

**THIS IS AN IMPORTANT LEGAL NOTICE. THE MATTERS DISCUSSED HEREIN
MAY AFFECT SUBSTANTIAL LEGAL RIGHTS THAT YOU MAY HAVE.
*READ THIS NOTICE CAREFULLY.***

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE CARDIZEM CD ANTITRUST	:	MASTER FILE NO. 99-MD-1278
LITIGATION	:	MDL NO. 1278
	:	
	:	HON. NANCY G. EDMUNDS
This document relates to:	:	
	:	
<i>Louisiana Wholesale, 99-CV-73259</i>	:	
	:	
<i>Duane Reade, 99-CV-73870</i>	:	

**NOTICE OF PROPOSED CLASS SETTLEMENT
AND HEARING REGARDING SETTLEMENT**

TO: All persons (or assignees of such persons) who at any time during the period July 9, 1998 through June 23, 1999 directly purchased Cardizem CD from HMRI [now Aventis Pharmaceuticals, Inc.]; and who also, after the first generic version of Cardizem CD entered the market on June 23, 1999, either:

- (1) purchased one or more generic versions of Cardizem CD; or**
- (2) obtained increased discounts for their direct purchases of Cardizem CD.**

Excluded are all defendants in this lawsuit, and their officers, directors, management and employees, subsidiaries or affiliates. Also excluded are those direct purchasers who have already opted out of the class on or before the opt-out deadline of January 25, 2002 ordered by the Court, including those who brought their own separate actions against the defendants, which are currently being coordinated with the class's case before the United States District Court for the Eastern District of Michigan.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. A SETTLEMENT HAS BEEN PROPOSED IN PENDING CLASS ACTION LITIGATION THAT MAY AFFECT YOUR RIGHTS. IF YOU ARE A MEMBER OF THE CLASS DESCRIBED BELOW, YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT

FUND.

I. PURPOSE OF NOTICE

Pending in this Court is a case brought by Louisiana Wholesale Drug Company, Inc. (“Louisiana Wholesale”) and Duane Reade, Inc. (“Duane Reade”) (collectively “Sherman Act Class Plaintiffs”), under the federal antitrust laws on behalf of themselves and a class of direct purchasers of Cardizem CD defined more fully below (the “Sherman Act Class” or “Class”), against Defendants Hoechst Marion Roussel, Inc. (now know as Aventis Pharmaceuticals, Inc.) (“Aventis”) and Andrx Pharmaceuticals, Inc. (“Andrx”) alleging an agreement in restraint of trade.

This notice is given pursuant to Rule 23 of the Federal Rules of Civil Procedure and by Order of the United States District Court for the Eastern District of Michigan for the purpose of informing you of your rights with regard to:

a) a proposed settlement of the above-referenced litigation on behalf of the Sherman Act Class in exchange for a payment by defendants of \$110 million plus interest (“Settlement Fund”), as described below; and

b) a hearing scheduled to be held on November 20, 2002 at 10:00 a.m. before the Honorable Nancy G. Edmunds, United States District Court Judge for the Eastern District of Michigan, Theodore Levin United States Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226 (the “Fairness Hearing”).

The purpose of the Fairness Hearing will be to consider whether the Court should approve: (1) the proposed settlement between the Sherman Act Class and defendants as fair, reasonable, adequate, and in the best interests of the Sherman Act Class; (2) an application for attorneys’ fees, expenses and costs incurred in the prosecution of this litigation; (3) any incentive

awards to Louisiana Wholesale and Duane Reade for their participation as Class representatives; and (4) the proposed plan of allocation of the settlement proceeds to Class members. The Court may continue or reschedule the hearing without further notice.

Sherman Act Class members are also hereby advised of their right to object or appear at the Fairness Hearing, as explained below.

II. THE LITIGATION

A. Sherman Act Class Plaintiffs' Claims

On November 18, 1998, Sherman Act Class Plaintiff Louisiana Wholesale filed an action on behalf of similarly situated direct purchasers of Cardizem CD alleging violations of the federal antitrust laws, specifically the Sherman Act and the Clayton Act, against defendants Aventis and Andrx. On February 22, 1999, Sherman Act Class Plaintiff Duane Reade filed a similar complaint against defendants Aventis and Andrx. The Louisiana Wholesale and Duane Reade cases were consolidated by the Court on June 11, 1999.

The Sherman Act Class Plaintiffs' consolidated actions (the 'Class Actions') arise out of an agreement Aventis entered into with Andrx on or about September 24, 1997, pursuant to which Aventis agreed to pay Andrx \$10 million per quarter in return for Andrx's agreement not to manufacture and sell its generic version of Cardizem CD. Sherman Act Class Plaintiffs have alleged that this illegal agreement kept less expensive generic versions of Cardizem CD off the market, thereby forcing direct purchasers to pay artificially inflated prices for Cardizem CD and its AB-rated generic equivalents.

B. Defendants' Denial of Liability

Defendants vigorously dispute the Sherman Act Class Plaintiffs' claims that the agreement was illegal. Defendants also deny Sherman Act Class Plaintiffs' claims that the agreement caused

plaintiffs and members of the Sherman Act Class any harm.

C. Status of the Litigation

On September 3, 1999, the Court appointed the law firms of Boies, Schiller & Flexner LLP and Garwin, Bronzaft, Gerstein & Fisher, L.L.P. as Co-Lead Counsel for the Sherman Act Class Plaintiffs. Since that time, Co-Lead Counsel and other counsel for the Sherman Act Class (collectively ‘Class Counsel’) have prosecuted this lawsuit on behalf of the Sherman Act Class.

On December 10, 1999, Class Counsel moved for certification of the Sherman Act Class. On March 14, 2001, the Court granted Class Counsel’s motion allowing the litigation to proceed on a classwide basis and certifying a class consisting of all persons (or assignees of such persons) who at any time during the period July 9, 1998 through June 23, 1999 (‘Class Period’) directly purchased Cardizem CD from HMRI [now Aventis]; and who also, after the first generic version of Cardizem CD entered the market on June 23, 1999, either: (1) purchased one or more generic versions of Cardizem CD; or (2) obtained increased discounts for their direct purchases of Cardizem CD (the ‘Sherman Act Class’ or ‘Class’). Excluded from the Class are all defendants in this lawsuit, and their officers, directors, management and employees, subsidiaries or affiliates. Also excluded are those direct purchasers who have already opted out of the Class on or before the opt-out deadline of January 25, 2002 ordered by the Court, including those who brought their own separate actions against the defendants, which are currently being coordinated with the Class’s case before the United States District Court for the Eastern District of Michigan. Notice of the class certification decision was sent to Class members on or about December 11, 2001, pursuant to a notice program approved by the Court. Class members were informed of their rights to remain in the Class and be subject to, and share in, any future settlement or verdicts in the litigation, or otherwise to opt out of the Class by January 25, 2002 and pursue any claims

against the defendants on their own.

In response to a motion for partial summary judgment by Class Counsel, on June 6, 2000, the Court held that the agreement between Aventis and Andrx was *per se* illegal under Section 1 of the Sherman Act. (The Court did not rule, however, on whether the illegal agreement caused any damage to members of the Class, or the amount of such damages, if any.) Defendants vigorously dispute the Court's decision and sought leave to make a special appeal of the decision to the United States Court of Appeals for the Sixth Circuit before the conclusion of the litigation. Defendants' request for permission to appeal was granted and on December 12, 2000, the Sixth Circuit agreed to hear defendants' appeal. The appeal has been fully briefed and argued, and the parties are currently waiting for a decision by the Sixth Circuit Court of Appeals.

Regardless of the outcome of the appeal of the *per se* motion, the defendants have asserted numerous other defenses to the Class's claims, including arguments that even if the agreement were illegal it caused no harm to the Class. For example, defendants assert, among other defenses, that the agreement was pro-competitive, perfectly legal, and that the agreement did not cause any injury to direct purchasers because: (1) it did not delay less expensive generic versions of Cardizem CD from entering the market; and (2) even assuming it delayed generic entry, certain direct purchasers may have received a net economic benefit from the delay.

Over the course of nearly three and a half years, Class Counsel have conducted substantial discovery in this case. This discovery included numerous interrogatories and document requests, as well as third-party subpoenas to other pharmaceutical manufacturers, raw ingredient suppliers, healthcare-related entities, and financial institutions. Class Counsel also obtained substantial documents and depositions from the defendants' patent litigation, Aventis's patent litigation against Biovail and the Federal Trade Commission's investigation of Andrx and Aventis. In the

course of this effort, Class Counsel reviewed hundreds of thousands of documents.

Armed with this written discovery, Class Counsel took over 20 depositions of current and former executives and employees of the defendants, expert witnesses and third-party witnesses. Additionally, Class Counsel retained and worked with several expert witnesses in evaluating total aggregate damages to the Class and defendants' causation defenses.

As a result of their intensive investigation, Class Counsel obtained significant knowledge regarding the strengths and weaknesses of the claims and defenses in this case before entering into settlement negotiations with defendants.

OTHER THAN AS SPECIFICALLY INDICATED ABOVE REGARDING THE *PER SE* ILLEGALITY OF THE AGREEMENT AT ISSUE IN THE CASE, THE COURT HAS NOT RULED ON THE MERITS OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY THE PARTIES. THIS NOTICE IS NOT TO BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION BY THIS COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY EITHER SIDE.

III. SUMMARY OF THE PROPOSED SETTLEMENT

Subject to the terms and conditions of the settlement agreement with defendants (the 'Settlement Agreement'), dated August 13, 2002, which is on file with the Court as Exhibit 'A' to the Sherman Act Class Plaintiffs' Motion for Preliminary Approval of Proposed Settlement and for Approval of the Form and Manner of Notice to the Class, a copy of which is also available at www.bsflp.com or www.gbgf-law.com, defendants will pay the Sherman Act Class \$110 million plus interest upon the settlement becoming final pursuant to paragraph 4 of the Settlement Agreement. Interest on the \$110 million has been accruing for the benefit of the Class since July 1, 2002, the date defendants deposited \$110 million into an escrow account pursuant to a

Memorandum of Understanding concerning the settlement. The settlement was arrived at following a three-day mediation with Professor Eric Green, a member of the faculty of the Boston University School of Law. Professor Green was appointed as mediator by the Court after agreement by the parties. The individual direct purchasers who have brought their own lawsuits against defendants will not share in the proposed settlement with the Sherman Act Class.

The settlement, on the terms and conditions set forth in the Settlement Agreement, also provides certain “most favored nation” protection against a settlement with any other direct private purchaser on better monetary terms for a comparable release than the settlement with the Class. If defendants were to enter into such a settlement, additional payments on behalf of the Class would be required to make up the difference upon the terms and conditions set forth in the Settlement Agreement.

Defendants do not admit any wrongdoing or liability on their part. The proposed settlement with the defendants is a compromise of disputed claims and does not mean that the defendants in this action have been found liable for the claims made by the Sherman Act Class Plaintiffs.

A. Releases

If the settlement is approved by the Court and becomes final pursuant to paragraph 4 of the Settlement Agreement, the Sherman Act Class Plaintiffs and members of the Sherman Act Class in the Class Actions, and their respective past, present and future directors, officers, employees, shareholders, attorneys, heirs, executors, administrators, general or limited partners, all acting in their capacity as a representative of a direct purchaser of Cardizem CD and/or its AB-rated equivalents, and their respective past, present and future affiliates, divisions, agents, representatives, predecessors, parents, subsidiaries, successors, and assigns (the “Releasers”),

unconditionally, fully, and finally release and discharge forever defendants and their respective past, present and future directors, officers, employees, shareholders, affiliates, divisions, agents, representatives, attorneys, heirs, executors, administrators, predecessors, parents, subsidiaries, general or limited partners, successors and assigns (the "Releasees") from any claims, debts, obligations, damages, liabilities, actions, and causes of action, of whatever nature, whether known or unknown, whether accrued in whole or in part of any kind whatsoever, from the beginning of time through the date of the Settlement Agreement, which any of the Sherman Act Class Plaintiffs had or has against any of the Releasees that were or could have been asserted by the Sherman Act Class Plaintiffs and/or members of the Sherman Act Class in the Class Actions relating to the drug Cardizem CD and/or its AB-rated equivalents arising out of or concerning the facts and circumstances giving rise to the allegations (including without limitation the Stipulation between Aventis and Andrx, dated September 24, 1997) in the Class Actions or in any other complaint filed in any action consolidated or coordinated with MDL No. 1278, including without limitation all claims asserted by any plaintiff in MDL No. 1278 (the "Released Claims").

Upon the settlement becoming final pursuant to paragraph 4 of the Settlement Agreement, each member of the Sherman Act Class covenants and agrees that it shall not seek to establish liability against any Releasee, in whole or in part, for any of the Released Claims. All Released Claims will be released and discharged to the fullest extent of the law, except solely if asserted by an entity who validly and timely opted out of the Class, and, with respect to any such opt-out claims that are or purport to be brought in whole or in part by reason of an assignment, then solely to the extent of the purchases of Cardizem CD identified in valid assignments to said entity entered into on or before January 25, 2002.

B. Full Satisfaction of Released Claims

Members of the Class who have not timely excluded themselves from the Class Actions on or before the opt-out deadline of January 25, 2002 ordered by the Court shall look solely to the Settlement Fund for settlement with and satisfaction against defendants of all claims that are released under the Settlement Agreement. Certain Class members have purported to assign all or a portion of their claims. Members of the Class and their representatives (the term ‘representatives’ for these purposes only excludes assignees solely to the extent assigned claims are preserved under the Settlement Agreement) shall not under any circumstances be entitled to any further compensation from defendants with respect to any assigned claims, and such claims shall be considered released by the Sherman Act Class members to the full extent provided by paragraph 12 of the Settlement Agreement. In the event the settlement becomes final pursuant to paragraph 4 of the Settlement Agreement, the Settlement Fund will fully satisfy any and all Released Claims. Except as provided by order of the Court, no Class member shall have any interest in the Settlement Fund or any portion thereof.

C. Consent to Jurisdiction

Any disputes arising under or relating to the Settlement Agreement, including, but not limited to, the releases in the Settlement Agreement, will be resolved in the United States District Court for the Eastern District of Michigan.

The above is only a summary of the settlement with defendants. A full copy of the Settlement Agreement is attached as Exhibit “A” to Sherman Act Class Plaintiffs’ Motion for Preliminary Approval on public file with the United States District Court for the Eastern District of Michigan, and is also available at www.bsflp.com or www.gbgf-law.com.

D. Preliminary Approval

The Court preliminarily approved the proposed settlement with defendants on September

24, 2002. Upon preliminary review, 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 with defendants should finally be approved, as described in section VI, below.

IV. ATTORNEYS' FEES, COSTS, EXPENSES AND INCENTIVE AWARDS

All fees, expenses and costs incurred by Class Counsel in the prosecution and settlement of this litigation will be paid out of the Settlement Fund, as the Court may order. On or before November 4, 2002, Class Counsel will file for consideration at the Fairness Hearing an application for attorneys' fees in an amount not to exceed 30% of the Settlement Fund (plus interest) and for reimbursement of expenses and costs. A copy of this application will be available at www.bsflp.com or www.gbgf-law.com or at the Office of the Clerk, United States District Court for the Eastern District of Michigan, as set forth in section VIII, below.

On or before November 4, 2002, Class Counsel also intend to file with the Court an application to award Sherman Act Class Plaintiffs, Louisiana Wholesale and Duane Reade, \$20,000 each out of the Settlement Fund for their participation as Class representatives in this litigation. A copy of this application will be available at www.bsflp.com or www.gbgf-law.com or at the Office of the Clerk, United States District Court for the Eastern District of Michigan, as set forth in section VIII, below.

You will not be responsible for payment of any costs, expenses or attorneys' fees incurred in the prosecution of this litigation, nor will you be responsible for payment of any incentive awards to the Sherman Act Class Plaintiffs. Such fees, expenses and awards as the Court may order will be deducted from the Settlement Fund.

V. PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS TO THE CLASS

The settlement proceeds, less attorneys' fees and costs, incentive awards to the Sherman Act Class Plaintiffs, notice costs, administrative costs and such other costs and expenses as may be approved by the Court, will be distributed to Class members in proportion to the damages incurred by each Class member from overcharges caused by the delay in market entry of generic Cardizem CD. On or before November 4, 2002, counsel for the Sherman Act Class will file a motion for approval of a plan of allocation of the net Settlement Fund in this case. A copy of this notice will be available at www.bsflp.com or www.gbgf-law.com or at the Office of the Clerk, United States District Court for the Eastern District of Michigan, as set forth in section VIII, below.

Sherman Act Class Plaintiffs have alleged that Class members were injured because they were forced to purchase more expensive branded Cardizem CD when they would have otherwise purchased the less expensive generic version. In general, damages are measured by, and will be allocated in proportion to, the purchases of generic Cardizem CD each Class member actually made or the increased discounts on Cardizem CD each Class member actually received. For example, the total volume of generic purchases in units will be multiplied by the difference in price between branded and generic Cardizem CD. Damages will be based upon actual purchases of generic Cardizem CD by each Class member that were made in substitution for branded Cardizem CD. The generic product is substantially less expensive and thus offers a basis to estimate the cost savings that would have occurred had the market entry of generic Cardizem CD not been delayed.

In order to assist in processing claims later in the allocation process, Class members may be asked to submit records (including electronic records where available) of all purchases of branded and generic Cardizem CD after June 1999, including transaction price (and any discounts,

rebates, chargebacks or other applicable price adjustments), total units, dosage strength, package size, and identity of manufacturer or distributor from which the product was purchased. **Please retain all such records.**

VI. FAIRNESS HEARING AND OBJECTIONS TO THE PROPOSED SETTLEMENT

Pursuant to Order of the Court, a Fairness Hearing will be held at 10:00 a.m. on November 20, 2002, in the courtroom of the Honorable Nancy G. Edmunds, Theodore Levin United States Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226, for the purpose of determining whether the Court should approve the proposed settlement between the Sherman Act Class and defendants. At the Fairness Hearing, the Court will consider whether to: (i) approve the Settlement Agreement as fair, reasonable, adequate, and in the best interests of the Sherman Act Class, and to dismiss the claims of the Class with prejudice and to enter a final judgment releasing Class members' claims as described above; (ii) approve payment of attorneys' fees and expenses on behalf of the Class; (iii) approve payment of incentive awards to Louisiana Wholesale and Duane Reade for their participation as Class representatives; and (iv) approve a plan of allocation for the net Settlement Fund to the members of the Class. **Class members who support the proposed settlement do not need to appear at the Fairness Hearing or take any other action to indicate their approval and participate in the settlement.**

Objections by Class members to the proposed settlement, to the plan of allocation, to the incentive awards, or to the attorneys' fees and expenses will be considered if, and only if, filed in writing on or before November 13, 2002, with the Office of the Clerk, United States District Court for the Eastern District of Michigan, Theodore Levin United States Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226, and served (postmarked no later than November 13, 2002) upon Co-Lead Counsel:

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Any member of the Sherman Act Class may appear at the Fairness Hearing in person or by duly authorized attorney and show cause why the settlement should not be approved as fair, reasonable and adequate, why payment of attorneys' fees or reimbursement of litigation costs and expenses should not be approved, why the incentive awards for the Sherman Act Class Plaintiffs should not be approved or why the plan of allocation should not be approved, provided, however, that no person shall be heard at the Fairness Hearing unless on or before November 13, 2002, such person has filed with the Clerk of the Court and served upon Co-Lead Counsel at the above addresses, a *Notice of Intention to Appear* and a *Summary Statement* outlining the position(s) to be asserted at the hearing and the grounds therefore, together with copies of any supporting papers or briefs.

You need not appear at the hearing in order to object. Your filed objections, *Notice of Intention to Appear*, *Summary Statement*, and any accompanying papers or briefs must include in a prominent location the name of the case, In re Cardizem CD Antitrust Litigation, the MDL case number (99-MD-1278), and the Judge's name (Hon. Nancy G. Edmunds).

Except as provided herein, no person shall be entitled to appear in person at the hearing or shall be entitled to contest the terms and conditions of the proposed settlement, any request for attorneys' fees and reimbursement of litigation costs and expenses, any incentive awards to the Sherman Act Class Plaintiffs, or approval of the plan of allocation. Persons who fail to object or

to file a notice of intent to appear as provided herein shall be deemed to have waived and shall be foreclosed forever from raising any such objections and will not be heard in person at the hearing.

The time and date of the Fairness Hearing may be continued or rescheduled without further notice.

VII. FURTHER PROCEEDINGS

If the settlement is approved by the Court, procedures will be established to ascertain the amounts of purchases of Cardizem CD and/or its AB-rated generic equivalents made by Class members during the Class Period described above and any other information needed to apportion and distribute the Settlement Fund. You should preserve your records relating to such purchases.

If the settlement is not approved by the Court, the case will continue to be prepared for trial or other judicial resolution of the claims and defenses.

VIII. EXAMINATION OF PAPERS AND INQUIRIES

This Notice contains only a summary of the litigation, Settlement Agreement, and your rights as a potential Class member. For more detailed information regarding the matters involved in this litigation, please refer to the papers on file in this litigation which may be inspected at the Office of the Clerk, United States District Court for the Eastern District of Michigan, Theodore Levin United States Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226, during business hours of each business day. In addition, copies of the Settlement Agreement, motion for final approval, application for attorneys' fees and expenses and incentive awards to the Sherman Act Class Plaintiffs, and the proposed plan of allocation will also be available at www.bsflp.com or www.gbgf-law.com.

Any questions which you have concerning the matters contained in this Notice may be directed in writing to the Co-Lead Counsel for the Sherman Act Class:

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IX. REMINDER AS TO CERTAIN TIME LIMITS

If you wish to object to the proposed settlement, application for attorneys' fees and expenses and incentive awards to the Sherman Act Class Plaintiffs, or the plan of allocation, or if you wish to be heard orally at the hearing, you must file the documents specified in section VI above with the Clerk of the Court by mail and mail a copy to Co-Lead Counsel for the Sherman Act Class as listed in section VI of this Notice, **postmarked on or before November 13, 2002.**

PLEASE DO NOT CALL THE COURT OR THE DISTRICT CLERK'S OFFICE REGARDING THIS NOTICE.

BY ORDER OF THE COURT:

Clerk of the Court
United States District Court
Eastern District of Michigan
Theodore Levin United States Courthouse
231 W. Lafayette Blvd.
Detroit, MI 48226

Dated: September 27, 2002.