UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

GOVERNMENT EMPLOYEES HEALTH ASSOCIATION, on behalf of itself and all others similarly situated, Plaintiff, v. ACTELION PHARMACEUTICALS LTD. et al., Defendants.	Case No. 1:18-cv-3560-GLR

GLR

~~[PROPOSED]~~ FINAL APPROVAL ORDER AND JUDGMENT

I. INTRODUCTION

On June 17, 2026, Plaintiff Government Employees Health Association ("GEHA" or "Plaintiff"[1]), on behalf of itself and the certified class of Third Party Payors ("the Class"), filed a Motion for Final Approval of Proposed Settlement, Approval of the Plan of Allocation and Distribution, and Entry of Final Judgment pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and the Court's March 13, 2026 Order (ECF No. 423).

Plaintiff entered into a Settlement Agreement ("Settlement") with Defendants Actelion Pharmaceuticals Ltd., Actelion Pharmaceuticals U.S., Inc., and Janssen Research & Development, LLC (collectively, "Defendants"). On March 4, 2026, Plaintiff moved for preliminary approval of the Settlement. ECF No. 421. The Court granted preliminary approval of the Settlement on March 13, 2026, directed notice of the Settlement to the Class, and scheduled a Fairness Hearing for July 1, 2026. ECF No. 423.

Having held a hearing on July 1, 2026 and considered the Motion and related briefing and declarations, and good cause appearing, the Court makes the following findings of fact and conclusions of law. Plaintiff's Motion is granted, and Judgment is entered in accordance with the terms of this Order effective as of this date.

II. BACKGROUND

On January 25, 2019, Plaintiff filed its Consolidated Class Action Complaint ("CCAC") against Defendants alleging violations of forty-six federal and state antitrust and consumer protection laws. ECF No. 34. Plaintiff alleged that Defendants unlawfully delayed generic competition for their blockbuster branded drug, Tracleer, which resulted in artificially inflated prices for branded Tracleer and its generic equivalent (bosentan). *Id.* ¶¶ 1–12. Plaintiff alleged that

[1] Unless otherwise noted, defined terms used in this Order and Judgment shall be defined as set forth in the Settlement Agreement.

members of the Class paid more for Tracleer and its generic equivalents than they would have paid absent Defendants' unlawful conduct. *Id.* ¶ 267.

The parties executed a binding Settlement on February 18, 2026. *See* Exhibit 1 (ECF No. 421-3) to the March 4, 2026 Declaration of Sharon K. Robertson in Supp. of Pl.'s Motion for Preliminary Approval ("Robertson Decl."), ECF No. 421-2. The parties agreed to the proposed Settlement after extensive discovery, motion practice, trial preparation, and good faith arm's-length negotiations among experienced counsel with assistance from Chief Magistrate Judge Timothy J. Sullivan. Joint Decl. ¶ 39. In accordance with the terms of the proposed Settlement, Defendants deposited $65,000,000 into an escrow account on behalf of the same Class that the Court previously certified. Robertson Decl., Ex. 1 ¶ 2.1, ECF No. 421-3.

The Class is defined as:

> 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 Tracleer or bosentan, other than for resale, in the Class States and territories[2] at any time during the period from December 29, 2015, through September 6, 2024.[3]

The parties have agreed to mutual releases, according to the terms of the Settlement. *Id.* ¶¶ 4.1–4.4. Plaintiff has agreed to release and dismiss with prejudice the Class claims against Defendants if the Settlement receives Final Approval from the Court. *Id.* ¶ 4.8.

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[2] The Class States and territories are: Arizona, California, Florida, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, the District of Columbia, and Puerto Rico.

[3] The following are excluded from the Class: (1) Defendants and their subsidiaries and affiliates; and (2) federal and state governmental entities.

III. FINAL APPROVAL OF THE SETTLEMENT

A court may approve a proposed class action settlement only "after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In making this assessment, courts in the Fourth Circuit consider the factors enumerated in the Federal Rules and *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158–59 (4th Cir. 1991). For the reasons detailed below, the Court finds the proposed Settlement is fair, reasonable, and adequate under the Rule 23(e)(2) and the *Jiffy Lube* factors. The Court also finds that the Proposed Plan of Allocation and Distribution is fair, reasonable and adequate.

A. The Settlement Satisfies the *Jiffy Lube* Test for Fairness

First, the case had progressed significantly at the time of the Settlement. *Jiffy Lube*, 927 F.2d at 159. The proposed Settlement was reached less than two weeks before the trial was set to commence, at which point the parties had aggressively litigated the case for more than seven years. As a result, Co-Lead Counsel had a well-developed record and understanding of the risks and benefits of continued litigation against Defendants when agreeing to the terms of the Settlement. *See In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 254–55 (E.D. Va. 2009) (finding that nearly reaching the conclusion of all fact discovery "clarifies plaintiffs' previous understanding of the strength and weaknesses of their claims and affords plaintiffs the ability to confirm the fairness, reasonableness, and adequacy of the proposed partial settlement" (citation modified)).

Second, significant discovery had been conducted at the time of settlement. *Mills Corp.*, 265 F.R.D. at 254. By the time the proposed Settlement was reached, fact and expert discovery (which included the production and review of over 1.6 million pages of documents) had been completed. Joint Decl. ¶¶ 6, 39. The parties had taken and/or defended over 20 fact and expert-witness depositions, fully briefed numerous motions, exchanged expert reports regarding class and merits issues, and subpoenaed and obtained discovery from many nonparties. Joint Decl. ¶¶ 6–22.

Third, the Settlement resulted from good-faith negotiations between Co-Lead Counsel for the Class and counsel for Defendants, with assistance from Chief Magistrate Judge Timothy Sullivan, who conducted multiple settlement conferences before the settlement could be reached. Joint Decl. ¶ 39; *see also Jiffy Lube*, 927 F.2d at 159; Fed. R. Civ. P. 23(e)(2)(B).

Fourth, the Class is represented by counsel with extensive antitrust and complex litigation experience, particularly in antitrust class actions involving pharmaceutical products. *Jiffy Lube*, 927 F.2d at 159; Fed. R. Civ. P. 23(e)(2)(A). Co-Lead Class Counsel, relying on their years of experience in similar cases and their efforts in this litigation, had the ability to assess the merits of continued litigation and the benefits achieved for the Class, and has respectfully recommended approval of the Settlement. *See, e.g., Mills Corp.*, 265 F.R.D. at 255 ("[I]t is entirely warranted for this Court to pay heed to [Class Counsel's] judgment in approving, negotiating, and entering into a putative settlement").

B. The Settlement Satisfies the *Jiffy Lube* Test for Adequacy

First, the risks of continued litigation weigh in favor of settlement. *Mills Corp.*, 265 F.R.D. at 256; Fed. R. Civ. P. 23(e)(2)(C)(i). Absent the proposed Settlement, the risks and complexities of proceeding with trial could have resulted in the Class receiving no recovery at all. In contrast, the proposed Settlement serves the best interests of the Class by securing a substantial cash recovery of $65,000,000 while avoiding delays, risks, and uncertainties, including the vagaries of juries tasked with rendering a verdict in a case as highly complex as this one and the potential appeal of any favorable verdict the Class might have been awarded. Compared to proceeding through trial, the certain receipt of the settlement funds works to the benefit of the Class.

Second, the anticipated costs of continued litigation weigh in favor of settlement. *Jiffy Lube*, 927 F.2d at 159; Fed. R. Civ. P. 23(e)(2)(C)(i). The additional litigation expenses associated with preparing for and completing the five-week trial would include thousands of attorney and support-

staff hours, document-hosting platform fees for the over 1.6 million pages of documents, expert fees, daily transcript fees, witness and expert travel expenses, and housing expenses for counsel, witnesses, and experts.

Third, Defendants would likely have been able to pay a significant judgment had the case proceeded to trial and a verdict been returned in favor of the Class, thus this factor is neutral. *Solomon*, 2020 WL 3490606, at *5 (Without "any clear evidence of Defendants risk of insolvency, this factor is largely considered 'beside the point given the other factors weighing in favor of preliminary approval.'" (quoting *Henley v. FMC Corp.*, 207 F. Supp. 2d 489, 494 (S.D.W. Va. 2002))).

Fourth, lack of opposition to the proposed Settlement weighs in favor of approval. *Microstrategy*, 148 F. Supp. 2d at 668 ("Such a lack of opposition to the Settlement strongly supports a finding of adequacy, for '[t]he attitude of the members of the Class, as expressed directly or by failure to object, after notice to the settlement is a proper consideration for the trial court.'"). The deadline for Class members to object to the Settlement, Plan of Allocation and Distribution, and request for attorneys' fees and expenses was June 2. No members of the Class have objected. Supplemental Declaration of Eric Miller ("Supp. Miller Decl.") ¶ 10; Joint Decl. ¶ 40.

C. The Plan of Allocation and Distribution Satisfies Rule 23

The Settlement Amount will be distributed as follows: (i) one-third of the settlement fund will be for the payment of attorneys' fees in the amount of $21,666,666.67, plus any accrued interest thereon; (ii) litigation expenses in the amount of $3,875,181.16 will be reimbursed; (iii) Class Representative GEHA will receive a service award totaling $40,000, and (iv) any remaining expenses associated with the administration of the settlement will be paid. The remaining net amount will be distributed *pro rata* to eligible members of the Class according to their purchases of branded and/or generic Tracleer, according to the Plan of Allocation and Distribution.

First, the Plan of Allocation and Distribution provides for an effective method of distribution. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii). Courts have approved similar methodologies in numerous other pharmaceutical antitrust class actions.[4] Class Members have been able to easily complete and submit their claim forms by mail or online. Robertson Decl., Exs. 2–3, ECF Nos. 421-4, 421-5; *see also In re ConAgra Foods, Inc.*, 2022 WL 17243625, at *8 (C.D. Cal. Nov. 14, 2022) (noting similar distribution plan was "straightforward" and thus satisfied Rule 23(e)).

Second, the Plan of Allocation and Distribution treats Class Members equitably. *See* Fed. R. Civ. P. 23(e)(2)(D). The proposed Plan of Allocation proposes that the Net Settlement Fund should be distributed *pro rata* based on each Class Member's purchases. *Birks v. Small Cmty. Specialists, L.L.C.*, 2024 WL 5344437, at *5 (D. Md. Dec. 10, 2024) ("Settlement Class Members are treated fairly as to one another because they are compensated according to the amount . . . they were charged.").

Third, the requested attorneys' fees are fair and reasonable. The fees and expenses sought are reasonable and align with fees awarded by this District, and by courts in similar pharmaceutical antitrust cases. *See; e.g.*, *Zetia*, ECF No. 2168 at 14–15 ("District courts in the Fourth Circuit have frequently found that a percentage award of one-third of the Settlement Fund is within the range of reasonable percentage of recovery, and one-third of the fund is a common award in antitrust class actions."); *Birks*, 2024 WL 5344437, at *6 ("39.35% of the Gross Settlement Fund [is]

[4] *See, e.g.*, *In re Zetia (Ezetimibe) Antitrust Litig.*, No. 2:18-md-02836 (E.D. Va. Oct. 18, 2023), ECF No. 2168 at 14–15; *Vista Healthplan, Inc. v. Warner Holdings Co. III, Ltd.*, 246 F.R.D. 349 (D.D.C. 2007); *Nichols v. SmithKline Beecham Corp.*, 2005 WL 950616, at *16–19 (E.D. Pa. Apr. 22, 2005); *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 258–60 (D. Del. 2002), *aff'd*, 391 F.3d 516 (3d Cir. 2004); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 380–82 (D.D.C. 2002); *In re Loestrin 24 FE Antitrust Litig.*, 2020 WL 4035125 (D.R.I. July 17, 2020), *report and recommendation adopted*, 2020 WL 5203323 (Sep. 1, 2020); *In re Lidoderm Antitrust Litig.*, 2018 WL 11293766 (N.D. Cal. May 3, 2018); *In re Aggrenox Antitrust Litig.*, 2018 WL 1183734 (D. Conn. Mar. 6, 2018).

reasonable and aligns with other class actions where Maryland courts have awarded attorneys' fees."); *see also* Appendix A to Counsel's Mem. of Law in Supp. of Mot. for an Award of Attorneys' Fees (chart detailing fee awards in generic pharmaceutical antitrust class actions).

Accordingly, the Court grants final approval for the Settlement and approves the Plan of Allocation and Distribution.[5]

IV. NOTICE TO THE CLASS

Rule 23 requires that prior to final approval, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23 (e)(1)(B). To meet the Rule 23(e) and due process requirements, "all that the notice must do is fairly apprise the prospective members of the class of the terms of the proposed settlement so that class members may come to their own conclusions about whether the settlement serves their interests." *In re Outer Banks Power Outage Litig.*, 2018 WL 2050141, at *6 (E.D.N.C. May 2, 2018) (quoting *Int'l Union, UAW v. Gen. Motors Corp.*, 497 F.3d 615, 630 (6th Cir. 2007)). Rule 23(c)(2)(B) requires "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort."

A.B. Data carried out a thorough notice plan. The proposed Notice Plan was detailed in Plaintiff's Motion for Preliminary Approval (ECF No. 421) and approved by the Court on March 13, 2026 (ECF No. 423). Mr. Eric Miller of A.B. Data submitted a declaration of compliance with notice requirements on April 13, 2026 (ECF No. 424), confirming that notice had been effectuated pursuant to the Court-ordered Notice Plan. Notice provided Class Members with an explanation of their right to object to any aspect of the Settlement, the request for attorneys' fees,

[5] The Court is required to consider any agreements required to be identified under Rule 23.(e)(3). No other agreements have been made in connection with the Settlements.

reimbursement of expenses, service awards, and the procedures to follow to do so.[6] The form of Notice regarding the proposed Settlement was designed to alert members of the Class to the Settlement Agreement with a bold headline and plain language providing essential information regarding the salient terms. Robertson Decl., Ex. 3 at 27, 37. The Notice Plan, which included notice sent via mail and email to Class members identified in A.B. Data's database as well as a banner ad campaign and news release, ensured a large portion of Class Members received direct notice. Supp. Miller Decl. ¶ 5–8. This robust Notice Plan provided at least 80% reach and frequency similar to notice plans that other courts have approved and that are recommended by the Federal Judicial Center's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide (2010). *Id.* ¶ 12.

In addition, Defendants served the required notices under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, with the documentation required by 28 U.S.C. § 1715(b)(1)-(8).

Accordingly, the Court finds the notice provided to the Class constitutes due, adequate, and sufficient notice and meets the requirements of due process and the Federal Rules of Civil Procedure.

V. ATTORNEYS' FEES, EXPENSES, AND AWARD TO THE CLASS REPRESENTATIVE

Class Counsel have moved for an award of attorneys' fees, reimbursement of expenses, and a service award to Plaintiff GEHA. Class Counsel request (i) an award of attorneys' fees of one-third of the gross settlement fund, totaling $21,666,666.67, plus any interest on that amount that may accrue prior to distribution at the same rate as earned by the settlement fund, including the interest accrued thereon, (ii) reimbursement of reasonable litigation expenses incurred in the

[6] *Did You Purchase, Pay for, or Provide Reimbursement for Tracleer or Bosentan?* (Long Form Notice) (Apr. 3, 2026), https://tracleerlitigation.com/media/wp0l41am/long-form-notice.pdf.

prosecution of this action, totaling $3,875,181.16, and (iii) payment of an incentive award of $40,000 to GEHA in recognition of its participation in this case on behalf of the third-party payor class. As a result, upon consideration of Class Counsel's petition for fees, costs and expenses, Class Counsel are hereby awarded attorneys' fees totaling $21,666,666.67 (representing 33 1/3% of the gross Settlement Fund) and costs and expenses totaling $3,875,181.16, together with a proportionate share of the interest thereon from the date the funds were deposited in the Escrow Account until payment of such attorneys' fees, costs and expenses, at the rate earned by the Settlement Fund, to be paid solely from the Settlement Fund. The Court also grants the request for a service award to GEHA in the amount of $40,000.00.

Co-Lead Counsel shall allocate and distribute such attorneys' fees and expenses among the various Class Counsel which have participated in this litigation. The Releasees shall have no responsibility for, and no liability whatsoever with respect to, any payment or disbursement of attorneys' fees and expenses among Class Counsel nor with respect to any allocation of attorneys' fees or expense to any other person or entity who may assert any claim thereto. The attorneys' fees and expenses authorized and approved by this Order shall constitute full and final satisfaction of any and all claims that Plaintiff and any Class Member, and their respective counsel, may have or assert for reimbursement of fees, costs, and expenses, and incentive awards, and Plaintiffs and members of the Class, and their respective counsel, shall not seek or demand payment of any fees and/or costs and/or expenses and/or incentive awards from Actelion other than from the Settlement Fund.

VI. RELEASES AND EFFECT OF THIS ORDER

By operation of this Order and Judgment, on the Effective Date, the action and all claims contained therein, are dismissed with prejudice as to Defendants. This Order and Judgment shall constitute a final judgment binding the Released Persons with respect to the Released Claims.

Upon the Effective Date, Plaintiff and each Class Member hereby releases and forever discharges and holds harmless the Defendants' Released Persons of and from Plaintiff's Released Claims. In addition, each of the Defendants' Released Persons hereby releases and forever discharges all Defendants' Released Claims against Plaintiff's Released Persons, including Co-Lead Counsel.

No Party may cite the Settlement Agreement or any related document or filing in support of an argument for certifying a class for any purpose related to the Action or the Released Claims. It is expressly agreed by and among the Parties that neither the Settlement Agreement, nor any document referred to within, nor any action taken to carry out the Settlement Agreement may be construed as an admission by the Defendants of any fault, wrongdoing, or liability whatsoever with respect to the subject matter of the Action.

Any distribution of monies or funds to Class Members shall be in accordance with the Plan of Allocation and Distribution approved by the Court. The Defendants shall not be responsible or liable for any aspect of the allocation methodology set forth in the Plan of Allocation and Distribution or the implementation of that methodology.

Without affecting the finality of the judgment hereby entered, the Court reserves exclusive jurisdiction over the administration and consummation of the Settlement and the settlement administration process. In the event the Effective Date does not occur in accordance with the terms of the Settlement Agreement, then this Order and any judgment entered thereon shall be rendered null and void and shall be vacated, and in such event, all orders and judgments entered, and releases delivered in connection herewith shall be null and void and the parties shall be returned to their respective positions *ex ante*.

VII. CONCLUSION

For the foregoing reasons, the Court grants final approval of the Settlement and enters Judgment in accordance with the terms of this Order as of the date of this Order. The Court directs consummation of the Settlement pursuant to its terms. The Action is dismissed with prejudice, and the Court's judgment is final.

IT IS SO ORDERED.

DATED: 7/1/2026

George L. Russell, III
Chief United States District Judge