

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE: EpiPen (Epinephrine
Injection, USP) Marketing,
Sales Practices and Antitrust
Litigation

MDL No: 2785

Case No. 17-md-2785-DDC-TJJ

(This Document Applies to Consumer
Class Cases)

**FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE
FOR THE MYLAN DEFENDANTS**

This matter came before the court on July 6, 2022, as scheduled by the “Order (I) Preliminarily Approving Settlement Under Fed. R. Civ. P. 23(e)(1), (II) Appointing the Settlement Administrator, (III) Approving Form and Manner of Notice to Class Members, (IV) Scheduling a Final Fairness Hearing to Consider Final Approval of the Settlement, and (V) Granting Related Relief” (“Order”) dated March 11, 2022 (Doc. 2594), and on the Class Plaintiffs’ Motion for Final Approval of Settlement, Approval of Plan of Allocation, and Award of Attorneys’ Fees, Expenses, and Service Awards (Doc. 2612) set forth in the Stipulation of Class Action Settlement (“Settlement Agreement”) dated February 27, 2022 (Doc. 2590-2). The court finds that due and adequate notice was given to the Class as required in the Order. And, after considering all papers filed and proceedings had herein and good cause appearing therefore, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** by the court that:

1. This Final Judgment and Order of Dismissal with Prejudice for the Mylan Defendants (“Judgment”) incorporates by reference: (a) the Settlement Agreement; (b) the Notice of Proposed Settlement of Class Action (Doc. 2590-4) and Summary Notice (Doc. 2590-

6) (collectively, the “Notice”); and (c) the Declaration of the Settlement Administrator (Doc. 2590-8) filed with this court on February 28, 2022. All terms used in this Order shall have the same meanings as set forth in the Settlement Agreement, unless otherwise set forth in this Order.

2. This court has jurisdiction over the subject matter of the Action¹ and Other Actions² and over all Settling Parties to the Action and Other Actions, including all Class Members.

3. The Notice given to the Class was the best notice practicable under the circumstances and of the matters set forth therein, including the proposed Settlement set forth in the Settlement Agreement, to all Persons entitled to such notice, and said Notice fully satisfied the requirements of the Federal Rules of Civil Procedure (including Rules 23(c)–(e)), the United States Constitution (including the Due Process Clause), the Rules of this court, and other applicable law.

4. Under Rule 23 of the Federal Rules of Civil Procedure, the court now affirms its determinations in the Order, fully and finally approves the Settlement set forth in the Settlement Agreement in all respects, and finds that:

(a) the Settlement Agreement and the Settlement contained therein, are, in all respects, fair, reasonable, and adequate, and in the best interest of the Class;

(b) there was no collusion in connection with the Settlement;

¹ The Settlement Agreement defines the “Action” as this pending MDL—*i.e.*, Case No. 17-md-2785-DDC-TJJ (MDL No. 2785). *See* Doc. 2590-2 at 7 (Settlement Agreement ¶ IV.1.1.1.).

² The Settlement Agreement defines the “Other Actions” as the following four cases, collectively: (1) *Ipson v. Viatrix Inc.*, No. 2:21-cv-02556-DDC-TJJ (D. Kan.); (2) *Gill v. Viatrix Inc.*, No. 2:21-cv-02534-DDC-TJJ (D. Kan.); (3) *Dvorak v. Viatrix Inc.*, No. 2:21-cv-02561-DDC-TJJ (D. Kan.); and (4) *Sumner v. Viatrix Inc.*, No. 2:21-cv-02555-DDC-TJJ (D. Kan.). *See* Doc. 2590-2 at 12 (Settlement Agreement ¶ IV.1.1.25.).

(c) the Settlement was the product of informed, arm's-length negotiations among competent, able counsel; and

(d) the record is sufficiently developed and complete to have enabled the Plaintiff Class Representatives and the Mylan Defendants to have adequately evaluated and considered their positions.

5. The court thus authorizes and directs implementation and performance of all the terms and provisions of the Settlement Agreement, as well as the terms and provisions of this Judgment. Except for any individual claims of those persons or entities who have validly and timely requested exclusion from the Class, as set forth in Exhibit F to Class Plaintiffs' Final Status Report Re Implementation of Class Notice (Doc. 2323-1 at 28–59) and in the Pfizer Settlement Final Judgment (Doc. 2507 at 8), the court hereby dismisses the Action and Other Actions against the Mylan Defendants and all Plaintiffs' Released Claims against the Mylan Defendants' Released Parties with prejudice. The Settling Parties are to bear their own costs, except for and to the extent provided in the Settlement Agreement and any separate order(s) entered by the court deciding Class Counsel's Motion for Award of Attorneys' Fees and Expenses.

6. The Releases set forth in Section 4 of the Settlement Agreement, together with the definitions contained in the Settlement Agreement relating to it, are expressly incorporated by reference into this Order. The court thus orders that:

(a) Upon the Effective Date, and as provided in the Settlement Agreement, Plaintiff Class Representatives shall, and each of the Class Members shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged any and all Plaintiffs' Released Claims against the Mylan Defendants' Released

Parties, whether or not such Class Member shares in the Settlement Fund. Claims to enforce the terms of the Settlement Agreement are not released.

(b) Plaintiff Class Representatives and all Class Members, and anyone claiming through or on behalf of any of them, are hereby forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, asserting any of the Plaintiffs' Released Claims against any of the Mylan Defendants' Released Parties.

(c) Upon the Effective Date, and as provided in the Settlement Agreement, each of the Pfizer Defendants' Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged Plaintiffs' Released Persons, including Class Counsel, from all Defendants' Released Claims, except for claims relating to the enforcement of the Settlement.

7. Upon the Effective Date, any and all persons or entities shall be permanently barred, enjoined, and restrained, to the fullest extent permitted by law, from bringing, commencing, prosecuting, or asserting any and all claims, actions, or causes of action for contribution or indemnity or otherwise against the Mylan Defendants or any of the Mylan Defendants' Released Parties seeking as damages or otherwise the recovery of all or any part of any liability, judgment, or settlement which they pay or obligated or agree to pay to the Class or any Class Member, arising out of, based upon, relating to, concerning, or in connection with any facts, statements, or omissions that were or could have been alleged in the Action or Other Actions. Notwithstanding the foregoing, nothing herein shall bar any action by any of the Settling Parties to enforce the terms of the Settlement Agreement.

8. Four individuals—Mamiesha Banks, Amanda McCrary, Carol Fuller, and Arthur Vergara—have written to co-lead counsel asking to opt out of the Settlement. Doc. 2619 at 5, 8–20 (Pritzker Decl. ¶¶ 6, Exs. A–D). Each of these individuals previously filed a timely request seeking exclusion from the Action, which the Settlement Administrator confirmed in the Final Status Report filed February 26, 2021. Doc. 2323-1. Because these four individuals were already excluded from the class when they timely filed their requests, they are no longer class members. Thus, the court need not take any action with respect to these four individuals.

9. Eleven individuals and one employer—Barbara Nuckols, Kathy Valleau, Marcia Engen, Charmaine Jones, Melisa Nguyen, Amy Dollin, Anthony Aiden, M. Denny, Justine Chiang (Doc. 2615), Najeeha Khan (Doc. 2614), Brian and Katrina Catron,³ and Central Painting & Sandblasting—have made belated requests to be excluded from the Settlement. Doc. 2619 at 5–6, 21–58 (Pritzker Decl. ¶¶ 7–8, Exs. E–P). Plaintiffs do not oppose or object to these requests, while the Mylan Defendants submit that 11 of these 12 requests (all but Kathy Valleau, whose spouse reports that Ms. Valleau passed away in 2018) do not meet the “excusable neglect” legal standard the court applied during the Pfizer Settlement proceedings: “(1) whether the movant’s neglect [in seeking a timely opt-out] was excusable, and (2) whether either party would be substantially prejudiced by the court’s action.” *See Burns v. Copley Pharms., Inc.*, No. 96-8054, 1997 WL 767763, at *3 (10th Cir. Dec. 11, 1997) (citing *Supermarkets Gen. Corp. v. Grinnell Corp.*, 490 F.2d 1183, 1186 (2d Cir.1974)); *see also In re Four Seasons Sec. Laws Litig.*, 493 F.2d 1288, 1290–91 (10th Cir. 1974) (holding that trial court didn’t err by permitting

³ Brian and Katrina Catron made one joint submission to co-lead counsel requesting exclusion from the Settlement. *See* Doc. 2619 at 57–58 (Pritzker Decl. Ex. P). The court treats the request as one request here.

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