

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE REMERON END-PAYOR)
ANTITRUST LITIGATION)

MASTER FILE NO. 02-CV-2007

THIS DOCUMENT RELATES TO:)
ALL ACTIONS)

Hon. Faith S. Hochberg

**ORDER CONDITIONALLY CERTIFYING SETTLEMENT CLASS,
APPROVING REPRESENTATION OF ATTORNEYS GENERAL AND
PRELIMINARILY APPROVING PROPOSED SETTLEMENT**

Upon review and consideration of the Settlement Agreement dated September 28, 2004, the attachments thereto which have been publicly filed with the Court, and "Rider A" filed separately under seal therewith (collectively, the "Settlement Documents"), and having been fully advised in the premises, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

**Preliminary Approval of Settlement and
Conditional Certification of the Settlement Class**

1. The Court has jurisdiction over these actions and each of the Parties.
2. The Court, for purposes of this Order, adopts the definitions set forth in the Settlement Agreement.
3. "Rider A" shall be accepted and filed under seal. The Court finds that it is appropriate for "Rider A" to be maintained under seal in light of the Court's determination that the terms of "Rider A" are not relevant to the evaluation and determination by members of the proposed Settlement Class described and defined herein as to whether the Settlement (defined below) proposed to this Court is fair and adequate to such members and/or to the Settlement Class.

4. The terms of the Settlement Agreement, including the attachments and "Rider A," are hereby preliminarily approved, subject to further consideration at the Fairness Hearing provided for below. The Court preliminarily finds that the settlement embodied in the Settlement Agreement (the "Settlement") falls sufficiently within the range of possible approval so that notice of the Settlement should be given as provided in this Order.

5. For purposes of the Settlement and the Settlement Agreement only and pending final approval of the Settlement Agreement and the Settlement, the Court conditionally certifies a Settlement Class consisting of:

All End Payors (including any assignees of such End Payors) who purchased and/or paid all or part of the purchase price of Mirtazapine Products in the United States during the period beginning June 15, 2001 through the date of this Preliminary Approval Order. Excluded from the Settlement Class are (i) Defendants and any of their subsidiaries and affiliates, (ii) all federal governmental entities, agencies and instrumentalities, and (iii) all wholesalers and retailers and all persons or entities that purchased Mirtazapine Products primarily for purposes of resale.

Pursuant to the Settlement Agreement, the United States is deemed to comprise the 50 states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and all possessions and territories of the United States of America.

6. The Court preliminarily finds that the proposed Settlement Class meets all applicable requirements of Fed. R. Civ. P. 23.

7. The Court preliminarily approves as class representatives United Food and Commercial Workers Local 56 Health & Welfare Fund, Board of Trustees of United Food and Commercial Workers Local 56 Health & Welfare Fund, Vista Healthplan, Inc., Gayle Taylor, Diann Mason and Robert Kapella, and/or on behalf of natural person members of the Settlement Class who reside in their respective states the Attorneys General of Connecticut, Georgia,

Indiana, Iowa, Massachusetts, Nebraska, North Dakota, Oklahoma, South Carolina, Utah, and Wisconsin (the "Class Representatives").

8. If the Settlement Agreement does not become Effective in accordance with its terms, the certification of the Settlement Class shall be null and void, and shall have no further force and effect, and Plaintiffs 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 Plaintiffs or any Class Representative to serve as representatives of any putative class or of any Plaintiff State, whether acting through its Attorney General or any other official, to represent any person or entity or class of persons and/or entities.

9. The Court preliminarily finds the below-listed counsel have adequately and fairly represented the Settlement Class:

Arthur M. Kaplan, Esq.
Jeffrey S. Istvan, Esq.
Fine, Kaplan and Black, RPC
1845 Walnut Street, 23rd Floor
Philadelphia, Pennsylvania 19103

Joseph H. Meltzer, Esq.
Schiffrin & Barroway, L.L.P.
Three Bala Plaza East, Suite 400
Bala Cynwyd, Pennsylvania 19004

Plaintiffs' Co-Lead Counsel

Patricia A. Conners, Esq.
Director, Antitrust Division
Elizabeth G. Arthur, Esq.
Assistant Attorney General
Office of the Attorney General
State of Florida
The Capitol, Plaza Level One
Tallahassee, Florida 32399-1050

Kim Van Winkle, Esq.
Assistant Attorney General
Antitrust and Civil Medicaid Fraud Division
Office of Attorney General
State of Texas
P.O. Box 12548
Austin, Texas 78711-2548

State Liaison Counsel

Notice To Potential Settlement Class Members

10. The Court finds that the form and content of the proposed Notice of Settlement (the "Notice") and the Notice Plan proposed by Plaintiffs are in full compliance with the requirements of Federal Rule of Civil Procedure 23, state equitable, statutory, and common law authority, and due process. The Court further finds that the Notice provides to the members of the Settlement Class sufficient information to make informed and meaningful decisions regarding their options in this litigation and the effect of the Settlement on their rights, and that the Notice and the Notice Plan constitute the best method of notice practicable under the circumstances. The Court approves the Notice and the Notice Plan.

11. The Court finds that the proposed 45-day Notice Period is adequate for members of the Settlement Class to exercise their rights to object to the proposed Settlement or to exclude themselves from the proposed Settlement Class. The Notice Period shall begin on March 14, 2005 and end on April 27, 2005.

12. Plaintiffs' Co-Lead Counsel and State Liaison Counsel shall cause the Notice to be disseminated to the Settlement Class in accordance with the Notice Plan and the terms of this Order. Prior to the Fairness Hearing, Plaintiffs' Co-Lead Counsel and State Liaison Counsel shall serve and file or cause to be served and filed sworn statements attesting to compliance with the Notice Plan.

13. The Court may, for good cause, extend the hearing date or any of the deadlines set forth in this Order without further notice to the Settlement Class; *provided* that the Court shall consult with the Representatives before extending any such deadline to permit the Representatives to attempt to make any modifications to any other deadlines contemplated by the Settlement Agreement that may become necessary or appropriate as a result of any such extension. 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 Parties, if appropriate, without further notice to the Settlement Class.

Requests for Exclusion From the Settlement Class

14. Settlement Class members that submit valid and timely requests for exclusion from the Settlement Class postmarked on or before April 27, 2005 (the "Opt-Out Deadline"), pursuant to and complying with the instructions contained in the Notice, shall not have any rights under the Settlement Agreement or the Settlement, and shall not be bound by the Settlement Agreement, the Settlement or the Final Judgment and Order.

15. All members of the Settlement Class who do not submit valid and timely requests for exclusion from the Settlement Class postmarked on or before the Opt-Out Deadline pursuant to and complying with the instructions contained in the Notice shall be bound by the Settlement Agreement, the Settlement and the Final Judgment and Order, in the event that the Settlement Agreement and the Settlement are finally approved by the Court and the Settlement Agreement becomes Effective in accordance with its terms.

16. If a potential Third Party Payor member of the Settlement Class mails a timely request for exclusion, but does not provide the information relating to its Third Party Payor Opt-Out Purchases requested by the Notice of Settlement to be included in any such request for exclusion, counsel for Defendants, Plaintiffs' Co-Lead Counsel and/or State Liaison

apply to the Court in order to
Counsel may proceed with discovery against any such Third Party Payor Settlement Class ^{member} *pursuant to*
~~member without the need for further application to this Court or any other court of competent~~ *F.R.C.P. 45,*
~~jurisdiction;~~ *provided* that, in such event, if counsel for Defendants, Plaintiffs' Co-Lead Counsel
and/or State Liaison Counsel are unable to obtain such information as they shall deem
satisfactory for the purpose of determining Total Third Party Payor Opt-Out Purchases, due to
the failure of any such Third Party Payor to produce such information, the Court shall entertain
application of the Representatives at that time to strike such Third Party Payor's request for
exclusion; *further provided* that in the event that counsel for Defendants, Plaintiffs' Co-Lead
Counsel and/or State Liaison Counsel obtain information demonstrating that the information
provided by any Third Party Payor relating to Third Party Payor Opt-Out Purchases in such
request for exclusion differs materially from such Third Party Payor's actual Opt-Out Purchases,
the Court shall entertain application of the Representatives at that time to strike such Third Party
Payor's request for exclusion.

Confidentiality

17. No information received by the Settlement Administrator (defined below) in connection with the Settlement that pertains to a particular member of the Settlement Class, nor any information contained in a request for exclusion (other than the identity of the person or entity requesting exclusion), shall be disclosed to any person or entity other than counsel to the Parties to the Settlement Agreement or the Court.

Fairness Hearing

18. A hearing on final settlement approval (the "Fairness Hearing") shall be held before this Court on June 28 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. The date for the Fairness Hearing is subject to adjournment automatically upon notice to this Court by any Party to the Settlement Agreement, to allow the parties additional time to obtain and analyze information relating to Rider A and/or to seek and obtain a decision from this Court with respect to any dispute concerning Rider A. At the Fairness Hearing, the Court will consider: (a) the fairness, reasonableness and adequacy of the Settlement and the Settlement Agreement, (b) whether the Settlement Class should be certified, for settlement purposes only, (c) whether the Court should approve awards of attorneys' fees and expenses to State Liaison Counsel and Plaintiffs' Co-Lead Counsel as described in the Settlement Agreement, (d) whether incentive awards should be awarded to certain named Plaintiffs who participated in prosecuting this litigation and achieving the Settlement, and (e) whether entry of a Final Judgment and Order terminating this litigation, in the form submitted by the Parties to the Settlement Agreement, should be entered.

19. All briefs and materials of any Party in support of final approval of the Settlement and the Settlement Agreement and entry of the Final Judgment and Order proposed by the Parties to the Settlement Agreement and the fee petition by Plaintiffs' Co-Lead Counsel and any application for incentive awards to named End-Payor Plaintiffs, shall be served on the Representatives identified in Paragraph 20 of this Order and filed with this Court at least thirty (30) calendar days before the Fairness Hearing.

20. Any member of the Settlement Class who or that has not filed a valid and timely request for exclusion in the manner set forth herein may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to any of the matters described in items (a) through (c) listed above in Paragraph 18, only if, on or before ^{May 28, 2005} ~~the Opt-Out Deadline~~, said person or entity: (a) files with 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, a notice of such person's intention to appear ("Notice of Appearance"), as well as a statement (the "Statement") indicating the basis for such person's support of or opposition to the Settlement, or such other matter listed in any of divisions (a) through (e), inclusive, of Paragraph 18, or the dismissal of claims, or the entry of final judgment, and all papers, briefs and other materials in support of such position, ~~and (b) serves copies of such Notice of Appearance, Statement and all papers, briefs and other materials that such person files with the Clerk, either in person or by mail, by the same date, on the following Representatives:~~

Representative Counsels shall be prepared to respond at the Fairness Hearing to any statements in opposition of the settlement.

~~Arthur M. Kaplan, Esq.
Jeffrey S. Istvan, Esq.
Fine, Kaplan and Black, RPC
1845 Walnut Street, 23rd Floor
Philadelphia, Pennsylvania 19103~~

~~Joseph H. Meltzer, Esq.
Schiffman & Barroway, L.L.P.
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Bala Cynwyd, Pennsylvania 19004~~

~~*Plaintiffs' Co-Lead Counsel*~~

~~Patricia A. Conners, Esq.
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P.O. Box 12548
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~~*State Liaison Counsel*~~

Joseph Rebein, Esq.
Shook, Hardy & Bacon LLP
2555 Grand Boulevard
Kansas City, Missouri 64108-2613

Counsel for Defendants

21. Any member of the Settlement Class who does not file, ~~and serve on all~~
~~Representatives,~~ ^{by May 28, 2005, as reflected in} an objection ~~within the time and in the manner provided in~~ the Notice and this Order, shall be deemed to have waived any such objection by appeal, collateral attack or otherwise.

Settlement Administrator

22. The Court hereby approves and appoints Complete Claim Solutions, Inc. to serve as the settlement administrator for the Settlement (the "Settlement Administrator"). The Settlement Administrator shall ensure that the members of the Settlement Class receive notice of the Settlement as set forth in the Notice Plan and shall review, process and recommend the approval or disapproval by the Court of the timely filed proofs of claim of members of the Settlement Class and pay those claims which are approved to Settlement Class members entitled to participate in the Settlement, pursuant to a plan of distribution to be jointly proposed by Plaintiffs' Co-Lead Counsel and State Liaison Counsel and to be approved by the Court, ^{consistent with the allocation percentages agreed to}
Other Provisions ^{by the parties and specified in the class notices.}

23. Pending the Court's final determination of whether the Settlement and the Settlement Agreement should be finally approved, neither the Plaintiffs nor any member of the Settlement Class, either directly, representatively, or in any other capacity, shall commence or prosecute any action or proceeding in any court or tribunal asserting any of the Released Claims, nor shall any Releasor (within the meaning of the Settlement Agreement) seek to establish liability or assert Claims on behalf of itself or any person or entity or class thereof against any of

the Releasees, in whole or in part, for any of the Released Claims. The Releasors have covenanted and agreed, to the fullest extent permitted by law, that they shall not hereafter seek to establish liability or assert Claims, on behalf of themselves or any other person or entity or class thereof, against any of the Releasees, in whole or in part, for any of the Released Claims. Upon the Effective Date of the Settlement, if the Releasors, or any member of the Settlement Class who has not timely and validly excluded itself from the Settlement Class and the Settlement, seeks to establish liability or assert any of the Released Claims in violation of Section II.B of the Settlement Agreement, then this Court or any court of competent jurisdiction may enter an injunction restraining prosecution of such proceeding.

24. After review of the proposed Notice Plan, the Court approves the expenditure of actual notice and administrative costs reasonably incurred in the amount and manner and to the extent provided for in Articles III and VI of the Settlement Agreement, for the purpose of providing Notices to members of the Settlement Class in accordance with the Notice Plan. The Escrow Agent is directed to pay such costs as they have been or are hereafter reasonably incurred upon joint written notice from the Representatives, as provided in the Settlement Agreement and the Escrow Agreement.

25. 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 the Settlement Agreement and, if it approves the Settlement and the Settlement Agreement, enters the Final Judgment and Order as and in the form provided in the Settlement Agreement and dismisses these actions with prejudice.

26. 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 the Plaintiffs shall retain full rights to assert any and all causes of action against Releasees and Defendants, and Releasees and Defendants 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, including the Injunction, had not been executed; and upon application of the Representatives, this Court shall enter an order authorizing the Parties to resume and complete discovery in these actions.

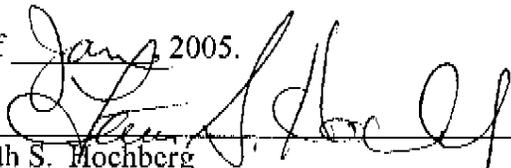
The parties shall give notice to the class that the settlement has become null and void in accordance with its own terms and that the Fairness Hearing is cancelled.

27. The Court, ^{preliminarily} finds that the Attorneys General of the Plaintiff States have the authority to represent, and settle and release the Released Claims of, (a) their respective states, (b) the past, present and future departments, burcaus, and agencies of the Plaintiff States as actual or alleged purchasers or reimbursers, (c) natural persons residing in their respective states, and (d) all other Releasors on whose behalf the Plaintiff States have agreed and purport to act pursuant to Section I.NN.1 of the Settlement Agreement.

28. Neither this Order nor the Settlement Agreement nor any other Settlement 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, the Settlement Documents or herein, 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, nor construed as or deemed to be evidence of or an admission or concession by any Plaintiff as to the absence of validity of any such claim or as to the validity of any defense. Neither this Order nor the Settlement Agreement nor any other Settlement Document, nor any of their provisions, nor any statement or document made or filed

in connection herewith or therewith, shall be filed, offered, received in evidence or otherwise used in this or any other action or proceeding or in any arbitration, except to consummate or enforce the Settlement Agreement or the terms of this Order.

SO ORDERED this th 25 day of Jan 2005.



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