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:	)	Honorable Mary A. McLaughlin
INDIRECT PURCHASER ACTION	)	

MEMORANDUM OF LAW IN SUPPORT OF INDIRECT PURCHASER PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT WITH THE VALEANT DEFENDANTS

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I. INTRODUCTION

Aetna Health of California, Inc. ("Aetna"), Plumbers & Pipefitters Local 572 Health and Welfare Fund, ("Local 572"), and Painters District Council No. 30 Health and Welfare Fund ("Painters") (collectively, "Plaintiffs"), submit this memorandum, on behalf of themselves and the certified class of end-payer purchasers (the "Class"), in support of their motion for final approval of their settlement with Valeant Pharmaceuticals International, Inc., f/k/a Biovial Corp., Biovail Laboratories, Inc., and Valeant International Bermuda, f/k/a Valeant International (Barbados) SRL f/k/a Biovail Laboratories International SRL (collectively, "Valeant").

The proposed settlement between Valeant and Plaintiffs (the "settlement") is fair, reasonable, and adequate and satisfies the class action settlement standards set forth by the Third Circuit in both *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975) and *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998). This settlement, therefore, should be approved.[1]

Plaintiffs allege that Valeant and co-Defendant SmithKline Beecham Corporation d/b/a GlaxoSmithKline ("GSK") unlawfully delayed the availability of generic versions of Wellbutrin XL, a brand-name anti-depressant prescription drug, in violation of state antitrust and consumer protection statutes, causing Plaintiffs and the Class to pay higher prices for Wellbutrin XL and its generic equivalents than they would have paid in a competitive market. After nearly four years of hard-fought active litigation, Plaintiffs and Valeant have reached a settlement that, if approved, would end the litigation between them. The Class has not settled with Valeant's co-Defendant GSK.

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[1] A copy of the Settlement Agreement was filed as Exhibit A to the Declaration of Peter D. St. Phillip, Jr. in Support of Plaintiffs' Motion for Preliminary Approval of Settlement ("*First St. Phillip Decl.*") (Dkt. No. 454-1).

The Settlement Agreement, if approved by the Court, resolves all claims under six states' laws against Valeant concerning the alleged suppression of generic competition for Wellbutrin XL for all Class members who paid for Wellbutrin XL and its generic equivalents during the period of November 14, 2005, to the present. The settlement provides for Valeant to pay $11.75 million dollars in cash plus the lesser of $500,000 or 50% of the actual costs of notifying the Class members of the settlement. The Settlement Fund will be divided into two parts: 10% of the total available settlement funds for consumers and 90% of the total available settlement funds for third-party payers ("TPPs"). This allocation was reached after arm's-length negotiations between attorneys advocating for consumers and TPPs. *See* Declaration of Pam Slate and Declaration of Wells Wilkinson (Dkt. No. 454-9 and -10), attached as Exhibits I and J to the *First St. Phillip Decl.* Class Counsel seeks Court approval of the proposed settlement because it represents an excellent result for the Class, given the risks of continued litigation, trial, and potential appeals. Class Counsel believes the settlement is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Class.

Per this Court's February 22, 2013 Order granting preliminary approval of the settlement, (Dkt. No. 456), on March 8, 2013, notice administrator Heffler Claims Administration ("Heffler") disseminated notice by direct mail and published notice online. Declaration of Christopher M. Walsh, dated May 13, 2013 ("Walsh Decl.") ¶¶ 5-10, attached as Exhibit D to the Declaration of Peter D. St. Phillip, Jr. in Support of Plaintiffs' Motion for Final Approval of the Settlement ("*Second St. Phillip Decl.*").[2] Heffler also published notice in a number of print and electronic media outlets. *Id.* ¶ 13. The notice described the precise terms of the settlement, including Class Counsel's intent to seek an award of attorneys' fees and reimbursement of

[2] The *Second St. Phillip Decl.* is being filed contemporaneously as an attachment to Plaintiffs' motion for attorneys' fees, reimbursement of expenses, and incentive awards from the Gross Settlement Fund.

expenses, and it directed Class members to the settlement website, www.wxlclassaction.com, for copies of the complete filing.

Pursuant to the Preliminary Approval Order, the postmark deadline for filing claims and lodging objections to the Settlement is May 31, 2013. If there are objections, Class Counsel will take discovery of the nature of the objection(s) and submit briefing on or before June 10, 2013. The Fairness Hearing is scheduled for June 18, 2013, at 9:30 a.m.

II. BACKGROUND

A. Summary of the Wellbutrin XL Antitrust Litigation

Plaintiffs incorporate herein the summary of the litigation set forth in the accompanying memorandum of law supporting Plaintiffs' motion for attorneys' fees, reimbursement of expenses, and incentive awards from the Gross Settlement Fund.

B. Summary of the Class Action Settlement

Following the May 11, 2012, decision granting summary judgment, the Class and Valeant began settlement discussions. *See Declaration of Kenneth Wexler* ("Wexler Decl.") ¶ 2 (Dkt. No. 454-8), attached as Ex. H to *First St. Phillip Decl.* After arm's-length negotiations, the parties reached a settlement resolving all claims in this litigation. *Id.* ¶ 4. Plaintiffs incorporate herein the summary of the settlement terms from their preliminary approval papers. *See* Pltfs.' Memo. Supp. Prelim. Approval at 4-5 (Dkt. No. 453).

III. ARGUMENT

A. Final Approval of the Settlement is Appropriate

Approval of a class action settlement is committed to the sound discretion of the Court. *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004). In general, the law strongly favors class action settlements.[3]

1. Standards for Court Approval of a Settlement

A class action settlement is approvable if it is "fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(2); *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 295 (3d Cir. 2011) (*en banc*). To guide courts in assessing whether a settlement warrants final approval, the Third Circuit has identified nine factors (often called the *Girsh* factors) to consider:

(1) the complexity, expense and likely duration of the litigation;

(2) the reaction of the class to the settlement;

(3) the stage of the proceedings and the amount of discovery completed;

(4) the risks of establishing liability;

(5) the risks of establishing damages;

(6) the risks of maintaining the class action through the trial;

(7) the ability of the defendants to withstand a greater judgment;

(8) the range of reasonableness of the settlement fund in light of the best possible recovery; and

(9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

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[3] *See, e.g.*, *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010) (recognizing the "strong presumption in favor of voluntary settlement agreements" and noting that it is "especially strong" in the context of class actions); *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation."); *Eichenholtz v. Brennan*, 52 F.3d 478, 486 (3d Cir. 1995) ("[T]he settlement of complex litigation before trial is favored by the federal courts.").

In re Ins. Brokerage Antitrust Litig., 579 F.3d 241, 258 (3d Cir. 2009) (citing *Girsh*, 521 F.2d at 157). No one factor is dispositive. *Hall v. Best Buy Co., Inc.*, 274 F.R.D. 154, 169 (E.D. Pa. 2011).

The Third Circuit has recently held that district courts should consider an additional set of factors, known as the *Prudential* factors:

> (1) the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages;
>
> (2) the existence and probable outcome of claims by other classes and subclasses;
>
> (3) the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved—or likely to be achieved—for other claimants;
>
> (4) whether class or subclass members are accorded the right to opt-out of the settlement;
>
> (5) whether any provisions for attorneys' fees are reasonable; and
>
> (6) whether the procedure for processing individual claims under the settlement is fair and reasonable.

In re Pet Food Products Liab. Litig., 629 F.3d 333, 350 (3d Cir. 2010) (citing *Prudential*, 148 F.3d at 323). Only the *Prudential* factors relevant to the litigation in question need be addressed. *Prudential*, 148 F.3d at 323-24.

District courts must make findings on each of the *Girsh* factors and, where appropriate, the *Prudential* factors; they may not simply substitute assurances from or conclusions by the parties for independent analysis of the settlement. *Pet Food*, 629 F.3d at 350. "The professional judgment of counsel involved in the litigation" is, however, "entitled to significant weight." *Fisher Bros. v. Phelps Dodge Indus., Inc.*, 604 F. Supp. 446, 452 (E.D. Pa. 1985). Counsel

should not be held to "an impossible standard, as a settlement is virtually always a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 179 (E.D. Pa. 2000) (citations, internal quotations omitted).

Furthermore, preliminary approval gives rise to a presumption of fairness when the court finds that (1) the negotiations occurred at arm's length, (2) there was sufficient discovery, (3) the proponents of the settlement are experienced in similar litigation, and (4) only a small fraction of the class objected. *In re Cendant Corp. Litig.*, 264 F.3d 201, 232 n.18 (3d Cir. 2001); *see* Preliminary Approval Order at 3 (finding that Settlement Agreement and plan of allocation were entered into at arm's length and warranted preliminary approval). "[W]here the court certifies the class before settlement negotiations commence[,] [it] can presume that the negotiations occurred at arm's length because [it has] already determined that the counsel negotiating on behalf of the class adequately represents the class's interests." *In re GMC Pick-Up Truck,* 55 F.3d at 814.

2. Evaluation of the Settlement Under the *Girsh* Factors

The court's analysis of the *Girsh* factors is to be viewed through the lens of the initial presumption of fairness that attaches to the settlement. *See Warfarin*, 391 F.3d at 539. This settlement meets each of the relevant factors for final approval.

i. The complexity, expense, and likely duration of the litigation

Antitrust class actions are "arguably the most complex action[s] to prosecute." *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, Civ. A. 03-4578, 2005 WL 1213926, at *11 (E.D. Pa. May 19, 2005) (quoting *In re Linerboard Antitrust Litig.*, 296 F. Supp. 2d 568, 577 (E.D. Pa. 2003) ("*Linerboard I*")). This case is no exception, as Plaintiffs describe in their accompanying memorandum of law in support of awards from the Gross Settlement Fund.

While the original deadlines for fact and expert discovery had passed when this case settled, much work still remained, including additional summary judgment briefing and argument and, finally, trial. This settlement saves substantial additional work and expense regarding the claims against Valeant. *See Warfarin*, 391 F.3d at 536 (approving settlement because, in part, "the time and expense leading up to trial would have been significant"); *PDC, Inc. v. 3M*, Civ. A. 04-5871, 2006 WL 2382718, at *13 (E.D. Pa. Aug. 14, 2006) (approving settlement where "in the absence of settlement, significant costs in terms of both time and money likely would result from the continued litigation of this case.").

This factor supports approval of the settlement.

ii. The reaction of the class to the settlement

Class reaction has been, to date, unequivocally positive. *See Declaraton of Matthew B. Sears* ¶ 3, attached as Exhibit E to the *Second St. Phillip Decl.* (56 claims and no objections received as of May 14, 2013). But the Class's reaction to the settlement cannot be fully scrutinized until the deadline for objection passes. Plaintiffs will address timely objections, if any, by supplemental briefing to be filed on or before June 10, 2013.

iii. The stage of the proceedings and the amount of discovery completed

Courts evaluate the procedural stage of a case at the time of settlement to assess whether counsel adequately appreciated the merits of the case while negotiating. *Warfarin*, 391 F.3d at 537 (citations omitted). "[C]ourts generally recognize that a proposed class action settlement is presumptively valid where . . . the parties engaged in arm's length negotiations after meaningful discovery." *Cullen v. Whitman Med Corp.*, 197 F.R.D. 136, 144-45 (E.D. Pa. 2000); *see also In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 630 (E.D. Pa. 2004) ("*Linerboard II*"). Settlements reached after discovery "are more likely to reflect the true value of the claim."

Boone v. City of Philadelphia, 668 F. Supp. 2d 693, 712 (E.D. Pa. 2009) (citing *Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304, 1314 (3d Cir. 1993)).

Here, fact and expert discovery on all but one issue were complete when the settlement was reached. In addition to the extensive document review and depositions Plaintiffs undertook during discovery, Plaintiffs subpoenaed several third parties; litigated discovery disputes; conducted a substantial investigation; and worked with experts in economics and the pharmaceutical industry to prepare for class certification and summary judgment. Thus, Class Counsel had ample information at the time they negotiated to weigh the merits of the case against the risks of continuing to litigate. *See Prudential*, 148 F.3d at 319 (adequate discovery ensures that a proposed settlement is the product of "informed negotiations").

This factor supports final approval of the settlement.

iv. The risks of establishing liability

This factor weighs the likelihood of ultimate success against the benefits of an immediate settlement. The existence of obstacles to the plaintiff's success at trial weighs in favor of settlement. *Warfarin*, 391 F.3d at 537; *Prudential*, 148 F.3d at 319. Plaintiffs here were seeking to establish Defendants' liability under state trade practices acts, for, *inter alia*, wrongfully prosecuting baseless patent litigation and FDA petitions as part of an overall scheme to monopolize. The Court granted Defendants' motion for summary judgment on these aspects of Plaintiffs' claims, but it reserved judgment on their claim related to delayed introduction of the 150 mg generic Wellbutrin XL. In light of the partial grant of summary judgment, a settlement with Valeant made sense, given that it provided a certain and substantial recovery for Class members while the case continues against GSK.

In light of the settlement's immediate $11.75 million recovery for the Class, this factor weighs strongly in favor of final approval.

v. The risks of establishing damages

As is commonly the case in antitrust and other complex litigation, "[d]amages would likely be established at trial through 'a "battle of experts," with each side presenting its figures to the jury and with no guarantee whom the jury would believe.'" *See In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256 (D. Del. 2002) (quoting *Cendant*, 264 F.3d at 239) (internal citations and quotations omitted). Although Plaintiffs feel confident in their ability to prove class-wide damages, a level of risk unavoidably remains. *See In re Lupron Mktg. & Sales Practices Litig.*, No. 01-CV-10861-RGS, 2005 U.S. Dist. LEXIS 17456 at *16 (D. Mass. Aug. 17, 2005) ("History is replete with cases in which plaintiffs prevailed at trial on issues of liability, but recovered little or nothing by way of damages.").

This factor weighs in favor of final approval.

vi. The risks of maintaining the class action through trial

This case was certified as a class action on August 15, 2011. (Dkt. No. 354). Defendants' petition for appellate review under FED. R. CIV. P. 23(f) was denied on July 26, 2012. (Case No. 12-8039). Although a district court may decertify or modify a class action at any time if it proves to be unmanageable, *see Warfarin*, 391 F.3d at 537, Plaintiffs did not foresee any manageability problems arising at trial. On balance, this factor, which measures the likelihood of maintaining a certified class throughout trial, *see id.*, is neutral in this case. *See Cendant*, 264 F.3d at 239 (holding that this factor was neutral where the risk of decertification appeared to be extremely slight).

vii. The ability of defendants to withstand a greater judgment

The ability of a defendant to withstand a greater judgment is most relevant in cases where the amount of the settlement is less than might ordinarily be agreed upon by the plaintiff, but where the defendant's financial circumstances do not allow for a greater settlement. *Reibstein v.*

Rite Aid Corp., 761 F. Supp. 2d 241, 254 (E.D. Pa. 2011); *Chakejian v. Equifax Info. Services, LLC*, 275 F.R.D. 201, 214 (E.D. Pa. 2011). These circumstances do not exist here, as Valeant's resources are not so limited.

Courts have recognized, however, that a defendant's resources should not be evaluated in a vacuum, divorced from considerations of whether the settlement is fair in light of the attending circumstances surrounding the litigation and settlement. *See Warfarin*, 391 F.3d at 538. In light of the Court's summary judgment ruling, the amount that Plaintiffs obtained in the settlement at the time is facially reasonable, given the uncertainty posed by the litigation posture at the time of settlement. The ability of Valeant to pay more is a neutral factor in this context.

viii. The range of reasonableness of the settlement fund in light of the best possible recovery and all the attendant risks of litigation

In combination, the final two *Girsh* factors "test two sides of the same coin: reasonableness in light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial." *Warfarin*, 391 F.3d at 538 (citation omitted). Assessment of a settlement, however, need not be tied to an exact formula. *See Prudential*, 148 F.3d at 322. A settlement may still be within a reasonable range, even though it represents only a portion of the potential recovery. *Cullen*, 197 F.R.D. at 144; *Linerboard II*, 321 F. Supp. 2d at 632; *see also Fisher Bros.*, 604 F. Supp. at 451 (settlement must fall within a "range of reasonableness," not be the most favorable possible result).

The Settlement provides Class members with substantial relief, particularly in light of the complexity of the claims at issue in this litigation and the Court's May 11, 2012, decision granting partial summary judgment to Defendants and dismissing a substantial portion of the Class's case. (Dkt. No. 420). In the absence of this settlement, the litigation would continue to involve contentious, vigorously contested, and costly litigation over liability, causation, and

damages issues. The consideration paid by Valeant—$11.75 million in cash—when balanced against the complex questions remaining to be litigated, demonstrates that the settlement falls well within the range of what is fair, reasonable, and adequate, and it clearly merits the Court's final approval. Dr. Rosenthal's damages analysis concluded that the total damages for the Class if Plaintiffs were able to prevail on all of their claims at trial totaled $337.4 million. With partial summary judgment already entered against Plaintiffs, this settlement eliminates the potential outcome of recovering no damages at all, while still preserving the claims against GSK.

3. Evaluation of the Settlement under the Relevant *Prudential* Factors

i. Factors that bear on the maturity of the underlying substantive issues

This case was settled at an extremely mature state. Most of the pretrial work had been completed and the evidence was subject to detailed expert analysis and judicial review. The advanced development of the record at the time of settlement strongly supports approval. *See Chakejian*, 275 F.R.D. at 215 (where underlying substantive issues were "mature in light of the experience of the attorneys, extent of discovery, posture of the case, and mediation efforts undertaken," settlement was reasonable).

ii. Results achieved by settlement for individual class members versus the results achieved—or likely to be achieved—for other claimants

This factor also supports approval of the settlement. To date, there are no opt-outs in this case. The settlement therefore obtains the best, and only, result for the remaining Class members as against Valeant.

iii. Whether class or subclass members are accorded the right to opt-out of the settlement

As part of the Class Notice, Class members were given the opportunity to opt-out of the Class. The opt-out deadline is May 31, 2012. This factor supports approval.

iv. Whether any provisions for attorneys' fees are reasonable

Plaintiffs' application for an award of attorney fees and reimbursement of expenses is reasonable for the reasons set forth in the accompanying memorandum. Plaintiffs incorporate that discussion herein.

Class members were notified that Plaintiffs would seek an award of attorneys' fees not more than 33.3% of the gross settlement ($3,916,275), and have been directed to the settlement website, where Plaintiffs' fee submission will be posted contemporaneously with its filing with the Court. As outlined in Class Counsel's separate brief, these fees are reasonable given the partially actualized risks attending this litigation. This factor, therefore, supports approval of the settlement.

v. Whether the procedure for processing individual claims under the settlement is fair and reasonable

The procedures for processing Class member claims are fair and reasonable. Class Action Settlement Services, LLC ("CASS') is the firm retained by Class Counsel and approved by the Court as claims administrator. Preliminary Approval Order ¶ 3. CASS will evaluate all claims received to determine whether they are reasonable, valid, and payable from the Settlement Fund. *Declaraton of Matthew B. Sears* ¶ 4. It will also contact claimants, as necessary, to confirm information provided in the claim forms or to seek additional information. *Id.* CASS has experience administering other healthcare and antitrust settlements and will be supervised by experienced Class Counsel. CASS and Class Counsel will ensure proper claims handling.

The claims processing procedures in place are fair and reasonable. This factor also supports approval of the settlement.

4. Adequate Notice Was Provided to the Class Consistent With the Court's Preliminary Approval Order

The due process requirements of the Fifth Amendment and the Federal Rules of Civil Procedure require that adequate notice of a proposed settlement be given to class members. *Nichols v. SmithKline Beecham Corp.*, Civ. A. 00-6222, 2005 WL 950616, at *9 (E.D. Pa. Apr. 22, 2005); FED. R. CIV. P. 23(e)(1). "The Rule 23(e) notice is designed to summarize the litigation and the settlement and to apprise class members of the right and opportunity to inspect the complete settlement documents, papers, and pleadings filed in the litigation." *Prudential*, 148 F.3d at 326-27 (citation, internal quotation marks omitted). The Fifth Amendment's due process requirements are satisfied by the "combination of reasonable notice, the opportunity to be heard and the opportunity to withdraw from the class." *Id.* at 306. "It is well settled that in the usual situation first-class mail and publication fully satisfy the notice requirements of both Fed. R. Civ. P. 23 and the due process clause." *Zimmer Paper Prods., Inc. v. Berger & Montague, P.C.*, 758 F.2d 86, 90 (3d Cir. 1985).

Plaintiffs utilized two methods in providing notice to Class members. First, notice was sent individually to the majority of TPPs by first-class mail. Walsh Decl. ¶¶ 7-9. For those unknown Class members, the notice administrator published notice on the Internet (on Facebook and Google), as well as in national and state-specific print publications. *Id.* ¶¶ 10, 13. This campaign had broad outreach and was reasonably calculated to provide notice to a significant number of absent Class members. The Court has already determined that the form of notice and its manner of distribution satisfy all requirements of due process and Fed. R. Civ. P. 23(e)(1). Preliminary Approval Order ¶¶ 6-7.

The notice program was reasonable. This factor also supports approval of the settlement.

B. The Plaintiffs' Plan of Allocation Is Fair and Reasonable

"A district court's principal obligation in approving a plan of allocation is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund." *Sullivan*, 667 F.3d at 326 (internal quotations and citation omitted). Courts generally find a plan of allocation reasonable if it reimburses class members based on the type and extent of their injuries. *Id.* at 328. A plan of allocation does not need to differentiate within a class based on the arguable strengths or weaknesses of the various class members' claims. *Id.* Because plan allocation decisions are highly fact-intensive, district courts have broad discretion. *Id.*; *Cendant*, 264 F.3d at 254.

Under the proposed plan, the Settlement Fund will be divided into two parts: 10% of the total available settlement funds for consumers and 90% of the total available settlement funds for TPPs. CASS will distribute the net settlement proceeds to Class members *pro rata*, based on the amounts they paid for products (brand and generic Wellbutrin XL) in proportion to what was paid by all Class members who submit claims.

This plan serves the interests of all Class members and should be approved. To determine a reasonable allocation between consumers and TPPs, Class Counsel hired two attorneys experienced in pharmaceutical antitrust litigation to serve as Allocation Counsel and to negotiate with one another. Slate Decl. ¶¶ 3-8 (Dkt. No. 454-9); Wilkinson Decl. ¶¶ 2-8 (Dkt. No. 454-10). Allocation Counsel reviewed Dr. Rosenthal's damages analysis, among other information, and engaged in hard-fought negotiations over several months before agreeing on the 10%-90% split. Slate Decl. ¶¶ 7, 9-11; Wilkinson Decl. ¶ 9. The 10% allocated to consumers is a close approximation of the percentage of damages that would go to consumers as a group under the various damages scenarios. Slate Decl. ¶ 12; Wilkinson Decl. ¶ 10(a). Within the consumer

and TPP segments, the settlement proceeds will be distributed pro rata. However, to simplify the administration process and encourage Class member participation, an average recognized loss rate of 20% will apply to all consumers, regardless of when they purchased a product during the Class period or the dosage purchased. *Id.* ¶ 10(b).

In sum, Class Counsel made every effort to design a plan of allocation that provides fair and efficient relief to the Class.

C. The Notice Requirements of the Class Action Fairness Act Are Satisfied

The Class Action Fairness Act, 28 U.S.C. § 1715 *et seq.* ("CAFA"), required Valeant to notify appropriate state and federal officials of the proposed settlement and to allow 90 days to pass before final approval of the proposed settlement may be entered. *See* 28 U.S.C. § 1715(d). Valeant sent the required CAFA notices on April 12, 2013. *See* April 15, 2013, ltr. from Andrew D. Lazerow to Hon. Mary A. McLaughlin. The parties have asked the Court to hold in abeyance its decision on final approval until July 15, 2013, when more than 90 days will have elapsed since Valeant mailed the CAFA notices. *Id.* This procedure will satisfy the CAFA notice requirements. *See, e.g., In re Processed Egg Prods. Antitrust Litig.*, 284 F.R.D. 249, 258 n.12 (E.D. Pa. 2012).

IV. CONCLUSION

For the reasons detailed above, and in other supporting documents, Plaintiffs' Class Counsel respectfully request that the Court enter the proposed Order and Final Judgment, which, *inter alia*, grants final approval to the settlement pursuant to FED. R. CIV. P. 23(e).

Dated: May 15, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2013, I electronically filed the foregoing using the Court's Case Management and Electronic Case Filing system, which will send notification of such filing to counsel of record in this action registered with the Court's system. Those counsel not registered with the Court's system will receive service via electronic and U.S. Mail.

/s/ Amber M. Nesbitt