

# **EXHIBIT C**

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

*In re K-Dur Antitrust Litigation*

This document relates to:

All Direct Purchaser Class Actions

Civil Action No. 01-cv-1652(SRC)(CLW)  
MDL Docket No. 1419

**[PROPOSED] ORDER GRANTING FINAL JUDGMENT AND  
ORDER OF DISMISSAL APPROVING DIRECT PURCHASER  
CLASS SETTLEMENT AND DISMISSING DIRECT  
PURCHASER CLASS CLAIMS AGAINST DEFENDANTS**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and in accordance with the terms of the Settlement Agreement between Merck & Co., Inc. (formerly known as Schering-Plough Corp.) and Upsher-Smith Laboratories, Inc. (jointly, “Defendants”); and Co-Lead Counsel for Louisiana Wholesale Drug Co. (the “Named Plaintiff”) and the Direct Purchaser Class (jointly, “Plaintiffs”), dated May 15, 2017, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. This Final Judgment and Order of Dismissal hereby incorporates by reference the definitions in the Settlement Agreement among Defendants and Plaintiffs, and all capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Settlement Agreement.

2. The Direct Purchaser Class is defined as follows:

All persons or entities who have purchased K-Dur 20 directly from Schering-Plough Corporation at any time during the period November 20, 1998, through September 1, 2001.

Excluded from the Class are: (a) Defendants and their officers, directors, management and employees, subsidiaries and affiliates; (b) federal governmental entities; (c) persons or entities who did not purchase generic versions of K-Dur 20 after the introduction of generic versions of K-Dur 20; and (d) the CVS Pharmacy, Inc., Rite Aid Corporation, Walgreen Co., Eckerd Corporation, The Kroger Co., Albertson’s, Inc., Safeway, Inc., Hy-Vee, Inc., and Maxi Drug, Inc., and their officers, directors, management and employees,

predecessors, successors, subsidiaries and affiliates, in their own right and as assignees of Class members (collectively, “Retailer Plaintiffs”).

3. The representative of the Direct Purchaser Class is the Named Plaintiff, Louisiana Wholesale Drug Co. The Court has found that Co-Lead Counsel and other counsel for Plaintiffs’ have fairly and adequately represented the interests of the Direct Purchaser Class and satisfied the requirements of Fed. R. Civ. P. 23(g).

4. The Court has jurisdiction over these actions, each of the parties, and all members of the Direct Purchaser Class for purposes of this case, including this Settlement.

5. The notice of settlement (substantially in the form presented to this Court as Exhibit B to the Settlement Agreement) (the “Notice”) directed to the members of the Direct Purchaser Class, constituted the best notice practicable under the circumstances. In making this determination, the Court observes that members of the Direct Purchaser Class had been previously identified in conjunction with Class members receiving notice of the pendency of the litigation and the certification of a direct purchaser class. *See* Dkt Nos. 997, 922. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finds that the Notice, and the means by which Notice was delivered, provided Direct Purchaser Class members due and adequate notice of the Settlement, the Settlement Agreement, these proceedings, and the rights of Class Members to object to the Settlement and/or Class Counsel’s request for an award of attorneys’ fees, reimbursement of costs and expenses and incentive award to the Named Plaintiff.

6. Due and adequate notice of the proceedings having been given to the Direct Purchaser Class and a full opportunity having been offered to the Direct Purchaser Class to participate in the \_\_\_\_\_, 2017 Fairness Hearing, it is hereby determined that all Direct Purchaser Class Members are bound by this Order and Final Judgment.

7. The Settlement of this Direct Purchaser Class Action was the result of *bona fide* and arm's-length negotiations conducted in good faith between counsel for the Direct Purchaser Class and counsel for Defendants, with the assistance of a highly experienced and respected mediator.

8. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement, and finds that the Settlement is, in all respects, fair, reasonable and adequate to Direct Purchaser Class Members.

9. The Court hereby approves the Plan of Allocation of the Settlement Fund as proposed by Class Counsel (the "Plan of Allocation"), which was summarized in the Settlement Agreement and Notice of Proposed Settlement and is attached to Direct Purchaser Class Plaintiffs' Motion for Final Approval of Settlement, and directs Berdon Claims Administration LLC, the firm retained by Direct Purchaser Class Counsel as the Claims Administrator, to distribute the net Settlement Fund as provided in the Plan of Allocation.

10. All claims against Defendants in *In re K-Dur Antitrust Litigation.*, Civil Action No. 2:01-cv-1652(SRC)(CLW)(D.N.J.), including by those members of the Direct Purchaser Class who did not timely exclude themselves from the Direct Purchaser Class, are hereby dismissed with prejudice, and without costs or attorneys' fees payable by Defendants.

11. In accordance with paragraph 9 of the Settlement Agreement, Named Plaintiff shall and each of the Direct Purchaser Class members shall be deemed to have, and by operation of this Judgment shall have, unconditionally, fully and finally released and forever discharged Defendants, any past, present and future parents, subsidiaries, divisions, affiliates, joint ventures, shareholders, officers, directors, management, supervisory boards, insurers, general or limited partners, employees, agents, trustees, associates, attorneys and any of their legal representatives, or any other representatives thereof (and the predecessors, heirs, executors, administrators,

successors and assigns of each of the foregoing) (the “Released Parties”) from any and all manner of claims, rights, debts, obligations, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, including costs, expenses, penalties and attorneys’ fees, accrued in whole or in part, in law or equity, that Named Plaintiff or any member or members of the Direct Purchaser Class (including any of their past, present, or future officers, directors, management, supervisory boards, insurers, general or limited partners, divisions, shareholders, agents, attorneys, employees, legal representatives, trustees, parents, associates, affiliates, joint ventures, subsidiaries, heirs, executors, administrators, predecessors, successors and assigns, acting in their capacity as such) (the “Releasers”), whether or not they object to the Settlement, 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 claims, known or unknown, that were alleged, or could have been brought against Defendants in the Action, as of the date of final approval of the Settlement that arise out of, in whole or in part, or relate in any way to the subject matter of or conduct alleged in the Action, any prior complaints filed by anyone in the Action, or any other related action, or to the subject matter of pre-trial proceedings in the Action. This includes, but is not limited to, claims related to:

- (1) the alleged delayed entry of generic K-Dur 20; and
- (2) the sale, marketing or distribution of K-Dur 20 or generic K-Dur 20, except as provided for in paragraph 13 herein (the “Released Claims”).

12. In addition, the Named Plaintiff shall, on behalf of itself and all other Releasers, be deemed to have and by operation of this Judgment shall have expressly waived, released and forever discharged 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. The Named Plaintiff and Releasors 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 released by operation of the Settlement Agreement and this Judgment, but the Named Plaintiff and Releasors hereby expressly waives and fully, finally and forever settles, 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. The Named Plaintiff and each Releasor also hereby expressly waives and fully, finally and forever settles, 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 expressly incorporated into the definition of Released Claims.

13. The releases set forth in paragraphs 11 and 12 of this Order shall not release claims between Plaintiff, members of the Direct Purchaser Class, and the Released Parties arising: (a) out of any breach of this Settlement Agreement; (b) under Article 2 of the Uniform Commercial Code (pertaining to Sales); (c) under the laws of negligence or product liability or implied warranty; (d) for breach of contract, breach of express warranty, or personal injury; or (e) other claims unrelated to the allegations in the Action.

14. The Court retains exclusive jurisdiction over the Settlement and the Settlement Agreement as described therein, including the administration and consummation of the Settlement, and over this Final Judgment and Order.

15. The Court finds that this Final Judgment and Order adjudicates all of the claims, rights and liabilities of the parties to the Settlement Agreement (including the members of the Direct Purchaser Class), and is final and shall be immediately appealable. Neither this Order nor the Settlement Agreement nor any other Settlement-related document shall constitute any evidence or admission by Defendants or any other Released Party on liability, any merits issue, or any class certification issue (including but not limited to whether a class can be certified for purposes of litigation or trial) in this or any other matter or proceeding, nor shall either the Settlement Agreement, this Order, or any other Settlement-related document be offered in evidence or used for any other purpose in this or any other matter or proceeding except as may be necessary to consummate or enforce the Settlement Agreement, the terms of this Order, or if offered by any released Party in responding to any action purporting to assert Released Claims.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2017

BY: \_\_\_\_\_

The Honorable Stanley R. Chesler  
Senior United States District Judge  
U.S. District Court for the District of New Jersey