

**THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF TENNESSEE at
CHATTANOOGA**

In re: SKELAXIN (METAXALONE) ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: ALL END-PAYOR ACTIONS	MDL Case No. 1:12-md-2343 Judge Curtis L. Collier
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**FINAL APPROVAL ORDER AND FINAL JUDGMENT OF DISMISSAL WITH
PREJUDICE AS TO DEFENDANT MUTUAL PHARMACEUTICAL COMPANY, INC.**

The End-Payor Class Representatives (“Plaintiffs” or “Class Representatives”), on behalf of themselves and the putative Settlement Class they seek to represent (“End-Payor Settlement Class”), brought this class action against Defendants Mutual Pharmaceutical Company, Inc. (“Mutual”) and King Pharmaceuticals, Inc. (“King”) (collectively, “Defendants”), alleging that Defendants unlawfully delayed the market entry of generic versions of Skelaxin, a brand-name muscle relaxant containing the active ingredient metaxalone, in violation of federal antitrust law, numerous state antitrust and consumer protection statutes, and various states’ common law of unjust enrichment. After vigorous litigation of this action and hard-fought settlement negotiations, the Class Representatives and Mutual have entered into a proposed settlement (the “Settlement”), which was preliminarily approved by this Court on August 5, 2014 (“Preliminary Approval Order”), providing for a Nine Million Dollar (\$9,000,000.00) cash payment (the “Settlement Amount”) in exchange for the full and final settlement of the End-Payors’ claims as to Mutual.¹

¹ The Class Representatives previously stipulated to the dismissal with prejudice of Mutual’s co-defendant, King (Doc. 861).

Before the Court is the Class Representatives' Motion for Final Approval of Proposed Class Settlement (the "Final Approval Motion," Doc. 910); and (2) Class Counsel's Motion for an Award of Attorney Fees and Reimbursement of Expenses (the "Fee and Expense Motion," Doc. 783).

The Court has received the Declaration of James G. Stranch, III ("Stranch Decl.," Doc. 912) attesting to the distribution of the Class Notice in accordance with the Preliminary Approval Order. Due and adequate notice has been given to the End-Payor Settlement Class as required in the Preliminary Approval Order, and the Court has considered all papers, files, and proceedings in this case, and is otherwise fully informed in the premises. **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. The Court has jurisdiction over the subject matter of this action and over all parties to the action, including all members of the End-Payor Settlement Class.

2. In its Preliminary Approval Order, the Court conditionally certified an End-Payor Settlement Class. After conducting a rigorous analysis, the Court hereby grants final approval of the same End-Payor Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3), defined as follows:

All persons or entities in the United States and its territories who purchased and/or paid for some or all of the purchase price for Skelaxin and/or its AB-rated generic equivalents in Arizona, Arkansas, California, the District of Columbia, Florida, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, or Wisconsin (collectively, the "Class States"), in any form, for consumption by themselves, their families, or their members, employees, insureds, participants, or beneficiaries, other than for resale, during the Class Period. For purposes of the Class definition, persons or entities "purchased" Skelaxin or its generic equivalent if they paid or reimbursed some or all of the purchase price.

The following are excluded from the Class: (a) Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal, state and municipal government entities, except for government funded employee benefit plans; (b) Fully insured health plans (*i.e.*, plans that purchased insurance from another third-party payor (“TPP”) covering 100% of the Plan’s reimbursement obligations to its members); (c) “Flat co-payor” consumers whose plans at the time of purchase would have required them to pay the same fixed dollar co-payment amount for Skelaxin as for generic metaxalone. (The exclusion in this subparagraph “c” shall apply solely to the extent of purchases by such consumers with a fixed dollar co-payment and not with respect to any other purchases by such consumers); and (d) End-payors who paid for Skelaxin or generic metaxalone that was acquired solely through a prison or federal, state or municipal facility. (The exclusion in this subparagraph “d” shall apply solely to the extent of the just specified payments and not with respect to any other payments for Skelaxin or generic metaxalone by such end-payors). The “Class Period” is defined as the period of time from November 4, 2005 through August 5, 2014.

3. The Court also makes all previous appointments for Class Counsel and Class Representatives final.

4. In its Preliminary Approval Order, the Court approved the content of the proposed Notice, as well as provisions for disseminating the Notice and Claims Forms as described in and attached to the Settlement Agreement. The Court also approved KCC as the Settlement Administrator.

5. The Class Notice provides a description of the End-Payor Settlement Class, the procedural status of the litigation, a brief description of the plan of allocation, the court approval process for the proposed Settlement, and the significant terms of the Settlement. The Class

Notice also fully informed members of the End-Payor Settlement Class of their rights with respect to the Settlement, including the right to opt out of the Settlement, object to the Settlement, or otherwise be heard as to the reasonableness and fairness of the Settlement. The Class Notice also informed members of the End-Payor Settlement Class of their right to object to Class Counsel's application for an award of attorney fees, an award of incentive fees, and reimbursement of expenses from the Settlement Fund.

6. The Court now finds that Notice was provided to End-Payor Settlement Class members in accordance with the Preliminary Approval Order, as set forth in the Stranch Declaration, attached to the Final Approval Motion.

7. The Class Notice met the statutory requirements of notice under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirements of due process.

8. The Fairness Hearing was held on December 15, 2015, and all End-Payor Settlement Class members were afforded an opportunity to participate in that hearing. Class Counsel appeared and presented argument concerning the fairness, reasonableness, and adequacy of the Settlement. The Court finds that the Settlement is fair, reasonable, and adequate to the End-Payor Settlement Class. The Court finds that the Settlement of the End-Payor Settlement Class members' claims against Mutual was not the product of collusion between the Class Representatives and Mutual or their respective counsel, but rather was the result of bona fide and arm's-length negotiations conducted in good faith between Class Counsel and Mutual's counsel.

9. Pursuant to Fed. R. Civ. P. 23, this Court hereby approves the Settlement between the End-Payor Settlement Class and Mutual, and finds that the Settlement is, in all respects, fair, reasonable, and adequate, and in the best interests of the members of the End-Payor Settlement

Class, and within a range that responsible and experienced attorneys could accept considering all relevant risks and factors of litigation. Accordingly, the Settlement shall be consummated in accordance with the terms and provisions of the Settlement Agreement.

10. The Sixth Circuit has recognized a federal policy favoring the voluntary settlement of class actions. *Int'l Union, United Auto., Aerospace, and Agric. Implement Workers of Am. v. Gen. Motors Corp.*, 497 F.3d 615, 632 (6th Cir. 2007) (“*UAW v. GMC*”); *Griffin v. Flagstar Bancorp, Inc.*, No. 10-10610, 2013 U.S. Dist. LEXIS 173702, at *6 (E.D. Mich. Dec. 12, 2013). Before approving a settlement, a district court must conclude that it is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). Several factors guide the inquiry: (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest. *See UAW v. GMC*, 497 F.3d at 631; *Granada Invs., Inc. v. DWG Corp.*, 962 F.2d 1203, 1205 (6th Cir. 1992).

11. The Settlement was a product of arm’s-length negotiations. The Parties arrived at the Settlement after working with the Court-appointed mediator for over a year and engaging in several independent negotiation sessions. These negotiations—aided by Retired Judge Jennifer Coffman’s leadership—were lengthy, detailed, and hard-fought. The Parties scrutinized the strengths and weaknesses of the pending claims and, utilizing their extensive experience with pharmaceutical antitrust litigation, engaged in intensive bargaining over the merits of the respective claims and defenses and the value of the End-Payor Settlement Class members’ claims.

12. Class Counsel’s decision to enter into the Settlement was, moreover, informed by significant Court rulings, as well as substantial discovery. In addition to taking and defending twenty-seven depositions, Class Counsel served multiple sets of discovery and reviewed

hundreds of thousands of documents in connection with their allegations. Accordingly, Class Counsel engaged in more than sufficient discovery and investigation to make an informed decision about the Settlement.

13. Class Counsel and the End-Payor Settlement Class would have faced numerous and substantial risks in establishing both liability and damages against Mutual if they had decided to continue to litigate rather than settle, and the Settlement Amount is well within the range of reasonableness in light of the best possible recovery and the risks the Parties would have faced if the case had continued to verdicts on both liability and damages.

14. Class Counsel and the Plaintiffs themselves fully support the Settlement, and the reaction of absent Class members further supports a finding that the Settlement is fair, reasonable, and adequate.

15. The Court finds that the Settlement is fair, reasonable, and adequate as to each member of the End-Payor Settlement Class. The Settlement is finally approved in all respects. The Parties are directed to implement the Settlement in accordance with the terms and conditions of the Settlement Agreement.

16. As set forth in Paragraph 10 of the Settlement Agreement, the Plaintiffs and each member of the End-Payor Settlement Class, other than those members that have timely excluded themselves and identified the value of their purchases, shall release and forever discharge the Releasees from the Released Claims, as such terms are defined in the Settlement Agreement. Each member of the End-Payor Settlement Class, other than those members that have timely excluded themselves and identified the value of their purchases, is deemed to have covenanted and agreed that it shall not, hereafter, seek to establish liability against any Releasee based, in whole or in part, upon any of the Released Claims.

17. Class Counsel are hereby awarded attorney fees in the amount of Three Million Dollars (\$3,000,000.00), or one third of the Settlement Fund, plus a proportionate share of the interest from the Settlement Fund through the date of the award. The Court finds this award to be fair and reasonable.

18. Class Counsel are hereby awarded Nine Hundred Ninety-Five Thousand Eight Hundred Thirty-One Dollars and Ninety-Six Cents (\$995,831.96), plus a proportionate share of the interest from the Settlement Fund through the date of the award, out of the Settlement Fund to reimburse them, and all Plaintiffs' counsel, for the expenses they incurred in the prosecution of the lawsuit, which expenses the Court finds to be fair, and reasonably incurred to achieve the benefits to the End-Payor Settlement Class obtained in the Settlement.

19. The Plaintiffs are hereby awarded incentive fees as follows: an aggregate award of Sixty-Thousand Dollars (\$60,000.00). The Court finds that these entities actively participated and/or assisted in the prosecution of this case by, among other things, production of documents in electronic and other form, providing written discovery responses, regularly communicating with counsel, appearing for depositions, and assisting with settlement negotiations.

20. The awarded attorney fees and expenses, and the awarded incentive fees, shall be paid to Class Counsel from the Settlement Fund in accordance with the terms of the Settlement Agreement. Class Counsel shall allocate the fees and expenses among all of Plaintiffs' counsel accordingly.

21. In making its award of attorney fees and reimbursement of expenses, the Court has considered that (a) the Settlement achieved as a result of the efforts of Class Counsel has created a fund of Nine Million Dollars (\$9,000,000.00) in the case that is already on deposit for the benefit of the End-Payor Settlement Class; (b) the Action involves complex factual and legal issues and, in the absence of a settlement, would involve further lengthy proceedings with

uncertain resolution of the complex factual and legal issues; (c) had the Settlement not been achieved, there would remain a significant risk that the Plaintiffs and the End-Payor Settlement Class would have recovered less or nothing from Defendant; and (d) the amount of attorney fees and expenses is consistent with awards in similar cases.

22. Neither this Order and Final Judgment, the Settlement Agreement, nor any or all negotiations, documents, or discussions associated with it shall be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by Mutual, or the truth of any of the claims or allegations contained in the complaints or any other pleading or document.

23. Without affecting the finality of this judgment, the Court retains exclusive jurisdiction over the Settlement and the Settlement Agreement (including the administration and consummation of the Settlement Agreement) and the plan of allocation in order to determine any remaining issues relating to attorney fees and expenses and any distribution to members of the End-Payor Settlement Class. In addition, without affecting the finality of this Judgment, Mutual and each member of the End-Payor Settlement Class is deemed to have irrevocably submitted to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to the Settlement Agreement or the applicability of the Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein, except that this submission to the Court's jurisdiction shall not prohibit (a) the assertion in the forum in which a claim is brought that the release included in the Settlement Agreement is a defense, in whole or in part, to such claim or (b) in the event that such a defense is asserted in that forum, the determination of its merits in that forum.

24. In the event the Settlement does not become final in accordance with its terms, pursuant to Paragraphs 17 and 18 of the Settlement Agreement, this Order and Final Judgment

shall be rendered null and void, shall be vacated, and all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Settlement Agreement.

25. For a period of five years, the Clerk of the Court shall maintain the record of those members of the Class who have timely excluded themselves from the Settlement Class and a certified copy of such records shall be provided to Mutual on Mutual's request.

26. The Court hereby directs that the stay as to the action against Mutual is hereby lifted, and Judgment of Dismissal With Prejudice be entered by the Clerk of the Court forthwith pursuant to Federal Rule of Civil Procedure 54(b) in regard to the Plaintiffs' and End-Payor Settlement Class Members' claims against Mutual, only. The direction of the entry of final judgment pursuant to Rule 54(b) is appropriate and proper because this judgment fully and finally adjudicates the claims of the Plaintiffs and the End-Payor Settlement Class in this action solely as to Mutual, allows consummation of the Settlement, and will allow for the subsequent distribution of the Settlement proceeds to the members of the End-Payor Settlement Class.

27. The Court hereby **GRANTS** the Final Approval Motion (Doc. 910) and the Fee and Expense Motion (Doc. 783). The Court **DIRECTS** the Clerk of Court to **CLOSE** the End-Payor Settlement Class cases: Case Nos. 1:12-cv-194 (Lead Case), 1:12-cv-134, 2:12-cv-85, and 1:12-cv-274.

SO ORDERED.

ENTER:

/s/
CURTIS L. COLLIER
UNITED STATES DISTRICT JUDGE

ENTERED AS A JUDGMENT
s/ Debra C. Poplin
CLERK OF COURT