

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE SALIX PHARMACEUTICALS, LTD.

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CLASS ACTION

Case No. 14-cv-8925  
CLASS ACTION

~~PROPOSED~~ <sup>KMW</sup> ORDER APPROVING DISTRIBUTION PLAN

Lead Plaintiff moved this Court for an order approving a distribution plan for the Net Settlement Fund in the above-captioned class action (the "Action"). Having reviewed and considered all the materials and arguments submitted in support of the motion, including the Declaration of Stephanie A. Thurin in Support of Lead Plaintiff's Motion for Approval of Distribution Plan (the "Thurin Declaration"):

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated March 24, 2017 (ECF No. 216-1) (the "Stipulation") and the Thurin Declaration, and all terms used herein shall have the same meanings as set forth in the Stipulation or in the Thurin Declaration.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.

3. Lead Plaintiff's plan for distribution of the Net Settlement Fund to Authorized Claimants is **APPROVED**. Accordingly:

(a) The administrative recommendations of the Court-approved Claims Administrator, Epiq Class Action & Claims Solutions, Inc. ("Epiq"), to accept the Timely Eligible Claims set forth in Exhibit B-1 to the Thurin Declaration and the Late But Otherwise Eligible Claims set forth in Exhibit B-2 to the Thurin Declaration, are adopted;

(b) The Claims Administrator's administrative recommendations to reject wholly ineligible Claims as set forth in Exhibit B-3 to the Thurin Declaration are adopted;

(c) Epiq is directed to conduct an Initial Distribution of the Net Settlement Fund after deducting all payments previously allowed and the payments approved by this Order, and after payment of any estimated taxes, the costs of preparing tax returns, and any escrow fees, as set forth in paragraph 38(a) of the Thurin Declaration. Specifically, as set forth in paragraph 38(a) of the Thurin Declaration, (i) any Authorized Claimant whose *pro rata* share of the Net Settlement Fund based on the total amount of the Net Settlement Fund after the deduction of all currently payable allowed costs and expenses calculates to less than \$10.00 shall not receive any payment from the Net Settlement Fund and Epiq shall notify those Authorized Claimants of that fact; (ii) Authorized Claimants whose *pro rata* share of the Net Settlement Fund (after removing from the calculation all Claims that fall under the \$10.00 minimum payment threshold) is less than \$100.00 shall be paid their full Distribution Amount ("Claims Paid in Full") and shall not be eligible for payment in subsequent distributions of the Net Settlement Fund; and (iii) after deducting the payments to the Claims Paid in Full, 90% of the remaining balance of the Net Settlement Fund shall be distributed on a *pro rata* basis to Authorized Claimants whose calculated Distribution Amount is \$100.00 or more, with the remaining 10% held in reserve (the "Reserve") to address any contingencies that may arise;

(d) In order to encourage Authorized Claimants to promptly cash their checks, all Initial Distribution checks shall bear the following notation: "DEPOSIT PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT NEGOTIATED"

WITHIN 90 DAYS OF ISSUE DATE.” Lead Counsel and Epiq are authorized to take appropriate action to locate and/or contact any Authorized Claimant who has not cashed his, her, or its check within said time as detailed in paragraph 38(a)(vi) footnote 5 of the Thurin Declaration;

(e) Authorized Claimants who do not cash their Initial Distribution checks within the time allotted or on the conditions set forth in paragraph 38(a)(vi) footnote 5 of the Thurin Declaration shall irrevocably forfeit all recovery from the Settlement, and the funds allocated to all such stale-dated checks shall be available to be re-distributed to other Authorized Claimants in the Second Distribution as described below. Similarly, Authorized Claimants who do not cash their second or subsequent distributions (should such distributions occur) within the time allotted or on the conditions set forth in paragraph 38(a)(vi) footnote 5 of the Thurin Declaration shall irrevocably forfeit any further recovery from the Net Settlement Fund;

(f) After Epiq has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks (as set forth in paragraph 38(a)(vi) footnote 5 of the Thurin Declaration), but no earlier than nine (9) months after the Initial Distribution, Epiq shall conduct the Second Distribution, in which any amounts remaining in the Net Settlement Fund after the Initial Distribution (including from the Reserve and the funds for all void stale-dated checks), after deducting Epiq’s fees and expenses incurred in connection with administering the Settlement for which it has not yet been paid (including the estimated costs of such Second Distribution), and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, shall be distributed to all Authorized Claimants in the Initial

Distribution who (i) were not Claims Paid in Full; (ii) cashed their Initial Distribution check; and (iii) who would receive at least \$10.00 from such distribution;

(g) In order to allow a final distribution of any funds remaining in the Net Settlement Fund after completion of the Second Distribution, whether by reason of returned funds, tax refunds, interest, uncashed checks, or otherwise:

(i) Not less than six (6) months after the Second Distribution is conducted, Epiq shall conduct a further distribution of the Net Settlement Fund, if Lead Counsel, in consultation with Epiq, determine that it is cost-effective to do so, in which all funds remaining in the Net Settlement Fund, after deducting Epiq's unpaid fees and expenses incurred or to be incurred in connection with administering the Net Settlement Fund (including the estimated costs of such distribution), and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, shall be distributed to Authorized Claimants who cashed their Second Distribution checks and who would receive at least \$10.00 in such further distribution based on their *pro rata* share of the remaining funds. Additional redistributions, after deduction of the costs and expenses as described above and subject to the same conditions, may occur thereafter in six-month intervals until Lead Counsel, in consultation with Epiq, determines that further redistribution is not cost effective.

(ii) At such time as Lead Counsel, in consultation with Epiq determines that further redistribution of funds remaining in the Net Settlement Fund is not cost effective, if sufficient funds remain to warrant the processing of Claims received after May 15, 2018, Epiq shall process such Claims and any such

Claims that are otherwise valid as well as any earlier received Claims for which an adjustment was received after May 15, 2018 that resulted in an increased Recognized Claim may be paid in accordance with subparagraph (h) below. If any funds shall remain in the Net Settlement Fund after payment of such late or late adjusted Claims, the remaining balance of the Net Settlement Fund, after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, shall be contributed to non-sectarian, not-for-profit organization(s) to be recommended by Lead Counsel and approved by the Court.

(h) No new Claims shall be accepted after May 15, 2018, and no further adjustments to Claims received on or before May 15, 2018 that would result in an increased Recognized Claim amount shall be made for any reason after May 15, 2018, subject to the following exception. If Claims are received or modified after May 15, 2018 that would have been eligible for payment or additional payment under the Plan of Allocation if timely received then, at the time that Lead Counsel, in consultation with Epiq, determines that a re-distribution is not cost effective as provided in subparagraph (g)(ii) above, after the payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, such Claimants, at the discretion of Lead Counsel, may be paid their distribution amounts or additional distribution amounts on a *pro rata* basis that would bring them into parity with other



Authorized Claimants who have cashed all their prior distribution checks to the extent possible;

(i) All persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted herein, or who are otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, are hereby released and discharged from any and all claims arising out of such involvement, and all Settlement Class Members, whether or not they receive payment from the Net Settlement Fund, are hereby barred from making any further claims against the Net Settlement Fund, Lead Plaintiff, Lead Counsel, the Claims Administrator, the Escrow Agent or any other agent retained by Lead Plaintiff or Lead Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund, or any other person released pursuant to the Settlement beyond the amounts allocated to Authorized Claimants;

(j) All of Epiq's fees and expenses incurred in connection with the administration of the Settlement and estimated to be incurred in connection with the Initial Distribution of the Net Settlement Fund as set forth in Exhibits C and D to the Thurin Declaration are approved, and Lead Counsel is directed to pay \$338,413.17 out of the Settlement Fund to Epiq for those fees and expenses; and

(k) Unless otherwise ordered by the Court, one year after the Second Distribution, Epiq shall destroy the paper copies of the Claims and all supporting documentation and, one year after all funds have been distributed, Epiq shall destroy electronic copies of the same.

4. This Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and such other and further relief as this Court deems appropriate.

SO ORDERED this 29<sup>th</sup> day of June, 2018.

*Kimba M. Wood*

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The Honorable Kimba M. Wood  
United States District Judge

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