

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION) MDL 2804
OPIATE LITIGATION)
)
THIS DOCUMENT RELATES TO:) Case No. 1:17-md-2804
)
) Judge Dan Aaron Polster
All Cases Naming Sandoz Inc. or Novartis)
Pharmaceuticals Corporation as Defendant(s))

**ORDER TO ESTABLISH QUALIFIED SETTLEMENT FUND AND APPOINT
SETTLEMENT REFEREE FOR SANDOZ SETTLEMENT AGREEMENT**

Sandoz Inc. (“Sandoz”) and the Plaintiffs’ Executive Committee (“PEC”) appointed by this Court, on behalf of the subdivisions and tribes that have reached resolution (the “Sandoz Settlement Agreement”)¹ with Sandoz², seek entry of an Order: (i) approving the establishment, under this Court’s continuing jurisdiction, of a qualified settlement fund within the meaning of section 468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulation Sections 1.468B-1, *et seq.*, which is more specifically described in the Sandoz Settlement Agreement and which shall be called the Sandoz Settlement Fund; and (ii) appointing a Settlement Referee for the Sandoz Settlement Fund. This Order is intended to facilitate and be wholly consistent with the Sandoz Settlement Agreement, and in the event of any inconsistency between this Order and the Sandoz Settlement Agreement, the Sandoz Settlement Agreement shall control.

¹ Any capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Sandoz Settlement Agreement. For the avoidance of doubt, the term “Sandoz Settlement Agreement” shall refer to the Sandoz Settlement Agreement between and among Participating Subdivisions and Participating Tribes, and Sandoz (in each case as defined in the Sandoz Settlement Agreement), to take effect as of the Effective Date as defined in the Sandoz Settlement Agreement, inclusive of all exhibits thereof.

² “Sandoz” means Sandoz Inc. and all of its respective past and present direct or indirect parents, subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, or assigns, including but not limited to Sandoz International GmbH, Novartis Pharmaceuticals Corporation, and Novartis AG and its subsidiaries and affiliates, including but not limited to Novartis Manufacturing LLC, Novartis Institutes for Biomedical Research, Inc., Novartis Corporation, and Novartis Consumer Health. This definition of “Sandoz” survives any spin-off, separation, or other corporate change-of-control transaction that results in Sandoz Inc. separating from or no longer being a direct or indirect subsidiary of one or more other Sandoz or Novartis entities.

I. Creation of the Sandoz Settlement Fund Under MDL Court Jurisdiction

Pursuant to the terms of the Sandoz Settlement Agreement, Sandoz has agreed to make payments into the Sandoz Settlement Fund, subject to the conditions set forth in and more specifically described in the Sandoz Settlement Agreement, under the continuing jurisdiction of this Court, that will be administered by the Settlement Referee and will be allocated and used as specified in the Sandoz Settlement Agreement to pay distributions to Participating Subdivisions and Participating Tribes, and to comply with the Ongoing Common Benefit Order (Dkt. #4428).

The Court establishes the Sandoz Settlement Fund, as described in and pursuant to the Sandoz Settlement Agreement. Subject to the Court's interpretation and application of the Sandoz Settlement Agreement, which allows for certain reductions, suspensions, or offsets, and conditioned upon the Court approving and entering this Order on or before December 11, 2023, Sandoz shall pay into the Sandoz Settlement Fund the sum of Ninety-Nine Million Five Hundred Thousand Dollars (\$99,500,000.00) (the "Sandoz Payment") on or before December 22, 2023. Should the Sandoz Settlement Agreement not become effective (including but not limited to the conditions not being satisfied to commence the Effective Date), or should the conditions for making payments set forth in the Sandoz Settlement Agreement not be satisfied (including but not limited to the condition that at least Eighty-Five Percent (85%) of Litigating Subdivisions and Litigating Tribes sign Subdivision Participation Forms or Tribe Participation Forms), or should any provision of the Sandoz Settlement Agreement pertaining to reductions, refunds, suspensions, or offsets be triggered, the Sandoz Payment shall revert in whole or in part as appropriate from the Sandoz Settlement Fund to Sandoz consistent with the provisions in the Sandoz Settlement Agreement, and the Settlement Referee shall promptly return the Sandoz Payment to Sandoz in whole or in part as appropriate. As of the date of this Order, the parties have extended the Effective Date

deadline to March 31, 2024 (subject to further extensions as permitted by the Sandoz Settlement Agreement).

II. Appointment of Settlement Referee

The Sandoz Settlement Fund shall be structured and operated in a manner so that it qualifies as a “qualified settlement fund” as described in Treasury Regulations Section 1.468B-1, and shall remain subject to the continuing jurisdiction of this Court.

The Court appoints David R. Cohen (the “Settlement Referee”) to serve as Trustee, Administrator, and/or Settlement Referee of this qualified settlement fund for purposes of Treasury Regulations Section 1.468B-2(k)(3) and for purposes of performing the role of the Settlement Referee as set forth in the Sandoz Settlement Agreement. The Settlement Referee shall be responsible for making any necessary tax filings and payments of taxes, estimated taxes, and associated interest and penalties, if any, by the Sandoz Settlement Fund. The Settlement Referee shall be responsible for responding to any questions from, or audits regarding, such taxes by the Internal Revenue Service or any state or local tax authority, as well as questions from the Department of Labor.

The Settlement Referee shall also be responsible for complying with all tax information reporting and withholding requirements with respect to payments made by the Sandoz Settlement Fund, as well as paying any associated interest and penalties. All such tax, interest, and penalty payments and all expenses and costs incurred in connection with taxation of the Sandoz Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) shall be paid from the Sandoz Settlement Fund and shall be considered administrative costs of the settlement.

With respect to work undertaken by the Settlement Referee prior to the fulfillment of the conditions precedent of the Sandoz Settlement Agreement, such costs shall be paid from the first interest generated by the Sandoz Settlement Fund, or from the Sandoz Settlement Fund.

No bond shall be required. The Sandoz Settlement Fund shall be held under this Court's ongoing jurisdiction at Huntington Bank, or at another financial institution selected by the Settlement Referee in his discretion and approved by the Court. All amounts deposited in the Sandoz Settlement Fund shall be invested conservatively in a manner designed to assure timely availability of funds, protection of principal, and avoidance of concentration risk. The services of the Settlement Referee, and any vendors and services he determines to be necessary and appropriate to conduct and complete his work, shall be paid or reimbursed from the interest earned or from the Sandoz Settlement Fund. The immunity and indemnity provisions applicable to the "Arbiters" that are set out in the Court's Order at docket no. 4030 shall apply equally to the Settlement Referee. *See also* docket no. 5090.

The Settlement Referee will obtain a Federal Taxpayer Identification Number for the Sandoz Settlement Fund upon entry of this Order by this Court establishing the Sandoz Settlement Fund, and the Settlement Referee will also take such other actions he determines to be necessary and appropriate in connection with the establishment of the Sandoz Settlement Fund, including the creation of a trust to serve as the legal entity that operates and administers the Sandoz Settlement Fund. The Settlement Referee shall be authorized, upon final distribution of all monies paid into the Sandoz Settlement Fund, to take appropriate steps to wind down the Sandoz Settlement Fund and thereafter be discharged from any further responsibility with respect to the Sandoz Settlement Fund.

WHEREFORE, as set forth in detail above, the Court grants the request of the PEC and Sandoz, and hereby:

- A. Consents to take continuing jurisdiction over the Sandoz Settlement Fund pursuant to Treasury Regulation Section 1.468B-1(c)(1); and

- B. Establishes the Sandoz Settlement Fund, as described in and pursuant to the Sandoz Settlement Agreement, and appoints David R. Cohen as Trustee, Administrator, and/or Settlement Referee consistent with the terms of the Sandoz Settlement Agreement.

This Court will enter such further Orders as may be necessary and appropriate regarding all of the matters addressed herein.

IT IS SO ORDERED.

/s/ Dan Aaron Polster
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

Dated: November 30, 2023