

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

IN RE LIPITOR ANTITRUST
LITIGATION

This Document Relates To:

All End-Payor Class Actions

MDL No. 2332

Master Docket No. 3:12-cv-2389 (PGS)
(JBD)

**ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS-ACTION SETTLEMENT**

WHEREAS, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(3), and 23(e), End-Payor Plaintiffs (“EPPs”) seek entry of an order, *inter alia*, preliminarily approving the class Settlement of this Action as to Pfizer (“Settlement”) pursuant to the terms and provisions of the Settlement Agreement dated April 29, 2024, with attached exhibit (“Settlement Agreement”); preliminarily approving the plan for allocation (“Allocation Plan”); preliminarily certifying the Settlement Classes for settlement purposes only; directing notice to the Settlement Classes pursuant to the proposed Notice Plan; preliminarily appointing the designated named EPPs as Class Representatives for their respective Classes, appointing Class Counsel, Liaison Counsel, Claims Administrator, and Escrow Agent; directing the timing and procedures for any objections to, and requests for exclusion from, the Settlement; setting forth other procedures, filings, and deadlines; and scheduling the Final Fairness Hearing; and

WHEREAS, the Court has read and considered the Settlement Agreement and its exhibit, and the End-Payor Plaintiffs' Unopposed Motion for Preliminary Approval;

NOW, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms used in this Order shall have the same meanings as set forth in the Settlement Agreement attached hereto as Exhibit A. End-Payor Plaintiffs' motion for preliminary approval (ECF No. ____) is **GRANTED**.

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d), and venue is proper in this District.

3. The Court has personal jurisdiction over the End-Payor Plaintiffs,¹ Settlement Class Members, and Defendants Pfizer Inc.; Pfizer Ireland Pharmaceuticals; Warner-Lambert Company; and Warner-Lambert Company LLC (collectively, "Pfizer" and, together with the End-Payor Plaintiffs, the "Parties").

¹The "End-Payor Plaintiffs" or "EPPs" include A.F. of L.-A.G.C. Building Trades Welfare Plan; the Mayor and City Council of Baltimore; New Mexico United Food and Commercial Workers Union's and Employers' Health and Welfare Trust Fund; Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana; Bakers Local 433 Health Fund; and Fraternal Order of Police, Fort Lauderdale Lodge 31, Insurance Trust Fund collectively (collectively, the "TPP Class Representatives"); and Nancy Billington; Emilie Heinle; and Andrew Livezey (collectively, the "Consumer Class Representatives").

Preliminary Certification of the Settlement Classes

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies, for settlement purposes only, the following Settlement Classes under the antitrust and consumer protection laws of Arizona, California, Washington, D.C., Florida, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, West Virginia, and Wisconsin (the “Class States”):

TPP Class

All entities that, for consumption by their members, employees, insureds, participants, or beneficiaries, purchased, paid, and/or provided reimbursement for some or all of the purchase price of branded Lipitor or generic atorvastatin calcium, in the Class States, other than for resale, at any time during the period from June 28, 2011 through and until December 31, 2012.

Consumer Class

Total Generic Exclusion Period (June 28, 2011 through November 29, 2011). All individuals who purchased, paid, and/or provided reimbursement for some or all of the purchase price of branded Lipitor, in the Class States, without the use of a Pfizer co-pay card.

Generic Overcharge Period (November 30, 2011 through December 31, 2012). All individuals who purchased, paid, and/or provided reimbursement for some or all of the purchase price of generic atorvastatin calcium, in the Class States.

5. Excluded from the TPP Settlement Class are: (a) Pfizer, Ranbaxy,² and their respective subsidiaries and affiliates; (b) Federal and state governmental entities; (c) Medicare Part D Plans; and (d) Medicaid Plans.

6. Excluded from the Consumer Settlement Class are: (a) Judges assigned to this case and their chambers' staff and any members of the judges' or chambers staff's immediate family; (b) Pfizer's and Ranbaxy's officers, directors, and employees; (c) Individuals who only purchased through a Medicare Part D or Medicaid Plan; (d) Individuals who only purchased branded Lipitor after November 30, 2011, and did not purchase generic atorvastatin calcium; and (e) Any "flat copay" consumer who purchased Lipitor only via a fixed dollar copayment that does not vary on the basis of the drug's status as brand or generic.

7. Under Rule 23(a)(1), the Court determines that the Settlement Classes are so numerous that the joinder of all members is impracticable. Based on transaction data collected by one pharmacy benefits manager, Prime Therapeutics ("Prime"), during the period from November 30, 2011 through December 31, 2012, there were 1,077,550 Lipitor transactions within the Class States that were processed by Prime; these purchases were associated with 229,207 unique Member IDs. *See* ECF No. 1252-2, Expert Report of Laura R. Craft, MPH ("Craft Report"), ¶¶ 4, 54.

² Ranbaxy, as used herein, refers to Defendants Ranbaxy Inc., Ranbaxy Laboratories Limited, and Ranbaxy Pharmaceuticals, Inc.

Data produced by just one of the named End-Payor Plaintiffs further supports a finding of numerosity, including purchases associated with 559 unique member IDs for the Total Generic Exclusion Period and 2,363 unique member IDs for the Generic Overcharge Period. Craft Report ¶¶ 61-64 (discussing data produced by End-Payor Plaintiff Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana). This is more than sufficient to satisfy Rule 23(a)(1)'s requirement that the class be so numerous that joinder of all members is impracticable.

8. Under Rule 23(a)(2), the Court determines that the Settlement Classes present questions of law or fact common to the Settlement Classes, including common questions regarding whether Pfizer willfully obtained and maintained monopoly power in the market for Lipitor and its generic equivalents; whether Pfizer and Ranbaxy engaged in anticompetitive conduct; whether that conduct delayed generic entry; and whether that conduct led to overcharges for branded and generic Lipitor.

9. The Court preliminarily appoints the TPP Class Representatives and the Consumer Class Representatives as Settlement Class Representatives for their respective Classes for the following reasons:

- (a) The TPP Class Representatives and Consumer Class Representatives allege, on behalf of the Settlement Classes, the same manner of injury

from the same course of conduct of which they complain themselves, and they assert on their behalf the same legal theories they assert for the Settlement Classes as a whole. The Court therefore determines that the claims of the TPP Class Representatives and Consumer Class Representatives are typical of the claims of the proposed Settlement Classes within the meaning of Rule 23(a)(3); and

- (b) Pursuant to Rule 23(a)(4), the Court determines that the End-Payor Plaintiffs have and will continue to fairly and adequately protect the interests of the Settlement Classes. The interests of the End-Payor Plaintiffs do not conflict with the interests of absent members of the Settlement Classes. All members of the Settlement Classes share a common interest in proving the alleged anticompetitive conduct, and all Settlement Class members share a common interest in recovering damages from Pfizer. Moreover, like the group of End-Payor Plaintiffs, the Settlement Classes are made up of business entities and individual consumers, and any member of the Settlement Classes that wishes to opt out will be allowed to do so. Furthermore, the End-Payor Plaintiffs and their Counsel are well qualified to represent the Settlement Classes in this case, given their experience in prior cases

and the vigor with which they have prosecuted this Action for over 11 years.

10. The Court determines that the Classes are ascertainable under the standard established by the Third Circuit based on testimony from EPPs' expert, Ms. Laura Craft, as well as the documents and data produced in this case. The Class definitions consist of objective criteria and the Classes can be ascertained through a reliable and administratively feasible methodology.

11. Pursuant to Rule 23(b)(3), the Court determines that common questions of law and fact predominate over questions affecting only individual members of the Settlement Classes. The issues in this Action are subject to generalized proof, and thus applicable to the Settlement Classes as a whole, and such issues predominate over those issues that are subject only to individualized proof.

12. Also pursuant to Rule 23(b)(3), the Court determines that a class action is superior to other available methods for the fair and efficient adjudication of this Action. The Court believes it is desirable, for purposes of judicial and litigation efficiency, to concentrate in a single action the claims of the TPP and Consumer Classes. The Court also believes there are few manageability problems presented by a case such as this, particularly given the Settlement preliminarily approved in this Order. *See Sullivan v. DB Invs., Inc.*, 667 F. 3d 273, 302-03 (3d Cir. 2011) (noting

that a settlement class eliminates manageability concerns because there will be no trial).

13. Pursuant to Rules 23(c)(1)(B) and 23(g), the Court has considered the factors provided in Rule 23(g)(1)(A), the Court preliminarily appoints the law firms of Wexler Boley & Elgersma LLP, Cohen Milstein Sellers & Toll PLLC, Motley Rice LLC, and Grant & Eisenhofer P.A. as Class Co-Lead Counsel for the Settlement Classes (“Class Counsel” or “Co-Lead Counsel”), and Dilworth Paxson LLP as Liaison Counsel for the Settlement Classes.

Preliminary Approval of the Proposed Settlement

14. At preliminary approval, a court evaluates whether the proposed settlement is within the range of possible approval and free of obvious deficiencies or reasons to doubt its fairness. *Easterday v. USPack Logistics LLC*, No. 15-cv-7559, 2023 WL 4398491, at *5 (D.N.J. July 6, 2023).

15. The Court finds that the Settlement has no obvious shortcomings and is within the range of possible approval.

16. The Court also finds that the Settlement Agreement has been reached as a result of extensive, arm’s-length negotiations of disputed claims, including through the use and assistance of an experienced third-party neutral mediator, and that the proposed Settlement is not the result of any collusion.

17. In addition, the Court finds that the proceedings that occurred before the Parties entered into the Settlement Agreement afforded counsel the opportunity to adequately assess the claims and defenses in the Action, the relative positions, strengths, weaknesses, risks, and benefits to each Party, and as such, to negotiate a Settlement Agreement that is fair, reasonable, and adequate, and which reflects those considerations.

18. The Court preliminarily approves the Settlement Agreement, and all of its terms, as fair, reasonable, and adequate under Rule 23, and in the best interests of the Settlement Classes, subject to further consideration at the Final Fairness Hearing.

19. The Court also preliminarily approves the proposed Plan of Allocation as fair, reasonable, and adequate.

20. The Court appoints The Huntington Bank as Escrow Agent for the purpose of administering the Escrow Account holding the Settlement Fund. All expenses incurred by the Escrow Agent must be reasonable and shall be payable solely from the Settlement Fund.

Approval of the Plan of Notice to the Settlement Class

21. The proposed Notice Plan includes, *inter alia*, notice by publication, direct mail notice to third-party payors that can be identified with reasonable effort, and the establishment of a settlement website (www.LipitorAntitrustSettlement.com). *See* Decl. of Kenneth A. Wexler in Supp. of

Pls.’ Unopposed Mot. for Preliminary Approval of End-Payor Class Plaintiffs’ Settlement and Other Relief (“Wexler Decl.”), Ex. D (Decl. of Cameron R. Azari, Esq., Senior Vice President of Epiq Class Action and Claims Solutions, Inc. (“Epiq”) Regarding Notice Plan).

22. The proposed Notice Plan is reasonably calculated to apprise the Settlement Classes of the pendency of the Action; the certification of the Settlement Classes for settlement purposes only; the terms of the Settlement, its benefits, and the Release of Claims; Settlement Class Members’ rights, including the right to, and the deadlines and procedures for, requesting exclusion from the Settlement or objecting to the Settlement; Class Counsel’s application for Fees, Costs, and Expenses and/or the application for service awards for the named End-Payor Plaintiffs; the deadline, procedures, and requirements for submitting a Claim for Reimbursement pursuant to the Settlement’s terms; the time, place, and right to appear at the Final Fairness hearing; and other pertinent information about the Settlement and the Settlement Class Members’ rights.

23. The Court finds that this Notice Plan satisfies the requirements of Rule 23(e) and due process, is otherwise fair and reasonable, and constitutes the best

notice practicable under the circumstances. Accordingly, the Court approves and directs the implementation of, the Notice Plan.

24. The Court also approves the form and content of the Settlement Class Notices and Claim Forms. Wexler Decl., Exs. K, M, N. The Parties may make non-material modifications to the Settlement Class Notices and Claim Forms prior to mailing and publication if they jointly agree any such changes are appropriate.

25. The Court appoints Epiq as the Settlement Claim Administrator (“Claims Administrator”). All expenses incurred by the Claims Administrator must be reasonable and shall be payable solely from the Settlement Fund. Class Counsel may, without an order of Court so directing, withdraw up to two million dollars

(\$2,000,000) for notice and notice-related expenses. *Class counsel will submit a quarterly report, and explain the payments of the Claims Administrator.* (PGS)

26. The Claims Administrator is directed to perform all settlement administration duties set forth in, and pursuant to the terms and time periods of, the Settlement Agreement, including implementing and maintaining the Settlement website, implementing the Notice Plan, processing and reviewing timely submitted and proper claims under the Settlement’s terms, and submitting any declarations and

other materials to counsel and the Court, as well as performing any other duties required under the Settlement Agreement.

27. Pfizer shall comply with its obligation to give notice under the Class Action Fairness Act (“CAFA”), 28 U.S.C. §1711, *et seq.*

28. A hearing on final approval (the “Fairness Hearing”) shall be held before this Court on October 1, 2024, 2024, at the United States District Court for the District of New Jersey, Clarkson S. Fisher Building & United States Courthouse, 402 East State Street, Trenton, New Jersey, 08608. At the Fairness Hearing, the Court will consider, *inter alia*: (a) the fairness, reasonableness, and adequacy of the Settlement and whether the Settlement should be finally approved; (b) whether the Court should approve the proposed Plan of Allocation of the Settlement Fund among members of the TPP and Consumer Classes; (c) whether the Court should approve awards of Class Counsel’s attorneys’ fees and reimbursement of costs and expenses; (d) whether service awards should be awarded to the End-Payor Plaintiffs; and (e) whether a Final Judgment and Order terminating the litigation between the End-Payor Plaintiffs and Pfizer should be entered. The Fairness Hearing may be rescheduled or continued; in that event, the Court will furnish all counsel with appropriate notice. Class Counsel shall be responsible for communicating any such

notice promptly to the Classes by posting a conspicuous notice on the following website of the Claims Administrator: www.LipitorAntitrustSettlement.com.

29. Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail, by first-class mail postmarked no later than forty-five (45) days after the date on which the Claims Administrator mails the Settlement Notice (the “Notice Date”), a written request for exclusion (“Request for Exclusion”) to the Claims Administrator at the address specified in the Class Notice. To be effective, the Request for Exclusion must be timely and must:

- (a) Identify the case name and number;
- (b) Include the Settlement Class Member’s full name, address, and telephone number;
- (c) Be signed by the Settlement Class Member is who opting out, or by its, his, or her authorized representative;
- (d) For any request for exclusion by a purported authorized agent or representative of a Settlement Class Member, be accompanied by proof of the representative’s legal authority and authorization to act and request exclusion on behalf of the Settlement Class Member;
- (e) Specifically and unambiguously state the desire to be excluded from the Settlement Classes in *In re Lipitor Antitrust Litigation*, 3:12-cv-2389; and

(f) For any TPP Settlement Class Member seeking exclusion, it must include all data reflecting its purchases of, and payments for, branded and generic Lipitor.

30. Group or class-wide exclusions shall not be permitted.

31. Any Settlement Class Member who fails to submit a timely and complete Request for Exclusion sent to the proper addressee shall remain in the applicable Settlement Class and shall be subject to and bound by all determinations, orders, and judgments in the Action concerning the Settlement, including but not limited to the Released Claims set forth in the Settlement Agreement.

32. Consumer identities shall not be made public as part of the exclusion process. Identifying information shall be kept confidential and, absent a consumer's consent, any opt-out requests shall be filed under seal.

33. Any Settlement Class Member who has not submitted a Request for Exclusion may object to the fairness of the Settlement Agreement and/or the requested amount of Class Counsel's fees, costs, and expenses and/or Settlement Class Representative service awards.

(a) To object, a Settlement Class Member must either: (i) file the objection, together with any supporting briefs and/or documents, with the Court in person or via the Court's electronic filing system within forty-five (45) days of the Notice Date; or (ii) mail, via first-class mail

postmarked within forty-five (45) days of the Notice Date, the objection, together with any supporting briefs and/or documents, to each of the following: (a) the Clerk's Office of the United States District Court, District of New Jersey, Clarkson S. Fisher Building & United States Courthouse, 402 East State Street, Trenton, New Jersey, 08608; (b) Kenneth A. Wexler, Wexler Boley & Elgersma LLP, 311 S. Wacker Drive, Suite 5450, Chicago, 60606, on behalf of Class Counsel; and (c) Raj Gandesha, Esq., White & Case LLP, 1221 Avenue of Americas, New York, NY 10020-1095, on behalf of Pfizer.

- (b) Any objecting Settlement Class Member must include the following with their objection: (i) the objector's full name, address, and telephone number; (ii) documentation establishing that the objector is a Settlement Class Member; (iii) a written statement of all grounds for the objection, accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents upon which the objection is based and which are pertinent to the objection; (v) the name, address, and telephone number of any counsel representing said objector; (vi) a statement of whether the objecting Settlement Class Member intends to appear at the Fairness Hearing, either with or without counsel, and the identities of any counsel who will appear on

behalf of the Settlement Class Member at the Fairness Hearing; (vii) the following statement followed by the objector's signature: "I declare under penalty of perjury under the laws of the United States of America that [insert objector name] is a member of the Class."; (viii) a list of all other objections submitted by the objector, or the objector's counsel, to any class-action settlements submitted in any court in the United States in the previous five (5) years, including the full case name, the jurisdiction in which it was filed, and the docket number. If the Settlement Class Member or their counsel has not objected to any other class-action settlement in the United States in the previous five (5) years, they shall affirmatively so state in the objection.

- (c) Individual consumers who do not want their identities to be put on the public record as part of the objection process may send their objection only to the Claims Administrator, who will redact (or "blackout") such consumers' names, addresses, and telephone numbers and then provide such redacted versions to the Court for filing on the public court docket. The Claims Administrator will also send copies of the original, unredacted objections to the Clerk of the Court, Class Counsel, and Pfizer's counsel. Appropriate steps must be taken to keep the identifying information confidential.

- (d) The Clerk's Office shall file on the public docket all objections other than those sent only to the Claims Administrator pursuant to Paragraph 33(c), above.
- (e) Subject to the approval of the Court, any Settlement Class Member who has properly filed a timely objection may appear, in person or by counsel, at the Fairness Hearing to explain why the proposed Settlement should not be approved as fair, reasonable, and adequate, or to object to any motion for award of Class Counsel's fees, costs, and expenses or Settlement Class Representative service awards. To appear, any Settlement Class Member must, no later than the objection deadline, file with the Clerk of the Court and serve upon all counsel designated in the Class Notice, a Notice of Intention to Appear at the Final Fairness Hearing. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence and the identity of all witnesses that the objecting Settlement Class Member (or the objecting Settlement Class Member's counsel) intends to present to the Court in connection with the Fairness Hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in accordance with the deadline and other requirements set forth in this Order and the Class Notice shall be deemed to have

waived any right to appear, in person or by counsel, at the Fairness Hearing. Any lawyer representing a Class Member for the purpose of making comments or objections must also file a Notice of Appearance with the Court using the Court's Case Management/Electronic Case Files (CM/ECF) System.

- (f) Any Settlement Class Member who has not properly filed a timely objection in accordance with the deadline and requirements set forth in this Order and the Class Notice shall be deemed to have waived any objections to the Settlement and any adjudication or review of the Settlement Agreement and/or its approval by appeal or otherwise.

34. In the event the Settlement is not granted final approval by the Court, or for any reason the parties fail to obtain a Final Judgment and Order as contemplated in the Settlement Agreement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

- (a) All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, and shall not be admissible or discoverable in this or any other proceeding, judicial or otherwise;

- (b) All of the Parties' respective pre-Settlement claims, defenses, and procedural rights will be preserved, and the Parties will be restored to their positions *status quo ante*;
- (c) Nothing contained in this Order is, or may be construed as, any admission or concession by or against Pfizer, the Released Parties, or the End-Payor Plaintiffs of any allegation, claim, defense, or point of fact or law in connection with this Action;
- (d) The preliminary certification of the Settlement Classes pursuant to this Order shall be vacated automatically, and the Action shall proceed as though the Settlement Classes had never been preliminarily certified.

35. All proceedings in the Action between the Settlement Classes and Pfizer are hereby stayed, except proceedings for purposes of effectuating the Settlement, until the Court renders a final decision regarding the approval of the Settlement and, if the Court approves the Settlement, enters a Final Judgment and Order and dismisses such Action as to Pfizer with prejudice.

36. Pending the Fairness Hearing and the Court's decision whether to grant final approval of the Settlement, no Settlement Class Member—including those Settlement Class Members who filed Requests for Exclusion from the Settlement which have not yet been reviewed and approved by the Court at the Final Fairness Hearing—shall directly, representatively, or in any other capacity commence,

prosecute, continue to prosecute, or participate in, against any of the Released Parties, any action or proceeding in any court or tribunal (judicial, administrative, or otherwise) asserting any of the matters, claims, or causes of action that are to be released in the Settlement Agreement. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action.

37. Pending the Fairness Hearing and any further determination thereof, this Court shall maintain continuing jurisdiction over these Settlement proceedings.

38. Based on the foregoing, the Court sets forth the following schedule for the Fairness Hearing and the actions preceding it. If any deadline set forth in this Order falls on a weekend or federal holiday, then such deadline shall be extended to the next business day. These deadlines may be extended by order of the Court, for good cause shown, without further notice to the Classes. Settlement Class Members

must check the Settlement website regularly for updates and further details regarding this Settlement:

<u>Event</u>	<u>Deadline for Compliance</u>
Date for Fairness Hearing	120 calendar days after entry of the Preliminary Approval Order
Mailing Notice complete	No later than 30 calendar days after entry of the Preliminary Approval Order (the "Notice Date").
Publication of Summary Notice and Notice posted on LipitorAntitrustSettlement.com	No later than 30 calendar days after entry of the Preliminary Approval Order.
Deadline for filing Claim Forms	No later than 180 calendar days after entry of the Preliminary Approval Order.
Deadline for requests for exclusion, objections, and notices of intent to appear at the Fairness Hearing	No later than 45 calendar days after the Notice Date.
Deadline for End-Payor Plaintiffs to file motion for final approval of the Settlement, the Plan of Allocation, and application for attorneys' fees, reimbursement of costs and expenses, and Settlement Class Representative service awards.	35 calendar days prior to the Fairness Hearing.
Deadline for End-Payor Plaintiffs to file reply, if any, in further support of motion for final approval of the Settlement, the Plan of Allocation, and application for attorneys' fees, reimbursement of costs and expenses, and Settlement Class Representative service awards.	7 calendar days prior to the Fairness Hearing.

SO ORDERED: Pat M. Thurman
 21 DATED: 6/3/24

SO ORDERED:

Date: _____, 2024

Hon. Peter G. Sheridan
United States District Judge