

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BONNIE BROWN, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 MEDICS PHARMACEUTICAL CORP.,)
)
 Defendant.)

Civil Case No. 13-01345 (RJL)

FILED
AUG 05 2015

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia



ORDER

August 5, 2015 [Dkt. # 5]

Upon consideration of the parties’ Joint Motion for Preliminary Approval of the Modified Class Action Settlement (“Motion”), Plaintiffs’ supporting memorandum, the proposed Modified Settlement Agreement (“Settlement Agreement”), Modified Notice, Modified Claim Form, Plaintiffs’ Release and Class Members’ Release, and the prior filings in the case in support of the original Joint Motion for Preliminary Approval of the Modified Class Action Settlement, it is hereby ORDERED that the Motion is GRANTED.

The Court makes the following findings and rulings:

1. The parties’ proposed Settlement Agreement is within the range of fair, adequate and reasonable, and, therefore, warrants submission to members of the

Settlement Class for their consideration and a formal fairness hearing under Fed. R. Civ.

P. 23(e). (“Settlement Hearing”).

2. The Settlement Class shall consist of:

All women regularly employed directly by Medicis or by Medicis indirectly through Quintiles, Innovex or QFR Solutions in the Aesthetics Division or Dermatology Division in the following field sales positions at any time from April 15, 2008 up to and including December 10, 2012: Professional Sales Specialist, Senior Sales Specialist, Executive Sales Specialist, Territory Manager, Professional Territory Manager, Senior Territory Manager, Executive Territory Manager, Regional Manager, Senior Regional Manager and Executive Regional Manager. Any women who have previously released sex discrimination claims against Medicis for the entirety of the Class Period during which they were employed directly by Medicis or by Medicis indirectly through Quintiles, Innovex or QFR Solutions, and/or any women who obtained a final judicial determination concerning sex discrimination claims which would otherwise be covered by this Settlement Agreement, are excluded from the definition of the Settlement Class.

Certification of the Settlement Class is provisional pending final approval of the Settlement. If the Settlement is not approved, this certification will be null and void.

3. The Court provisionally finds that the requirements of Fed. R. Civ. P. 23(a) have been satisfied, as follows:

a. The Settlement Class is so numerous that joinder of every member would be impractical; it consists of 225 current and former female field sales employees for Medicis.

b. There are common questions of law and fact regarding the Company’s common policies pertaining to compensation and promotions.

c. The Plaintiffs and their counsel are adequate representatives of the Settlement Class. Specifically, the Court finds that Leslie Baginski, Lisa Cummings-Gallina, Laurie Introp, Lisa Levine, Bridget Oliveto, and Lindsay Pihaly are adequate Class Representatives who will fairly protect the interests of the Class and their claims, as detailed in the Complaint, are typical of the claims of the Class.

d. Cyrus Mehri, Michael Lieder, and Ellen Eardley of Mehri & Skalet, PLLC; and Sara Wyn Kane and Robert J. Valli, Jr. of Valli Kane & Vagnini LLC, are adequate Class Counsel. The Court further designates Cyrus Mehri, Ellen Eardley and Sara Wyn Kane as Lead Class Counsel.

4. The Court provisionally finds that the class-wide claims for discrimination in compensation and promotions asserted in this Action may be certified pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3), as follows:

a. Medicis acted on grounds that apply generally to the Settlement Class, so that the injunctive relief set out in the Settlement Agreement is appropriate respecting the Class as a whole.

b. The common factual and legal questions associated with the pay and promotion claims, including questions arising from the competing analyses of the parties' statistical experts, predominate over factual and legal issues affecting only individual members.

c. The proposed class action is superior to other methods for fairly and efficiently adjudicating the controversy because:

i. To date, class members have manifested no interest in individually controlling the prosecution of separate actions, and if they wish to do so, they may opt out of the settlement and bring separate actions;

ii. To the best of the knowledge of the parties and the Court, no class members have pending litigation against Medicis asserting gender discrimination claims; and

iii. It is more efficient to concentrate the gender discrimination claims of class members in a single forum than to have those claims proceed in multiple fora.

5. The Court has expressed concern, however, about certifying the class for sexual harassment claims based on the existing record. As a result, Plaintiffs are not seeking class certification for those claims at this juncture, but may seek to expand the scope of the class to sexual harassment claims *after* the completion of the claim form process and prior to the hearing on final approval.

6. The Modified Notice of Proposed Settlement and Settlement Hearing (“Notice”) is approved as appropriate notice to the class. The parties shall send the Notice and Modified Claim Form (“Claim Form”) to Class Members as set forth in Section IV of

the Settlement Agreement. The Claims Administrator shall send the Notice and Claim Form to Class Members within 15 days of this Order.

7. The Notice sets forth the procedures pursuant to which members of the Settlement Class may exclude themselves (“opt out”) from the monetary benefits of the Settlement Agreement. Any request for exclusion must be submitted within 45 days after Notice is mailed. Individuals may rescind their requests for exclusion as set forth in the Notice. Such rescissions must be submitted within 60 days after Notice is mailed.

8. The Notice sets forth the procedures pursuant to which members of the Settlement Class may object to the terms of the Settlement Agreement. Any objection must be submitted within 45 days after Notice is mailed. Sixty days after Notice is mailed, Class Counsel will file with the Court any timely objections received.

9. The Notice sets forth the procedures pursuant to which members of the Settlement Class may file a claim for monetary relief. Claims must be submitted within 90 days from the mailing of the Notice.

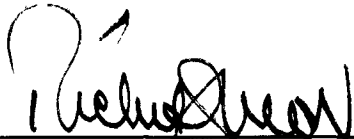
10. The Claim Form contains questions intended to elicit information directly supporting claims of discrimination in compensation and promotions, and other questions intended to elicit information indirectly supporting those claims, including but not limited to information about alleged sexual harassment, termination and retaliation claims. The parties shall have until **January 22, 2016** (approximately 90 days from when the Claim Forms are received) to analyze and prepare the data contained therein to be submitted to

the Court. The Court will then schedule a hearing at a date and time to be determined where the Court will consider whether to preliminarily approve the class as to the harassment claims.

11. After the Court has decided whether to preliminarily approve the class as to harassment claims, the Court will set a deadline for the parties to file a motion for final approval of their class action settlement and a deadline for Class Counsel to file its motion for an award of attorney's fees and costs. The court will then schedule a hearing for final approval of the proposed Settlement and Class Counsel's motion for an award of attorney's fees and costs ("Settlement Hearing").

12. Pending the outcome of the Settlement Hearing, all members of the Class are temporarily enjoined from commencing, prosecuting or maintaining any claim already asserted in, and encompassed by, this Action, and all Class Members (including those who request exclusion) are temporarily enjoined from commencing, prosecuting or maintaining in any court or forum other than this Court any claim, action or other proceeding that challenges or seeks review of or relief from any order, judgment, act, decision or ruling of the Court in connection with this Settlement Agreement or otherwise in connection with this Action.

SO ORDERED.



RICHARD J. LEON
United States District Judge