

Exhibit 6

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

***IN RE GLUMETZA ANTITRUST
LITIGATION***

No. 3:19-cv-05822-WHA
(Consolidated)

This Document Relates To:

*Meijer, Inc. et al. v. Bausch Health Companies, Inc.
et al.*, No. 3:19-cv-05822-WHA

*Bi-Lo, LLC et al. v. Bausch Health Companies,
Inc. et al.*, No. 3:19-cv-06138-WHA

*KPH Healthcare Services, Inc. v. Bausch Health
Companies, Inc. et al.*, No. 3:19-cv-06839-WHA

**DIRECT PURCHASER CLASS
PLAINTIFFS' [PROPOSED] PLAN OF
ALLOCATION**

I. INTRODUCTION

Plaintiffs Meijer, Inc., Meijer Distribution, Inc., BI-LO, LLC, Winn-Dixie Logistics, Inc., and KPH Healthcare Services, Inc. (“Plaintiffs”), individually and on behalf of the direct purchaser class (“Direct Purchaser Class”),¹ submit this proposed plan of allocation (“Allocation Plan”) to apportion the \$300 million settlement with Defendants Bausch Health Companies Inc., Salix Pharmaceuticals, Ltd., Salix Pharmaceuticals, Inc., and Santarus, Inc. (“Bausch”), plus interest and net of Court-approved attorneys’ fees (including a proportionate share of interest), reimbursement for litigation expenses incurred through the date of settlement, and settlement administration costs (the “Net Settlement Fund”), among members of the Direct Purchaser Class (“Class Members”).

The Allocation Plan allocates the Net Settlement Fund based on each Class Member’s *pro rata* share of combined net unit purchases of brand and generic Glumetza made directly from (a) Bausch, which sold brand Glumetza, (b) Lupin Pharmaceuticals, Inc. and Lupin, Ltd. (“Lupin”), which sold generic Glumetza, and (c) Oceanside Pharmaceuticals, Inc. (“Oceanside”), an affiliate of Bausch Health Companies, Inc., which sold authorized generic Glumetza. The Allocation Plan is similar to allocation plans that have been approved in similar class actions brought by direct purchasers to recover overcharges arising from impaired generic competition.²

¹ The Court previously certified the following Class:

All persons or entities in the United States and its territories who directly purchased Glumetza or generic Glumetza from a defendant from May 6, 2012 until [August 15, 2020].

ECF No. 347 (“Class Certification Order”). The following entities that timely opted out of the Direct Purchaser Class are excluded from the Class: Albertsons Companies, Inc., Albertsons LLC, CVS Pharmacy, Inc., H-E-B L.P., Humana Pharmacy, Inc., Hy-Vee, Inc., The Kroger Co., Rite Aid Corporation, Rite Aid Hdqtrs. Corp., R&S Northeast LLC, and Walgreen Co.

² See, e.g., *In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, No. 18-md-2819 (E.D.N.Y.), ECF Nos. 490-7, 562; *In re Loestrin 24 Fe Antitrust Litig.*, No. 13-md-2472 (D.R.I.), ECF Nos. 1396-8, 1462; *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 14-md-2503, (D. Mass.), ECF Nos. 1163-4, 1179; *In re Lidoderm Antitrust Litig.*, No. 14-md-2521 (N.D. Cal.), ECF Nos. 1004-5, 1004-6, 1054; *In re Aggrenox Antitrust Litig.*, No. 14-md-2516 (D. Conn.), ECF Nos. 733-1, 739; *In re Celebrex (Celecoxib) Antitrust Litig.*, No. 14-cv-361 (E.D. Va.), ECF Nos. 609-4, 630; *King Drug Co. of Florence, Inc. v. Cephalon, Inc.*, No. 06-cv-1797 (E.D. Pa.), ECF Nos. 864-17, 870.

1 Plaintiffs' expert economist, Dr. Jeffrey J. Leitzinger, will calculate each Claimant's³
 2 percentage share of the Net Settlement Fund using transactional sales data for brand and generic
 3 Glumetza produced by Bausch, Lupin, and Oceanside in discovery, supplemented with IQVIA data
 4 as necessary.⁴ Claimants will also have the option of submitting their own records or data showing
 5 purchases of brand and generic Glumetza directly from Bausch, Lupin, and/or Oceanside during
 6 the relevant period and documentation showing any relevant assignments. Dr. Leitzinger will
 7 review any such submissions and confer with the Settlement Administrator regarding the final
 8 calculations, which may include making any appropriate adjustments.⁵

9 Throughout this Allocation Plan, "purchases" refers to gross unit purchases of brand or
 10 generic Glumetza directly from Bausch, Lupin, and/or Oceanside during the relevant period net of
 11 any returns and net of any purchases for which the Claimant has assigned its rights to recovery in
 12 this litigation.⁶ The unit of purchase is a milligram. Claimants' *pro rata* shares will be based on only
 13 purchases made directly from Bausch, Lupin, or Oceanside and will not include brand or generic
 14 Glumetza purchased from other entities.⁷

15 The proposed Allocation Plan is practical and efficient, using sales data already obtained
 16 from Bausch, Lupin, and Oceanside during discovery and supplementing it, as necessary, with
 17 IQVIA data (most or all of which is already in Dr. Leitzinger's possession).⁸ It also is a fair and
 18

19 ³ A "Claimant" is any entity that timely submits a completed proof of claim and release form
 20 ("Claim Form"). *See* Declaration of Jeffrey J. Leitzinger, Ph.D. Related to Proposed Allocation Plan
 21 and Net Settlement Fund Allocation ¶¶ 1, 7 ("Leitzinger Decl.") (filed herewith). A Claimant's
 22 percentage share will be zero if that Claimant timely submits a Claim Form but that claim is
 23 rejected because, for example, the Claimant did not purchase brand or generic Glumetza directly
 24 from Bausch, Lupin, or Oceanside from May 6, 2012 through August 15, 2020 and does not have a
 25 valid assignment covering any such direct purchases. *Id.* ¶ 3 n.4.

26 ⁴ *Id.* ¶ 5. Dr. Leitzinger has already performed preliminary calculations of each Class Member's
 27 *pro rata* total of combined brand and generic Glumetza purchases using these sources. *Id.* ¶ 6.

28 ⁵ *Id.* ¶ 8.

⁶ *Id.* ¶ 3.

⁷ *Id.* ¶ 3 n.4.

⁸ *Id.* ¶ 9.

reasonable way to allocate the Net Settlement Fund to all Class Members, including brand- or generic-only purchasers, basing their respective shares on the approximate extent of overcharges they incurred.⁹

II. ALLOCATION PLAN

The Allocation Plan calculations are set out in detail in the accompanying declaration of Dr. Leitzinger. In summary, the Allocation Plan works as follows.

1. Pre-Populated Claim Forms

1.1. At the appropriate time and after receiving Court approval to do so, the Settlement Administrator, Angeion Group, LLC, in conjunction with Dr. Leitzinger's firm, Econ One, will prepare a separate, individualized Claim Form for each Class Member. The Claim Form will include each Class Member's name and address and will be pre-populated with each Class Member's total net brand Glumetza unit purchases directly from Bausch from May 6, 2012 through August 15, 2020 and net generic Glumetza unit purchases directly from Lupin and/or Oceanside from February 1, 2016 (when generic Glumetza launched) through August 15, 2020, as calculated by Dr. Leitzinger based on transactional sales data produced by Bausch, Lupin, and Oceanside, supplemented as necessary by IQVIA data.¹⁰ The purchase totals shown on the Claim Form will be reduced to account for returns reflected in the sales data and all known assignments.¹¹

Based on Class Counsel's prior experience in using this claims process for similar classes of direct purchasers in generic-suppression cases, we expect that 100% of the eligible Claimants will receive their allocated share of the Net Settlement Fund.¹²

The Claim Form will (a) request that each Class Member verify the accuracy of the information contained in the Claim Form, and (b) provide instructions for challenging any of the

⁹ *Id.*

¹⁰ *See id.* ¶¶ 5, 6 (explaining the sources for these totals).

¹¹ *Id.*

¹² *See supra* note 2. In each of these cases, there was no remaining balance in the distribution account following final distribution of the net settlement fund to the eligible claimants, and no motions for supplemental or *cy pres* distributions were filed on behalf of the direct purchaser class.

figures or computations contained in the Claim Form. If a Class Member agrees that the information contained in the Claim Form is accurate, it will be asked to sign the Claim Form verifying its accuracy and to timely mail it to the Settlement Administrator, Angeion Group. If a Class Member believes that the information contained in its Claim Form is not accurate, that Class Member may submit its own purchase records pursuant to the procedures described below.¹³

1.2. The Claim Form will request the Claimant's full name and mailing address appropriate for correspondence regarding the distribution of the Net Settlement Fund and the identity of and contact information for the person responsible for overseeing the claims process for the Claimant. The Claim Form will also include the release language set out in the Settlement Agreement between the Direct Purchaser Class and Bausch. Each Claimant will be required to execute and return the Claim Form to receive any distribution from the Net Settlement Fund.

1.3. *Timeliness.* The submission of the Claim Form to the Settlement Administrator (with any necessary supporting documentation if the Claimant does not agree with the information contained in its Claim Form) will be deemed timely if it is received or postmarked within the time period or by the deadline set by the Court. At Lead Class Counsel's discretion, this deadline may be extended another 45 days without additional approval of the Court. Lead Class Counsel may also seek further extensions of the deadline by order of the Court after any such initial extension.

1.4. *Follow-up with Class Members.* The Settlement Administrator shall follow up with any Class Member that does not timely return a Claim Form by phone, email, and/or mail to confirm that the decision not to submit a Claim Form was intentional and address any questions the Class Member may have.

2. Calculation of *Pro Rata* Shares of the Net Settlement Fund

2.1. Each Claimant's allocated share of the Net Settlement Fund will be set in proportion to the Claimant's combined total of (a) net unit purchases of brand Glumetza directly from Bausch for the period May 6, 2012 through August 15, 2020; and (b) net unit purchases of generic

¹³ Dr. Leitzinger will work with the Settlement Administrator to review any data and related documentation submitted by Claimants to finalize the allocation calculations. Leitzinger Decl. ¶ 8.

1 Glumetza directly from Lupin and/or Oceanside for the period February 1, 2016 through August
2 15, 2020. The beginning and end dates of the date range are determined by the Court's Class
3 Certification Order.

4 The National Drug Codes ("NDCs") for qualifying brand and generic Glumetza will be
5 included in the Claim Form and available on the settlement website. The NDCs are standard codes
6 maintained by the FDA and used in the pharmaceutical industry to identify specific pharmaceutical
7 products and will allow Claimants to understand precisely which purchases are eligible for
8 purposes of allocation.

9 The Allocation Plan will use the combined total brand and generic Glumetza purchases, net
10 of any returns and net of any purchases for which the rights to damages in this litigation have been
11 assigned from a Class Member by agreement.¹⁴ Allocations to any Claimants whose right to a share
12 of the Net Settlement Fund arises by virtue of assignments from Class Members will be determined
13 in the same manner: the volumes of brand and generic Glumetza purchases used to calculate *the pro*
14 *rata* share will be the volumes assigned to the assignee Claimant by an otherwise eligible Class
15 Member, and the assignor Class Member's brand and generic purchase volumes will be reduced by
16 the same amount.¹⁵ As the Claim Form will make clear, data submitted by a Claimant who files a
17 Claim Form based on an assignment may be shared with the Claimant's assignor Class Members
18 during the claims administration process.

19 2.2. The allocation computation will be based on the following information (whether
20 from the data produced in discovery supplemented by IQVIA data or from submissions by the
21 Claimants): (a) each Claimant's net unit purchases of brand Glumetza directly from Bausch for the
22 period from May 6, 2012 through August 15, 2020; (b) each Claimant's net unit purchases of
23 generic Glumetza directly from Lupin and/or Oceanside for the period February 1, 2016 through
24 August 15, 2020; (c) the combined total of all Claimants' net unit purchases of brand Glumetza
25 directly from Bausch for the period from May 6, 2012 through August 15, 2020; and (d) the

26 ¹⁴ *Id.* ¶¶ 5, 7.

27 ¹⁵ *Id.* ¶ 7 n.8.

combined total of all Claimants' net unit purchases of generic Glumetza directly from Lupin and/or Oceanside for the period from February 1, 2016 through August 15, 2020.

2.3. Dr. Leitzinger has calculated the ratio of the average Class-wide overcharge per unit of brand Glumetza and per unit of generic Glumetza. According to Dr. Leitzinger's calculations, the Direct Purchaser Class suffered essentially the same average dollar per-unit overcharge on brand and generic purchases; therefore, there is no need to "weight" the brand versus generic purchases to ensure that the Allocation Plan keeps Class Members' overcharges on brand Glumetza purchases and generic Glumetza purchases in fair proportion.¹⁶

2.4. To calculate each Claimant's *pro rata* share of the Net Settlement Fund, the Settlement Administrator, working with Dr. Leitzinger, will take each Claimant's combined total qualifying net purchases of brand and generic Glumetza and divide it by the combined total qualifying purchases of brand and generic Glumetza for all Claimants. This calculation will yield each Claimant's *pro rata* share of the Net Settlement Fund. Based on the data produced in discovery and supplemented by IQVIA data, Dr. Leitzinger has already performed a preliminary computation of qualifying net brand and generic Glumetza purchases for each Class Member and can use these figures to calculate each Claimant's percentage share of the Net Settlement Fund.¹⁷ If any Class Member fails to submit a claim, or if any Claimant submits data or other documentation showing an alternative amount of purchases that is approved by the Settlement Administrator (who will work with Dr. Leitzinger to review such submissions), the *pro rata* shares for all Claimants will be recalculated accordingly.¹⁸

2.5. The final calculations of each Claimant's *pro rata* share will then be applied to the Net Settlement Fund to determine each Claimant's allocated share.

¹⁶ *Id.* ¶ 6 n.9.

¹⁷ *Id.* ¶ 6.

¹⁸ *Id.* ¶¶ 7–8.

1 **3. Processing of Claims**

2 3.1. All claims will be reviewed and processed by the Settlement Administrator with
3 assistance from Dr. Leitzinger and his staff at Econ One as required and appropriate.

4 3.2. *Acceptance and Rejection.* The Settlement Administrator will first determine whether
5 a Claim Form received is timely, properly completed, and signed. If a Claim Form is incomplete, the
6 Settlement Administrator will communicate with the Claimant via U.S. First-Class Mail, email, or
7 telephone regarding the deficiency. Claimants will then have 25 days from the date they are
8 contacted by the Settlement Administrator regarding the deficiency to cure it. If any Claimant fails
9 to correct the deficiency within this time, the Settlement Administrator may reject the claim and
10 will notify the Claimant of the rejection by letter, stating the reason for rejection and informing the
11 Claimant of its right to seek, and the procedure for seeking, review of the decision by the Court via
12 the appeals process described in § 7 below.

13 3.3. The Settlement Administrator will approve all timely Claim Forms that are properly
14 completed (the “Approved Claims”). All late Claims Notices that are otherwise complete will be
15 processed by the Settlement Administrator, but marked as “Late Approved Claims.” If Lead Class
16 Counsel conclude that, in their judgment, any such “Late Approved Claims” should ultimately not
17 be accepted,¹⁹ those Claimants will be so notified within 30 days of the extended 45-day deadline
18 period set forth in ¶ 1.3 above and then may seek review by the Court via the appeals process
19 described in § 7 below.

20 3.4. *The Pro Rata Distribution Calculation.* The Settlement Administrator, in conjunction
21 with Dr. Leitzinger, will be responsible for determining the total amount that each Claimant will
22 receive from the Net Settlement Fund. Once the Settlement Administrator has determined the
23 number of Approved Claims, it will work with Dr. Leitzinger to calculate each Claimant’s *pro rata*
24 share of the Net Settlement Fund as determined by the calculation described in § 2 above.²⁰

25 _____
26 ¹⁹ *Cf. Kuehbeck v. Genesis Microchip Inc.*, No. C 02-05344, 2007 WL 2382030, at *1 (N.D. Cal.
27 Aug. 17, 2007) (authorizing distribution to claimants who timely filed claims and those who filed
28 late but otherwise valid claims).

²⁰ *See* Leitzinger Decl. ¶ 7.

1 **4. Processing Challenged Claims**

2 4.1. The Settlement Administrator, in conjunction with Dr. Leitzinger and Lead Class
3 Counsel, will review any and all written challenges by Claimants to the Settlement Administrator's
4 determinations of total net direct brand and generic Glumetza unit purchases as specified in
5 Paragraph 1.1. If, upon review of a challenge and supporting documentation, the Settlement
6 Administrator decides to amend or modify its determination of the Claimant's total qualifying
7 purchases, it will advise the Claimant. These determinations shall be final, subject to the appeals
8 process described in § 7 below.

9 4.2. Where the Settlement Administrator determines that a challenge requires additional
10 information or documentation, it will so advise the Claimant and provide that Claimant an
11 opportunity to cure the deficiency within 25 days. If the Claimant fails to cure the deficiency within
12 that time, the challenge may be rejected, and the Claimant will be notified of the rejection by mail,
13 which notification shall be deemed final.

14 4.3. If the Settlement Administrator concludes that it has enough information to
15 properly evaluate a challenge and maintains that its initial determination was correct, it will so
16 inform the Claimant in writing, which notification shall be deemed final.

17 **5. Report to Court Regarding Distribution of Net Settlement Fund**

18 5.1. After the Settlement Administrator reviews all submitted claims and works with Dr.
19 Leitzinger to determine the amount that each Claimant is entitled to receive from the Net
20 Settlement Fund, the Settlement Administrator will prepare a report for the Court's final review
21 and approval. The report will explain the tasks and methodologies employed by the Settlement
22 Administrator in processing the claims and administering the Allocation Plan. The report will also
23 contain (1) a list of Class Members or other Claimants (if any) that filed Claim Forms that were
24 rejected and (2) a list of any challenges to the estimated distribution amounts that were rejected,
25 along with the reasons for those rejections. Finally, the report will contain an accounting of the
26 expenses associated with the Allocation Plan, including bills from Econ One and Angeion Group,
27
28

any taxes that are due and owing, and any other fees or expenses associated with the settlement administration process.

6. Payment to the Claimants

6.1. Upon Court approval of the final report and declaration of the Settlement Administrator, the Settlement Administrator will issue payment by wire transfer or check to each Claimant that submitted a complete and valid Claim Form.

6.2. It is anticipated that the entire Net Settlement Fund will be distributed in a single distribution. Subject to further order of the Court, however, any Net Settlement Fund amount that remains unclaimed after the first distribution will be distributed to Claimants in an additional distribution or distributions on the basis of the same calculations of the Claimants' *pro rata* combined total of brand and generic Glumetza purchases described above.

6.3. Insofar as the Net Settlement Fund includes residual funds after distribution or distributions as set forth in the preceding paragraphs that cannot be economically distributed to the Claimants (because of the costs of distribution as compared to the amount remaining), Lead Class Counsel will make an application to the Court, with notice to Bausch, for such sums to be used to make *cy pres* payments for the benefit of members of the Direct Purchaser Class. That is, subject to Court approval, the money may be used, for example, to make a donation in support of interests that are consistent with the purpose of this action as directed by the Court.

7. Resolution of Disputes

7.1. In the event of any disputes between Claimants and the Settlement Administrator on any subject (e.g., timeliness or completeness a claim, sufficiency of supporting documentation, or the calculation of *pro rata* shares), the decision of the Settlement Administrator shall be final, subject to the Claimant's right to seek review by the Court. In notifying a Claimant of the final rejection of a Claim or a challenge thereto, the Settlement Administrator will notify the Claimant of its right to seek such review by issuing notice to the Settlement Administrator and Lead Class Counsel.

7.2. Any such appeal by a Claimant must be submitted in writing to the Court, with copies to the Settlement Administrator and Lead Class Counsel, within 20 days of the Settlement Administrator's mailing of the final rejection notification letter to the Claimant.

Dated: September 14, 2021

Respectfully submitted,

/s/ Steve D. Shadowen

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CERTIFICATE OF SERVICE

I, Lauren G. Barnes, certify that, on this date, I served the foregoing document on the CM/ECF system, which sends a notification to all counsel of record.

Dated: September 14, 2021

/s/ Lauren G. Barnes

Lauren G. Barnes

FILER'S ATTESTATION

Pursuant to Local Rule 5-1(i)(3) of the Northern District of California, regarding signatures, I, Steve D. Shadowen, attest that concurrence in the filing of this document has been obtained.

Dated: September 14, 2021

/s/ Steve D. Shadowen

Steve D. Shadowen