

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

THE HOSPITAL AUTHORITY OF
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY,
TENNESSEE, d/b/a NASHVILLE
GENERAL HOSPITAL and AMERICAN
FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES DISTRICT
COUNCIL 37 HEALTH & SECURITY
PLAN,

Plaintiffs,

v.

MOMENTA PHARMACEUTICALS, INC.
and SANDOZ INC,

Defendants.

Civil Action No. 3:15-cv-01100

Chief Judge Waverly D. Crenshaw, Jr.
Magistrate Judge Barbara D. Holmes

**DECLARATION OF ERIC J. MILLER REGARDING
A) MAILING OF NOTICE; B) PUBLICATION OF SUMMARY NOTICE; AND
C) REPORT ON OBJECTIONS AND CLAIMS RECEIVED TO DATE**

I, Eric J. Miller, declare as follows:

1. I am the Senior Vice President of A.B. Data, Ltd.'s class action administration division ("A.B. Data"), with its principal offices in Milwaukee, Wisconsin.

2. Pursuant to the Court's Order of Preliminary Approval of Settlement dated January 3, 2020 (the "Preliminary Approval Order"); A.B. Data was appointed to serve as Notice and Claims Administrator.

3. This Declaration details the steps that were taken to implement the Notice Plan per the terms of the Preliminary Approval Order and the Court's subsequent Order dated January 9, 2020 that

amended the deadline to complete the media and print publication notice (together, the “Preliminary Approval Orders”), which consisted of the following:

- a. Disseminating notice to members of the Class of the pendency of this Action and the proposed Settlement thereof;
- b. Establishing a case-specific toll-free telephone line with Interactive Voice Response (IVR) system and live operators; and
- c. Establishing a case-specific website for the Settlement at www.DVTMedsLawsuit.com (the “Website”).

PUBLICATION NOTICE

4. A. B. Data worked extensively with Class Counsel to prepare a Summary Notice, attached to this Declaration as Exhibit A.

5. Pursuant to the Notice Plan approved by this Court, A.B. Data submitted the Summary Notice to the outlets indicated in the table below for publication on the dates noted:

<u>Publication</u>	<u>Issue Date</u>
<i>USA Today</i>	January 24, 2020
PR Newswire	January 24, 2020

6. Beginning on January 24, 2020, A.B. Data coordinated at least 211 million internet banners and Facebook ads to appear on popular websites through February 22, 2020 across the U.S. When clicked, the banners directed potential members of the class to the case-specific website or Facebook page. A sample internet banner for consumer is attached to this Declaration as Exhibit B. Sponsored search listings were acquired on Google AdWords so a link to the case website would appear on search result pages when searching for key words like “deep vein thrombosis”. A thirty-day banner ad campaign was purchased on the website, ThinkAdvisor.com/life-health, to reach TPPs. The banner ads for this campaign are attached as Exhibit C.

DIRECT MAIL NOTICE

7. A.B. Data formatted the Postcard Notice for printing. A true and correct copy of the Postcard Notice is attached hereto as Exhibit D.

8. A.B. Data established a mailing list of potential TPP Class Members by identifying third-party payors and their representatives (the “TPP Mailing List”). The TPP Mailing List was compiled using membership listings and existing databases from publicly available sources including U.S. Department of Labor Form 5500 filings and the Pharmacy Benefit Management Institute. Following de-duplication, the TPP Mailing List comprised a total of 41,423 unique notice records relating to the names and addresses of potential TPP Class Members.

9. In addition, A.B. Data purchased a mailing list of 24,426 contacts from InfoUSA to reach hospitals, medical centers, and healthcare facilities (the “Hospital Mailing List”) in accordance with the Notice Plan.

10. A.B. Data caused the TPP Mailing List and Hospital Mailing List to be standardized and updated using NCOALink[®], a national database of address changes that is compiled by the United States Postal Service.

11. On January 24, 2020, in accordance with the Notice Plan approved by the Court, A.B. Data caused 65,849 Postcard Notices to be mailed to the potential TPP and Hospital Class Members included on the TPP Mailing List and Hospital Mailing List via the USPS by First-Class Mail.

TELEPHONE HOTLINE

12. On or about January 24, 2020, A. B. Data established a case-specific toll-free number, 888-208-9630, with an Interactive Voice Response (IVR) system and live operators. The automated attendant answers calls and presents callers with a series of choices in response to basic questions. If callers require further assistance, they have the option to transfer to a live operator during business hours.

WEBSITE

13. A.B. Data established a website designated for this action, www.DVTMedsLawsuit.com. The Website includes information regarding the action including the deadline to object, the claim filing deadline, and the date and time of the Final Approval Hearing. The Website allows visitors to download copies of the Notice and Claim Forms, as well as the capability of submitting claims online; the proposed Distribution Plan; the Preliminary Approval Orders; the Settlement Agreements; and other documents related to the Action. On the morning of March 3, 2020, Class Counsel's motion for attorneys' fees and costs and service awards was uploaded to the website. The website became operational on January 24, 2020, and is accessible 24 hours a day, 7 days a week.

REPORT ON OBJECTIONS

14. The notices informed class members that objections to the settlements must be filed with the Court and sent to class counsel and defense counsel on or before March 16, 2020.

15. As of the date of this Declaration, A.B. Data has not received any objections, nor has it been informed of any objections filed with the Court or Counsel for the parties.

REPORT ON CLAIMS

16. Pursuant to the Preliminary Approval Orders, Claim Forms are to be mailed to the address listed in the Notice Packet received or submitted online through the Website no later than July 3, 2020. As of April 24, 2020, 171 claims have been filed by TPPs, 8 claims have been filed by Hospitals, and 6,812 claims have been filed by Consumers. The claims on file presently total over \$146 million. Large TPPs and claims aggregators often wait until shortly before the claims deadline to file their claims; therefore A.B. Data anticipates that a large percentage of the TPPs and Hospitals that file claims will do so closer to the filing deadline.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of April, 2020 at Palm Beach Gardens, FL.

A handwritten signature in blue ink, appearing to read 'Eric J. Miller', is written above a horizontal line.

Eric J. Miller

EXHIBIT A

If You Bought or Provided Reimbursement for the Anticoagulant Medications Lovenox® or Generic Enoxaparin Between September 21, 2011 and September 30, 2015

You Could Get Money from Class Action Settlements Totaling \$120 Million

Proposed Settlements totaling \$120 million have been reached in a class action lawsuit regarding the price that uninsured consumers, hospitals, and third-party payors paid for Lovenox® or generic enoxaparin. The lawsuit asserts that Defendants kept the prices of Lovenox® and generic enoxaparin higher than they otherwise would have been by manipulating the generic approval process. Defendants deny any wrongdoing.

No one is claiming that Lovenox® or generic enoxaparin are unsafe or ineffective.

Who is included?

The Class includes:

- Hospitals, third-party payors, and people without insurance who indirectly purchased, paid for, and/or reimbursed some or all of the purchase price for Lovenox® or generic enoxaparin;
- In Arizona, Arkansas, California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin;
- From September 21, 2011 through September 30, 2015;
- For the purpose of personal consumption by themselves, their families, or their members, employees, insureds, participants, patients, beneficiaries, or anyone else.

In addition to hospitals, the Class only includes third-party payors and people without insurance who purchased, paid for, and/or reimbursed some or all of the purchase price for Lovenox® or generic enoxaparin from a pharmacy. This means that third-party payors and people without insurance will only be able to recover damages, if at all, for Lovenox® or generic enoxaparin dispensed from a pharmacy.

What do the Settlements provide?

The Defendants will pay a total of \$120 million into a Settlement Fund to settle all claims in the lawsuit brought on behalf of the Class.

Class Counsel will ask the Court to award attorneys' fees in an amount not to exceed 33% of the Settlement Fund, plus interest, litigation expenses, and service awards to the Class Representatives. After these deductions, the remainder of the Settlement Fund will be distributed pro rata to Class Members who file a valid Claim Form. The amount of money each Class Member receives will depend on how much each Class Member paid for Lovenox® or generic enoxaparin from September 21, 2011 through September 30, 2015, compared to the amount paid by all other Class Members who file valid and timely Claim Forms.

How do I get a payment?

You must submit a Claim Form by **July 3, 2020** to be eligible for a payment. See below.

What are my other rights?

If the Settlements are approved, you will not be able to sue the Defendants for any claim relating to the lawsuit. You may object to the Settlements by March 16, 2020. The Court will hold a hearing on May 29, 2020 at 1:00 p.m. Central time to consider whether to approve the Settlements and a request for attorneys' fees, expenses, and incentive awards. The Court has appointed attorneys to represent the Class. You or

your own lawyer may ask to appear and speak at the hearing at your own expense. These deadlines may be amended by Court Order, so check the litigation website noted below.

**For more information and a Claim Form:
Visit www.DVTmedslawsuit.com or call 1-888-208-9630.**

EXHIBIT B

**\$120 Million LOVENOX® or
Generic Enoxaparin Settlements**

**If You Bought the
Anticoagulant Medication
LOVENOX or Generic ENOXAPARIN,
You Could GET MONEY from Class Action
Settlements Totaling \$120 Million**



FILE A CLAIM TODAY ➤

DVTmedslawsuit.com

EXHIBIT C

**\$120 Million LOVENOX® or
Generic Enoxaparin Settlements**

**If You Bought or
Provided Reimbursement for the
Anticoagulant Medication
LOVENOX or Generic ENOXAPARIN,
You Could GET MONEY from Class Action
Settlements Totaling \$120 Million**



FILE A CLAIM TODAY >>>

DVTmedslawsuit.com

EXHIBIT D

Enoxaparin Antitrust Settlement
Civil No. No. 15-CV-01100

LEGAL NOTICE

If You Bought or Provided Reimbursement for the Anticoagulant Medications Lovenox® or Generic Enoxaparin from September 21, 2011 through September 30, 2015

You Could Get Money from Class Action Settlements Totaling \$120 Million

Proposed Settlements totaling \$120 million have been reached in a class action lawsuit regarding the price that uninsured consumers, hospitals, and third-party payors paid for Lovenox® or generic enoxaparin.

The lawsuit asserts that Defendants kept the prices of Lovenox® and generic enoxaparin higher than they otherwise would have been by manipulating the generic approval process. Defendants deny any wrongdoing.

No one is claiming that Lovenox® or generic enoxaparin are unsafe or ineffective.

**ENOXAPARIN ANTITRUST
SETTLEMENT
c/o A.B. DATA, LTD.
PO BOX 173090
MILWAUKEE, WI 53217**

Postal Service: Please Do Not Mark or Cover Barcode

PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE
PAID
MILWAUKEE, WI
PERMIT NO.

Who is included? The Class includes:

- Hospitals, third-party payors, and people without insurance who indirectly purchased, paid for, and/or reimbursed some or all of the purchase price for, Lovenox® or generic enoxaparin;
- In Arizona, Arkansas, California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin;
- From September 21, 2011 through September 30, 2015;
- For the purpose of personal consumption by themselves, their families, or their members, employees, insureds, participants, patients, beneficiaries, or anyone else.

In addition to hospitals, the Class only includes third-party payors and people without insurance who purchased, paid for, and/or reimbursed some or all of the purchase price for, Lovenox® or generic enoxaparin from a pharmacy. This means that third-party payors and people without insurance will only be able to recover damages, if at all, for Lovenox® or generic enoxaparin dispensed from a pharmacy.

What do the Settlements provide? The Defendants will pay a total of \$120 million into a Settlement Fund to settle all claims in the lawsuit brought on behalf of the Class.

Class Counsel will ask the Court to award attorneys' fees in an amount not to exceed 33% of the Settlement Fund, plus interest, litigation expenses, and service awards to the Class Representatives. After these deductions, the remainder of the Settlement Fund will be distributed pro rata to Class Members who file a valid Claim Form. The amount of money each Class Member receives will depend on how much each Class Member paid for Lovenox® or generic enoxaparin from September 21, 2011 through September 30, 2015, compared to the amount paid by all other Class Members who file valid and timely Claim Forms.

How do I get a payment? You must submit a Claim Form by July 3, 2020 to be eligible for a payment. See below.

What are my other rights? If the Settlements are approved, you will not be able to sue the Defendants for any claim relating to the lawsuit. You may object to the Settlements by March 16, 2020. The Court will hold a hearing on May 29, 2020, at 1:00 p.m. Central time to consider whether to approve the Settlements and a request for attorneys' fees, expenses, and incentive awards. The Court has appointed attorneys to represent the Class. You or your own lawyer may ask to appear and speak at the hearing at your own expense. These deadlines may be amended by Court Order, so check the litigation website noted below.

For more information and a Claim Form: Visit www.DVTmedslawsuit.com or call 1-888-208-9630.

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2020, the foregoing document was filed electronically with the U.S. District Court for the Middle District of Tennessee. Notice of this filing was served via the court's electronic filing system on counsel listed below:

Timothy L. Warnock (TN Bar No. 12844)
Stuart A. Burkhalter (TN Bar No. 29078)
RILEY WARNOCK & JACOBSON, PLC
1906 West End Avenue
Nashville, TN 37203
Telephone: (615) 320-3700
Facsimile: (615) 320-3737

Matthew D. Kent (*pro hac vice*)
Liz Brodway Brown (*pro hac vice*)
D. Andrew Hatchett (*pro hac vice*)
Michael P. Kenny (*pro hac vice*)
Anthony Thomas Greene (*pro hac vice*)
Kara F. Kennedy (*pro hac vice*)
ALSTON & BIRD LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424
Telephone: (404) 881-7000
Facsimile: (404) 881-7777

Teresa T. Bonder (*pro hac vice*)
Nell G. Moley (*pro hac vice*)
Jean E. Richmann (*pro hac vice*)
ALSTON & BIRD LLP
560 Mission Street, Suite 2100
San Francisco, CA 94105
Telephone: (415) 243-1000
Facsimile: (415) 243-1001

Attorneys for Sandoz Inc.

R. Dale Grimes (TN Bar No. 6223)
Virginia M. Yetter (TN Bar No. 31471)
BASS, BERRY & SIMS PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
Telephone: (615) 742-6200

Jason T. Murata (*pro hac vice*)
Brooke Jones Oppenheimer (*pro hac vice*)
Thomas G. Rohback (*pro hac vice*)
AXINN, VELTROP & HARKRIDER LLP
90 State House Square
Hartford, CT 06103
Telephone: (860) 275-8100
Facsimile: (860) 275-8101

Carmel Rana Arikat (*pro hac vice*)
Richard B. Dagen (*pro hac vice*)
Bradley D. Justus (*pro hac vice*)
Michael L. Keeley (*pro hac vice*)
Daniel K. Oakes (*pro hac vice*)
Jetta C. Sandin (*pro hac vice*)
AXINN, VELTROP & HARKRIDER LLP
950 F Street, NW
Washington, DC 20004
Telephone: (202) 912-4700
Facsimile: (202) 912-4701

Carol Xianxiao Liu (*pro hac vice*)
Varnitha Siva (*pro hac vice*)
AXINN, VELTROP & HARKRIDER LLP
114 West 47th Street
New York, NY 10036
Telephone: (212) 728-2200
Facsimile: (212) 728-2201

Juanita R. Brooks (*pro hac vice*)
Roger Alen Denning (*pro hac vice*)
Tucker N. Terhufen
FISH & RICHARDSON, P.C.
12390 El Camino Real
San Diego, CA 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

Attorneys for Momenta Pharmaceuticals, Inc.

/s/Katherine Lubin Benson
Katherine Lubin Benson