

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STATE OF CALIFORNIA,

Plaintiff,

v.

**TEVA PHARMACEUTICAL
INDUSTRIES, LTD., et al.**

Defendants.

CIVIL ACTION

Case No. 19-3281

**PLAINTIFF STATE OF CALIFORNIA’S SUPPLEMENTAL BRIEF IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF THE CONSUMER SETTLEMENT
AND ENTRY OF THE STIPULATED STATE INJUNCTION ORDER**

Plaintiff State of California respectfully submits this Supplemental Brief in support of its Motion for Final Approval of the Consumer Settlement and Entry of the Stipulated State Injunction Order (the “Motion”) in order to provide an updated estimate of the direct and *cy pres* distribution amounts for consideration under the *Baby Products* “direct benefit” analysis, as well as updates concerning the only objections filed in this action by California resident Mr. Carlton Davis and New Mexico resident Mr. Daniel Dunham.

First, as part of the “direct benefit” analysis set forth in its Motion filed on January 24, 2020, the State provided an initial estimate of both the direct and *cy pres* distribution amounts that were derived from an initial review and processing of the claims received at that time. ECF No. 24-1 10 and 26-30. A.B. Data has since completed its review and processing of all of the claims submitted to the State’s Consumer Settlement. Declaration of Eric J. Miller Regarding Claims and Distribution (“Miller Dec.”), ¶ 3. Altogether, A.B. Data has received 10,412 timely claims to the Consumer Settlement. *Id.* Payment of claims determined to be valid after an initial review and payment of additional claims requiring further vetting and verification will, as described in more detail in the Miller Dec., result in a distribution of at least an estimated

\$10,090,640.34 directly to California Claimants and a residue of approximately \$15,159,359.66 to be distributed *cy pres* to promote the interests of California Eligible Consumers who either could not or chose not to submit claims to this settlement. *See id.* ¶¶ 4-8. Notably, these updated distribution amounts further demonstrate that the proposed distribution plan does indeed ensure that the distribution of the Consumer Fund would benefit the *parens patriae* group at large, and not just those who chose to submit claims. For all the reasons set forth herein as well as in the State's Motion, the proposed Consumer Settlement and Distribution Plan should be finally approved so that the *parens patriae* group represented in this action can begin to benefit from this settlement.

Second, the heightened claims rate achieved herein is at least double the rate achieved in the Multistate Group's settlement action, and when considered together with the fact that no member of the *parens patriae* group has opted out of this settlement, this further highlights the *parens patriae* group's overwhelmingly positive reaction to the State's proposed Consumer Settlement and Distribution Plan. *See* ECF No. 24-1 at 22-23. The State submits that neither the objections lodged by Mr. Davis (ECF No. 22) or by Mr. Dunham (ECF No. 23) actually represent the interest of the affected *parens patriae* group, and should be overruled for all the reasons stated in the State's Motion and herein. Indeed, Mr. Dunham is not even a member of the *parens patriae* group. After filing its Motion on January 24th, the State received confirmation that Mr. Dunham has never been a California resident and that in fact, Mr. Dunham does not hold himself out as a member of California's Consumer Settlement. Mr. Dunham's objections should therefore be rejected outright because nonclass members have no standing to object to a proposed settlement. *See In re Fine Paper Litigation State of Wash.*, 632 F.2d 1081, 1087 (3d Cir. 1980) (stating that the "general rule [is] that a nonsettling party may not object to the terms of a settlement which do not affect its own rights").

With respect to the objections lodged by Mr. Davis, they essentially boil down to an objection to the settlement amount and the allocation plan, accompanied by a request for \$8,000 in fees incurred in preparing the objections *pro se*. *See* ECF No. 22. The objection to the settlement and allocation plan lacks merit and should be overruled for all the reasons stated in the State's Motion as to how the Consumer Settlement as a whole, including the amount, meets Third Circuit

standards for fairness, reasonableness, and adequacy set forth in *Girsh v. Jepsen*, 521 F.2d 153 (3d Cir. 1975), *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998), and *In re Baby Products Antitrust Litig.*, 708 F.3d 163 (3d Cir. 2013). See ECF No. 24-1 at 7-15 and 17-28. Inasmuch as Mr. Davis also has lodged a nearly identical objection in the class settlement coupled with a nearly identical request for \$8,000 in fees, the response of the class to that objection would be applicable here as well and is thus adopted and incorporated by reference.*

In sum, the State respectfully requests that the Court reject Mr. Dunham's objection for lack of standing, overrule Mr. Davis's objections for the reasons stated, and enter the proposed Order Granting Plaintiff State of California's Motion for Final Approval of the Consumer Settlement and Entry of the Stipulated State Injunction Order.

*As to Mr. Davis's request for \$8,000 in fees, that amount is more than four times the amount that Mr. Davis will be paid based on his claim to the Consumer Settlement if the Court so permits. While a successful objector may be entitled to fees for their work, "[s]ome objections, however, are made for improper purposes, and benefit only the objectors and their attorneys (e.g., by seeking additional compensation to withdraw even ill-founded objections)." See *Manual for Complex Litigation*, Fourth, § 21.643. See also Barbara J. Rothstein and Thomas E. Willging, *Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges*, 17 (3d ed. 2010) (warning judges to "[w]atch out, though, for canned objections from professional objectors who seek out class actions to extract a fee by lodging generic, unhelpful protests. Rule 23 gives you authority to scrutinize as part of the overall class settlement any side agreements to 'buy out' such objectors.").

Dated: February 14, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2020, a true and correct copy of the foregoing document was electronically filed, will be available for viewing and downloading from the Court's ECF system and will be served by CM/ECF upon all counsel of record.

/s/ PAMELA PHAM

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