

THIS IS AN IMPORTANT NOTICE THAT MAY AFFECT YOUR LEGAL RIGHTS

READ THIS NOTICE CAREFULLY

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

_____)
IN RE REMERON DIRECT PURCHASER)
ANTITRUST LITIGATION)
_____) Master Docket No. 03-CV-0085 (FSH)
)
THIS DOCUMENT RELATES TO:)
ALL ACTIONS)
_____)

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION,
CLASS COUNSEL’S MOTION FOR ATTORNEYS’ FEES,
AND HEARING REGARDING SETTLEMENT**

TO: MEMBERS OF A CLASS (THE “DIRECT PURCHASER CLASS” OR “CLASS”) CONSISTING OF ALL PERSONS OR ENTITIES (AND ASSIGNEES OF CLAIMS FROM SUCH PERSONS OR ENTITIES) WHO DIRECTLY PURCHASED REMERON® FROM ORGANON USA INC. OR AKZO NOBEL N.V. (COLLECTIVELY, “DEFENDANTS”) AT ANY TIME DURING THE PERIOD OF JANUARY 16, 2002 THROUGH AUGUST 24, 2005 (THE “CLASS PERIOD”).

Excluded from the Class are: (1) the defendants in this lawsuit, and their officers, directors, management and employees, subsidiaries and affiliates; (2) to the extent they would otherwise be in this Class, either as a direct purchaser or as an assignee of a direct purchaser, Walgreen Co., Eckerd Corporation, Albertson’s, Inc., The Kroger Co., American Sales Company, Safeway, Inc., Hy-Vee, Inc., CVS Meridian, Inc., and Rite Aid Corporation, and their successors in interest, who initiated the actions styled CVS Meridian, Inc., et al. v. Organon, Inc., et al., No. 2:03-cv-05488-FSH-PS, and Walgreen Co., et al. v. Organon, Inc., et al., No. 2:03-cv-02221-FSH-PS, which have been dismissed with prejudice; and (3) to the extent they would otherwise be in this Class, either as a direct purchaser or as an assignee of a direct purchaser, the 50 states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions and territories of the United States of America, who initiated the action styled State of Oregon et al. v. Organon USA Inc., et al., No. 2:04-cv-05126-FSH-PS, which has been dismissed with prejudice as of the date this Settlement becomes final in accordance with its terms

I. INTRODUCTION

If you made at least one purchase of the brand-name drug Remeron® directly from its manufacturer at any time during the period of January 16, 2002 through August 24, 2005, your rights

may be affected by the proposed settlement of a lawsuit, *In re Remeron Direct Purchaser Antitrust Litigation*, Master File No. 03-CV-0085 (FSH) (the “Class Action”), which is now pending before the United States District Court for the District of New Jersey (the “Court”). If you have assigned any of your rights to any such purchases, you are requested to forward this Notice to your assignee.

You have been identified as a potential member of the Class. This Notice is given pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Order of the United States District Court for the District of New Jersey for the purpose of informing you of your rights with regard to: (1) a proposed settlement of the above-referenced litigation for a payment by Defendants of \$75 million in cash (the "Settlement Fund") in full, complete and final settlement of the above-referenced litigation; and (2) a hearing scheduled to be held on **November 2, 2005**, at **4:00 P.M.**, before the Honorable Faith S. Hochberg, of the United States District Court for the District of New Jersey, at the United States District Courthouse at 50 Walnut Street, Newark, New Jersey 07101 (the "Fairness Hearing").¹

The purpose of the Fairness Hearing will be to determine whether: (1) the proposed settlement is fair, reasonable, adequate and in the best interests of the Direct Purchaser Class, and thus should be approved; (2) to approve a proposed plan to allocate the Settlement Fund among Class members; (3) to approve the application of Class Counsel for an award of attorneys’ fees and costs, and the application for an incentive award for the Class representative and named plaintiffs; and (4) the Court should enter a final judgment terminating the above-referenced litigation. The Court may continue or reschedule the hearing without further notice.

Direct Purchaser Class members are also hereby advised of their right to exclude themselves from the Class and forego participation in the Settlement, or alternatively, object and/or appear at the Fairness Hearing as explained below. The purpose of this Notice is to advise you of your rights.

II. THE NATURE OF THE LAWSUIT

The Class Action was brought by Louisiana Wholesale Drug Company, Inc. (“Louisiana Wholesale” or “Plaintiff”) and Meijer, Inc. (collectively, “Plaintiffs”), on behalf of themselves and other direct purchasers of Remeron®, against the manufacturers of Remeron®, Organon USA Inc. and Akzo Nobel N.V. Plaintiffs claim that Defendants violated federal antitrust law, specifically

¹ Other cases challenging similar conduct by Defendants were filed on behalf of: (1) consumers and other entities who purchased Remeron® from sources other than Defendants; and/or (2) entities which paid for all or part of such indirect purchases (including third-party payors such as insurance companies or health care plans). The proposed settlement described in this Notice relates only to the Class. **NEITHER CONSUMERS NOR THIRD-PARTY PAYORS WHO PURCHASED OR PAID FOR REMERON® FROM A SOURCE OTHER THAN DEFENDANTS ARE PART OF THE DIRECT PURCHASER CLASS WITH RESPECT TO SUCH PURCHASES.**

Section 2 of the Sherman Act, 15 U.S.C. § 2, by monopolizing an alleged market for mirtazapine (the active ingredient in Remeron®). More specifically, Plaintiffs allege that Defendants delayed the marketing of less expensive generic versions of Remeron® by, *inter alia*, improperly obtaining, listing and enforcing U.S. Patent No. 5,977,099. Plaintiffs argue that the delay in the marketing of generic versions of Remeron® forced purchasers of Remeron® to pay higher prices for mirtazapine.

Defendants deny each and every one of Plaintiffs' allegations of unlawful or improper conduct, deny Plaintiffs' and the Class's entitlement to damages or any other relief, and assert several defenses. Defendants argue that Plaintiffs have failed to state a claim upon which the Court can grant relief, that Defendants acted in furtherance of their legitimate business interests and have caused no injury to competition, the public, or Plaintiffs, that Defendants' conduct was protected by the First Amendment to the U.S. Constitution, and that Defendants' conduct was otherwise lawful. On September 8, 2004, the Court dismissed certain antitrust causes of action asserted by direct purchaser plaintiffs. *In re Remeron Antitrust Litigation*, 335 F. Supp. 2d 522 (D.N.J. 2004). A motion for summary judgment in favor of Defendants was pending at the time the Settlement was reached.

III. THE CLASS

In light of the proposed Settlement, the Court has certified this case as a class action on behalf of:

All persons or entities (and assignees of claims from such persons or entities) who directly purchased Remeron® from Defendants at any time during the period of January 16, 2002 through August 24, 2005, the date of the Settlement Agreement (the "Class Period").

The Class excludes: (1) the Defendants in this lawsuit, and their officers, directors, management and employees, subsidiaries and affiliates; (2) to the extent they would otherwise be in this Class, either as a direct purchaser or as an assignee of a direct purchaser, Walgreen Co., Eckerd Corporation, Albertson's, Inc., The Kroger Co., American Sales Company, Safeway, Inc., Hy-Vee, Inc., CVS Meridian, Inc., and Rite Aid Corporation, and their successors in interest, who initiated the actions styled CVS Meridian, Inc., et al. v. Organon, Inc., et al., No. 2:03-cv-05488-FSH-PS, and Walgreen Co., et al. v. Organon, Inc., et al., No. 2:03-cv-02221-FSH-PS, which have been dismissed with prejudice; and (3) to the extent they would otherwise be in this Class, either as a direct purchaser or as an assignee of a direct purchaser, the 50 states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions and territories of the United States of America, who initiated the action styled State of Oregon et al. v.

Organon USA Inc., et al., No. 2:04-cv-05126-FSH-PS, which has been dismissed with prejudice as of the date this Settlement becomes final in accordance with its terms.

The Court has also approved Louisiana Wholesale as the representative plaintiff for the Class, and has appointed the law firms of Garwin Gerstein & Fisher L L P and Cohen, Milstein, Hausfeld & Toll, PLLC as co-lead counsel for the Class.

IV. THE PROPOSED SETTLEMENT

Subject to the terms and conditions of the settlement agreement (the "Settlement Agreement"), dated August 24, 2005 (which is on file with the Court), Defendants paid \$75 million in cash on **September 7, 2005** into an escrow account as the Settlement Fund for the benefit of the Direct Purchaser Class. The proposed settlement is a compromise of disputed claims and does not mean that any Defendant in this action has been found liable for the claims made by Plaintiffs or the Class. Defendants do not admit any wrongdoing or liability on their part, and nothing in this notice or any other settlement-related document shall be taken or construed as an admission of any wrongdoing or liability by Defendants.

All costs, fees and expenses related to this litigation and settlement are to be paid solely out of the proceeds of the Settlement Fund. Direct Purchaser Class counsel intend to seek, solely from the Settlement Fund, attorneys' fees totaling 33 $\frac{1}{3}$ % of the Settlement Fund plus the reimbursement of reasonable costs and expenses incurred in the prosecution of this action plus interest thereon. Class counsel's application for an award of attorneys' fees will be made available on or before **October 12, 2005**, on class counsel's web sites, www.garwingerstein.com and www.cmht.com. Moreover, an application will also be made to the Court for an incentive award of \$60,000 for Plaintiffs in the Class Action to compensate them for their participation in, and prosecution of, this case on behalf of the Direct Purchaser Class, which has included, among other things, production of documents, providing written discovery, being deposed, regular communications with counsel, and attendance and active involvement at both mediation sessions and hearings before the Court. Class counsel will file their application for an award of attorneys' fees, reimbursement of costs and expenses, and for an incentive award with the Clerk of the United States District Court for the District of New Jersey, at the United States District Courthouse, 50 Walnut Street, Newark, New Jersey 07101, on or before **October 26, 2005**. The application will be available for inspection during normal business hours at the office of the Clerk.

If Class members with total purchases of Remeron® exceeding a certain confidential amount agreed to by the parties exclude themselves from the Class, Defendants may terminate or modify the settlement.

The above is only a summary of the proposed settlement and is qualified in its entirety by the terms of the Settlement Agreement. A copy of the Settlement Agreement, including the releases, is on public file with the United States District Court for the District of New Jersey at the address indicated in this Notice and is available for inspection there during normal business hours.

The Court preliminarily approved the proposed settlement after a hearing held on **August 30, 2005**. The Court found the proposed settlement to be within the range of reasonableness. Accordingly, the Court has set a Fairness Hearing in order to determine whether the proposed settlement should be finally approved as described in Section VIII, below.

V. THE PLAN OF ALLOCATION

In the event the proposed settlement becomes final, the Settlement Fund, net of attorneys' fees, costs and expenses, and incentive awards as approved by the Court and net of certain other sums, will be distributed in accordance with a plan of allocation approved by the Court. The plan of allocation will be based upon **proofs of claim to be filed by Class members at a later time**. You may be required as a condition of participation in the settlement to present evidence of your purchases of brand-name Remeron® and generic mirtazapine during the period January 16, 2002 to August 24, 2005. You should, therefore, preserve invoices and other records reflecting such purchases.

The Settlement Fund, net of attorneys' fees, costs and expenses, and incentive awards as approved by the Court and net of certain other sums, will be allocated to Class members based upon a plan of allocation that will generally provide a *pro rata* share of an estimate of actual overcharges each Class member allegedly incurred as a result of the alleged unlawful monopolization. The overcharges incurred by individual Class members will be calculated roughly by evaluating the following: (1)(a) the quantity of generic mirtazapine that each Class member purchased from any source from January 24, 2003 through August 24, 2005 as a substitute for buying brand name Remeron® from Defendants, (b) multiplied by the average differential in price between the brand and generic forms of mirtazapine; and/or (2)(a) the quantity of generic mirtazapine that each Class member purchased directly from any generic mirtazapine manufacturer from January 24, 2003 through August 24, 2005, (b) multiplied by the price differential between the actual price of the generic and the price that would have prevailed had there been no alleged delay in generic entry; and/or (3) the combined savings from certain discounts, rebates, and/or other price reductions implemented by Defendants subsequent to generic entry (January 24, 2003) that a Class member would have received relating to brand-name Remeron® purchased directly from Defendants.

VI. THE RELEASES

Releases. If the proposed settlement becomes final in accordance with its terms, Defendants and their past, present and future parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, officers, directors, management, supervisory boards, insurers, general or limited partners, employees, agents, trustees, associates, purchasers, attorneys and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (the “Released Parties”) are and shall be unconditionally, fully and finally released and forever discharged from all manner of claims, debts, obligations, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys’ fees, known or unknown, suspected or unsuspected, accrued in whole or in part, in law or equity, that Plaintiff or any member or members of the Class who has or have not timely excluded itself or themselves from the Class (including any of their past, present or future officers, directors, insurers, general or limited partners, divisions, stockholders, agents, attorneys, employees, legal representatives, trustees, parents, associates, affiliates, joint ventures, subsidiaries, heirs, executors, administrators, purchasers, predecessors, successors and assigns, acting in their capacity as such) (the “Releasers”), whether or not they object to the Settlement and whether or not they make a claim upon or participate in the Settlement Fund, ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, arising out of or relating in any way to any conduct alleged or which could have been alleged in the Class Action or in any other action or proceeding coordinated or consolidated in Master Docket No. 2:03-CV-0085-FSH-PS, relating to any alleged delay in the marketing or selling of Remeron® or its generic equivalents, prior to the date hereof, except as provided for in the “Reservation of Claims” described below (the “Released Claims”). For purposes of the releases described in this Notice, Remeron® includes Remeron® SolTabs and any form of mirtazapine, branded or generic. Plaintiff and each member of the Class hereby covenant and agree, on behalf of themselves and all other Releasers, that each shall not sue or otherwise seek to establish or impose liability against any Released Party based, in whole or in part, on any of the Released Claims.

In addition, Plaintiff and each Class member, on behalf of themselves and all other Releasers, hereby expressly waive, release and forever discharge, upon the Settlement becoming final, any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code, which reads:

Section 1542. General release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor;

or by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each Class member may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of these releases, but each Class member hereby expressly waives and fully, finally and forever settles and releases and discharges, upon this Settlement becoming final, any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Class member also hereby expressly waives and fully, finally and forever settles and releases and discharges any and all claims it may have against any Released Party under § 17200, *et seq.*, of the California Business and Professions Code or any similar, comparable or equivalent provision of the law of any other state or territory of the United States or other jurisdiction, which claims are hereby expressly incorporated into the definition of Released Claims.

Reservation of Claims. The releases set forth above shall not release any claims arising in the ordinary course of business between Class members and the Released Parties concerning product liability, breach of contract, breach of warranty, or personal injury, other than any such claim based in whole or in part on any conduct challenged by any plaintiff, or on the operative facts alleged, in the Class Action or in any action or proceeding coordinated or consolidated in Master Docket No. 2:03-CV-0085-FSH-PS.

VII. RIGHTS AND OBLIGATIONS OF CLASS MEMBERS

If you choose to remain a member of this Class:

1. You will be entitled to share in the proceeds of the proposed Settlement as described above and according to the terms of the Settlement Agreement and the orders of the Court, if the Settlement is finally approved by the Court and becomes final in accordance with its terms.
2. Class counsel will represent the Class on your behalf. All fees, costs and expenses of counsel for the Class will be paid only out of the Settlement Fund. You will not have to pay Class counsel any additional amounts, and, in no event will you have to pay any judgment, court costs, or attorneys' fees for participating in this settlement. As a Class member, you may enter an appearance through your own counsel at your own expense. You may also seek to intervene individually and may advise the Court if at any time you consider that you are not being fairly and adequately represented by the representative plaintiff and/or counsel for the Class.

3. If the proposed settlement is finally approved, you will be bound by the final judgment and releases against Defendants as entered by the Court.

4. You may be required as a condition to participating in any recovery through the proposed settlement to present evidence respecting your purchases of Remeron®, your discounts, rebates and other price reductions for purchases of Remeron® (if any), and your purchases of any generic versions of mirtazapine during the relevant time periods. (You should, therefore, preserve invoices and other records reflecting this information.)

5. You will be entitled to receive notice of any ruling reducing the size of the Class or dismissing the Class claims. (For this reason, as well as to participate in any recovery, **you are requested to notify the Claims Administrator, in writing, of any corrections or changes in your name or address** at: *In re Remeron Direct Purchaser Antitrust Litigation*, c/o Berdon Claims Administration LLC, P.O. Box 9014, Jericho, NY 11753-8914; or by fax: (516) 931-0810; or via the website: www.berdonllp.com/claims.) You will also be afforded an opportunity to be heard respecting the proposed settlement and application for attorneys' fees, costs and an incentive award to the Plaintiffs.

VIII. THE FAIRNESS HEARING

Pursuant to an Order of the Court, a hearing will be held on **November 2, 2005**, at **4:00 P.M.**, in the courtroom of the Honorable Faith S. Hochberg, Chief Judge of the United States District Court for the District of New Jersey at the United States District Courthouse, 50 Walnut Street, Newark, New Jersey 07101, for the purpose of determining whether to approve: (1) the proposed settlement as fair, reasonable, and adequate; (2) the proposed plan of allocation of the Settlement Fund among Direct Purchaser Class members; (3) Direct Purchaser Class Counsel's application for an award of attorneys' fees and disbursement of expenses; and (4) the application for an incentive award for the Class representative and named plaintiffs. The Court will also determine whether to enter a final judgment terminating this litigation, in the form submitted by the parties to the Settlement Agreement. You are entitled to appear and be heard at this hearing. The time and date of the hearing may be continued or rescheduled without further notice.

If you do not wish to object to the proposed settlement, it is not necessary to appear at the hearing or to take any action at this time. Any member of the Class that has not excluded itself from the Class may appear at the Fairness Hearing in person or by duly authorized attorney and show cause why the proposed settlement should not be approved as fair, reasonable and adequate, or to oppose or comment on any other subject of the Hearing, provided that no person shall be heard in opposition to the proposed settlement unless such person sends, by first-class mail postmarked on

or before **October 26, 2005**, postage prepaid, to the Clerk of the United States District Court for the District of New Jersey, Martin Luther King, Jr. Federal Building and United States Courthouse, 50 Walnut Street, Newark, New Jersey 07101-0999, a notice of intention to appear and a statement of the position to be asserted and the grounds therefor, together with copies of any supporting papers or briefs. Your notice must include in a prominent location the name of the case (*In re Remeron Direct Purchaser Antitrust Litigation*), the Master File number (No. 03-CV-0085-FSH), and the Judge's name (Hon. Faith S. Hochberg). You must also send a copy of your request to counsel for the Class, whose addresses are as follows:

Bruce E. Gerstein, Esq.
GARWIN GERSTEIN
& FISHER LLP
1501 Broadway, Suite 1416
New York, New York 10036
Telephone: (212) 398-0055

Linda P. Nussbaum, Esq.
COHEN, MILSTEIN, HAUSFELD
& TOLL, PLLC
150 East 52nd Street, 30th Floor
New York, New York 10019
Telephone: (212) 838-7797

Co-Lead Counsel for the Direct Purchaser Class

and to counsel for Defendants, addressed as follows:

Laurence T. Sorkin, Esq.
Dean Ringel, Esq.
CAHILL GORDON & REINDEL LLP
80 Pine Street
New York, New York 10005-1702

Counsel for Defendants

Except as provided herein, no person shall be entitled to contest the terms and conditions of the proposed settlement, and persons who fail to object as provided herein shall be deemed to have waived and shall be foreclosed forever from raising any such objections. You need not appear at the hearing in order to object.

**IX. YOUR RIGHT TO EXCLUDE YOURSELF
FROM THE CLASS AND THIS SETTLEMENT**

Any Class member that wishes to be excluded from the Class may do so in writing. However, you will **not** be permitted to file a proof of claim, and will **not** be permitted to share in the Settlement Fund, if you exclude yourself from the Class. If you want to be excluded from the settlement and the Class, you must mail a **written** request for exclusion to the Claims Administrator, and such request for exclusion must be received by the Claims Administrator by **no later than October 19, 2005**, at the following address in order to be considered valid:

In re Remeron Direct Purchaser Antitrust Litigation
c/o Berdon Claims Administration LLC
P.O. Box 9014

Jericho, NY 11753-8914

Fax: (516) 931-0810

Any request for exclusion must legibly set forth your name (including all names by which you have been known since January 16, 2002) and address and the name of this case (In re Remeron Direct Purchaser Antitrust Litigation). The request for exclusion must also clearly state that you are a member of the Class and that you wish to be excluded from the Class. A separate request for exclusion must be filed by each Class member electing to be excluded from the Class.

Any Class member that elects to exclude itself from the Class will not be entitled to participate in the settlement or to receive any payment from the Settlement Fund, but will retain such rights, if any, it may have (to the extent otherwise permitted by law and subject to all applicable limitations) to prosecute separate litigation against Defendants, at its own expense, and Defendants will retain all defenses against and counterclaims to any such claims.

X. ADDITIONAL INFORMATION

Corrections or changes of name or address, or requests for additional copies of this Notice should **not** be directed to the Court, but should be directed **in writing** to the Claims Administrator at:

In re Remeron Direct Purchaser Antitrust Litigation
c/o Berdon Claims Administration LLC
P.O. Box 9014
Jericho, NY 11753-8914
Fax: (516) 931-0810
Website: www.berdonllp.com/claims

Any questions which you have concerning the matters contained in this Notice may be directed in writing to:

Bruce E. Gerstein, Esq.
GARWIN GERSTEIN
& FISHER LLP
1501 Broadway, Suite 1416
New York, New York 10036
Telephone: (212) 398-0055

Linda P. Nussbaum, Esq.
COHEN, MILSTEIN, HAUSFELD
& TOLL, PLLC
150 East 52nd Street, 30th Floor
New York, New York 10019
Telephone: (212) 838-7797

Co-Lead Counsel for the Direct Purchaser Class

The Settlement Agreement and the exhibits thereto, as well as the pleadings and other records in this litigation, may be examined and copied at any time during regular office hours at the office of the Clerk of the Court, United States District Court, District of New Jersey, 50 Walnut

Street, Newark, New Jersey 07101. Certain settlement documentation is also available at www.garwingerstein.com and www.cmht.com.

Dated: **August 30, 2005**

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY