

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

GOVERNMENT EMPLOYEES HEALTH
ASSOCIATION, on behalf of itself and all
other similarly situated,

Plaintiff,

v.

ACTELION PHARMACEUTICALS LTD., *et*
al.,

Defendants.

Case No. 1:18-cv-3560-GLR

**[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE OF SETTLEMENT**

This Court, having reviewed and considered the Settlement Agreement executed between the Plaintiff Government Employees Health Association (“GEHA” or “Plaintiff”), and Defendants Actelion Pharmaceuticals Ltd., Actelion Pharmaceuticals U.S., Inc., and Janssen Research & Development, LLC (collectively, “Defendants”) and the certified Class defined in Plaintiff’s Motion for Preliminary Approval of Proposed Settlement, Approval of the Form and Manner of Notice to the Class, and Proposed Schedule for a Fairness Hearing, ORDERS:

1. Preliminary approval of the Settlement, subject to further consideration at the Fairness Hearing described below.
2. Unless otherwise defined herein, capitalized terms referencing the Settlement Agreement shall have the meanings ascribed to those terms in the Settlement Agreement.
3. The Court previously certified the Class on September 6, 2024. ECF No. 350. The Class is hereby defined as follows:

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 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 at any time during the period from December 29, 2015, through September 6, 2024.

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

4. The Court previously appointed Plaintiff as the class representative. ECF No. 350. The Court also previously appointed Thomas Sobol of Hagens Berman Sobol Shapiro LLP and Sharon Robertson of Cohen Milstein Sellers & Toll PLLC as Co-Lead Counsel on behalf of the Class on September 6, 2024. ECF No. 350.

5. The Fairness Hearing shall be held before this Court on _____, 2026, at _____, **(at least 110 days after issuance of the Preliminary Approval Order)** before the Honorable George L. Russell, III, in Courtroom __ of the United States District Court for the District of Maryland, to determine: (i) whether the terms and conditions provided for in the proposed Settlement Agreement are fair, reasonable, and adequate to the Class and should be finally approved by the Court; (ii) whether a Final Order and Judgment of Dismissal, which, inter alia, dismisses the Action in its entirety with prejudice and contains releases, should be entered; (iii) whether the proposed Plan of Allocation should be approved; and (iv) the amount of reasonable attorneys' fees, costs, and expenses, if any, that should be awarded to Class Counsel and an incentive award to Plaintiff, the Class Representative.

Preliminary Approval of the Settlement Agreement

6. The Court finds that the proposed Settlement, which includes payments from Defendants that collectively total sixty-five million dollars (\$65,000,000) (the “Settlement Fund”), to be deposited into an escrow account for the benefit of the Class, in exchange for, *inter alia*, dismissal of the litigation between the Class and Defendants with prejudice and release and discharge of the Plaintiffs’ Released Claims and Defendants’ Released Claims, as set forth in the Settlement Agreement, and which was arrived at by arm’s-length negotiations by highly experienced counsel after formal and informal mediations and over seven years of litigation, falls within the range of possibly approvable settlements. The proposed Settlement is, therefore, hereby preliminarily approved, subject to further consideration at the Fairness Hearing.

Approval of the Notice Plan

7. Members of the Class have previously been given notice of the pendency of the litigation and the opportunity to exclude themselves. No Class Members have been excluded from the Class. The Court previously found that the prior notice of class certification to the Class satisfied the requirements of Rule 23 and due process, (ECF No. 369), and because the prior notice to the Class provided an opt-out period that closed on December 23, 2024, there is no need for an additional opt-out period pursuant to Fed. R. Civ. P. 23(e)(4).

8. The Court approves, as to form and content, the notice plan (“Notice Plan”) and exhibits attached to the Declaration of Eric Miller, including the Claim Form and Notices, and finds that the direct mailing and email distribution of the Postcard Notice¹ and publishing of the Summary Notice substantially in the manner and form set forth therein meet the requirements of

¹ Postcard Notice, Summary Notice, Claim Forms are defined in the Notice Plan.

Federal Rule of Civil Procedure 23 and due process, and constitute the best notice practicable under the circumstances and shall constitute due and sufficient notice to all entitled to be noticed.

9. The Court further reserves the right to enter a Final Judgment and Order of Dismissal that approves the Settlement and dismisses the Action (as defined in the Settlement Agreement) on the merits and with prejudice regardless of whether the Court has approved the Plan of Allocation or awarded attorneys' fees and expenses or awarded the Class Representative an incentive award.

10. The Court appoints A.B. Data, Ltd. as Notice and Claims Administrator ("Notice and Claims Administrator") to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

a. No later than 21 days after entry of this Order (the "Notice Date"), Co-Lead Counsel shall cause a link to the Summary Notice and the Claim Forms, substantially in the forms annexed as Exhibits attached to the Declaration of Eric Miller and hosted on a website maintained by the Notice and Claims Administrator, to be emailed to all members of the Class whose last-known email addresses can be identified with reasonable effort. Co-Lead Counsel shall cause a copy of the Postcard Notice providing an address, phone number and website address where members of the Class can obtain the Notice and Claim Form, advising them of their right to object to the Settlement, and of the date and time for the Fairness Hearing to be mailed by first-class mail to all members of the Class (as defined in the Notice) who can be identified with reasonable effort. Since Class Members have, by earlier notice been afforded the opportunity to opt out of the Class and the deadline to do so expired on December 23, 2024, no further opt out period shall be provided.

b. No later than 21 days after the issuance of this Order, Co-Lead Counsel shall cause the Summary Notice to be published once in a nationally distributed newswire, and not later than 21 days after the issuance of this Order, Co-Lead Counsel shall place a copy of the Settlement Agreement (including Exhibits) and this Preliminary Approval Order on the website, <https://tracleerlitigation.com/> maintained by the Notice and Claims Administrator.

c. No later than 30 days after the issuance of this Order, Class Counsel shall cause to be served on Defendants' counsel and filed with the Court proof, by affidavit or declaration, of compliance with the notice requirements of this Order.

d. No later than 7 days prior to the Fairness Hearing, the Notice and Claims Administrator shall submit a report outlining the implementation of the Notice Plan, including how many Notices were sent, and how many Claim Forms were submitted.

11. All members of the Class shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class.

12. Members of the Class who wish to participate in the Settlement shall complete and submit a Claim Form in accordance with the instructions contained therein. Unless the Court orders otherwise, all Claim Forms must be submitted electronically by, or if mailed, postmarked no later than _____, 2026 (**120 calendar days after the Notice Date**). Any member of the Class that does not submit a timely Claim Form within the time provided shall be barred from sharing in the distribution of the proceeds of the Net Settlement Amount unless otherwise ordered by the Court.

13. Members of the Class may enter an appearance in the Action, at their own expense, individually or through counsel of their choice. Members of the Class who do not enter an appearance will be represented by Co-Lead Counsel.

14. Members of the Class may appear and show cause if they have any reason why the proposed Settlement should or should not be approved as fair, reasonable, and adequate, why a judgment should or should not be entered thereon, why the Plan of Allocation and Distribution should or should not be approved, why attorneys' fees and expenses should or should not be awarded, or why a service award should or should not be provided to the Class Representative.

15. Any member of the Class who does not make a written objection in the manner provided in the Notices and/or appear in person or through a representative at the Fairness Hearing shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the Settlement, to the Plan of Allocation and Distribution, or to any award of attorneys' fees reimbursement of expenses, and incentive award to the Class Representative.

16. The Court appoints Huntington National Bank to be the Escrow Agent. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Settlement Agreement and Plan of Allocation.

17. The Plan of Allocation or any application for attorneys' fees, reimbursement of expenses, or incentive award to the Class Representative will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

18. At or after the Fairness Hearing, the Court will determine whether the Plan of Allocation and Distribution and the application for attorneys' fees, reimbursement of expenses, and service award to the Class Representative shall be approved. However, Co-Lead Counsel is permitted to withdraw up to \$250,000 for costs related to issuing Notice without further order of the Court.

19. All reasonable expenses incurred in identifying and notifying members of the Class, as well as administering the Settlement Fund, including any taxes, shall be paid as set forth in the Settlement Agreement. In the event the Settlement is not finally approved by the Court, or otherwise fails to become effective, neither Class Representative Plaintiff, the Class, nor Class Counsel shall have any obligation to repay any amounts actually and properly disbursed for disseminating the notice to the Class and related notice administration expenses, except as provided in the Settlement Agreement.

20. Neither this Order, the Settlement, nor any of their terms or provisions, nor any act performed or document executed pursuant to or in furtherance of them, nor any of the negotiations or proceedings connected with them, shall be construed as an admission or concession by any party of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind and shall not be construed as, or deemed to be evidence of, or an admission or concession that, Plaintiff or any members of the Class have suffered any damages, harm, or loss.

21. In the event that the Settlement does not become final in accordance with its terms, this Order shall be vacated and rendered null and void to the extent provided by and in accordance with the terms of the Settlement Agreement. In such event, all orders entered, and releases delivered in connection herewith shall also be null and void to the extent provided by and in accordance with the Settlement Agreement.

Schedule

22. The Court reserves the right to continue the Fairness Hearing without further notice to the Class other than by ECF and posting on the website, <https://tracleerlitigation.com/>, and retains jurisdiction to consider all further applications arising out of or connected with the proposed

Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the parties, if appropriate, without further notice to the Class other than by ECF.

23. Pending the Fairness Hearing, all of Plaintiffs' Released Persons are enjoined from initiating or prosecuting any actions or claims against any of Defendants' Released Persons that are within the scope of the releases provided for by the Settlement Agreement, and all of Defendants' Released Persons are enjoined from initiating or prosecuting any actions or claims against any of Plaintiffs' Released Persons that are within the scope of the releases provided for by the Settlement Agreement.

24. The following schedule of dates shall govern the resolution of the Settlement:

EVENT:	PROPOSED DEADLINE
Deadline for Class Counsel to provide notice to Class Members by effectuating the Summary Notice and Postcard Notice as specified in the Notice Plan	_____, 2026 [or 21 days after entry of Preliminary Approval Order]
Deadline for Class Counsel to cause the Summary Notice to be published once in nationally distributed, business-focused newswires	_____, 2026 [or 21 days after entry of Preliminary Approval Order]
Deadline for Class Counsel to file affidavit of notice of emailing, mailing, and publication	_____, 2026 [or 30 days after entry of Preliminary Approval Order]
Deadline for members of the Class to file objections to (i) the Settlement, (ii) the Plan of Allocation, (iii) the application by Class Counsel for attorneys' fees and/or reimbursement of expenses (collectively, the "Applications")	_____, 2026 [or 60 days after the Notice Date]
Deadline for filing of Final Approval papers in support of (i) the Settlement, (ii) the Plan of Allocation, (iii) the application by Class Counsel for attorneys' fees and/or reimbursement of expenses	_____, 2026 [or 14 days before the Fairness Hearing]
Deadline for Class Members in the Class to submit/file: <ul style="list-style-type: none"> • Proof of Claim and Release Forms • Objections to the Settlement, or any of the 	_____, 2026 [or 14 days before the Fairness Hearing]

Applications for award of Attorneys' fees, reimbursement of expenses, and incentive awards	
Deadline for filing reply to any opposition to the Applications for award of Attorneys' fees, reimbursement of expenses, and incentive awards or any response to any objection(s) filed	_____, 2026 [or 7 days before the Fairness Hearing]
Date of Fairness Hearing	_____, 2026 [or 110 days after entry of Preliminary Approval Order]

IT IS SO ORDERED.

DATED:

George L. Russell, III
Chief United States District Judge