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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ADRIANA M. CASTRO, M.D., P.A.;
SUGARTOWN PEDIATRICS, LLC; and
MARQUEZ and BENGOCHEA, M.D., P.A.,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

SANOFI PASTEUR INC.,

Defendant.

Civil Action No. 11-7178(JMV)(MAH)

**PLAN OF DISTRIBUTION
OF THE NET SETTLEMENT FUND**

Dated: August 2, 2017

I. INTRODUCTION

Pursuant to Question 8 of the long form notice (“Notice”) mailed to Class members and posted on the case-specific website: www.menactraantitrustlitigationsettlement.com, Class Representatives Adriana M. Castro, M.D., P.A., Sugartown Pediatrics, LLC, and Marquez and Bengochea, M.D., P.A submit this proposed Plan of Distribution to distribute the \$61.5 million settlement fund among Class members, less attorneys’ fees, expenses, administration costs, service awards approved by the Court, and any applicable taxes (“Net Settlement Fund”).¹

The proposed Plan of Distribution allocates the Net Settlement Fund based on each Class member’s *pro rata* share of Menactra purchases during the time period March 1, 2010 through and including December 31, 2014 (“Class Period”).² All Class members who timely submit executed and valid Claim Forms (*see* Exhibit A) are referred to herein as “Claimants.” The amount of money each Claimant will receive also depends on the number of valid Claim Forms submitted by Class members and the Net Settlement Fund. The fewer Class members who submit valid and timely Claim Forms, the higher each Claimant’s relative share would be. No portion of the Net Settlement Fund will revert to the Defendant.

To compute each Claimant’s *pro rata* share of the Net Settlement Fund, first, the Court-appointed Settlement Administrator Rust Consulting, Inc. (“Rust”), working with the economic consulting firm, Econ One, Inc. (“Econ One”), will determine the total volume of Menactra

¹ The Net Settlement Fund will also include an appropriate amount of interest.

² The Class is defined as: “All persons or entities in the United States and its territories that purchase Menactra directly from defendant Sanofi Pasteur Inc. (“Sanofi”) or any of its divisions, subsidiaries, predecessors or affiliates, such as VaxServe, Inc., during the period from March 1, 2010 through and including December 31, 2014 (“Class Period”) and excluding all governmental entities, Sanofi, Sanofi’s divisions, subsidiaries, predecessors, and affiliates Kaiser Permanente and the Kaiser Foundation (collectively, “Kaiser”), and any purchases by entities buying Menactra pursuant to a publicly-negotiated price (*i.e.* governmental purchasers).” Preliminary Approval Order, ECF 512, at 1.

purchases made by each Class member during the Class Period based on Sanofi's transactional sales database. That sum for each Class member who submits a Claim Form, will then be divided by the total volume of Menactra purchases for all valid Claimants to arrive at each Claimant's *pro rata* factor. Next, for each Claimant, its *pro rata* factor is multiplied by the amount of funds in the Net Settlement Fund to determine each Claimant's total dollar recovery. This type of methodology has been approved in in many settlements in similar cases brought by direct purchasers to recover overcharges arising from impaired competition in cases involving pharmaceutical and medical products.³ It is also consistent with the method described in the Court-approved long form notice that was mailed to Class members on May 17, 2017.

Plaintiffs have retained Dr. Jeffrey J. Leitzinger and his nationally recognized economic consulting firm, Econ One (of which he is the President), to assist with the computation of *pro rata* allocation shares to those Class members who did not exclude themselves from the Class and who submit a valid and timely Claim Form. Dr. Leitzinger, who has been working on this case for several years, and who submitted two reports in support of class certification, is fully familiar with the facts of the case and the damages calculations. This proposed Plan of Distribution is: (a) practical and efficient as it uses transactional data obtained from Sanofi (and thus does not require Class members to have retained their own purchase records); (b) flexible, in that it allows Class members who wish to rely upon their own purchase records to challenge the

³ See, e.g., *In re Doryx Antitrust Litig. (Mylan Pharms., Inc., v. Warner Chilcott Public Ltd.)*, No. 12-cv-3824 (E.D. Pa.), ECF 452-3, at 2 (*pro rata* shares of settlement fund computed on basis of class members' purchases); *In re Skelaxin Antitrust Litigation*, No. 12-cv-83 (E.D. Tenn.), ECF 788 at 6 (same); *In re DDAVP Direct Purchaser Antitrust Litig.*, No. 05-cv-2237 (S.D.N.Y.), ECF 101 at 19-20 (S.D.N.Y.) (same); *In re Miralax Antitrust Litig.*, No. 07-cv-142 (D. Del.), ECF 240, at 18 (same); *In re Prograf Antitrust Litig.*, No.11-md-2242 (D. Mass.), ECF 667-2, at 2 (same); *In re Metoprolol Succinate Direct Purchaser Antitrust Litig.*, No.06-cv-52 (D. Del.), ECF 192 at 18 (same); *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-cv-340 (D. Del.), ECF 536-1 at 19 (same); *In re Wellbutrin XL Antitrust Litig.*, No. 08-cv-2431 (E.D. Pa.), ECF 481-1 at 16 (same).

data relied upon by Rust; (c) consistent with that which appeared in the Court-approved long form notice; and, (d) consistent with the relative overcharge suffered by each Class member, and thus fair to all members of the Class.

II. PLAN OF DISTRIBUTION – CLAIM PROCESS

A. Claim Forms

Rust working with Econ One will provide a separate individualized Claim Form for each Class Member, substantially in the form attached hereto as Exhibit A. The Claim Form will contain the total volume of qualifying Menactra purchases specifically for that Class member during the Class Period, based on transactional data produced by Sanofi. Rust, working in conjunction with Econ One and Co-Lead Counsel, shall distribute an individualized, pre-printed, Claim Form to each Class member by first class mail within 45 days of the Court granting final approval of the Settlement and Plan of Distribution. The Claim Form will include information identifying each Class member by its name and address including a list of related entities, as well as a calculation of each Class member's total volume of Menactra purchases. The Claim Form will specifically request that each Class member verify the accuracy of the information contained in the Claim Form and will also provide instructions for challenging the total amount of Menactra purchases contained in the Claim Form. If a Class member agrees that the information contained in the Claim Form is accurate as to its purchase levels, it will be asked to sign the Claim Form verifying its accuracy, and timely mail it to Rust. If a Class member believes that the information contained in its Claim Form is inaccurate regarding its Menactra purchases that Class Member may submit its own Menactra purchase records as described below.

The Claim Form will also request that each Class member confirm its name and mailing address appropriate for correspondence regarding the distribution of the Net Settlement Fund, or

to provide corrected information if any information included in the Claim Form is inaccurate.

The Claim Form will also ask for the identity and contact information for the person responsible for overseeing the claims process for that particular Class member.

The submission of the Claim Form to Rust (with any necessary supporting documentation if the Claimant does not agree with information contained in its Claim Form) will be deemed timely if it is received or postmarked within 90 days from the Final Approval of the Settlement and Plan of Distribution (*i.e.*, 45 days after Claim Forms are mailed). At Co-Lead Counsel's discretion, this deadline may be extended another 30 days. Co-Lead Counsel may also seek further extensions of the deadline by order of the Court after any initial extension.

B. Processing of Claims

All Claim Forms will be reviewed and processed by Rust with assistance from Econ One. Rust shall first determine whether a Claim Form received is timely, properly completed, and signed. All timely Claim Forms that are properly completed shall be approved by Rust. If a Claim Form is incomplete or otherwise deficient, Rust will communicate with the Claimant via first class mail, email, or telephone regarding the incompleteness or other deficiency. Claimants will then have 21 days from the date they are contacted by Rust regarding the deficiency to cure any such incompleteness or other deficiency. If any Claimant fails to correct the incompleteness or deficiency within this time, the Claim Form, in Rust's discretion, may be rejected and the Claimant shall be notified of such rejection by letter or email stating the reason for rejection.

If a Claimant submits records to dispute that Claimant's doses of Menactra purchased, then the process described in Section IV herein shall apply.

III. PLAN OF DISTRIBUTION: METHODOLOGY

Each Claimant's allocated share of the Net Settlement Fund will be set in proportion to each Claimant's total volume of Menactra purchases during the Class Period (March 1, 2010 through and including December 31, 2014). The allocation computation will be based on the either the transactional data produced by Sanofi or from submissions by Claimants (if validated by Rust). To calculate the *pro rata* share for each Claimant of the Net Settlement Fund, the Settlement Administrator, working with Dr. Leitzinger, will take the total qualifying volume of Menactra purchases for each Claimant and divide it by the total qualifying volume of Menactra purchases for all Claimants. To calculate the total distribution amount in dollars for each Claimant, each Claimant's *pro rata* share will then be multiplied by the total dollar amount of the Net Settlement Fund.

For illustrative purposes, assume a Claimant purchased 2,000 doses of Menactra during the Class Period and total purchases of Menactra for all Claimants during the Class Period was 10 million doses. That Claimant's *pro rata* distribution share would be 0.02% (2,000/10,000,000). To arrive at the total distribution amount in dollars for this hypothetical Claimant, the Claimant's share would be multiplied by the total dollar amount of the Net Settlement Fund. If the Net Settlement Fund amounted to \$28 million, then this Claimant would receive 0.02% (its *pro rata* share) of \$28 million or \$5,600.00.

IV. PLAN OF DISTRIBUTION: DECISION-MAKING PROCESS

Rust, in conjunction with Econ One, will determine the total distribution amounts for each Claimant according to the methodology described above. Should any Claimant submit its own purchase data or other records in conjunction with the claims process or otherwise seek to challenge any of the data or estimations set out in the Claim Form, Rust, in conjunction with

Econ One, will use its judgment to determine whether the initial estimation set out in the Claim Form should be revised. Co-Lead Counsel shall be advised of any challenges made by Claimants to the proposed distribution amounts and shall be consulted in the decision-making process.

Rust, working in conjunction with Co-Lead Counsel, has the authority to reject a Claimant's challenge in whole or part, or to modify a distribution amount in response to such challenge. The Claimant shall be informed of Rust's and Co-Lead Counsel's decision to accept, accept in part, or reject the Claimant's challenge within a reasonable time. Rust will include its final decisions regarding distribution amounts to each of the Claimants in a declaration that Plaintiffs' Co-Lead Counsel shall submit to the Court for approval once the claims process has been completed.

Dated: August 2, 2017

Respectfully submitted,

s/ Peter S. Pearlman

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Co-Lead Counsel for Plaintiffs and the Class

EXHIBIT A

Menactra Antitrust Litigation
c/o Rust Consulting, Inc.
5203, P.O. Box 2563
Faribault, MN 55021-9563

IMPORTANT COURT-ORDERED DOCUMENT

<<BARCODE>>

Claimant ID #«Claimant_ID» - «Sequence»
«Name_1»
«Name_2»
«Name_3»
«Address_1»
«Address_2»
«City», «State» «Zip5» «Zip4»

Adriana M. Castro, et al. v. Sanofi Pasteur Inc.
United States District Court for the District of New Jersey
Civil Action No. 2:11-cv-07178-JMV-MAH

MENACTRA ANTITRUST LITIGATION PROOF OF CLAIM

(If Menactra was purchased in a name other than the Claimant’s name, please attach documentation of your right to assert a claim with respect to those payments.)

PART 1: CLAIMANT IDENTIFICATION

Employer Tax Identification Number: _____

(If you fail to include this tax information, your Claim may not be paid.)

Person to contact if there are questions regarding this Claim:

Daytime Phone Number: (_____) _____ Fax Number: (_____) _____

E-Mail Address: _____

INTRODUCTION

On _____, the Court in this case granted final approval of a settlement between Plaintiffs Adriana M. Castro, M.D., P.A., Sugartown Pediatrics, LLC, and Marquez and Bengochea, M.D., P.A. (together, “Plaintiffs”), individually and on behalf of a certified Class (defined below) of physicians and entities who purchased Menactra directly from Sanofi Pasteur Inc. (“Sanofi”), or any of its divisions, subsidiaries, predecessors or affiliates, such as VaxServe, Inc., from March 1, 2010 through and including December 31, 2014 (the “Class Period”),¹ and

¹ The Class is defined as: “All persons or entities in the United States and its territories that purchase Menactra directly from defendant Sanofi Pasteur Inc. (“Sanofi”) or any of its divisions, subsidiaries, predecessors or affiliates, such as VaxServe, Inc., during the period from March 1, 2010 through and including December 31, 2014 (“Class Period”) and excluding all governmental entities, Sanofi, Sanofi’s divisions, subsidiaries, predecessors, and affiliates Kaiser Permanente and the Kaiser Foundation (collectively, “Kaiser”), and any

Defendant Sanofi. The settlement provides for \$61.5 million in cash and Sanofi's release of counterclaims asserted against Class members (the "Settlement"). You were mailed the long form notice of class action settlement ("Settlement Notice") on May 17, 2017. The Settlement Notice is also available at www.menactraantitrustlitigationsettlement.com. The Settlement Notice summarizes both the litigation and the terms of the Settlement. The purpose of this proof of claim ("Claim Form") is to ensure that you are able to participate in the distribution of the \$61.5 million settlement fund, less attorneys' fees, expenses, administration costs, service awards approved by the Court, and any taxes owed ("Net Settlement Fund").

INSTRUCTIONS

The Settlement Administrator, Rust Consulting, Inc., in conjunction with Plaintiffs' economic expert retained to assist with the allocation process, Econ One, Inc., has calculated the total volume of Menactra purchases you made from Sanofi during the Class Period (March 1, 2010 through and including December 31, 2014) as reported in Sanofi's electronic transactional data. Qualifying purchases are those purchases of Menactra made directly from Sanofi during the Class Period. The calculation applicable to you appears below in Part 2.

You should verify the accuracy of the total volume of purchases in Part 2. If you agree that the information in Part 2 is accurate, you should check the box in Part 2, sign the Claim Form, and mail it to the Settlement Administrator at Menactra Antitrust Litigation Settlement, c/o Rust Consulting, Inc. – 5203, P.O. Box 2563, Faribault, MN 55021-9563, **postmarked no later than _____**, and you will not be required to produce any purchase data or take any further steps. For instance, you need not retain anyone to assist you with this process. Your *pro rata* share of the Net Settlement Fund will be computed once the deadline for submitting Claim Forms has expired. The calculation will be as follows: your total amount of qualifying purchases of Menactra in number of doses divided by the total amount of qualifying purchases of Menactra in number of doses by all Class members submitting timely and valid claims multiplied by the Net Settlement Fund. The amount you receive will potentially vary based upon the following factors, among others: (1) the number of timely and valid Claim Forms received from eligible Class members; and (2) certain additional or unexpected claims administration costs and other expenditures that may reduce the Net Settlement Fund available for distribution.

By agreeing with the amount listed in Part 2, you will be waiving the right to challenge the Settlement Administrator's determination regarding your *pro rata* distribution amount on the ground that the distribution amount would have been different had it been calculated using your own purchase records.

If you find that calculation derived from Sanofi's transactional data is **materially** different from the summary based on your internal records, you may challenge the purchase amount set forth in this Claim Form. In that case, you will need to provide supporting documentation (described below) which is subject to review and evaluation by the Settlement Administrator.

Per the Class definition certified by the Court, in order to be part of the Class, you must have purchased Menactra directly from Sanofi, or any of its divisions, subsidiaries, predecessors or affiliates, such as VaxServe, Inc., during the Class Period.

purchases by entities buying Menactra pursuant to a publicly-negotiated price (*i.e.* governmental purchasers)." See Preliminary Approval Order, Civil Action No. 2:11-cv-07178, ECF 512, at 1 (D.N.J. Apr. 24, 2017).

PART 2: CLAIM FORM

For the period March 1, 2010 through and including December 31, 2014, you have purchased _____ doses of Menactra from Sanofi.

The information above should include all transactions by the Class member identified herein and each of its parents, subsidiaries, and affiliates. All entities for whom the data is provided must agree to accept this aggregate figure.

Check here if you agree to accept the listed amount:

ASSIGNMENTS

If you have at any time assigned any claims relating to your purchases of Menactra directly from Sanofi during the time period March 1, 2010 through and including December 31, 2014, state the value of the assigned claim, the assignee, and the date of assignment:

Value of Assigned Claim: _____

Assignee of Claim: _____

Date of Assignment: _____

PLEASE CHECK HERE IF YOU ARE FILING THIS CLAIM BASED ON AN ASSIGNMENT

If you are submitting a Claim pursuant to a legally valid assignment of claims relating to purchases of Menactra directly from Sanofi during the time period March 1, 2010 though and including December 31, 2014 that were assigned to you, please identify with particularity the assignments here. Please also attach documentation of such assignments.

IF YOU CHECKED THE BOX STATING THAT YOU ACCEPT THE AMOUNT OF MENACTRA PURCHASES, SKIP TO PART 3. IF YOU DO NOT ACCEPT THAT PURCHASE AMOUNT, INSTRUCTIONS FOR SUBMITTING ACTUAL PURCHASE DOCUMENTATION APPEAR BELOW.

A. To the extent that you dispute the sales transaction data supplied by the Settlement Administrator as set forth in Part 2 above, you must provide the Settlement Administrator with valid documentation in support of the purchase claimed. Acceptable documentation includes copies of (a) purchase invoices or (b) internal purchase records or ledgers certified by your purchasing (accounts payable) department or an independent accountant. Such documentation must indicate the (a) date of purchase; (b) purchased product was Menactra; (c) supplier; (d) purchaser (including proof that the purchaser is you, your related company or your valid assignor and the purchaser was invoiced by Sanofi for the purchase and appears as “bill to” or “sold to” entity in the transactional data); and (e) the amount of doses purchased. All documentation is subject to review and evaluation by the Settlement Administrator.

By signing below, you are further verifying under penalty of perjury that the information provided in this proof of claim is accurate and complete.

PART 3: VERIFICATION

I declare, under penalty of perjury, under the laws of the United States of America that the foregoing information provided by the undersigned is true and correct and that this proof of claim was

executed this ___ day of _____, 201_ in _____
(City)

(State / Country)

(Sign your name here)

(Type/Print your name here)

(Type / Print your company name here)

(Title of person signing, *e.g.*, President, Partner)

ACCURATE PROCESSING OF CLAIMS MAY TAKE SIGNIFICANT TIME.

THANK YOU IN ADVANCE FOR YOUR PATIENCE.

CHECKLIST

Before submitting your claim, please make sure that you:

1. Complete the Claimant Identification (Part 1) and sign the Verification/Release (Part 3) sections of the Claim Form.
2. If you elect to submit your own purchase data, please produce the required documentation as described in Part 2.A of the Claim Form and send the documentation with your completed Claim Form.
3. Maintain the original documents and electronic files supporting your claim (where applicable).
4. Keep a copy of the completed Claim Form for your records.
5. Send your completed Claim Form to the Settlement Administrator by Certified Mail (return receipt requested), if you want proof that your claim was received.
6. Submit your Claim Form postmarked no later than _____.

* * *

* * *

If you have any questions concerning the plan or the Claim Form, or if you change your address, please contact the Settlement Administrator at:

Settlement Administrator
Menactra Antitrust Litigation Settlement, c/o Rust Consulting, Inc. – 5203,
P.O. Box 2563, Faribault, MN 55021-9563
Website: www.menactraantitrustlitigationsettlement.com
Toll-Free: 1-866-216-0279