

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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| IN RE: RANBAXY GENERIC DRUG APPLICATION<br>ANTITRUST LITIGATION |
| THIS DOCUMENT RELATES TO:<br><br>ALL END-PAYOR ACTIONS          |

MDL No. 2878

Master File No.  
19-md-02878-NMG

~~PROPOSED~~ ORDER

**A. Prior Certification of the End-Payor Classes.**

AND NOW, upon further consideration of the previously filed Motion for Class Certification (ECF No. 287) in conjunction with the Motion For Entry of an Order Approving the Form and Manner of Notice, Appointing a Notice Administrator, and Formally Appointing Class Representatives and Class Counsel (“EPPs’ Motion to Approve Form and Manner of Notice”) and the accompanying Memorandum of Law filed by the End-Payor Class Plaintiffs, United Food and Commercial Workers Health and Welfare Fund of Northeastern Pennsylvania (“UFCW NEPA”), Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana and HMO Louisiana, Inc. (“BCBS LA”), any opposition thereto, any further briefing and argument thereon, and in conjunction with this Court’s Order of May 14, 2021 granting the End-Payor Class Plaintiffs’ Motion for Class Certification (ECF No. 389, “Class Certification Order”), the Court makes the following appointments as required by Rule 23 of the Federal Rules of Civil Procedure.

In the Class Certification Order, the Court made the following findings as required by Rule 23:

1. This Court certified under FED. R. CIV. P. 23(b)(3) the following six End-Payor (“EPP”) Classes:

All persons or entities in the United States and its territories that indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of Diovan and/or AB-rated generic versions of Diovan from any of the Defendants or any brand or generic manufacturer at any time during the class period September 28, 2012, through and until the anticompetitive effects of the Defendants’ conduct cease (the “Diovan Class Period”);

All persons or entities in the United States and its territories that indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of Valcyte and/or AB-rated generic versions of Valcyte from any of the Defendants or any brand or generic manufacturer, other than for resale, at any time during the class period August 1, 2014, through and until the anticompetitive effects of the Defendants’ conduct cease (the “Valcyte Class Period”);

All persons or entities in the United States and its territories that indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of AB-rated generic versions of Nexium from any of the Defendants or any brand or generic manufacturer, other than for resale, at any time during the class period May 27, 2014, through and until the anticompetitive effects of the Defendants’ conduct cease (the “Nexium Class Period”);

All persons or entities in the Indirect Purchaser States<sup>1</sup> that indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of Diovan and/or AB-rated generic versions of Diovan from any of the Defendants or any brand or generic manufacturer, other than for resale, at any time during the class period September 28, 2012, through and until the anticompetitive effects of the Defendants’ conduct cease (the “Diovan Class Period”);

All persons or entities in the Indirect Purchaser States that indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price of Valcyte and/or AB-rated generic versions of Valcyte from any of the Defendants or any brand or generic manufacturer, other than for resale, at any time during the class period August 1, 2014, through and until the anticompetitive effects of the Defendants’ conduct cease (the “Valcyte Class Period”);

All persons or entities in the Indirect Purchaser States that indirectly purchased,

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<sup>1</sup> The Indirect Purchaser States are: Arizona, California, the District of Columbia, Florida, Hawaii, Iowa, Massachusetts, Maine, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, South Dakota, Vermont, West Virginia, and Wisconsin.

paid, and/or provided reimbursement for some or all of the purchase price of AB-rated generic versions of Nexium from any of the Defendants or any brand or generic manufacturer, other than for resale, at any time during the class period May 27, 2014, through and until the anticompetitive effects of the Defendants' conduct cease (the "Nexium Class Period");

Excluded from all six EPP classes are: (a) natural person consumers; (b) Defendants, their officers, directors, management, employees, subsidiaries, and affiliates; (c) all federal and state governmental entities except for cities, towns, municipalities, or counties with self-funded prescription drug plans; (d) all persons or entities who purchased Diovan, Nexium, Valcyte, or their AB-rated generic versions for purposes of resale from any of the Defendants or any brand or generic manufacturer; (e) fully insured health plans (i.e., health plans that purchased insurance covering 100% of their reimbursement obligation to members); and (f) pharmacy benefit managers.

2. This Court found, and Defendants concede, that the End-Payor Class Plaintiffs satisfied the requirements of FED. R. CIV. P. 23(a)(1), (a)(2), and (a)(3) by showing that each of the classes are so numerous that joinder of all members is impracticable; so numerous and geographically dispersed that joinder of all members thereof is impracticable; that there are questions of law or fact common to each class; and that the claims or defenses of the representative parties are typical of the claims or defenses of each class. Class Certification Order at 22.

3. This Court found that the End-Payor Class Plaintiffs satisfied the adequacy of representation requirements of FED. R. CIV. P. 23(a)(4) by showing that (i) there is no conflict between the proposed class representatives UFCW NEPA and BCBS LA and the rest of the class members and (ii) that class counsel is qualified and has extensive experience litigating similar antitrust class actions. Class Certification Order at 22-23.

4. This Court found that the End-Payor Class Plaintiffs satisfied the predominance and superiority requirements of FED. R. CIV. P. 23(b)(3), including meeting their burden of demonstrating that antitrust injury and damages are capable of proof by common evidence and

that common issues predominate over individualized inquiries. Class Certification Order at 23-28.

**B. Appointment of Class Representatives and Lead Counsel.**

For the reasons set forth below, the Court hereby ORDERS that:

5. Pursuant to FED. R. CIV. P. 23(a)(4), the Court hereby appoints UFCW NEPA and BCBS LA the named plaintiffs in this lawsuit, representatives of the six Classes. It does so for the following reasons:

a. UFCW NEPA and BCBS LA allege on behalf of the proposed EPP Classes the very same manner of injury from the very same course of conduct that they complain of as to themselves, and UFCW NEPA and BCBS LA assert on their own behalf the same legal theories that they assert for the EPP Classes. The Court therefore determines that the claims of UFCW NEPA and BCBS LA are typical of the claims of the EPP Classes within the meaning of Rule 23(a)(3); and

b. Pursuant to Rule 23(a)(4), the Court determines that UFCW NEPA and BCBS LA will fairly and adequately protect the interests of the EPP Classes. The interests of UFCW NEPA and BCBS LA do not conflict with the interests of absent class members of the EPP Classes. Furthermore, class counsel are well-qualified to represent the EPP Classes in this case, given their experience in prior cases, and the vigor with which they have prosecuted this action thus far.

6. Pursuant to FED. R. CIV. P. 23(c)(1)(B) and 23(g), the Court having considered the factors provided in Rule 23(g)(1)(A), the following firms, previously appointed as Interim Co-

Lead Class Counsel for the End-Payor Class,<sup>2</sup> are hereby confirmed and appointed as Co-Lead Class Counsel for the End-Payor Classes:

**LOWEY DANNENBERG, P.C.**  
One Tower Bridge  
100 Front Street, Suite 520  
West Conshohocken, PA 19428  
(215) 399-4770

**THE DUGAN LAW FIRM, APLC**  
One Canal Place – Suite 1000  
365 Canal Street  
New Orleans, LA 70130  
(504) 648- 0180

**C. Effectuating Notice to the Classes.**

Upon further consideration of EPPs' Motion to Approve Form and Manner of Notice, accompanying Memorandum of Law, and any opposition thereto, the motion is GRANTED and it is hereby ORDERED that:

7. EPPs' Form and Manner of Notice is hereby approved.
8. A.B. Data is hereby appointed notice administrator for this action.
9. The Long-Form, Short-Form, and Postcard Notices attached as Exhibits C, D, and E to the Declaration of Linda Young filed concurrently with End-Payor Plaintiffs' Motion are approved.
10. Within 10 days of entry of this Order, the notice administrator shall activate the website and toll-free number, and initiate digital publication notice.
11. Within 10 days of this Order, the notice administrator shall complete mailing of notice to class members.

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<sup>2</sup> ECF No. 31.

12. Members of the End-Payor Class may request to be excluded from the class. Exclusion requests must be emailed or mailed to A.B. Data no later than 45 days after the date of mailing of Notice to the Classes. Class Counsel shall file a list of excluded class members.

IT IS SO ORDERED.

*October 26, 2021*

*Nathaniel M. Gorton*  
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NATHANIEL M. GORTON,  
UNITED STATES DISTRICT JUDGE