

1
2 **UNITED STATES DISTRICT COURT**
3 **CENTRAL DISTRICT OF CALIFORNIA**
4 **SOUTHERN DIVISION**

5 IN RE ALLERGAN, INC. PROXY
6 VIOLATION SECURITIES
7 LITIGATION

Case No. 8:14-cv-02004-DOC-KESx

CLASS ACTION

8 **ORDER PRELIMINARILY**
9 **APPROVING**
10 **SETTLEMENT AND PROVIDING**
11 **FOR NOTICE**

12 WHEREAS, a class action is pending in this Court entitled *In re Allergan,*
13 *Inc. Proxy Violation Securities Litigation*, Case No. 8:14-cv-2004-DOC-KESx
14 (C.D. Cal.) (the “Action”);

15 WHEREAS, by Order dated March 15, 2017, this Court certified the Action
16 to proceed as a class action on behalf of all persons who sold Allergan, Inc.
17 (“Allergan”) common stock contemporaneously with purchases of Allergan
18 common stock made or caused by Defendants during the period February 25, 2014
19 through April 21, 2014, inclusive (the “Class Period”) and were damaged thereby
20 (the “Class”);¹

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¹ A person is considered to have sold “contemporaneously” if he, she, or it sold Allergan common stock on a trading day during the Class Period. Excluded from the Class by definition are: Defendants; their Officers and directors during the Class
Order Preliminarily Approving
Settlement and Providing for Notice
Case No. 8:14-CV-02004-DOC-KESx

1 WHEREAS, pursuant to this Court’s Order dated June 14, 2017, the Notice
2 of Pendency of Class Action (the “Class Notice”) was mailed to potential members
3 of the Class to notify them of, among other things: (i) the Action pending against
4 Defendants; (ii) the Court’s certification of the Action to proceed as a class action
5 on behalf of the Class; and (iii) their right to request to be excluded from the Class,
6 the effect of remaining in the Class or requesting exclusion, and the requirements
7 for requesting exclusion;

8 WHEREAS, (i) State Teachers Retirement System of Ohio, Iowa Public
9 Employees Retirement System, and Patrick T. Johnson (collectively, “Plaintiffs”),
10 on behalf of themselves and the other members of the Class; and (ii) defendants
11 Valeant Pharmaceuticals International, Inc., Valeant Pharmaceuticals International,
12 and J. Michael Pearson (collectively, the “Valeant Defendants”) and Pershing
13 Square Capital Management, L.P., PS Management GP, LLC, PS Fund 1, LLC,
14 Pershing Square, L.P., Pershing Square II, L.P., Pershing Square GP, LLC, Pershing
15 Square Holdings, Ltd., Pershing Square International, Ltd., and William Ackman

16 _____
17 Period; Immediate Family Members of the individual Defendants and of the
18 excluded Officers and directors; any entity in which any of the foregoing has or had
19 a controlling interest; any affiliates, parents or subsidiaries of the Defendants; the
20 legal representatives, agents, affiliates, heirs, successors or assigns of any of the
21 foregoing, in their capacities as such; and Nomura International plc, and any of its
affiliates, parents, or subsidiaries. Also excluded from the Class are any persons that
submitted a request for exclusion as set forth on Appendix 1 to the Stipulation.

1 (collectively, the “Pershing Defendants,” together with the Valeant Defendants,
2 “Defendants,” and, together with Plaintiffs, the “Parties”) have determined to settle
3 all claims asserted against Defendants in this Action with prejudice on the terms and
4 conditions set forth in the Stipulation and Agreement of Settlement dated January
5 26, 2018 (the “Stipulation”) subject to approval of this Court (the “Settlement”);

6 WHEREAS, Plaintiffs have made an application, pursuant to Rule 23 of the
7 Federal Rules of Civil Procedure, for an order preliminarily approving the
8 Settlement in accordance with the Stipulation, and approving notice of the
9 Settlement to Class Members as more fully described herein;

10 WHEREAS, the Court has read and considered: (i) Plaintiffs’ motion for
11 preliminary approval of the Settlement, and the papers filed and arguments made in
12 connection therewith; and (ii) the Stipulation and the exhibits attached thereto; and

13 WHEREAS, unless otherwise defined herein, all capitalized words contained
14 herein shall have the same meanings as they have in the Stipulation;

15 NOW THEREFORE, IT IS HEREBY ORDERED:

16 1. **Preliminary Approval of the Settlement** – The Court hereby
17 preliminarily approves the Settlement, as embodied in the Stipulation, as being fair,
18 reasonable, and adequate to the Class, subject to further consideration at the
19 Settlement Hearing to be conducted as described below.

1 2. **Settlement Hearing** – The Court will hold a settlement hearing (the
2 “Settlement Hearing”) on May 30, 2018 at 7:30 a.m. at the Ronald Reagan Federal
3 Building, United States Courthouse, 411 West Fourth Street, Santa Ana, CA, 92701,
4 9th Floor, Courtroom 9D, for the following purposes: (i) to determine whether the
5 proposed Settlement on the terms and conditions provided for in the Stipulation is
6 fair, reasonable, and adequate to the Class, and should be approved by the Court; (ii)
7 to determine whether a Judgment substantially in the form attached as Exhibit B to
8 the Stipulation should be entered dismissing the Action with prejudice against
9 Defendants; (iii) to determine whether the proposed Plan of Allocation for the
10 proceeds of the Settlement is fair and reasonable and should be approved; (iv) to
11 determine whether the motion by Lead Counsel for an award of attorneys’ fees and
12 reimbursement of Litigation Expenses should be approved; and (v) to consider any
13 other matters that may properly be brought before the Court in connection with the
14 Settlement. Notice of the Settlement and the Settlement Hearing shall be given to
15 Class Members as set forth in ¶ 4 of this Order.

16 3. The Court may adjourn the Settlement Hearing without further notice
17 to the Class, and may approve the proposed Settlement with such modifications as
18 the Parties may agree to, if appropriate, without further notice to the Class.

19 4. **Retention of Claims Administrator and Manner of Giving Notice** –
20 Lead Counsel are hereby authorized to retain Garden City Group, LLC (the “Claims

1 Administrator” or “GCG”), which was previously approved by the Court to
2 administer the dissemination of the Class Notice, to supervise and administer the
3 notice procedure in connection with the proposed Settlement as well as the
4 processing of Claims as more fully set forth below. Notice of the Settlement and the
5 Settlement Hearing shall be given by Lead Counsel as follows:

6 (a) not later than fifteen (15) business days after the date of entry of
7 this Order (the “Notice Date”), the Claims Administrator shall cause a copy of the
8 Settlement Notice and the Claim Form, substantially in the forms attached hereto as
9 Exhibits 1 and 2, respectively (the “Settlement Notice Packet”), to be mailed by first-
10 class mail to the members of the Class who may be identified through reasonable
11 effort;

12 (b) contemporaneously with the mailing of the Settlement Notice
13 Packet, the Claims Administrator shall cause copies of the Settlement Notice and the
14 Claim Form to be posted on the website previously developed for this Action,
15 www.AllerganProxyViolationSecuritiesLitigation.com, from which copies of the
16 Settlement Notice and Claim Form can be downloaded;

17 (c) not later than ten (10) business days after the Notice Date, the
18 Claims Administrator shall cause the Summary Settlement Notice, substantially in
19 the form attached hereto as Exhibit 3, to be published once each in *The Wall Street*
20

1 *Journal, The New York Times, and The Financial Times* and to be transmitted once
2 over the *PR Newswire*; and

3 (d) not later than May 23, 2018, Lead Counsel shall serve on
4 Defendants' Counsel and file with the Court proof, by affidavit or declaration, of
5 such mailing and publication.

6 5. **Approval of Form and Content of Notice** – The Court: (i) approves,
7 as to form and content, the Settlement Notice, the Claim Form, and the Summary
8 Settlement Notice, attached hereto as Exhibits 1, 2, and 3, respectively; and (ii) finds
9 that the mailing and distribution of the Settlement Notice and Claim Form and the
10 publication of the Summary Settlement Notice in the manner and form set forth in ¶
11 4 of this Order (a) is the best notice practicable under the circumstances; (b)
12 constitutes notice that is reasonably calculated, under the circumstances, to apprise
13 Class Members of the proposed Settlement (including the Releases to be provided
14 thereunder); of Lead Counsel's motion for an award of attorneys' fees and
15 reimbursement of Litigation Expenses; of their right to object to the Settlement, the
16 Plan of Allocation and/or Lead Counsel's motion for attorneys' fees and
17 reimbursement of Litigation Expenses; and of their right to appear at the Settlement
18 Hearing; (c) constitutes due, adequate, and sufficient notice to all persons and
19 entities entitled to receive notice of the proposed Settlement; and (d) satisfies the
20 requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States

1 Constitution (including the Due Process Clause), the Private Securities Litigation
2 Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, and all other applicable law
3 and rules. The date and time of the Settlement Hearing shall be included in the
4 Settlement Notice and Summary Settlement Notice before they are mailed and
5 published, respectively.

6 6. **Nominee Procedures** – In the previously disseminated Class Notice,
7 brokers and other nominees (“Nominees”) were advised that, if they sold Allergan
8 common stock for the beneficial interest of persons or organizations other than
9 themselves, they must either: (i) within seven (7) calendar days of receipt of the
10 Class Notice, request from GCG sufficient copies of the Class Notice to forward to
11 all such beneficial owners and within seven (7) calendar days of receipt of those
12 Class Notices forward them to all such beneficial owners; or (ii) within seven (7)
13 calendar days of receipt of the Class Notice, provide a list of the names and addresses
14 of all such beneficial owners to GCG.

15 (a) For Nominees who chose the first option (*i.e.*, elected to mail the
16 Class Notice directly to beneficial owners), GCG shall forward the same number of
17 Settlement Notice Packets to such Nominees, and the Nominees shall, within seven
18 (7) calendar days of receipt of the Settlement Notice Packets, mail the Settlement
19 Notice Packets to their beneficial owners;

1 (b) For Nominees who chose the second option (*i.e.*, provided a list
2 of names and addresses of beneficial holders to GCG), GCG shall promptly mail a
3 copy of the Settlement Notice Packet to each of the beneficial owners whose names
4 and addresses the Nominee previously supplied. Unless the Nominee sold Allergan
5 common stock during the Class Period for beneficial owners whose names and
6 addresses were not previously provided to GCG, or the Nominee is aware of name
7 and address changes for these beneficial owners, such Nominees need not take any
8 further action;

9 (c) For Nominees that sold Allergan common stock during the Class
10 Period for beneficial owners whose names and addresses were not previously
11 provided to GCG or if a Nominee is aware of name and address changes for
12 beneficial owners whose names and addresses were previously provided to GCG,
13 such Nominees shall within seven (7) calendar days of receipt of the Settlement
14 Notice, provide a list of the names and addresses of all such beneficial owners to
15 GCG, or shall request from GCG sufficient copies of the Settlement Notice Packet
16 to forward to all such beneficial owners which the Nominee shall, within seven (7)
17 calendar days of receipt of the Settlement Notice Packets from GCG, mail to the
18 beneficial owners; and

19 (d) Upon full and timely compliance with this Order, Nominees who
20 mail the Settlement Notice Packets to beneficial owners may seek reimbursement of

1 their reasonable expenses actually incurred in complying with this Order by
2 providing GCG with proper documentation supporting the expenses for which
3 reimbursement is sought. Such properly documented expenses incurred by
4 Nominees in compliance with the terms of this Order shall be paid from the
5 Settlement Fund, but will only be reimbursed upon review and approval by the
6 Court. The Court further requests that all Claimants submit electronic claims forms
7 whenever possible and, in particular, urges Claimants with 40 or more Class Period
8 transactions to file them electronically.

9 7. **CAFA Notice** – As provided in the Stipulation, Defendants were
10 required to serve upon the appropriate state official of each state in which a Class
11 Member resides and the Attorney General of the United States a notice of the
12 proposed Settlement in compliance with the requirements of the Class Action
13 Fairness Act, 28 U.S.C. § 1715 et seq. (“CAFA”) no later than ten (10) calendar days
14 following the filing of the Stipulation with the Court. Defendants served CAFA
15 notice on those officials on February 5, 2018. Defendants are solely responsible for
16 the costs of the CAFA notice and administering the CAFA notice. No later than
17 May 23, 2018, Defendants shall cause to be served on Lead Counsel and filed with
18 the Court proof, by affidavit or declaration, regarding compliance with CAFA
19 § 1715(b).

1 8. **Participation in the Settlement** – Class Members who wish to
2 participate in the Settlement and to be eligible to receive a distribution from the Net
3 Settlement Fund must complete and submit a Claim Form in accordance with the
4 instructions contained therein. Unless the Court orders otherwise, all Claim Forms
5 must be postmarked no later than one hundred twenty (120) calendar days after the
6 Notice Date. Notwithstanding the foregoing, Lead Counsel may, at their discretion,
7 accept for processing late Claims provided such acceptance does not delay the
8 distribution of the Net Settlement Fund to the Class. By submitting a Claim, a person
9 or entity shall be deemed to have submitted to the jurisdiction of the Court with
10 respect to his, her, or its Claim and the subject matter of the Settlement.

11 9. Each Claim Form submitted must satisfy the following conditions:
12 (i) it must be properly completed, signed, and submitted in a timely manner in
13 accordance with the provisions of the preceding paragraph; (ii) it must be
14 accompanied by adequate supporting documentation for the transactions and
15 holdings reported therein, in the form of broker confirmation slips, broker account
16 statements, an authorized statement from the broker containing the transactional and
17 holding information found in a broker confirmation slip or account statement, or
18 such other documentation as is deemed adequate by Lead Counsel or the Claims
19 Administrator; (iii) if the person executing the Claim Form is acting in a
20 representative capacity, a certification of his, her, or its current authority to act on

1 behalf of the Class Member must be included in the Claim Form to the satisfaction
2 of Lead Counsel or the Claims Administrator; and (iv) the Claim Form must be
3 complete and contain no material deletions or modifications of any of the printed
4 matter contained therein and must be signed under penalty of perjury.

5 10. Any Class Member that does not timely and validly submit a Claim
6 Form or whose Claim is not otherwise approved by the Court: (i) shall be deemed
7 to have waived his, her, or its right to share in the Net Settlement Fund; (ii) shall be
8 forever barred from participating in any distributions therefrom; (iii) shall be bound
9 by the provisions of the Stipulation and the Settlement and all proceedings,
10 determinations, orders, and judgments in the Action relating thereto, including,
11 without limitation, the Judgment or Alternate Judgment, if applicable, and the
12 Releases provided for therein, whether favorable or unfavorable to the Class; and
13 (iv) will be barred from commencing, maintaining, or prosecuting any of the
14 Released Plaintiffs' Claims against each and all of the Defendants' Releasees, as
15 more fully described in the Stipulation and Settlement Notice. Notwithstanding the
16 foregoing, late Claim Forms may be accepted for processing as set forth in ¶ 8 above.

17 11. **No Second Opportunity to Request Exclusion From the Class** – In
18 light of the extensive notice program undertaken in connection with class
19 certification and the ample opportunity provided to Class Members to request
20 exclusion from the Class at that time, the Court is exercising its discretion not to

1 allow a second opportunity for Class Members to exclude themselves from the Class
2 in connection with the Settlement proceedings. *See, e.g., Denney v. Deutsche Bank*
3 *AG*, 443 F.3d 253, 271 (2d Cir. 2006); *In re Washington Mut., Inc.*, No. 2:08-md-
4 1919 MJP, 2015 WL 12803633, at *1 (W.D. Wash. June 22, 2015).

5 12. **Appearance and Objections at Settlement Hearing** – Any Class
6 Member may enter an appearance in the Action, at his, her, or its own expense,
7 individually or through counsel of his, her, or its own choice, by filing with the Clerk
8 of Court and delivering a notice of appearance to both Lead Counsel and
9 “Representative Defendants’ Counsel” (*i.e.*, the Defendants’ Counsel identified in ¶
10 13 below), at the addresses set forth in ¶ 13 below, such that it is received no later
11 May 9, 2018, or as the Court may otherwise direct. Any Class Member who does
12 not enter an appearance will be represented by Lead Counsel.

13 13. Any Class Member may file a written objection to the proposed
14 Settlement, the proposed Plan of Allocation, and/or Lead Counsel’s motion for an
15 award of attorneys’ fees and reimbursement of Litigation Expenses and appear and
16 show cause, if he, she, or it has any cause, why the proposed Settlement, the
17 proposed Plan of Allocation and/or Lead Counsel’s motion for attorneys’ fees and
18 reimbursement of Litigation Expenses should not be approved; *provided, however*,
19 that no Class Member shall be heard or entitled to contest the approval of the terms
20 and conditions of any aspect of the proposed Settlement, the proposed Plan of

1 Allocation, and/or the motion for attorneys' fees and reimbursement of Litigation
2 Expenses unless that person or entity has filed a written objection with the Court and
3 served copies of such objection on Lead Counsel and Representative Defendants'
4 Counsel at the addresses set forth below such that they are received no later May 9,
5 2018.

6 **Lead Counsel**

Representative Defendants' Counsel

7 **Bernstein Litowitz Berger &**
8 **Grossmann LLP**
Mark Lebovitch
1251 Avenue of the Americas
New York, NY 10020

Hueston Hennington LLP
John C. Hueston
523 West 6th Street
Los Angeles, CA 90014

10 **Kessler Topaz Meltzer & Check, LLP**
Lee Rudy
280 King of Prussia Road
Radnor, PA 19087

Kirkland & Ellis LLP
Mark Holscher
333 South Hope Street
Los Angeles, CA 90071

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13 14. Any objections, filings, and other submissions by the objecting Class
14 Member: (i) must state the name, address, and telephone number of the person or
15 entity objecting and must be signed by the objector; (ii) must contain a statement of
16 the Class Member's objection or objections, and the specific reasons for each
17 objection, including any legal and evidentiary support the Class Member wishes to
18 bring to the Court's attention; and (iii) must include documents sufficient to prove
19 membership in the Class, including the number of shares of Allergan common stock
20 that the objector purchased and/or sold during the Class Period, as well as the number

1 of shares, dates, and prices for each such purchase and sale. Objectors who enter an
2 appearance and desire to present evidence at the Settlement Hearing in support of
3 their objection must include in their written objection or notice of appearance the
4 identity of any witnesses they may call to testify and any exhibits they intend to
5 introduce into evidence at the hearing.

6 15. Any Class Member that does not make his, her, or its objection in the
7 manner provided herein shall be deemed to have waived his, her, or its right to object
8 to any aspect of the proposed Settlement, the proposed Plan of Allocation, and/or
9 Lead Counsel's motion for an award of attorneys' fees and reimbursement of
10 Litigation Expenses and shall be forever barred and foreclosed from objecting to the
11 fairness, reasonableness, or adequacy of the Settlement, the Plan of Allocation, or
12 the requested attorneys' fees and Litigation Expenses, or from otherwise being heard
13 concerning the Settlement, the Plan of Allocation, or the requested attorneys' fees
14 and Litigation Expenses in this or any other proceeding.

15 16. **Stay and Temporary Injunction** – Until otherwise ordered by the
16 Court, the Court stays all proceedings in the Action other than proceedings necessary
17 to carry out or enforce the terms and conditions of the Stipulation. Pending final
18 determination of whether the Settlement should be approved, the Court bars and
19 enjoins Plaintiffs, and all other members of the Class, from commencing or
20 prosecuting any and all of the Released Plaintiffs' Claims against each and all of the

1 Defendants' Releasees. For the avoidance of doubt, nothing in this Order, the
2 Stipulation, or any other documentation of the Settlement prevents the Court from –
3 in form or substance – issuing its final summary judgment rulings or findings, as
4 described to the Parties during the January 16, 2018 hearing in the Action.

5 17. **Notice and Administration Costs** – All reasonable Notice and
6 Administration Costs shall be paid as set forth in the Stipulation without further
7 order of the Court.

8 18. **Settlement Fund** – The contents of the Settlement Fund held by
9 Huntington National Bank (which the Court approves as the Escrow Agent), shall
10 be deemed and considered to be *in custodia legis* of the Court, and shall remain
11 subject to the jurisdiction of the Court, until such time as they shall be distributed
12 pursuant to the Stipulation and/or further order(s) of the Court.

13 19. **Taxes** – Lead Counsel are authorized and directed to prepare any tax
14 returns and any other tax reporting form for or in respect to the Settlement Fund, to
15 pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund,
16 and to otherwise perform all obligations with respect to Taxes and any reporting or
17 filings in respect thereof without further order of the Court in a manner consistent
18 with the provisions of the Stipulation.

19 20. **Termination of Settlement** – If the Settlement is terminated as
20 provided in the Stipulation, the Settlement is not approved, or the Effective Date of

1 the Settlement otherwise fails to occur, this Order shall be vacated, rendered null and
2 void and be of no further force and effect, except as otherwise provided by the
3 Stipulation, and this Order shall be without prejudice to the rights of Plaintiffs, the
4 other Class Members, and Defendants, and the Parties shall revert to their respective
5 positions in the Action as of December 28, 2017, as provided in the Stipulation.

6 21. **Use of this Order** – Neither this Order, the Term Sheet, the Stipulation
7 (whether or not consummated), including the exhibits thereto and the Plan of
8 Allocation contained therein (or any other plan of allocation that may be approved
9 by the Court), the negotiations leading to the execution of the Term Sheet and the
10 Stipulation, nor any proceedings taken pursuant to or in connection with the Term
11 Sheet, the Stipulation and/or approval of the Settlement (including any arguments
12 proffered in connection therewith): (i) shall be offered against any of the
13 Defendants’ Releasees as evidence of, or construed as, or deemed to be evidence of
14 any presumption, concession, or admission by any of the Defendants’ Releasees with
15 respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that
16 was or could have been asserted or the deficiency of any defense that has been or
17 could have been asserted in this Action or in any other litigation, or of any liability,
18 negligence, fault, or other wrongdoing of any kind of any of the Defendants’
19 Releasees or in any way referred to for any other reason as against any of the
20 Defendants’ Releasees, in any civil, criminal, or administrative action or proceeding,

1 other than such proceedings as may be necessary to effectuate the provisions of the
2 Stipulation; (ii) shall be offered against any of the Plaintiffs' Releasees, as evidence
3 of, or construed as, or deemed to be evidence of any presumption, concession, or
4 admission by any of the Plaintiffs' Releasees that any of their claims are without
5 merit, that any of the Defendants' Releasees had meritorious defenses, or that
6 damages recoverable under the Complaint would not have exceeded the Settlement
7 Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind,
8 or in any way referred to for any other reason as against any of the Plaintiffs'
9 Releasees, in any civil, criminal, or administrative action or proceeding, other than
10 such proceedings as may be necessary to effectuate the provisions of the Stipulation;
11 or (iii) shall be construed against any of the Releasees as an admission, concession,
12 or presumption that the consideration to be given under the Settlement represents the
13 amount which could be or would have been recovered after trial; *provided, however,*
14 that if the Stipulation is approved by the Court, the Parties, the Releasees, and their
15 respective counsel may refer to it to effectuate the protections from liability granted
16 thereunder or otherwise to enforce the terms of the Settlement.

17 22. **Supporting Papers** – Lead Counsel shall file and serve the opening
18 papers in support of the proposed Settlement, the Plan of Allocation, and Lead
19 Counsel's motion for an award of attorneys' fees and reimbursement of Litigation
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1 Expenses no later than April 25, 2018; and reply papers, if any, shall be filed and
2 served no later than May 23, 2018.

3 23. The Court retains jurisdiction to consider all further applications arising
4 out of or connected with the proposed Settlement.

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6 SO ORDERED this 19th day of March, 2018.

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The Honorable David O. Carter
United States District Judge