

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BONNIE BROWN, ET AL.,)	
)	
Plaintiffs,)	CV No. 13-1345-RJL
)	
vs.)	Washington, D.C.
)	June 1, 2016
)	3:30 p.m.
MEDICIS PHARMACEUTICAL CORP.,)	
)	
Defendant.)	
<hr/>		

TRANSCRIPT OF FAIRNESS HEARING
BEFORE THE HONORABLE RICHARD J. LEON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:	Cyrus Mehri Joanna Wasik Michael Lieder Sarah Kane Mehri & Skalet PLLC 1250 Connecticut Ave, NW Suite 300 Washington, D.C. 20036 (202) 822-5100 cmehri@findjustice.com[]
	Sara W. Kane VALLI KANE & VAGNINI LLP 600 Old Country Road Suite 519 Garden City, NY 11530 (516) 203-7180 skane@vkvlawyers.com

APPEARANCES CONTINUED:

For the Defendants:

James W. Nagle
GOODWIN PROCTER LLP
Exchange Place
53 State Street
Boston, MA 02109
617-570-1000

Court Reporter:

William P. Zaremba, RMR, CRR
Registered Merit Reporter
Certified Realtime Reporter
Official Court Reporter
U.S. District Court
for the District of Columbia
333 Constitution Avenue, NW
Room 6511
Washington, D.C. 20001
(202)354-3249
WilliamPZaremba@gmail.com

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription

1 P R O C E E D I N G S

2 DEPUTY CLERK: All rise. This Honorable Court is
3 now in session. The Honorable Judge Richard J. Leon
4 presiding. God save the United States and this Honorable
5 Court. Please be seated and come to order.

6 Your Honor, we have Civil Action 13-1345,
7 Leslie Baginski, et al., versus Medicis Pharmaceutical
8 Corporation.

9 Counsel, please approach the lectern and identify
10 yourself for the record.

11 MR. MEHRI: Good afternoon, Your Honor.
12 Cyrus Mehri here with the plaintiffs.

13 Joanna Wasik from my office is here.

14 And Michael Lieder and Sarah Kane, our co-counsel,
15 are here as well.

16 When we get a chance, I'd like to introduce our
17 plaintiffs that are here too, but I'll let Mr. Nagle
18 introduce himself.

19 THE COURT: All right. Welcome back.

20 MR. NAGLE: Good afternoon, Your Honor.
21 James Nagle on behalf of the Defendant Medicis.

22 THE COURT: Welcome back.

23 How many plaintiffs are here?

24 MR. MEHRI: It's good to be here, Your Honor.
25 Five of our seven named plaintiffs are here.

1 And I'll just mention their name and ask them to stand, if
2 it's okay.

3 THE COURT: Sure.

4 MR. MEHRI: Your Honor, you may remember that
5 Ms. Bonnie Brown, one of our lead plaintiffs, she passed
6 away during the course of the litigation. Her husband
7 who's -- we entered an appearance on behalf of the estate --
8 Marco Lopez is here.

9 I'll ask Mr. Lopez to stand.

10 THE COURT: Welcome.

11 MR. MEHRI: And Lisa Cummings-Gallina, another
12 named plaintiff, is here, ask her to stand.

13 THE COURT: Welcome.

14 MR. MEHRI: Laurie Introp, who's initiated this
15 case, starting eight years ago.

16 THE COURT: Welcome.

17 MR. MEHRI: She's here.

18 Lisa Levine.

19 THE COURT: Welcome.

20 MR. MEHRI: And Bridget Oliveto is here as well.
21 She came to a prior hearing as well, Your Honor.

22 THE COURT: Welcome back.

23 MR. MEHRI: And, collectively, they come from five
24 states: Texas, New Jersey, New York, Georgia, Nebraska.

25 And the other plaintiffs who couldn't -- who had

1 trouble making it today are from Minnesota and California.

2 THE COURT: So we had something in the order of 99
3 employees who were victimized, right?

4 MR. MEHRI: Yes, Your Honor. 99 employees filled
5 out the claimant forms during the notice process.

6 THE COURT: All right.

7 And, let's see. What percentage?

8 MR. MEHRI: It's 44 percent, Your Honor, of the
9 individuals who received the notice.

10 THE COURT: All right.

11 And so how many of those 99, they're expecting to
12 get compensated?

13 MR. MEHRI: I would think all of them, Your Honor.

14 You know, as we went through all of the claim
15 forms, some of them put in tremendous amount of detail,
16 other ones had very little detail.

17 But the claims administrator, who's very
18 experienced doing this kind of work, is allocating points
19 based on the length of service, based on the review of the
20 claim forms and the details that they put in there, based on
21 their contributions to advancement of this case, and the
22 scope of the release.

23 And so she has done this very much before in other
24 cases and has used a similar methodology here as well.

25 THE COURT: And I believe you represented in your

1 pleadings that a 44 percent return is, for this type of
2 case, actually rather high.

3 MR. MEHRI: It is on the high end, Your Honor.

4 And it's higher than other cases we've had here in
5 this district as well.

6 THE COURT: For these kind of
7 sexual-harassment-type claims.

8 MR. MEHRI: Yes.

9 Employment gender cases, our experience -- and
10 it's similar to the claims administrator -- tends to be in
11 the 25-to-40-percent range. So this was on the upper end of
12 that. So from our point of view is a very robust response
13 from the class.

14 Quite a bit of detail went into the claim forms.
15 Frankly, it was painful even reviewing the claim forms, and
16 we did summarize that prior to the last hearing, Your Honor.

17 No member of the class objected to the settlement.
18 No member of the class opted out of the settlement, which is
19 rare.

20 We also -- as we notice in our papers, we did the
21 best we could in analysis, comparing this to other
22 comparable cases, and this appears to be the highest, or
23 among the highest, results on a per-claimant basis.

24 So the 99 on the average would receive 44,000, and
25 that's on the upper end, if not the highest, that's happened

1 in these kind of cases.

2 THE COURT: Right.

3 MR. MEHRI: We also noted, Your Honor, that it's
4 rare for hostile-work-environment claims to have the classes
5 certified. And you helped us, I think, guide us through
6 that process, in using the claim form as a way to yield more
7 information, was an innovative approach, as far as we know,
8 that's never been used before.

9 THE COURT: Well, we're used to doing cutting-edge
10 things around here.

11 MR. MEHRI: Well, if you get forced to look at
12 some problems, you have to come up with some good solutions.
13 And so that --

14 THE COURT: I'm glad it worked out.

15 MR. MEHRI: That really worked out well, and we
16 appreciated that opportunity, Your Honor.

17 And I think that really vindicated the women here
18 and the other plaintiffs, that what they said wasn't in
19 isolation but was systematic.

20 And your Honor may have noted in a prior hearing
21 the unusual behavior, the CEO's involvement in the interview
22 process, and all of those kinds of things were confirmed
23 when we yielded the data from the claim forms.

24 THE COURT: Have the sources of these problems
25 been rooted out in terms of the company? Are they -- have

1 these people either been moved into other positions or fired
2 or something?

3 MR. MEHRI: Well, Your Honor, one of the things --
4 I think, benefits that happened along the way here was the
5 CEO left the company.

6 These other direct reports who were other
7 culprits -- and the claims process yielded very robust
8 information -- as I said, very hard to read about sexual
9 harassment, sexualized environment -- all those leaders
10 left.

11 THE COURT: Good.

12 MR. MEHRI: So I want to be 100 percent clear that
13 the conduct at issue in this case preceded Valeant's
14 purchase of Medicis. So Valeant is no way implicated by the
15 conduct that happened by the former CEO and his direct
16 reports.

17 But even though they have left, one of the
18 highlights of this settlement is the programmatic relief
19 that we have both on the economic issues. There's a lot
20 more transparency in how sales opportunities are
21 distributed. There's efforts to mitigate these kind of
22 things from happening, again, with hotlines and training of
23 the work -- of the managers.

24 There's also --

25 THE COURT: You've got a cultural shift here.

1 MR. MEHRI: Well, we hope so.

2 The Court has to approve the settlement so we can
3 get the programmatic relief in place. Once it's in place,
4 it will be there for multiple years. We'll be involved as
5 class counsel. The reports will come to us, as well as the
6 mediator, Hunter Hughes.

7 So we believe there's a shift to place once a CEO
8 left. But the long-term change will take place for the
9 programmatic relief once the Court approves it and it gets
10 into place.

11 THE COURT: That'll look pretty good to me.

12 There's no one objecting to any of these things.

13 MR. MEHRI: No one's objected, Your Honor.

14 THE COURT: That's pretty unusual.

15 MR. MEHRI: It's unusual.

16 It's not -- usually, we get a few objections.
17 Usually, they're on side issues.

18 But we didn't get a single objection, Your Honor.
19 So we're very pleased to present that to the Court. We've
20 worked very hard to get here.

21 These women started this journey, and I feel that
22 they put all this faith in the legal process and their faith
23 was vindicated. And a lot had to do with the caliber of the
24 counsel we had on the other side and the skills of the
25 mediator, and our whole team bringing a lot of years of

1 experience to this kind of case. So I think it really kind
2 of represents the best of the bar.

3 We did it with the utmost efficiency. We didn't
4 get sidetracked with discovery disputes. They cooperated
5 with us in giving us the database that we could do the
6 statistical analyses. So everyone was focused on solving a
7 problem and making it right for what happened in the past.

8 So now we stand before you and it's our pleasure
9 to move for final approval of the settlement, final approval
10 in all aspects.

11 And I don't know if the Court has any questions on
12 attorneys' fees, but that was --

13 THE COURT: Well, that's the only piece of the
14 puzzle. I really have not had a chance to really focus on
15 that yet.

16 MR. MEHRI: Okay.

17 THE COURT: I've got your pleadings.

18 MR. MEHRI: Okay.

19 THE COURT: And because of the press of other
20 business --

21 MR. MEHRI: Sure.

22 THE COURT: -- I haven't had a chance to really
23 carefully go through it.

24 I know you've asked for something in the area of
25 35 percent --

1 MR. MEHRI: That's right.

2 THE COURT: -- which is -- you know, it's a little
3 high, but it's kind of in the range.

4 MR. MEHRI: Right.

5 THE COURT: I think I'll -- I think I'll need to
6 take a little time to review those --

7 MR. MEHRI: Sure.

8 THE COURT: -- attorneys' fees, although it will
9 bring back memories of being in private practice.

10 MR. MEHRI: You may not want those memories,
11 Judge.

12 THE COURT: I remember that as being probably the
13 least attractive part of my private-practice experience.

14 But on the other hand, this is not the first case
15 I've had of this -- class-action case, obviously, I've had.
16 And I've had to review attorneys' fees from time to time in
17 other settings.

18 I have had the unfortunate situation, in at least
19 one case, where the attorneys' fees were, in my judgment,
20 way inflated, way unnecessary.

21 MR. MEHRI: Right.

22 THE COURT: There's no secret about it; it was a
23 public record.

24 MR. MEHRI: Right.

25 THE COURT: I'm sure you may have heard about it.

1 MR. MEHRI: No. I read your opinion, Your Honor.

2 THE COURT: You read the opinion, I'm sure.

3 So I don't have any sense this is that type of
4 case at all.

5 MR. MEHRI: Right.

6 THE COURT: I certainly -- this is not a case like
7 that other one, that was a pro bono case or taken on a pro
8 bono basis. This is a different kind of case altogether.

9 However, I do think prudence dictates that I at
10 least go through the attorneys' fees.

11 MR. MEHRI: Sure.

12 THE COURT: And to the extent I have any
13 questions, I could, you know, obviously have another hearing
14 and go over those.

15 MR. MEHRI: Sure.

16 THE COURT: But I don't seem to have any issues
17 with any of the other aspects of this. And so to that
18 extent, I think you can feel confident that I'm going to be
19 very amenable to all the other aspects of it.

20 MR. MEHRI: Well, I appreciate that.

21 THE COURT: And I mean, frankly, the only issue,
22 being attorneys' fees, depending upon where that comes out,
23 if I don't agree with you for whatever reason, then that
24 would mean more money per --

25 MR. MEHRI: Take a record settlement per claimant,

1 and make it even more of a record settlement.

2 THE COURT: Right.

3 It might mean a little more money for each of the
4 claimants. But in the end, that might be the more just
5 result.

6 I'm not saying it is or it isn't.

7 MR. MEHRI: Right.

8 THE COURT: I need to look at it.

9 MR. MEHRI: Sure.

10 THE COURT: So I feel that this case has been very
11 well and very efficiently --

12 MR. MEHRI: I appreciate that.

13 THE COURT: -- pursued. So I don't, at this
14 point, have any reason to feel concerned about the
15 attorneys' fees, but I do feel I should review it.

16 I think what I'll do is -- have an opportunity to
17 do that in the near future.

18 MR. MEHRI: Sure.

19 THE COURT: And then if there's a need for a
20 hearing, set a hearing. If not, then just execute the
21 papers in the next month or so.

22 MR. MEHRI: Okay.

23 THE COURT: And then you'll kind of know where I
24 stand.

25 MR. MEHRI: Sure. No. That's fine, Your Honor.

1 And I appreciate that you're reserving judgment on it.

2 If you want, I'll just very quickly give some
3 highlights on the attorneys'-fees part following your
4 Fannie Mae decision, which I think this follows very much in
5 line with that.

6 THE COURT: Well, I think you're right.

7 And I mean, obviously, this is a different kind of
8 case than that, in the sense that that was a case that was
9 very heavily litigated.

10 MR. MEHRI: Right.

11 THE COURT: That was --

12 Well, of course, it was litigated over ten years.
13 I issued 16 published opinions. The D.C. Circuit issued six
14 public opinions. There were 120 fact depositions, 40 expert
15 witness depositions, 30 million documents produced. I mean,
16 that's the largest class-action security-frauds suit in the
17 history of our circuit.

18 MR. MEHRI: Right.

19 THE COURT: So that's Mount Olympus.

20 I mean, I'm not saying this is Kilimanjaro.
21 I'm just saying this is not Mount Olympus. That's Mount
22 Olympus.

23 MR. MEHRI: And I understand that.

24 I was looking at the legal principles and your
25 No. 1 factor of the risk the results achieved. And we

1 are -- this is unparalleled with the results achieved.

2 And you look at --

3 THE COURT: Oh, and I appreciate that.

4 MR. MEHRI: -- every other case around the
5 country. And we highlighted that in the papers. This case
6 stands tall -- it is Mount Olympus in some ways.

7 THE COURT: In that sense.

8 MR. MEHRI: In that sense, it is.

9 The second is the skill and efficiency. I hope
10 we've demonstrated that to Your Honor.

11 THE COURT: Well, I think your pleadings have been
12 outstanding. I think your presentations to date have been
13 outstanding. So I have no reason to quarrel with that.

14 MR. MEHRI: So that's the second big factor.

15 No objections. You had that as one of your big
16 factors, and, obviously, we noted that.

17 The length and complexity of the case: While it
18 wasn't in front of you, Your Honor, though, in the sense of
19 a traditional case, let's just give some background on this.

20 We started on this journey literally months after
21 the landmark *Wal-Mart versus Dukes* case, when there was the
22 peak of legal uncertainty, and the peak of risk for
23 plaintiffs' counsel to do this kind of work.

24 THE COURT: Right.

25 MR. MEHRI: Some of our peer firms, including one

1 of our peer firms in D.C., just stopped doing this kind of
2 work, because they just thought it became too risky.

3 But when we started it, we started by sending a
4 letter to Mr. Nagle, and his team received. And there was a
5 decision made that it was in the interest of all parties and
6 judicial economy for us to try to work this out before we
7 come into the courtroom and start taking up all the Court's
8 time.

9 And if you have top counsel and there's a certain
10 amount of trust that you build up over time either directly
11 or indirectly with your reputations or working directly with
12 people, you can go on a path that's very efficient.

13 THE COURT: And that's very laudable. I'm glad
14 you did that.

15 MR. MEHRI: And that being said, the last factor
16 you have is the time involved. And this circuit is a
17 percentage circuit, but time involved is something to look
18 at. And here, we really have -- our lodestar is very, very
19 close to what we're asking for. It's almost identical.

20 So even from that point of view, the time we've
21 put in equals the 35 percent. And so that's -- it wasn't
22 that way when we first filed it in the fall of 2013, but it
23 is as we sit here today.

24 THE COURT: Well, you know, I'm not saying this
25 applies in your case at all because I haven't looked at it

1 yet.

2 MR. MEHRI: Right.

3 THE COURT: But I have had, unfortunately, other
4 cases where law firms, let's just say, were putting down
5 time on matters with way too many attorneys --

6 MR. MEHRI: Right.

7 THE COURT: -- way too many people billing on
8 issues that really only required maybe one person, maybe
9 two --

10 MR. MEHRI: Right.

11 THE COURT: -- not six or seven.

12 And let's just say they took a very expansive
13 approach to attorney time --

14 MR. MEHRI: Right.

15 THE COURT: -- accounting.

16 And I understand how that can happen in -- I was
17 in a large law firm. I understand how there's pressures --

18 MR. MEHRI: Right.

19 THE COURT: -- on young attorneys, particularly,
20 to put down a lot of time, and then leave it to the partners
21 to edit it out, so to speak, cut it out.

22 MR. MEHRI: Right.

23 THE COURT: Sometimes they do cut it out,
24 sometimes they don't cut it out, because there's pressures
25 on the partners to have a lot of billable time that's being

1 billed.

2 So I understand those realities. I used to be a
3 law firm partner for many years.

4 And I'm not saying this has happened in this case
5 at all.

6 MR. MEHRI: Right.

7 THE COURT: I'm just saying, I've had that
8 experience, and because I've had that experience, it is
9 important, I think, for judges to take a look at those
10 billings --

11 MR. MEHRI: Right.

12 THE COURT: -- and see how many lawyers are being
13 assigned to go to this hearing or go to this meeting or go
14 to that meeting.

15 You know, are they overbilling this or overbilling
16 that? Again, I'm not saying that happened here.

17 MR. MEHRI: Right.

18 THE COURT: So I feel an obligation, as a judge,
19 to look at that, scrutinize it. And if I don't see anything
20 that appears untoward in any way or inappropriate or
21 overdoing it --

22 MR. MEHRI: Well, I appreciate that, Your Honor.
23 If I were sitting where you are, I'd say the same thing.
24 I think you should do the due diligence.

25 I could just tell you, one, I've never had a court

1 criticize our work from an attorneys' fees point of view.

2 THE COURT: Good.

3 MR. MEHRI: If anything, they've felt we've been
4 conservative.

5 This case, we worked as a very tight ship. It was
6 just two law firms.

7 THE COURT: Right.

8 MR. LEIDE: It was Sara Kane and myself talking on
9 a regular basis, making sure we were doing things
10 efficiently, and that we had good oversight and we exercised
11 billing judgment.

12 The only thing you might see is that over the
13 course of the litigation, which five to eight years -- for
14 Sara's firm, eight years; my firm, five years -- we have had
15 some turnover with associates, which the Court also --

16 THE COURT: Well, that's to be expected.

17 MR. MEHRI: But other than that, I don't know how
18 much more we could have done to be more efficient.

19 THE COURT: Well, that's -- I'm sure that's true.

20 And I think -- my guess is that the papers will
21 reflect that.

22 MR. MEHRI: Well, we appreciate the opportunity,
23 Your Honor.

24 There's three housekeeping things I wanted to
25 bring up, and then I want to give Mr. Nagle an opportunity

1 too.

2 Not completely surprising, several women who were
3 in the class, who missed the deadline to get their claim
4 forms in, contacted us in the last few weeks, and we've
5 said, look, you missed the deadline.

6 But one person contacted us on Friday who seemed
7 to have a very compelling reason why she didn't get her
8 claim form in in October of 2015, she had surgery, and
9 serious medical issues, and she missed the deadline. So on
10 Friday, we said to her, well, if she gives us an affidavit
11 with backup information, that we would --

12 THE COURT: Medical records.

13 MR. MEHRI: -- that kind of thing -- right -- that
14 we would bring it to your attention.

15 And we got it -- we said we needed it by noon
16 today, and we got it exactly at noon today.

17 Ask I don't want to mention her name, obviously,
18 for the reasons that are understandable, we've had that
19 confidentially.

20 But with the Court's permission, what I'd like to
21 do is send the affidavit to the claims administrator and
22 have her do due diligence, both to make sure it's authentic,
23 and to make sure it's reasonable otherwise.

24 And if it passes muster with the claim's
25 administrator, then even though she missed the deadline,

1 I think the medical reasons would be a rare exception that
2 would allow her to be a participant in the settlement.

3 That's how we see it. That, you know, kind of --
4 everybody else didn't give us a good reason. This stood out
5 as a compelling reason.

6 THE COURT: Any objection to that?

7 MR. NAGLE: None, Your Honor.

8 THE COURT: That sounds fair.

9 So why don't you go forward with that.

10 MR. MEHRI: Right.

11 Well, let's make sure it gets authenticated and
12 have the due diligence.

13 Second, we noticed an error this morning, both in
14 my affidavit and in the summary sheet, on expenses. And we
15 want to just correct that. I'll do it on the record today.
16 But I think what the easiest thing for us is to send you the
17 papers with the right numbers on it.

18 THE COURT: Oh, okay.

19 MR. MEHRI: But what the background is is that one
20 of the benefits we achieved for the class -- and this is,
21 again, unlike many other settlements, is that the defendant
22 has agreed, for all practical purposes, to pay the full
23 amount of the claims administrator expenses, which we expect
24 to be less than 100,000.

25 Inadvertently, the claims administrator billed my

1 firm, and we inadvertently paid \$28,000. And I tried to get
2 it cleaned out of my affidavit last week, but somehow it
3 still ended up in there. So the numbers we gave you on
4 expenses were inaccurate by \$28,000. So I want to clean
5 that up.

6 And the third housekeeping item is really a matter
7 Mr. Nagle should address, which is the statute called CAFA.

8 The Class Action Fairness Act requires that notice
9 go to the Attorney General on any class action settlement.

10 I can give you some background on the statute if
11 you want it, but it's really the defendant's obligation, and
12 so that affects some timing aspect.

13 THE COURT: Which Attorney General?

14 MR. MEHRI: All 50.

15 THE COURT: All 50?

16 MR. MEHRI: Plus the U.S. Attorney General.

17 So the background on it -- I'll just give you a
18 little background on the statute.

19 It passed in 2005, and Congress was concerned
20 about what -- I'll use the term -- I don't know what term
21 they use about -- abusive kind of class actions, where the
22 settlements were coupons and things that weren't getting
23 real benefits, meaningful benefits to members of the class.

24 THE COURT: Uh-huh.

25 MR. MEHRI: So one cross-check on that was to have

1 notice go to the Attorney General. But it's the defendant's
2 duty, not plaintiff's duty to get the notice out.

3 And I've never seen an Attorney General raise any
4 issue of an employment class case. So to me, this is a
5 formality. But we worked out a timeline with the defendants
6 once this came to our attention.

7 THE COURT: Would it make sense that that be run
8 to ground before a final approval is issued?

9 MR. LEIDE: Well, that's what we worked out,
10 Your Honor, just the mechanics of it.

11 It's very important to us, the plaintiffs, that
12 the timing of this not affect the money being deposited into
13 an escrow that the trustee runs within five business days,
14 which is what the settlement called for.

15 So we want to make sure it's sitting there in
16 trust. That's the one issue that we have. Otherwise, we're
17 flexible on the timing, which puts it into September 1, is
18 the timing.

19 But maybe I should let Mr. Nagle --

20 MR. NAGLE: If I may, Your Honor.

21 THE COURT: Go ahead, Mr. Nagle.

22 MR. NAGLE: Sure.

23 Your Honor, I missed the Class Action Fairness
24 Act. I should have sent the notice within ten days of when
25 the settlement was entered a couple of years ago. I missed

1 it.

2 We sent out the notice last week when it was
3 brought to our attention very promptly, but still quite
4 late. My apologies both to the plaintiffs and to the Court
5 for that.

6 As a result, the Court can't technically enter --
7 as I read the statute, can't technically enter a final order
8 dismissing the complaint until 90 days have passed from when
9 we sent the order out.

10 What we have worked out with plaintiffs' counsel
11 with respect to this, and subject to the Court's approval,
12 is that if the Court is otherwise content with every other
13 aspect of the settlement, including the attorneys' fees,
14 which I understand from your remarks today, you still wish
15 to take some look at, but once you get -- once you get to
16 that point, if you will -- if the Court was prepared to
17 indicate that it was giving final approval, subject only to
18 the completion of the CAFA process, the Class Action
19 Fairness Act process, and it would be my obligation to come
20 to the Court by September 1st, which is just after the
21 90-day period expires --

22 If we've gotten anything from any of the Attorney
23 General's office, we'll bring that to the Court's attention.
24 We'll need some further discussion, perhaps another hearing,
25 probably not -- I mean, I don't think any of us have an

1 expectation that anything is going to arise here.

2 But if nothing else does happen, then the Court,
3 after September 1st, on September 2nd even, could enter an
4 order, a final order dismissing the complaint and allowing
5 payments to be made pursuant to the settlement.

6 We've agreed that once you indicate that you're
7 prepared to give final approval to all other aspects of the
8 case, including the attorneys' fees, that within five
9 business days of that, we'll pay over the money that's due
10 into a settlement fund, which will be held in escrow by the
11 claims administrator.

12 The claims administrator can then go to work on
13 her job of trying to get everything lined up so she can make
14 payments very promptly to the individual claimants. And the
15 money will also be out of the defendant's hands; it will be
16 in the plaintiffs' hands.

17 It would revert to us, with interest, in the event
18 that something did come up in the Class Action Fairness Act
19 process from one of the Attorney Generals that caused the
20 settlement to be otherwise scuddled. Very highly remote
21 possibility of that, Your Honor. But that's how we propose
22 to resolve it.

23 It's been done in at least a couple of other cases
24 that I'm familiar with, an identical procedure where the
25 Court is given signal, final approval, but made it subject

1 to the completion of the CAFA process and a reporting
2 mechanism to come into that effect, and the administrative
3 order that the plaintiffs have prepared for the Court to
4 enter contemplates that.

5 I think the order, as it states now, says that the
6 order of dismissal would take place ten business days
7 automatically after the effective date.

8 Effective date, unfortunately, in that form of
9 order, wasn't specifically defined, Your Honor. I think the
10 effective date should be defined -- and I've written it
11 down -- should not enter until later of September 2nd, 2016,
12 or the date on which the Court resolves any CAFA inquiries
13 reported by the defendant by September 1st.

14 And so I think if that order -- the proposed order
15 were modified to have that language with respect to
16 effective date, that would give you an order that you could
17 enter, Your Honor, at the point that you were prepared to,
18 after reviewing the attorneys' fees.

19 And I think plaintiffs' counsel is going to be
20 submitting some additional materials. I understand the
21 Court -- perhaps we can clarify that point on effective date
22 at that point to get that in a position that the Court could
23 enter it, if that were acceptable to you, Your Honor.

24 Again, my apologies for the error that's created
25 this.

1 MR. MEHRI: Your Honor, I just have one
2 modification on what Mr. Nagle said.

3 And, Jim, you can, of course, speak up after this.

4 But we feel an urgency to have the order be
5 written in a way that the money goes into the escrow, even
6 if you're reviewing -- and you will be reviewing -- the
7 attorneys' fees, because that doesn't change the amount,
8 it may change the -- that doesn't change the total amount.
9 It may change what goes to counsel, what goes to the
10 claimants. That could be reserved to after you make a
11 decision on attorneys' fees.

12 But Valeant could take no responsibility, as I
13 said, for what happened under the Medicis CEO's watch.
14 But they -- if you read the papers, they're a company, a
15 very tumultuous company. Their stock price has gone from
16 250 to 25.

17 I don't want to take any risk that, as we
18 accommodate the defendants, if something happens to the
19 company in 90 days.

20 I'm just -- I have no inside knowledge, I have no
21 way of -- I have no crystal ball, but I just feel this
22 fiduciary duty that we should protect this asset and have it
23 held by the trustee during this 90 days when we know, as a
24 practical matter, that it's one out of a 100,000 chance
25 we're going to get any inquiries from an Attorney General

1 just based on what they have done in prior cases.

2 So I'm happy to accommodate the defendant.

3 I'm --

4 THE COURT: The statute, apparently, provides a
5 90-day window for the Attorney General in which to act,
6 right?

7 MR. MEHRI: Right.

8 There's two parts of the statute; one, the
9 defendant missed, which was within ten days, they were
10 supposed to send a copy of the settlement to the AGs and
11 some other paperwork.

12 I'm happy to try to work with them to accommodate
13 them. I'm not -- you know -- and I do think it's good to
14 give the Attorney Generals that 90-day window. I think
15 that's -- I'm fine with that.

16 And I'm fine with the Court not entering the
17 final, final until that moment.

18 But I don't -- this is going to delay distribution
19 to our clients of about six weeks. I can live with that.
20 But I can't live with not having the assets in an escrow
21 held by the trustee if, God forbid, something happened to
22 the company over the next 90 days. That's a risk I'm not
23 comfortable with, whereas I can live with the risk -- not
24 the risk, the inconvenience on our clients of waiting an
25 extra six weeks.

1 THE COURT: So you would want the -- well, it's
2 seven and a half million, right?

3 MR. MEHRI: Yeah. It's seven-point -- I can't
4 remember right now, but it's about 7.3 million, I think is
5 right.

6 THE COURT: All right.

7 7.3 million, you would like that placed in escrow
8 as soon as the Court indicates, as it's likely to, that the
9 terms of the settlement are acceptable --

10 MR. MEHRI: Right.

11 THE COURT: -- and final order will be issued
12 pending completion of the K-A-F-A.

13 MR. MEHRI: C-A-F-A.

14 THE COURT: C-A-F-A.

15 MR. MEHRI: Right.

16 THE COURT: CAFA procedures.

17 MR. MEHRI: Right.

18 And what -- the difference between what I'm saying
19 and what Mr. Nagle said is that if the Court is satisfied
20 with this settlement -- there's been no objections -- then
21 we should proceed.

22 If the Court has an issue with our attorneys'
23 fees, that doesn't impact the overall settlement fund.
24 That impacts the allocation of the settlement fund.

25 And so that's why, for a client's sake, the money

1 should be put into escrow five days from when the Court is
2 comfortable that the settlement, overall, is a fair
3 settlement to the class. And then we don't have to have --
4 this delay prejudices us.

5 THE COURT: 90 days is already ticking, right?

6 MR. MEHRI: That's right, Your Honor.

7 THE COURT: It started when they issued their --
8 sent, I should say, a copy of their settlement papers to the
9 51 Attorney Generals.

10 MR. MEHRI: Right. But that was only a few days
11 ago, Your Honor, so we have 85-plus.

12 THE COURT: Actually, it's 52, because we've
13 got -- D.C. has an Attorney General.

14 MR. MEHRI: Right. You're right, Your Honor.

15 THE COURT: 52.

16 Well, my guess is I'll be in a position to
17 conclude, one way or the other, on this settlement in the
18 next few weeks.

19 So if I, at the end of a couple weeks from now,
20 conclude everything's fine --

21 MR. MEHRI: Sure.

22 THE COURT: -- including the attorneys' fees --

23 MR. MEHRI: Sure.

24 THE COURT: -- and then indicate in a Minute Order
25 or something that, subject to completion of the CAFA

1 procedures, the Court will issue a final order once those
2 are completed, at that point, they could put the money in
3 escrow --

4 MR. MEHRI: That's right, Your Honor.

5 THE COURT: -- in September, whatever the date is.

6 MR. MEHRI: Well, we agreed to September 1.

7 And this is both in our final proposed order and
8 the administrative order, those are the two orders to look
9 at. There are two orders that we presented.

10 THE COURT: Is that the 90 days, at the completion
11 of the 90-day period?

12 MR. MEHRI: Right. We pegged September 1, which
13 is a little bit more than 90 days, for Mr. Nagle to report
14 if they received anything from any Attorney General, any
15 inquiry of any sort.

16 And then if the answer is no, then, boom, we would
17 be doing the distribution to our classes, hopefully, on
18 September 2nd.

19 If there are -- if any inquiries of any sort come
20 up, then you would be notified, Your Honor, and then
21 we would have to reconvene to figure out if there's anything
22 to be addressed.

23 THE COURT: Not likely, but I see your point.

24 MR. MEHRI: Right.

25 So all I'm trying to do is protect our class, as

1 soon as possible, to have the money in escrow, and we can
2 delay the allocation and distribution.

3 But I just want to protect them as soon as you're
4 comfortable, Your Honor.

5 THE COURT: Like I say, I think I'll be in a
6 position to give you my assessment of the situation within a
7 matter of a few weeks.

8 MR. MEHRI: Okay. Well, we appreciate that,
9 Your Honor.

10 And we'll -- we're planning to resubmit the
11 administrative order to correct the numbers. And we'll look
12 at it, in light of today's hearing, for anything else, and
13 give that to you in the next couple of days.

14 THE COURT: And then once you get the, you know,
15 indication from the Court that it's subject to -- I mean,
16 acceptable, subject to the completion of the CAFA
17 requirements, you can go ahead and put the money in escrow
18 and wait until September 1st to see if anyone --

19 MR. MEHRI: Right.

20 THE COURT: -- expresses concerns.

21 Makes sense to me.

22 MR. MEHRI: Okay. Anything?

23 MR. NAGLE: That's exactly what we've agreed to,
24 Your Honor, yes.

25 MR. MEHRI: And that's in our papers.

1 But we may have to go back and double-check a
2 couple light things, in light of today.

3 THE COURT: All right. So I'll wait to get
4 your -- you don't need to change the papers that I have
5 already on the attorneys' hours or anything.

6 MR. MEHRI: No. It's just the expenses that we
7 recognize was an error.

8 THE COURT: One expense of \$28,000 or something?

9 MR. MEHRI: Right.

10 THE COURT: Do you have anything else, Mr. Nagle?

11 MR. NAGLE: Nothing else, Your Honor.

12 Thank you for your assistance with this case.

13 THE COURT: Thank you for your advocacy.

14 And thank you, Mr. Mehri, for your advocacy.

15 MR. MEHRI: We appreciate it, Your Honor.

16 THE COURT: We'll stand in recess.

17 DEPUTY CLERK: All rise.

18 This Honorable Court will stand in recess until
19 the return of court.

20 (Proceedings concluded at 4:04 p.m.)

21

22

23

24

25

C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Date: June 23, 2016 _____ /S/ William P. Zaremba _____

William P. Zaremba, RMR, CRR