

**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

[PROPOSED] DISTRIBUTION PLAN

This Distribution Plan will govern distributions from the net proceeds of the settlement fund created by the settlements in this case with Momenta Pharmaceuticals, Inc., and Sandoz Inc. dated December 10, 2019 (the “Settlement Agreements”). To receive a distribution, a person or entity must submit a Proof of Claim and be an Eligible Claimant. If a Claimant is a member of the Class, then that Claimant’s eligibility to participate in this Distribution Plan, and the amount of payment the Claimant shall receive (if any), is described below.

I. Definitions

If not otherwise defined, terms shall have the meanings used in the Settlement Agreements.

1. “Class” shall mean:

Hospitals, third-party payors, and people without insurance who indirectly purchased, paid for, and/or reimbursed some or all of the purchase price for, generic enoxaparin or Lovenox®, 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.

With respect to third-party payors and people without insurance, the Class only includes those, described above, who purchased, paid for, and/or reimbursed some or all of the purchase price for, generic enoxaparin or Lovenox® from a pharmacy.

Excluded from the Class are:

- a) Defendants, their officers, directors, management, employees, subsidiaries, and affiliates;
- b) Federal and state governmental agencies except for cities, towns, municipalities, counties or other municipal government entities, if otherwise qualified;
- c) Payors that received 100% reimbursement on all transactions, such as fully insured health plans (i.e., plans that purchased insurance covering 100% of their reimbursement obligation to members);
- d) Third-party payors and people without insurance who purchased, or paid or reimbursed only for branded Lovenox®, and not generic enoxaparin, from a pharmacy or other retail outlet; and
- e) Judges assigned to this case and any members of their immediate families.

2. “Class States” shall mean: Arizona, Arkansas, California, the 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.

3. “Class Period” shall mean from September 21, 2011, through September 30, 2015.

4. “Eligible Claimant” shall mean any member of the Class who submits a timely and valid Proof of Claim and has not excluded him, her, or itself from the Class.

5. “Net Settlement Fund” shall mean the combination of the Net Settlement Funds as defined in each of the Settlement Agreements.

6. “Proof of Claim” shall mean the documents titled “Hospital Claim Form,” “Third-Party Payor Claim Form,” and “Uninsured Consumer Claim Form,” which are available for download at www.dvtmedslawsuit.com, or by calling 1-800-XXX-XXXX. The timeliness and validity of a Claimant’s Proof of Claim shall be determined by the Notice and Claims Administrator.

7. “Qualifying Claim” shall mean the amount that the Eligible Claimant paid for generic enoxaparin or Lovenox® syringes in the Class States during the Class Period, net of any rebates, returns, discounts, chargebacks, refunds, or other appropriate offsets (as determined by the Notice and Claims Administrator).

II. Calculation of Distribution

Each Eligible Claimant’s share of the Net Settlement Fund shall be calculated based on its share of total branded Lovenox® and generic enoxaparin claims (in dollars) in the Retail and Non-Retail Channels. The “Retail Channel” means claims related to purchases of generic enoxaparin or Lovenox® from a pharmacy during the Class Period. The “Non-Retail Channel” means claims related to purchases of generic enoxaparin or Lovenox® by a hospital during the Class Period.

The Net Settlement Fund shall be allocated as follows to claims based on Retail and Non-Retail Class purchases of branded Lovenox and generic Enoxaparin:

	Retail Channel	Non-Retail Channel
Brand	2.9%	20.1%
Generic	58.7%	18.3%

For each of the four allocation categories (Retail-Brand, Retail-Generic, Non-Retail-Brand, and Non-Retail-Generic), each Claimant's Share shall be calculated as the ratio of (a) the amount of the Claimant's Qualifying Claim attributable to that category to (b) the total of all amounts of all Qualifying Claims attributable to that category. Thus, the payment for an Eligible Claimant *n* shall be calculated using the following formula:

$$\begin{aligned} & (\text{Claimant}_n \text{ Retail-Brand Share} \times (\text{Net Settlement Fund} \times 2.9\%)) + \\ & (\text{Claimant}_n \text{ Retail-Generic Share} \times (\text{Net Settlement Fund} \times 58.7\%)) + \\ & (\text{Claimant}_n \text{ Non-Retail-Brand Share} \times (\text{Net Settlement Fund} \times 20.1\%)) + \\ & (\text{Claimant}_n \text{ Non-Retail-Generic Share} \times (\text{Net Settlement Fund} \times 18.3\%)) \end{aligned}$$

If the initial proposed distribution to an allocation category would result in the Claimants in that category receiving more than the amount that they paid for branded Lovenox or generic enoxaparin, then the amount initially allocated to that category that is in excess of those Claimants' collective payments shall be divided proportionally between remaining allocation categories.

III. Administration.

All determinations under this Plan of Allocation shall be made by the Notice and Claims Administrator, subject to review by Class Counsel and approval by the Court. In instances where a claimant has provided incomplete information regarding the bases for its claims, the Claims Administrator shall have authority to adjudicate disputes or otherwise determine

appropriate allocation for the claimant based on available information, subject to review by the Court.

Dated: December 20, 2019

Respectfully submitted,

/s/ Brendan P. Glackin

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