

Brown et al v. Medicis Pharmaceutical Corporation,

No. 1:13-cv-01345-RJL

Exhibit 5

Exhibit to Plaintiffs' Memorandum of Points and Authorities in Support
of Joint Motion for Preliminary Approval of the Modified Class
Settlement

GENERAL RELEASE AND INDEMNIFICATION AGREEMENT
(NAMED PLAINTIFFS [OTHER THAN THOSE LOCATED IN CALIFORNIA])

In consideration of my receipt of a court-approved monetary distribution from the Claims Portion of the Settlement Fund in *Brown et al. v. Medicis Pharmaceutical Corporation*, Case No. ____ (the “Litigation”), I agree to be bound by the terms of this General Release and Indemnification Agreement (the “Agreement”).

I. DEFINITIONS

Unless otherwise specified, the terms used in this Agreement shall have the same meanings as those set forth in the Settlement Agreement.

II. COMPLETE GENERAL RELEASE OF CLAIMS

I hereby waive, release, discharge, and covenant not to sue Medicis Pharmaceutical Corporation (“Medicis”) or Valeant Pharmaceuticals International Corp. (“Valeant”), including their officers, directors, subsidiaries, affiliates, predecessors, successors, fiduciaries, insurers, employees, consultants and agents (“Released Parties”), from and with respect to any and all actions, causes of action, suits, liabilities, claims, and demands whatsoever, and each of them, whether known or unknown, from the beginning of time until _____ [insert date of preliminary approval of class action settlement]. I intend this release to be general and comprehensive in nature and to release all claims and potential claims against the Released Parties to the maximum extent permitted at law. Claims I am releasing include specifically, by way of description but not by way of limitation, any and all claims that I have: (i) arising out of or relating in any way to the alleged facts, circumstances and occurrences underlying the allegations of violations of Title VII of the Civil Rights Act of 1964 as amended and similar state and local laws that were asserted or could have been asserted in the Litigation by me or on my behalf; (ii) arising out of or relating in any way to the alleged facts, circumstances and occurrences underlying the allegations of violations of Title VII and similar state and local laws that were asserted or could have been asserted by me or on my behalf in a charge of discrimination filed against the Company and/or the Released Parties with the EEOC and/or state agencies; (iii) relating to the termination of my employment or my constructive discharge from Medicis (if applicable); (iv) arising out of or in any way related to any federal, state, or local law prohibiting discrimination on the basis of age, race, color, religion, disability, sex, national origin, or citizenship, including, without limitation, claims under Title VII, the Family Medical Leave Act, the Employee Retirement Income Security Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act or any other similar statutes whatever the state or country of enactment; and (v) arising out of or in any way related to any transactions, occurrences, acts, statements, disclosures, or omissions occurring any time until _____ [insert date of preliminary approval of class action settlement]. I understand that this release includes all related claims for monetary damages, injunctive, declaratory or equitable relief, and costs and attorneys’ fees, whether arising under Title VII or any other federal, state, local or common laws or regulations. I agree not to accept damages of any nature, other equitable or legal remedies for my own benefit or attorney’s fees or costs from any of the Released Parties with respect to any claim released by this Agreement other than the payment I

am entitled to receive under the court-approved monetary distribution from the Claims Portion of the Settlement Fund.

III. ADEA WAIVER

I recognize that in addition to all other claims being released herein, I am releasing claims for age discrimination under the Age Discrimination in Employment Act. Accordingly, I have the right to reflect on this Agreement for a period of twenty-one (21) days before executing it, and I have an additional seven (7) days after executing it to revoke it under the terms of the Older Workers Benefit Protection Act. This Agreement will become effective and enforceable seven (7) days following the execution of this Agreement, unless it is revoked during the seven (7) day period, in which case this Agreement will be ineffective and unenforceable. By my signature below, I represent and warrant that I have been advised of these rights, that I have been advised that I have a right to consult with an attorney, and that I have discussed them with my attorney to the extent I thought necessary. I intend this to be a fully binding and enforceable release of all claims, including claims under the Age Discrimination in Employment Act.

IV. INDEMNIFICATION

I understand that I am responsible for payment of any and all federal, state or local taxes (excluding the employer share of employment taxes and unemployment taxes and excluding payroll taxes properly withheld from the distributions) resulting from or attributable to the distributions that I receive. Accordingly, I agree to indemnify and hold harmless the Released Parties, Class Counsel, and the Depository Bank from any tax liability relating to my receipt of the award, including penalties and interest and costs of any proceedings. I further agree to indemnify and hold harmless the Claims Administrator and Trustees of the Settlement Fund from any tax liability, including penalties and interests and costs of any proceedings, attributable to my own acts or omissions. In the event a tax liability for interest or penalties arises with respect to my award that is attributable to acts or omissions of the Claims Administrator or Trustees, I agree to indemnify and hold harmless the Claims Administrator and Trustees of the Settlement Fund from any tax liability only to the extent of the taxes due and payable, but not with respect to penalties and interest, or the costs of any proceedings related to liability for penalties or interest.

V. OTHER AGREEMENTS AND REPRESENTATIONS

A. Confidentiality. I agree to keep the amount of any and all distributions I receive from the Settlement Fund strictly confidential to the fullest extent permitted by law, except that I may disclose the same to my attorneys, tax or financial advisors and immediate family members.

B. Entire Agreement. This Agreement may not be modified in any manner, except by a writing signed by both an authorized Medicis or Valeant attorney and me. I acknowledge that Medicis and Valeant have made no oral representations or promises to me, and that I have not relied on any representations or promises, other than those in or referred to by this Agreement, the Settlement Agreement, and the Court regarding this Litigation.

C. Ownership of Claims. I represent and warrant that I have not assigned or transferred any claim I am purporting to release, nor have I attempted to do so.

D. Successors and Assigns. This release binds my heirs, administrators, representatives, executors, successors, and assigns.

E. Interpretation. This Agreement shall be construed as a whole according to its fair meaning. Unless the context indicates otherwise, the term “or” shall be deemed to include the term “and” and the singular or plural number shall be deemed to include the other. This Agreement shall be governed by the statutes and common law of the District of Columbia (excluding any that mandate the use of another jurisdiction’s laws).

AGREED:

[SIGNATURE]

[PRINT NAME]

Date

GENERAL RELEASE AND INDEMNIFICATION AGREEMENT
(NAMED PLAINTIFFS [FOR THOSE LOCATED IN CALIFORNIA])

In consideration of my receipt of a court-approved monetary distribution from the Claims Portion of the Settlement Fund in *Brown et al. v. Medicis Pharmaceutical Corporation*, Case No. ____ (the “Litigation”), I agree to be bound by the terms of this General Release and Indemnification Agreement (the “Agreement”).

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IV. COMPLETE GENERAL RELEASE OF CLAIMS

I hereby waive, release, discharge, and covenant not to sue Medicis Pharmaceutical Corporation (“Medicis”) or Valeant Pharmaceuticals International Corp. (“Valeant”), including their officers, directors, subsidiaries, affiliates, predecessors, successors, fiduciaries, insurers, employees, consultants and agents (“Released Parties”), from and with respect to any and all actions, causes of action, suits, liabilities, claims, and demands whatsoever, and each of them, whether known or unknown, from the beginning of time until _____ [insert date of preliminary approval of class action settlement]. I intend this release to be general and comprehensive in nature and to release all claims and potential claims against the Released Parties to the maximum extent permitted at law. Claims I am releasing include specifically, by way of description but not by way of limitation, any and all claims that I have: (i) arising out of or relating in any way to the alleged facts, circumstances and occurrences underlying the allegations of violations of Title VII of the Civil Rights Act of 1964 as amended and similar state and local laws that were asserted or could have been asserted in the Litigation by me or on my behalf; (ii) arising out of or relating in any way to the alleged facts, circumstances and occurrences underlying the allegations of violations of Title VII and similar state and local laws that were asserted or could have been asserted by me or on my behalf in a charge of discrimination filed against the Company and/or the Released Parties with the EEOC and/or state agencies; (iii) relating to the termination of my employment or my constructive discharge from Medicis (if applicable); (iv) arising out of or in any way related to any federal, state, or local law prohibiting discrimination on the basis of age, race, color, religion, disability, sex, national origin, or citizenship, including, without limitation, claims under Title VII, the Family Medical Leave Act, the Employee Retirement Income Security Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act or any other similar statutes whatever the state or country of enactment; and (v) arising out of or in any way related to any transactions, occurrences, acts, statements, disclosures, or omissions occurring any time until _____ [insert date of preliminary approval of class action settlement]. I understand that this release includes all related claims for monetary damages, injunctive, declaratory or equitable relief, and costs and attorneys’ fees, whether arising under Title VII or any other federal, state, local or common laws or regulations. I agree not to accept damages of any nature, other equitable or legal remedies for my own benefit or attorney’s fees or costs from any of the Released Parties with respect to any claim released by this Agreement other than the payment I

am entitled to receive under the courts approved monetary distribution from the Claims Portion of the Settlement Fund.

As further consideration and inducement for the distribution to me referenced above, I hereby waive any and all rights under Section 1542 of the California Civil Code or any other similar state, local or federal law, statute, rule, order or regulation that I may have with respect to any of the Released Parties.

Section 1542 provides:

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.

I expressly agree that release set forth in this Agreement shall extend and apply to all unknown, unsuspected and unanticipated injuries and damages as well as those that are now disclosed.

III. ADEA WAIVER

I recognize that in addition to all other claims being released herein, I am releasing claims for age discrimination under the Age Discrimination in Employment Act. Accordingly, I have the right to reflect on this Agreement for a period of twenty-one (21) days before executing it, and I have an additional seven (7) days after executing it to revoke it under the terms of the Older Workers Benefit Protection Act. This Agreement will become effective and enforceable seven (7) days following the execution of this Agreement, unless it is revoked during the seven (7) day period, in which case this Agreement will be ineffective and unenforceable. By my signature below, I represent and warrant that I have been advised of these rights, that I have been advised that I have a right to consult with an attorney, and that I have discussed them with my attorney to the extent I thought necessary. I intend this to be a fully binding and enforceable release of all claims, including claims under the Age Discrimination in Employment Act.

IV. INDEMNIFICATION

I understand that I am responsible for payment of any and all federal, state or local taxes (excluding the employer share of employment taxes and unemployment taxes and excluding payroll taxes properly withheld from the distributions) resulting from or attributable to the distributions that I receive. Accordingly, I agree to indemnify and hold harmless the Released Parties, Class Counsel, and the Depository Bank from any tax liability relating to my receipt of the award, including penalties and interest and costs of any proceedings. I further agree to indemnify and hold harmless the Claims Administrator and Trustees of the Settlement Fund from any tax liability, including penalties and interests and costs of any proceedings, attributable to my own acts or omissions. In the event a tax liability for interest or penalties arises with respect to my award that is attributable to acts or omissions of the Claims Administrator or Trustees, I agree to indemnify and hold harmless the Claims Administrator and Trustees of the Settlement

Fund from any tax liability only to the extent of the taxes due and payable, but not with respect to penalties and interest, or the costs of any proceedings related to liability for penalties or interest.

V. OTHER AGREEMENTS AND REPRESENTATIONS

A. Confidentiality. I agree to keep the amount of any and all distributions I receive from the Settlement Fund strictly confidential to the fullest extent permitted by law, except that I may disclose the same to my attorneys, tax or financial advisors and immediate family members.

B. Entire Agreement. This Agreement may not be modified in any manner, except by a writing signed by both an authorized Medicis or Valeant attorney and me. I acknowledge that Medicis and Valeant have made no oral representations or promises to me, and that I have not relied on any representations or promises, other than those in or referred to by this Agreement, the Settlement Agreement, and the Court regarding this Litigation.

C. Ownership of Claims. I represent and warrant that I have not assigned or transferred any claim I am purporting to release, nor have I attempted to do so.

D. Successors and Assigns. This release binds my heirs, administrators, representatives, executors, successors, and assigns.

E. Interpretation. This Agreement shall be construed as a whole according to its fair meaning. Unless the context indicates otherwise, the term “or” shall be deemed to include the term “and” and the singular or plural number shall be deemed to include the other. This Agreement shall be governed by the statutes and common law of the District of Columbia (excluding any that mandate the use of another jurisdiction’s laws).

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[SIGNATURE]

[PRINT NAME]

Date