thereto which have been publicly filed with the Court (collectively, the "Settlement Documents"), and Direct Purchaser Class Plaintiff's Motion for Preliminary Approval of Proposed Settlement with Defendants, for Certification of the Proposed Class in Light of Settlement, and for Approval of the Form and Manner of Notice to the Class, the attachments to such motion and the submissions of the parties, and having held a hearing on

August 30, 2005, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Court has jurisdiction over these actions and each of the parties.
2. In light of the proposed Settlement of the above-referenced action, the

Court finds that the following proposed class is certified pursuant to Fed. R. Civ. P. 23:

All persons or entities (and assignees of claims from such persons or entities) who directly purchased Remeron® from Defendants at any time during the period of January 16, 2002 through the date of the Settlement Agreement (the "Class Period").

Excluded from the Class are: (1) the defendants in this lawsuit, and their officers, directors, management and employees, subsidiaries and affiliates; (2) to the extent they would otherwise be in this Class, either as a direct purchaser or as an assignee of a direct purchaser, Walgreen Co., Eckerd Corporation, Albertson's, Inc., The Kroger Co., American Sales Company, Safeway, Inc., Hy-Vee, Inc., CVS Meridian, Inc., and Rite Aid Corporation, and their successors in interest, who initiated the actions styled CVS Meridian, Inc., et al. v. Organon, Inc., et al., No. 2:03-cv-05488-

FSH-PS, and Walgreen Co., et al. v. Organon, Inc., et al., No. 2:03-cv-02221-FSH-PS, which have been dismissed with prejudice; and (3) to the extent they would otherwise be in this Class, either as a direct purchaser or as an assignee of a direct purchaser, the 50 states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions and territories of the United States of America, who initiated the action styled State of Oregon et al. v. Organon USA Inc., et al., No. 2:04-cv-05126-FSH-PS, which has been dismissed with prejudice as of the date this Settlement becomes final in accordance with its terms.

3. Pursuant to Fed. R. Civ. P. 23(g), the Court hereby approves the following counsel as lead counsel for the Class (the "Class Counsel"):

Bruce E. Gerstein, Esq.
Noah Silverman, Esq.
Adam Steinfeld, Esq.
GARWIN GERSTEIN & FISHER LLP
1501 Broadway, Suite 1416
New York, New York 10036

Linda P. Nussbaum, Esq.
COHEN, MILSTEIN, HAUSFELD & TOLL, PLLC
150 East 52nd Street
30th Floor
New York, New York 10019

4. The Court approves plaintiff Louisiana Wholesale Drug Company, Inc. as class representative (the "Class Representative").

5. If the Settlement does not become final in accordance with paragraph 5 of the Settlement Agreement, the certification of the proposed Class shall be null and void, and shall have no further force and effect, and Plaintiff and Defendants shall have reserved and shall retain all of their rights to propose or oppose for any reason any and all class certification motions or the standing of any plaintiff, and Defendants shall have reserved and shall retain all of their rights to contest the adequacy of any proposed class or of any plaintiff or the Class Representative to serve as representative of any putative class.

6. Upon review of the record, the Court finds that the proposed Settlement between Plaintiff, the Class and Defendants, which was arrived at by arm's-length negotiations by highly experienced counsel, falls within the range of possible approval and is hereby preliminarily approved, subject to further consideration at the Fairness Hearing provided for below.

7. Both forms of notice to the Class attached as exhibits to Plaintiff's motion for preliminary approval – namely, the written notice for mailing to all known Class members and the summary notice for publication in the industry trade journal, *The Pink Sheet* (the "Notice") – satisfy the requirements of Rule 23(e) of the Federal Rules of Civil Procedure and due process, are otherwise fair and reasonable, and are thus approved for dissemination to the Class. Class Counsel shall cause this Notice to be disseminated no later than 20 days following entry of this Order.

8. Class Counsel shall also ensure that copies of the Notice and the Settlement Agreement are available to Class members in a conspicuous place on their websites.

9. Class Counsel ~~may~~^{shall} retain a claims administrator (the "Claims Administrator") to assist in providing notice to the Class, receiving requests for exclusion and communicating with Class members. All expenses incurred by such administrator must be reasonable, are subject to Court approval, are subject to the provisions of the Escrow Agreement, and shall be payable solely from the Settlement Fund.

10. Any person or entity who or that does not wish to remain a member of the Class must mail a written request for exclusion to the Claims Administrator, which must be received by the Claims Administrator by no later than Oct. 19, 2005 (the "Opt-Out Deadline"). The request for exclusion must: (1) clearly state the person's name, address, and the name of this case (In re Remeron Direct Purchaser Antitrust Litigation), and (2) clearly state that

such person or entity wishes to be excluded from the Class. Class members that submit valid and timely requests for exclusion shall not have any rights under the Settlement Agreement or the Settlement, and shall not be bound by the Settlement Agreement, the Settlement or any final judgment of this Court finally approving the Settlement.

11. All Class members who do not submit valid and timely requests for exclusion from the Class on or before the Opt-Out Deadline shall be bound by the Settlement Agreement, the Settlement and any final judgment of this Court finally approving the Settlement, in the event that the Settlement is finally approved by the Court and the Settlement becomes final in accordance with paragraph 5 of the Settlement Agreement.

12. A hearing on final settlement approval (the "Fairness Hearing") shall be held before this Court on Nov. 2, 2005, at 4:00 p.m. Eastern time, in the courtroom assigned to the Honorable Faith S. Hochberg, U.S.D.J., at the United States District Court for the District of New Jersey, Martin Luther King, Jr. Federal Building and United States Courthouse, 50 Walnut Street, Newark, New Jersey 07101-0999. At the Fairness Hearing, the Court will consider, *inter alia*: (a) the fairness, reasonableness and adequacy of the Settlement, (b) whether the Court should approve the proposed plan of allocation of the Settlement Fund among Class members; (c) whether the Court should approve awards of attorneys' fees and expenses to Class Counsel as described in the Settlement Agreement, (d) whether incentive awards should be awarded to certain named plaintiffs, and (e) whether entry of a final judgment terminating this litigation, in the form submitted by the parties to the Settlement Agreement, should be entered. The Fairness Hearing may be rescheduled or continued; in this event, the Court will furnish all counsel with appropriate notice. Class Counsel shall be responsible for communicating any such notice promptly to the Class by posting a conspicuous notice on their websites. The Court may

approve the Settlement with only such modifications (if any) as may be agreed to in a writing signed by all of the settling parties, if appropriate, without further notice to the Class.

13. All briefs and materials in support of final approval of the Settlement and entry of the final judgment proposed by the parties to the Settlement Agreement and the fee petition by Class Counsel and any application for incentive awards, shall be filed with the Court

and served on the following counsel by no later than Oct. 26, 2005;

with the exception of the fee petition and incentive award application that shall be due

On behalf of Class Counsel, Plaintiff and the Class:

Bruce E. Gerstein, Esq.
Noah Silverman, Esq.
Adam Steinfeld, Esq.
GARWIN GERSTEIN & FISHER LLP
1501 Broadway, Suite 1416
New York, New York 10036

Oct. 12, 2005 and shall be posted in a conspicuous place on the websites of Class Counsel:

On behalf of Defendants:

Laurence T. Sorkin, Esq.
Dean Ringel, Esq.
CAHILL GORDON & REINDEL LLP
80 Pine Street
New York, New York 10005-1702

14. Class members who do not exclude themselves from the Class and who wish to object or otherwise be heard with respect to the proposed Settlement, or to appear in person at the Fairness Hearing, must first send a Notice of Intention to Appear and a Summary Statement outlining the position(s) to be asserted and the grounds therefor, 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 New Jersey, Martin Luther King, Jr. Federal Building and United States Courthouse, 50 Walnut Street, Newark, New Jersey 07101-0999, with copies to the following counsel:

On behalf of Class Counsel, Plaintiff and the Class:

Bruce E. Gerstein, Esq.
Noah Silverman, Esq.
Adam Steinfeld, Esq.
GARWIN GERSTEIN & FISHER LLP
1501 Broadway, Suite 1416
New York, New York 10036

Linda P. Nussbaum, Esq.
COHEN, MILSTEIN, HAUSFELD & TOLL, PLLC
150 East 52nd Street
30th Floor
New York, New York 10019

On behalf of Defendants:

Laurence T. Sorkin, Esq.
Dean Ringel, Esq.
CAHILL GORDON & REINDEL LLP
80 Pine Street
New York, New York 10005-1702

To be valid, any such Notice of Intention to Appear and Summary Statement must be postmarked no later than fourteen (14) days prior to the Fairness Hearing. Except as herein provided, no person or entity shall be entitled to contest the terms of the proposed Settlement. All persons and entities who fail to file a Notice of Intention to Appear as well as a Summary Statement as provided above shall be deemed to have waived any such objection by appeal, collateral attack or otherwise and will not be heard in person at the Fairness Hearing.

15. All proceedings in these actions against the Defendants are hereby stayed until such time as the Court renders a final decision regarding the approval of the Settlement and, if it approves the Settlement, enters final judgment as and in the form provided in the Settlement Agreement and dismisses these actions with prejudice.

16. In the event that the Settlement does not become final pursuant to paragraph 5 of the Settlement Agreement, then, subject to approval of the Court, litigation of the

Class Action will resume in a reasonable manner to be approved by the Court upon joint application by the parties hereto.

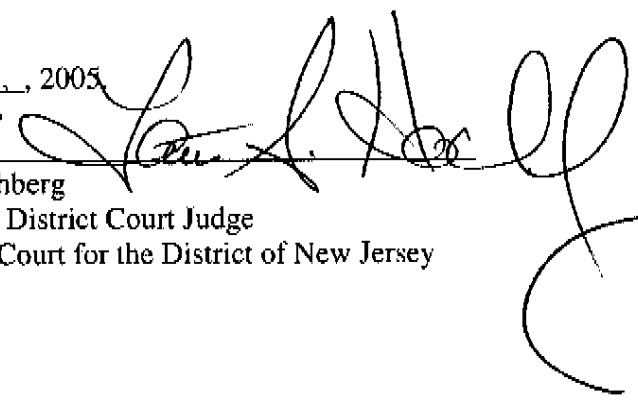
17. In the event the Settlement Agreement and the Settlement are terminated in accordance with the provisions of the Settlement Agreement, the Settlement Agreement, the Settlement, and all related proceedings shall, except as expressly provided to the contrary in the Settlement Agreement, become null and void, shall have no further force and effect, and Plaintiff shall retain full rights to assert any and all causes of action against Defendants and any other Released Party, and Defendants and the other Released Parties shall retain any and all defenses and counterclaims thereto. These actions shall thereupon revert forthwith to their 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; and upon application of counsel for Defendants and Class Counsel, this Court shall enter an order authorizing the parties to resume and complete discovery in these actions.

18. 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 by Defendants as to the validity of any claim that has been or could have been asserted against any or all of them or as to any liability by any or all of them or as to any matter set forth in this Order.

19. The Settlement Agreement, Plaintiff's motion for preliminary approval, and the brief in support of Plaintiff's motion for preliminary approval, ~~previously filed under seal,~~ *docketed immediately.* shall be ~~unsealed as of the entry of this Order.~~ Nothing in this paragraph or this Order shall

require disclosure of the confidential Letter Agreement referenced in paragraph 14 of the Settlement Agreement, ~~which shall remain under seal.~~

SO ORDERED this ^{ye} 30 day of Aug., 2005



Faith S. Hochberg
United States District Court Judge
U.S. District Court for the District of New Jersey