

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

EUFAULA DRUGS, INC., *et al.*,)
)
 Plaintiffs,)
)
 v.) CASE NO. 2:05-cv-293-MEF
)
 TDI MANAGED CARE SERVICES,)
 INC., *et al.*,)
)
 Defendants.)

ORDER

On May 29, 2009, the parties to the above-entitled action (the “Action”), plaintiffs Eufaula Drugs, Inc. and Scott-Cook, Inc. (together, “Plaintiffs”) and defendants TDI Managed Care Services, Inc. and Eckerd Health Services (together, “EHS”), entered into a Stipulation of Settlement (the “Settlement Agreement”) which is subject to review under Rule 23(e) of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions for the proposed settlement of the Settled Claims on the merits and with prejudice; and

WHEREAS, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Action was previously certified as a class action on behalf of a plaintiff class defined as follows:

All pharmacies and/or other similar entities, who entered into a contract which provided for reimbursement of prescriptions according to a formula which included the Average Wholesale Price (“AWP”) with Defendant and/or its

predecessors in interest, their successors in interest, and/or their subsidiaries and/or their related entities from February 14, 1999 to October 23, 2003, inclusive.

and notice was previously given to the members of the Class advising them of the pendency of the Action as a class action and Class Members were given the opportunity to exclude themselves from the Class; and

WHEREAS, the parties have submitted herewith a Joint Motion For Preliminary Approval Of Settlement And For Order Directing Notice To The Class (the "Motion") seeking preliminary approval of the settlement set forth in the Settlement Agreement and approving dissemination to the Class of the proposed notice (the "Notice") referenced in the Motion and attached as Exhibit E to the Settlement Agreement; and

WHEREAS, the Court having read and considered the Settlement Agreement and the accompanying documents, and the parties to the Settlement Agreement having consented to the entry of this Order, and all capitalized terms used herein having the meanings defined in the Settlement Agreement;

It is hereby

ORDERED that:

1. A Settlement Fairness Hearing (the "Settlement Fairness Hearing") shall be held before the Court on **Friday, November 6, 2009, at 9:00A.M.** in the United States District Court for the Middle District of Alabama, Northern Division, in the United States Courthouse, One Church Street, Courtroom 2A, Montgomery, Alabama, for the purposes of:

1. Determining whether the proposed Settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be approved by the Court, and whether the Order and Final Judgment provided for in the Settlement Agreement should be entered thereon;
2. Determining whether the proposed allocation of the proceeds of the Settlement is fair and reasonable, and should be approved by the Court;
3. Considering the application of Class Counsel for Class Counsel Fees and Expenses;
4. Considering the application of Class Counsel for Class Representative Awards to Plaintiffs; and
5. Ruling on such other matters as the Court may deem appropriate.

The Court may adjourn the Settlement Fairness Hearing (including consideration of Class Counsel's application for an award of Class Counsel Fees and Expenses) or any adjournment thereof without further notice to the Class other than by announcement at the Settlement Fairness Hearing or any adjournment thereof.

2. The Court approves the form, substance and requirements of the Notice attached as Exhibit E to the Settlement Agreement.
3. The Court approves the appointment of Administar Services Group LLC as the Settlement Administrator for the Settlement.
4. No later than ten (10) business days after the date of this Order the Settlement

Administrator shall:

1. Cause copies of the Notice to be mailed by first-class mail to all Class Members;
and
2. Cause copies of the Claim Form to be mailed by first-class mail to all Class Members that are entitled to receive Claim Forms pursuant to the Settlement Agreement.

At or before the Settlement Fairness Hearing, the parties shall file proof, by affidavit, of such mailings. EHS shall pay all reasonable costs and expenses related to the delivery of the Notice.

5. No later than ten (10) business days after the date of this Order Class Counsel shall file its Petition for Attorney's Fees and Reimbursement of Expenses.
6. The Court finds that the mailing and distribution of the Notice, substantially in the manner and form set forth in this Order, meets the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.
7. Class Members shall be bound by all determinations and judgments in this Action, whether favorable or unfavorable, unless such persons had previously requested exclusion from the Class. No further opportunity to request exclusion need be given in this Action. No additional requests for exclusion from the Class will be accepted in this Action. The pharmacies that requested exclusion from the Class in response to the prior notice of

pendency of the Action are excluded from the Class and shall not be entitled to receive any of the proceeds of the Settlement as described in the Settlement Agreement and in the Notice.

8. Any Class Member that wishes to receive a distribution of cash pursuant to the Settlement must return a signed Claim Form (a "Settlement Claim") to the Settlement Administrator. In order to constitute a timely Settlement Claim under the Settlement Agreement, the Settlement Claim must be postmarked or received for delivery by a private courier service no later than forty-five (45) days after the deadline for mailing of notice set forth in paragraph 4 of this Order.

9. The Court will consider Class Members' comments and/or objections to the Settlement, the proposed allocation of the proceeds of the Settlement, Class Counsel's application for an award of Class Counsel Fees and Expenses or the Class Representative Awards only if such comments or objections and any supporting papers are filed in writing with the Clerk of the Court no later than forty-five (45) days after the deadline for mailing of notice set forth in paragraph 4 of this Order at the following address:

Ms. Debra P. Hackett
Clerk of Court
U.S. District Court
P.O. Box 711
Montgomery, AL 36101-0711;

and copies of all such papers are served by mail or private delivery service (postmarked or received for delivery (as applicable) no later than forty-five (45) days after the deadline for mailing of notice set forth in paragraph 4 of this Order upon each of the following:

Robert G. Methvin, Jr.
McCALLUM, METHVIN & TERRELL, P.C.
2201 Arlington Avenue South
Birmingham, AL 35205
(On behalf of Plaintiffs and the Class);

Jack B. Hinton, Jr.
GIDIERE, HINTON, HERNDON & CHRISTMAN
904 Regions Tower
60 Commerce Street
Montgomery, AL 36104
(On behalf of EHS); and

Kevin M. McGinty, Esq.
**MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.**
One Financial Center
Boston, MA 02111
(On behalf of EHS)

10. Any Class Member that files and serves a timely written comment or objection may also appear at the Settlement Fairness Hearing either in person or through counsel retained at the Class Member's expense. Attendance at the Settlement Fairness Hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement, the proposed allocation of the proceeds of the Settlement, the application for Class Counsel Fees and Expenses and/or the application for

Class Representative Awards are required to indicate in their written objection their intention to appear at the Settlement Fairness Hearing.

11. Class Members that intend to object to the proposed Settlement, the proposed allocation of the proceeds of the Settlement, the application for Class Counsel Fees and Expenses and/or the application for Class Representative Awards, and desire to present evidence at the Settlement Fairness Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Fairness Hearing. Class Members do not need to appear at the Settlement Fairness Hearing or take any other action to indicate their approval.

12. Unless the Court otherwise directs, no member of the Class shall be entitled to object to the Settlement, the proposed allocation of the proceeds of the Settlement, the application for Class Counsel Fees and Expenses and/or the application for Class Representative Awards, or otherwise to be heard, except by serving and filing written objections as described above. Any Class Member that fails to object in the manner provided above shall be deemed to have waived such objection and shall forever be barred from making any such objection in this Action or in any other action or proceeding. The Court shall not consider comments and/or objections filed

by individuals that excluded themselves from the Class.

13. Following the Settlement Fairness Hearing, if the Court approves the Settlement provided for in the Settlement Agreement, judgment shall be entered substantially in the form attached to the Settlement Agreement.

14. If any specified condition to the Settlement set forth in the Settlement Agreement is not satisfied and Class Counsel or Counsel for EHS elect to terminate the Settlement as provided in the Settlement Agreement, then, in any of such events, the Settlement Agreement, the Settlement proposed in the Settlement Agreement (including any amendments thereof), and any actions taken or to be taken with respect to the Settlement proposed in the Settlement Agreement, and the Settlement shall be of no further force or effect and shall be null and void, and shall be without prejudice to any of the parties hereto, which shall be restored in all respects to their respective positions existing prior to the execution of the Settlement Agreement, except that Defendant shall not be entitled to reimbursement of sums expended for the mailing and distribution of the Notice as directed by this Order.

15. The Court reserves the right to approve the Settlement Agreement and the Settlement with modifications and without further notice to Class

Members, and retains jurisdiction over this Action to consider all further applications arising out of or connected with the proposed Settlement.

16. Pending final determination of whether the Settlement should be approved, Plaintiffs and all Class Members, and any of them, are hereby barred and enjoined from asserting, commencing, prosecuting, assisting, instigating or in any way participating in the commencement or prosecution of any action asserting any Settled Claims.

DONE this 2nd day of July, 2009.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE