

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civ. No. 14-6997 (MCA) (MAH)**

**PLAINTIFFS' UNOPPOSED MOTION TO DISTRIBUTE NOTICE TO  
THE SETTLEMENT CLASS, APPOINT NOTICE AND CLAIMS  
ADMINISTRATOR, AND FOR APPROVAL OF THE PLAN OF  
ALLOCATION**

PLEASE TAKE NOTICE that the undersigned, Interim Co-Lead Counsel for Plaintiffs and the Proposed Class, pursuant to Fed. R. Civ. P. 23, individually and on behalf of a proposed settlement class, will move before the Hon. Madeline Cox Arleo, U.S.D.J., at the Martin Luther King, Jr. Federal Building and Courthouse, 50 Walnut Street, Newark, New Jersey, on a date and time to be set by the Court, for an Order: (1) authorizing distribution of notice to the Settlement Class; (2) appointing KCC, LLC as notice and claims administrator; and (3) approving the plan of allocation. Celgene does not oppose this motion.

The grounds for this motion are set forth more fully in the Memorandum of Law in Support of Plaintiffs' Unopposed Motion to Distribute Notice to the Settlement Class, Appoint Notice and Claims Administrator, and For Approval of the Plan of Allocation, as well as the Declarations of Carla Peak and Dr. Jeffrey J.

Leitzinger and the accompanying exhibits. A proposed form of Order is also attached.

Respectfully submitted,

Dated: April 27, 2020

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## I. INTRODUCTION

On March 30, 2020, Plaintiffs International Union of Bricklayers and Allied Craft Workers Local 1 Health Fund, the City of Providence, International Union of Operating Engineers Local 39 Health and Welfare Trust Fund, The Detectives' Endowment Association, New England Carpenters Health Benefits Fund, and David Mitchell reached a settlement with Defendant Celgene Corporation ("Celgene") that resolved claims for Celgene's allegedly anticompetitive conduct relating to Thalomid and Revlimid (the "Settlement").<sup>1</sup> On April 3, 2020, Plaintiffs moved for preliminary approval of the Settlement. *See* ECF No. 312. Plaintiffs now move the Court to approve the proposed plan to distribute notice to the Settlement Class and to approve the plan of allocation.

Plaintiffs' proposed notice plan mirrors the plan this Court already approved in conjunction with the first proposed settlement between the parties. *See* ECF No. 292. Plaintiffs propose using the same highly experience notice and claims administrator – with the same notice plan – as the Court approved for the prior settlement: KCC, LLC ("KCC"). As described in the accompanying Declaration of Carla Peak ("Peak Decl."), the Vice President of Legal Notification Services at KCC, the proposed notice program uses a combination of individual mailed notice

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<sup>1</sup> The Settlement Agreement between Plaintiffs and Celgene is available at ECF No. 312-3. All definitions in the Settlement Agreement are incorporated herein by reference.

and paid notice placements in industry-related trade media to reach the third-party payor (“TPP”) portion of the Settlement Class, as well as a combination of notice placements in a well-read consumer publication, digital notices placed on a variety of websites, and issuance of a press release to reach the consumer portion of the Settlement Class. Peak Decl. at ¶ 6. The Notice Plan is expected to reach virtually all TPP Settlement Class members and approximately 80% of likely consumer Settlement Class members. *Id.* KCC will also establish a website and a toll-free number for members of the Settlement Class. *Id.* at ¶¶ 26–27.

With respect to the TPP portion of the Settlement Class, KCC will send an email containing a summary of the litigation and Settlement to all TPP entities contained in KCC’s proprietary database and for which KCC possesses an email address (approximately 1,000). Peak Decl. at ¶ 9. In addition, KCC will mail the Long Form Notice (Peak Decl., Ex. 1) via United States Postal Service (USPS) to all TPP entities contained in KCC’s proprietary database (approximately 47,000 contacts).

KCC will mail all entities that previously submitted a claim a copy of the Long Form Notice and a Supplemental Claim Form. *Id.* ¶ 9. The TPP Long Form Notice informs entities that previously submitted claim forms to participate in the prior settlement that they are not required to submit a new claim form – KCC will automatically review and consider all previously submitted claim forms for



distribution of the net Settlement Fund. The Supplemental Claim Form will include the dollar amount of purchases that the Settlement Class member previously claimed, allow the claimant to correct that total, and will allow the claimant to provide the total dollar amount spent on purchases of Thalomid or Revlimid after August 1, 2019 but before the (new) Preliminary Approval Date (the revised extended Settlement Class period). Peak Decl. ¶ 9, n.1. The Supplemental Claim Form will also provide credentials to allow the Settlement Class member to confirm, update and/or supplement their claim online. *Id.*

Furthermore, KCC will publish a digital Notice (Peak Decl., Ex. 2) on trade websites and in trade digital e-newsletters on *ThinkAdvisor.com/Life-Health* and *SHRM.org*, which will result in 425,000 and 9.4 million page views, respectively. *Id.* at ¶ 13. In addition, KCC will publish advertisements in the *ThinkAdvisor Life/Health Daily* e-newsletter (which has over 65,000 subscribers) for approximately one business week, as well as twice in the Society for Human Resource Management's *HR Daily* e-newsletter (with an audience of approximately 460,000). *Id.* at ¶¶ 13–14; Peak Decl. Ex. 2.

With respect to the Consumer portion of the Settlement Class, KCC will place the Summary Notice (Peak Decl., Ex. 4) in *People* magazine, a weekly entertainment magazine that reaches 15.8% of likely Class members. Peak Decl. at ¶¶ 21–22. In addition, KCC will purchase and place 192.9 million internet

impressions programmatically, to be distributed over various websites using multiple ad networks and on Facebook over a period of 60 days. These digital notices and impressions will appear on both desktop and mobile devices and will be targeted to adults 45 years or older. *Id.* at ¶ 24; Peak Decl. Ex. 5.

Unlike the previous settlement, KCC now knows the identity of approximately 8,815 consumers who have claimed to be members of the Settlement Class. KCC will mail a multi-page Long Form Notice and Supplemental Claim Form via United States Postal Service (“USPS”) to all individuals who filed a Claim Form to participate in the previous settlement. The Supplemental Claim Form will include the dollar amount of purchases that the Settlement Class member previously claimed, allow the claimant to correct that total, and will allow the claimant to provide the total dollar amount spent on purchases of Thalomid or Revlimid after August 1, 2019 but before the (new) Preliminary Approval Date (the revised extended Settlement Class period). The Supplemental Claim Form will also provide credentials to allow the Settlement Class member to confirm, update, and/or supplement their claim online. Peak Decl. ¶ 16, Ex. 3.

As set forth in greater detail herein, Plaintiffs’ notice program will fairly apprise potential Settlement Class members of the existence of the Settlement in this lawsuit and their options thereunder. *See generally* Peak Decl. The proposed

Plan of Allocation will fairly compensate Settlement Class members based on the scope of the release provided by Celgene. Accordingly, the Court should approve dissemination of class notice as described herein, appoint KCC as Notice and Claims Administrator, and approve the Plan of Allocation and claim forms (Peak Decl. Exs. 1 and 3) as set forth herein.

As reflected in the Proposed Order submitted herewith, notice can be disseminated within 10 days of the Court's granting of this Motion. The fairness hearing can then be held 133 days after the Court's granting of this Motion.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

In 2014, the first of Plaintiffs' lawsuits against Celgene was filed, alleging that Celgene engaged in a multi-faceted scheme to maintain a monopoly and unlawfully interfere with potential competitors' efforts to enter the market with generic versions of Celgene's brand cancer treatment drugs Thalomid and Revlimid, in violation of section 16 of the Clayton Act, section 2 of the Sherman Act, and various antitrust, unfair and deceptive trade practices, and unjust enrichment claims under the laws of several states. *See* ECF No. 1. Over the next five years, the parties litigated motions to dismiss and class certification motions

and engaged in extensive fact and expert discovery.<sup>2</sup>

In 2019, the parties reached a settlement, which the Court preliminarily approved. The Court approved the notice plan and the plan of allocation, and notice was provided to settlement class members. However, a number of class members chose to opt out of the settlement, which resulted in Celgene exercising its right to terminate the settlement agreement on December 23, 2019. *See* ECF No. 300.

On April 3, 2020, Plaintiffs moved for preliminary approval of a new settlement, on behalf of the following Settlement Class:

All persons or entities who purchased and/or paid for some or all of the purchase price of Thalomid or Revlimid in any form, before the Preliminary Approval Date, in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee, for consumption by themselves, their families, or their members, employees, insureds, participants, or beneficiaries, but excluding the following:

- a. Celgene and its officers, directors, management, employees, subsidiaries, or affiliates;
- b. All federal or state governmental entities, except cities, towns, or municipalities with self-funded prescription drugs plans;
- c. All persons or entities who only purchased Revlimid or

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<sup>2</sup> Plaintiffs respectfully refer the Court to Section II of the Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Proposed Settlement (ECF No. 312-1) for a more complete background and procedural history of this litigation.

Thalomid for purposes of resale directly from Celgene or its affiliates;

- d. The entities on Attachment A to the Settlement Agreement;
- e. Fully insured health plans;
- f. Stop-loss insurers; and
- g. The judges in this case and any members of their immediate families.

*See* ECF No. 312-1, at 6-7. If preliminary approval is granted, the next step in finalizing the Settlement is to notify the Settlement Class, after which a fairness hearing can be held. Plaintiffs, in conjunction with KCC, have therefore developed the robust notice plan described herein to do precisely that.

### **III. STANDARD FOR DISSEMINATING NOTICE**

Federal Rule of Civil Procedure 23(c)(2) provides that class members must receive the “best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.”

Fed. R. Civ. P. 23(c)(2)(B).<sup>3</sup> Similarly, Rule 23(e)(1)(B) requires a court to “direct

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<sup>3</sup> Fed. R. Civ. P. 23(c)(2)(B)(i)-(vii) provides, in relevant part, that “[t]he notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).”

notice in a reasonable manner to all class members who would be bound by the [proposed settlement].” Fed. R. Civ. P. 23(e)(1)(B). “First-class mail and publication consistently have been considered sufficient to satisfy the notice requirements of Rule 23[(c)] and Rule 23(e) for advising class members of a proposed settlement and of their right to file claims.” *Zimmer Paper Prods., Inc. v. Berger & Montague, P.C.*, 758 F.2d 86, 90 (3d Cir. 1985); *see also In re Processed Egg Prods. Antitrust Litig.*, 284 F.R.D. 249, 266 (E.D. Pa. 2012) (quoting *Zimmer* and finding notice by mailing and publication to satisfy Rule 23). In addition, the most recent amendments to Rule 23 expressly provide that notice solely by “electronic means” is appropriate. Fed. R. Civ. P. 23(c)(2)(B) (eff. Dec. 1, 2018).

The notice must state in plain, easily understood language: the nature of the action; the definition of the class certified; the class claims, issues, or defenses; that a class member may enter an appearance through counsel if the member so desires; that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and the binding effect of a class judgment on class members under Rule 23(c)(3). *Processed Egg Prods.*, 284 F.R.D. at 265.

#### **IV. THE PROPOSED NOTICE HERE SATISFIES THE RULE 23 STANDARD**

The content of the proposed mail and publication notices (collectively, the “Notices”) complies with the requirements of Rules 23(c)(2) and 23(e). The

Notices clearly and concisely explain the nature of the action, the Settlement Class, and the terms of the Settlement. *See* Peak Decl. Exs. 1–4. They provide a clear description of the Settlement Class (including a list of the entities that have been excluded by name from the Settlement Class) and the binding effect of membership in the Settlement Class, as well as information that a member of the Settlement Class will need to actually file a claim against the Settlement Fund. *Id.* The Notices also explain how to exclude oneself from the Settlement Class, the right to object to the Settlement Agreement, how to obtain copies of the Notices and Settlement Agreement, and how to contact Settlement Class Counsel and the Claims Administrator. *Id.*

Settlement Class Counsel propose a notice plan that will maximize the opportunity for members of the Class to understand the nature of the litigation, the Settlement, and to respond if they so choose. Plaintiffs, working with KCC, have designed a multipronged notice plan that includes direct notice to Settlement Class members (where possible), published notice in two trade publications that members of the Settlement Class are likely to review, millions of targeted internet and digital impressions, the creation of a settlement website, establishment of a toll-free number where class members can obtain additional information, and an informational press release. *See* Peak Decl. at ¶¶ 9-23.

Plaintiffs have endeavored to secure the most efficient notice program

possible, based on the goal of reaching the broadest cross-section of Settlement Class members. With respect to the TPP portion of the Settlement Class, KCC's direct emailing and mailing of the Long Form Notice, publication of the Summary Notice in two e-newsletters,<sup>4</sup> and advertisements on two trade websites/digital e-newsletters<sup>5</sup> will mean that virtually all TPP members of the Settlement Class (who incurred the vast majority of the damages allegedly suffered by Settlement Class members) will receive notice of the Settlement. *See* Peak Decl. at ¶¶ 6, 9-13. With respect to the consumer portion of the Settlement Class, placement of the Summary Notice in *People* magazine, and distribution of over 192.9 million targeted internet

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<sup>4</sup> *HR Daily* has been selected as it is the daily e-newsletter of the Society for Human Resource Management, which delivers breaking news to more than 460,000 people each weekday. *See* Peak Decl. at ¶ 14. *ThinkAdvisor/Life/Health Daily* has been selected as it provides up-to-the-minute news coverage to a targeted audience of over 65,000 subscribers. *Id.*

<sup>5</sup> *ThinkAdvisor's Life/Health Insurance* channel, with an audience of 140,000 average monthly visitors and nearly 425,000 monthly page views, provides insurance agents and investment advisors with comprehensive coverage of the products and services necessary to guide clients in developing life insurance strategies and informed decisions regarding health insurance, annuities, and their practice. *SHRM.org* is the official website of the Society for Human Resource Management, and its audience includes over 2 million unique monthly visitors and over 9.4 million page views per month. Digital notices will appear on these websites/digital e-newsletters for approximately one month each. *See* Peak Decl. at ¶ 14.



impressions<sup>6</sup> will mean that approximately 80% of all consumer members of the Settlement Class will receive notice of the Settlement. *Id.* at ¶¶ 6, 21–25.

In addition, the Settlement website will post case and Settlement-related materials, including the Orders granting preliminary approval, the Settlement Agreement itself, the Notices, the operative Complaint, the claim forms, and a toll-free information number. *See* Peak Decl. at ¶ 27. Links to the foregoing website will also be accessible to Settlement Class members on the websites of Settlement Class Counsel. The internet domain name and toll-free number will be identified on the Notices. *Id.* at Exs. 1–4.

Such notice plans are commonly used in class actions like this and constitute valid, due, and sufficient notice to Settlement Class members, and satisfy both Rule 23(c)(2)(B)’s “best notice practicable” standard and Rule 23(e)(1)’s “notice in a reasonable manner” standard. *See, e.g.,* 5 James Wm. Moore, Moore’s Fed. Prac., § 23.102[3][a]–[c] (3d ed. 2014). The Court should therefore approve the notice program described herein, which is substantially the same notice program the Court approved with respect to the first proposed settlement. *See* ECF No. 292;

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<sup>6</sup> These will be distributed over various websites using multiple ad networks and on the social media platform Facebook, over a period of 60 days. The impressions will appear on both desktop and mobile devices (including smartphones and tablets), in display and native ad formats. These digital notices and impressions will be targeted to adults 45 years of age or older and will include an embedded link to the Settlement website. *See* Peak Decl. at ¶ 24.

*Zimmer Paper*, 758 F.2d at 90.

**V. THE COURT SHOULD APPROVE KCC AS NOTICE AND CLAIMS ADMINISTRATOR**

Plaintiffs respectfully submit that the Court should also approve KCC to serve as the notice and claims administrator for the Settlement. KCC is a well-known firm with a history of successfully administering many class action settlements. *See* Peak Decl. at ¶¶ 3-5. With respect to the first proposed settlement, Settlement Class Counsel selected KCC after a rigorous bid process, including obtaining and reviewing proposals from 6 other administration firms. Settlement Class Counsel believe that KCC will be able to meet the obligations imposed on a notice and claims administrator under the Settlement in a cost-effective manner. *Id.* Importantly, KCC has the institutional knowledge it acquired from working as the notice and claims administrator for the first proposed settlement, which had progressed past the opt out, objection, and claims submission deadline at the time Celgene rescinded that agreement. This includes, *inter alia*, the fact that KCC has all the claim forms submitted for the first proposed settlement, which will automatically be evaluated for eligibility to receive a payment if the Settlement is approved.

**VI. PLAINTIFFS' PROPOSED PLAN OF ALLOCATION IS FAIR AND REASONABLE**

Plans of allocation, like settlement agreements, must be approved if fair,

reasonable, and adequate. *In re Computron Software, Inc.*, 6 F. Supp. 2d 313, 321 (D.N.J. 1998). “The court’s principal obligation is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund.” *Walsh v. Great Atl. & Pac. Tea Co.*, 726 F.2d 956, 964 (3d Cir. 1983).

The proposed Plan of Allocation will fairly compensate Settlement Class members for injuries actionable under U.S. and state antitrust and other laws because it is a *pro rata* distribution of the Settlement Fund in proportion to the money spent on Thalomid and Revlimid made by each Settlement Class member who files a claim form. Specifically, the Net Settlement Fund will be divided into four pools of funds based on Plaintiffs’ expert’s calculations.<sup>7</sup> As he did for the

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<sup>7</sup> Division of net settlement funds into separate pools by type of claimant is a commonly approved allocation method in end payor class actions, like this one, involving third party payors and consumers. *See, e.g., In re Aggrenox Antitrust Litig.*, No. 14-md-2516, ECF No. 812-2 (D. Conn. July 5, 2018) (“the Net Settlement Fund will be divided into two pools, one for consumers and one for third-party payors. . . . Eligible Claimants shall be paid out of each Allocation Pool for which they are eligible. . . . [The] allocation will be on a pro rata basis . . . in proportion to how much Aggrenox® and/or generic Aggrenox® the Eligible Claimant purchased, paid for or reimbursed”); *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 14-md-2503 (D. Mass.), Plan of Allocation available at [https://www.solodyncase.com/court\\_docs](https://www.solodyncase.com/court_docs) at ¶¶ 2, 8, 12 (defining “Allocation Pool” to “mean the Consumer Pool and the Third-Party Payor Pool” and providing that “[t]o determine each Eligible Claimant’s Qualifying Claim pro rata share of an Allocation Pool, the Claims Administrator shall multiply the total value of that Allocation pool by a fraction, for which (a) the numerator is the Qualifying Claim for that Eligible Claimant for that Allocation Pool, and (b) the denominator is the sum total of all Qualifying Claims by all Eligible Claimants for that Allocation Pool,” where “Qualifying Claim” meant “the amount the Claimant paid for Solodyn”).

prior settlement, Dr. Leitzinger provided shares of total damages for the settlement class states attributable to purchases of Thalomid versus Revlimid, as well as the share of damages as to each of those drugs represented by TPPs as compared with consumers. Declaration of Jeffrey J. Leitzinger, Ph.D., ¶ 2; *see also* ECF No. 291-11. At the request of Settlement Class Counsel, Dr. Leitzinger has revised his estimates of the pro rata allocation between the four pools of funds using the data provided by the opt out TPPs (who are now excluded from the Settlement Class). Declaration of Jeffrey J. Leitzinger, Ph.D., ¶ 2. Based on these revised estimates, 5.5% of the Net Settlement Fund will go to Thalomid purchasers (with 15.5% to consumers and 84.5% to TPPs) and 94.5% of the Net Settlement Fund will go to Revlimid purchasers (13.5% to consumers and 86.5% to TPPs). *Id.* at ¶ 3. Eligible claimants shall be paid out of each allocation pool for which they are eligible. For consumers, the allocation will be determined based on the amount each consumer claimant spent on the drug as a percentage of the total amount spent by all consumer claimants.<sup>8</sup> For TPPs, the allocation will be determined based on the amount each such claimant spent as a percentage of the total amount spent by all TPP claimants.<sup>9</sup> Plaintiffs' proposed long-form notices reflect this information. *See* Peak Decl., Ex. 1 and Ex. 3.

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<sup>8</sup> Consumers will be able to estimate the amount of money they spent on Thalomid or Revlimid (whether copays, coinsurance, or other out-of-pocket costs).

<sup>9</sup> For TPPs, this will be assessed by reference to transaction data.

This process will allow the Claims Administrator to accurately calculate the proper distributions to be made to Settlement Class members. The Plan of Allocation treats all similarly situated Settlement Class Members equally and ensures that everyone will receive a share of the Settlement Fund on the basis of their applicable purchases. Because that is eminently fair and reasonable, the Court should approve the Plan of Allocation. *Computron Software*, 6 F. Supp. 2d at 321 (approving plan of allocation that provided class members with “a pro rata share of their defined loss.”).

## **VII. THE COURT SHOULD SCHEDULE A FAIRNESS HEARING**

Plaintiffs respectfully request that the Court schedule a Fairness Hearing in connection with the Settlement. At the hearing, the Court should consider whether the Settlement is fair, reasonable, and adequate. The Proposed Order filed herewith provides that Settlement Class members requesting exclusion from the Settlement Class must comply with the requirements set forth in the notices distributed to Settlement Class members no later than 118 days after entry of the Proposed Order filed herewith (the “Opt-Out Deadline”). *See* Proposed Order ¶ 10. Papers in support of final approval of the Settlement are to be submitted 80 days after entry of the Proposed Order filed herewith. *Id.* at ¶ 11. Settlement Class members who intend to object to the fairness, reasonableness, and adequacy of the Settlement must file and serve a signed statement no later than 118 days after the Court enters

the Proposed Order filed herewith. *Id.* at ¶ 10.

Plaintiffs respectfully suggest that scheduling a Fairness Hearing for a date 133 days after the entry of the Proposed Order, or as soon thereafter as is convenient for the Court, will provide the parties and Settlement Class member sufficient time to comply with each of these deadlines.

### **VIII. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Unopposed Motion to Distribute Notice to the Settlement Class and For Approval of the Plan of Allocation, and that the Court schedule a Fairness Hearing in connection with the Settlement.

Respectfully submitted,

Dated: April 27, 2020

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civ. No. 14-6997 (MCA) (MAH)**

**DECLARATION OF CARLA PEAK IN SUPPORT OF SETTLEMENT NOTICE PLAN**

I, Carla Peak, declare and state as follows:

1. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct. I am Vice President of Legal Notification Services at KCC, LLC (“KCC”). KCC is an experienced national class action notice provider and class administrator with experience in administering class action settlements. KCC’s services include pre-settlement consulting, settlement fund escrow, disbursement and tax reporting, class member data management, legal notification, call center support, and claims administration.

2. This declaration will describe KCC’s experience, as well as the notice program (the “Notice Plan”) proposed for this case, including how the Notice Plan was developed.

**EXPERIENCE**

3. KCC is a class action administrator that specializes in providing comprehensive class action services including, but not limited to, pre-settlement consulting, email and mailing campaign implementation, website design, claims administration, check and voucher disbursements, tax reporting, settlement fund escrow and reporting, class member data management, legal notification, call center support, claims administration, and other related services critical to the effective administration of class actions. KCC has developed efficient, secure and cost-effective methods to properly handle the voluminous data and mailings associated with the noticing, claims processing and disbursement requirements of settlements to ensure the orderly and fair treatment of class members and all parties in interest.

4. An industry leader, KCC has implemented more than 6,000 successful class action

notice and settlement administration matters and handled thousands of distributions in other contexts. Our experience includes many of the largest and most complex settlement administrations of both private litigation and of actions brought by state and federal government regulators.

5. More specifically, KCC has been appointed as the notice or claims administrator in many direct and indirect purchaser antitrust class actions. For example, *In re Asacol Antitrust Litigation*, No. 1:15-cv-12730 (D. Mass.) (end-payor notice administrator and direct purchaser claims administrator); *In re Lidoderm Antitrust Litigation*, No. 3:14-md-02521 (N.D. Cal.) (end-payor notice administrator); *In re Solodyn (Minocycline Hydrochloride) Antitrust Litigation*, No. 14-md-2503 (D. Mass.); *In re: Nexium (Esomeprazole) Antitrust Litigation*, No. 1:12-md-2409 (D. Mass.); *In re: Skelaxin (Metaxalone) Antitrust Litigation*, No. 1:12-md-2343 (E.D. Tenn.) (notice and claims administrator); *In re: NCAA Athletic Grant-In-Aid Antitrust Litigation*, No. 14-md-2541 (N.D. Cal.); *In Re Korean Ramen Antitrust Litigation*, No. 13-cv-4115 (N.D. Cal.); *In re Lithium Ion Batteries Indirect Antitrust Litigation*, No. 13-md-02420 (N.D. Cal.) (claims administrator); *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Company, Ltd.*, No. 2:09-cv-00852 (E.D. Wis.) (claims administrator in both direct and indirect purchaser settlements); *The Dial Corporation, et al. v. News Corporation.*, No. 1:13-cv-06802 (S.D.N.Y.) (claims administrator); *In re Hypodermic Products Antitrust Litigation*, No. 05-cv-1602 (D. N.J.) (claims administrator); *In re Domestic Drywall Antitrust Litigation*, No. 2:13-md-02437 (E.D. Pa.) (claims administrator); *In re Potash Antitrust Litigation (II)*, No. 1:08-cv-06910 (N.D. Ill.) (claims administrator); *In re Aftermarket Filters Antitrust Litigation*, No. 1:08-cv-04883 (N.D. Ill.) (claims administrator); *Grand Strand Water & Sewer Authority v. Oltrin Solutions, LLC*, No. 4:14-cv-2800 (D. S.C.); *In re: Fresh and Process Potatoes Antitrust Litigation*, 4:10-md-02186 (D. Idaho) (claims administrator); *In re Blood Reagents Antitrust Litigation*, No. 09-md-2081 (E.D. Pa.); *In re Titanium Dioxide Antitrust Litigation*, No. 10-cv-00318 (D. Md.). More information on KCC's experience can be found at [www.kccllc.com](http://www.kccllc.com).

## **OVERVIEW**

6. The proposed Notice Plan, mirroring the Notice Plan for the previous settlement, uses a combination of individual mailed notice and paid notice placements in industry-related trade media to reach the third-party payor (“TPP”) portion of the Settlement Class, as well as a combination of notice placements in a well-read consumer publication and digital notices placed on a variety of websites to reach the consumer portion of the Settlement Class. The Notice Plan is expected to reach virtually all TPP Settlement Class members and approximately 80% of likely consumer Settlement Class members.

7. The reach of the Notice Plan is consistent with other effective court-approved notice programs. Additionally, the Federal Judicial Center’s (“FJC”) Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide (the “FJC Checklist”) considers 70-95% reach among class members reasonable.

## **NOTICE PLAN SUMMARY**

### *Case Analysis*

8. The Settlement Class consists of all persons or entities who purchased and/or paid for some or all of the purchase price of Thalomid or Revlimid in any form, before the Preliminary Approval Date, in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee, for consumption by themselves, their families, or their members, employees, insureds, participants, or beneficiaries, but excluding the following:

- a. Celgene and its officers, directors, management, employees, subsidiaries, or affiliates;
- b. All federal or state governmental entities, except cities, towns, or municipalities with self-funded prescription drug plans;
- c. All persons or entities who only purchased Revlimid or Thalomid for purposes of resale directly from Celgene or its affiliates;
- d. The entities on Attachment A to the Settlement Agreement;

- e. Fully insured health plans;
- f. Stop-loss insurers; and
- g. The judges in this case and any members of their immediate families.

### ***TPP Mailing***

9. As was done for the previous settlement, an Email containing a summary of the litigation and settlement will be sent to all TPP entities contained in KCC's proprietary database and for which KCC possesses an email address (approximately 1,000 contacts). A multi-page Long Form Notice and Claim Form will be mailed via United States Postal Service ("USPS") mail to all TPP entities contained in KCC's proprietary database (approximately 47,000 contacts), as well as all Settlement Class members who previously submitted a Claim Form.<sup>1</sup> This database generally includes health insurance companies, fully and partially self-funded health and welfare groups, as well as third-party administration companies.

10. Prior to mailing, the addresses will be checked against the National Change of Address ("NCOA")<sup>2</sup> database maintained by the USPS; certified via the Coding Accuracy Support System ("CASS");<sup>3</sup> and verified through Delivery Point Validation ("DPV").<sup>4</sup>

11. Notices returned by USPS as undeliverable will be re-mailed to any address available through postal service information. For example, such notices would be mailed to the address provided by the USPS on returned pieces for which the automatic forwarding order has

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<sup>1</sup> TPP entities who did not submit a claim in the previous settlement will receive a generic Claim Form. Settlement Class members who previously submitted a Claim Form will receive a Long Form Notice and Supplemental Claim Form. The Supplemental Claim Form will include the Settlement Class member's previously recorded claim total, and allow them to confirm or update the previously recorded total, as well as include additional purchases made after the preliminary approval date of the prior settlement, but before the preliminary approval date of this settlement (to cover the entirety of the settlement class period). The Supplemental Claim Form will also provide online credentials to allow the Settlement Class member to confirm, update and/or supplement their claim online.

<sup>2</sup> The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and last known address.

<sup>3</sup> Coding Accuracy Support System is a certification system used by the USPS to ensure the quality of ZIP+4 coding systems.

<sup>4</sup> Records that are ZIP+4 coded are then sent through Delivery Point Validation to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses and reports exactly what is wrong with incorrect addresses.

expired, but is still within the period that the USPS returns the piece with a new address provided on the forwarding order expiration sticker. Any returned mailing that does not contain an expired forwarding order with a new address indicated will be researched through standard skip tracing and re-mailed if a new address is obtained. The mailing database will be updated with new address information from re-mails and successful address searches.

12. A copy of the TPP Long Form Notice, Supplemental Claim Form, generic Claim Form, and Email Notice are attached as **Exhibit 1**.

***TPP Paid Media***

13. As was done for the previous settlement, coverage among the TPP portion of the Settlement Class will be further extended through the use of advertising on trade websites and in trade digital e-newsletters. Specifically, digital Notices will appear on *ThinkAdvisor.com/Life-Health* and *SHRM.org*. *ThinkAdvisor's Life/Health Insurance* channel provides insurance agents and investment advisors with comprehensive coverage of the products and services necessary to guide clients in developing life insurance strategies and informed decisions regarding health insurance, annuities, and their practice. Its audience includes 140,000 average monthly visitors and nearly 425,000 monthly page views. Digital Notices will appear on *ThinkAdvisor.com/Life-Health* for approximately one month. *SHRM.org* is the official website of the Society for Human Resource Management. Its audience includes over two million monthly unique visitors and over 9.4 million page views per month. Digital Notices will appear on *SHRM.org* for approximately one month.

14. Digital Notices will also appear in the *ThinkAdvisor Life/Health Daily* e-newsletter and the Society for Human Resource Management's *HR Daily* e-newsletter. *ThinkAdvisor Life/Health Daily* is the official daily e-newsletter of *ThinkAdvisor's Life/Health Insurance* channel. It provides up-to-the-minute news coverage, analysis, and trends. A top-banner logo, three 300x250 banners, and an "About Us" ad placement that includes a 30-character headline, 400-character body text, and 75x75 logo image will appear in the *Life/Health Daily* e-newsletter for approximately one business week (a total of five sends). *Life/Health Daily* has over 65,000

subscribers. *HR Daily* is the official daily e-newsletter of the Society for Human Resource Management. A 580x110 pixel digital Notice will appear in *HR Daily* twice. *HR Daily* delivers breaking news to more than 460,000 each weekday.

15. A sample of a TPP digital Notice is attached as **Exhibit 2**.

### ***Consumer Mailing***

16. Unlike for the previous settlement, KCC now knows the identity of approximately 8,815 consumers who have claimed to be members of the settlement class. KCC will mail a multi-page Long Form Notice and Supplemental Claim Form via USPS to all individuals who filed a Claim Form to participate in the previous settlement. The Supplemental Claim Form will include the dollar amount of purchases that the Settlement Class member previously claimed, allow the claimant to correct that total, and will allow the claimant to provide the total dollar amount spent on purchases of Thalomid or Revlimid after August 1, 2019 but before the (new) Preliminary Approval Date (the revised extended settlement class period). The Supplemental Claim Form will also provide online credentials to allow the Settlement Class member to confirm, update and/or supplement their claim online. Prior to mailing, the addresses will be checked against the NCOA database maintained by the USPS; certified via CASS; and verified through DPV.

17. A copy of the Consumer Long Form Notice, Supplemental Claim Form and generic Consumer Claim Form are attached as **Exhibit 3**.

### ***Analysis of Consumer Portion of the Settlement Class***

18. As was done for the original settlement, KCC will also use paid media to reach consumers in the Settlement Class.

19. According to the Centers for Disease Control and Prevention (“CDC”), age is the most significant risk factor for developing myeloma, with persons younger than 45 years old rarely developing the disease.<sup>5</sup> Based on 2012-2016 United States Cancer Statistics (“USCS”) data

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<sup>5</sup> Centers for Disease Control and Prevention. (2018). Myeloma. Retrieved from <https://www.cdc.gov/cancer/myeloma/index.htm>.

available produced by the CDC and the National Cancer Institute (“NCI”),<sup>6</sup> incidence rates of new myeloma cases increased significantly with each age group up through 80-84 years of age (with 45.9 new cases for every 100,000 persons) before showing a decline in rate of incidence. The data also indicated that, based on all new cases reported between 2012-2016, over 97% were among persons 45 years of age or older.

20. Based on this and other information from the CDC, GfK MRI<sup>7</sup> data was studied among adults 45 years of age or older who have used a branded prescription remedy for cancer in the last 12 months (“likely Class members”). This data indicates that targeting Adults 45+ nationally will reach the broadest and most comprehensive group of likely Class members.

### ***Consumer Media***

21. To reach the consumer portion of the Settlement Class, a Summary Notice will be placed in a leading consumer publication among likely Class members, as was done for the previous settlement. Specifically, a Summary Notice will appear once in *People* magazine.

22. *People* is a weekly entertainment magazine featuring celebrity news, biographies and gossip. It reaches 15.8% of likely Class members and likely Class members are 16.6% more likely to be readers, as compared to the adult population.

23. A copy of the Summary Notice for publication is attached as **Exhibit 4**.

24. In addition, 192.9 million internet impressions will be purchased programmatically and distributed over various websites using multiple ad networks and on the social media platform Facebook over a period of 60 days. The impressions will appear on both desktop and mobile devices, including smartphones and tablets, in display and native ad formats. The digital notices will be targeted to adults 45 years of age or older (Adults 45+) and will include an embedded link

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<sup>6</sup> 2016 is the latest year for which incidence data are available.

<sup>7</sup> GfK MRI (“MRI”) is a nationally accredited research firm that provides consumer demographics, product and brand usage, and audience/exposure in all forms of advertising media. Established in 1979, MRI measures the usage of over 6,500 product and service brands across 600 categories, along with readership of hundreds of magazines and newspapers, internet usage, television viewership, national and local radio listening, yellow page usage, and out-of-home exposure. Based on a yearly face-to-face interview of 25,000 consumers in their homes, MRI’s Survey of the American Consumer™ is the primary source of audience data for the U.S. consumer magazine industry and the most comprehensive and reliable source of multi-media audience data available.

to the case website. Conversion tracking will be used to monitor online behavior, as well as track likely Class members who file a claim online or who leave the case website before filing a claim.

25. A sample of a Consumer digital Notice is attached as **Exhibit 5**.

#### ***Response Mechanisms***

26. The informational settlement website, [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com), will be updated to provide Settlement Class members with additional information and documents about the settlement, as well as to file a claim online. Settlement Class members who previously filed a Claim Form will receive login credentials with their mailed notice that will allow them to supplement their claim online. The website address will be provided in all printed notice materials and accessible through an embedded link in the Email notice and digital Notices.

27. The toll-free number will be updated to allow Settlement Class members to learn more about the settlement in the form of frequently asked questions and answers and to request to have more information and a claim form mailed directly to them. The toll-free number will be included in all printed notice documents.

#### ***Notice Documents***

28. The Notices provide Settlement Class members with substantial information and are written in a clear and concise manner, and in plain, easily understood language. They satisfy the requirements of Rule 23 and adhere to the guidelines set forth in the *Manual for Complex Litigation, Fourth* and by the FJC. Many courts, and as previously cited, the FJC itself, have approved notices that have been written and designed in a similar fashion.

#### **CONCLUSION**

29. The Notice Plan will effectively reach all or nearly all of the TPP portion of the Settlement Class and approximately 80% of the consumer portion of the Settlement Class on average 2.5 times each via the notification methods described above. All Settlement Class members will be provided with information necessary to understand their rights and options, as well as how to file a claim.



30. The Notice Plan and Notices will provide the best notice practicable under the circumstances of this case, conform to all aspects of Federal Rule of Civil Procedure 23, and comport with the guidance for effective notice articulated in the *Manual for Complex Litigation, Fourth*.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27<sup>th</sup> day of April, 2020, at Sellersville, Pennsylvania.

A handwritten signature in black ink, reading "Carla Peak". The signature is written in a cursive, flowing style. The first name "Carla" is written in a larger, more prominent script, and "Peak" is written in a slightly smaller, more compact script. The signature is positioned above a horizontal line.

Carla Peak

# **Exhibit 1**

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

## Entities that paid for Thalomid or Revlimid may be affected by, and could get a payment from, a new class action settlement.

*A federal Court authorized this Notice. It is not a solicitation from a lawyer.*

- A new (March 2020) settlement has been reached with Celgene Corporation (“Celgene”) in a class action lawsuit about whether it acted to keep generic versions of Thalomid and Revlimid off the market. This Notice is for:
  - **Third-Party Payors (e.g., insurers, employee welfare benefits plans, and government funded employee welfare benefit plans) that paid for Thalomid or Revlimid.**
- Celgene has agreed to settle the lawsuit for \$34 million.
- You may be included in this settlement if you are a Third-Party Payor that paid for all or some of the purchase price of Thalomid or Revlimid in any form—for your members, employees, insureds, participants, or beneficiaries—in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee any time before [the preliminary approval date].
- Your rights are affected whether you act or don’t act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
<b>SUBMIT A CLAIM FORM DEADLINE: [DATE], 2020</b>	Unless you already submitted a claim, this is the only way you will receive any payment from the settlement with Celgene. If you submitted a claim to participate in the 2019 class action settlement with Celgene, you do not need to, but you can, submit a supplemental claim for additional purchases made after August 1, 2019. You will also give up the right to sue Celgene in a separate lawsuit about the claims this settlement resolves.
<b>ASK TO BE EXCLUDED DEADLINE: [DATE], 2020</b>	<p>If you decide to exclude your entity, you will keep the right to sue Celgene in a separate lawsuit about the claims this settlement resolves, but you give up the right to get a payment from this settlement.</p> <p>This is the only option that allows your entity to sue, continue to sue, or be part of another lawsuit against Celgene related to the legal claims released by this settlement.</p>
<b>OBJECT TO THE SETTLEMENT DEADLINE: [DATE], 2020</b>	If you do not exclude yourself from the settlement, you may object to it by writing to the Court about why you don’t like the settlement.
<b>GO TO A HEARING ON: [DATE], 2020</b>	You may object to the settlement and ask the Court for permission to speak at the Fairness Hearing about your objection.
<b>DO NOTHING</b>	If you are a Settlement Class Member ( <i>see</i> Questions 5 and 6, below), you are automatically part of the settlement. If you do nothing, you will not get a payment from this settlement (unless you previously submitted a Claim Form) and you will give up the right to sue, continue to sue, or be part of another lawsuit against Celgene for any claim made in this lawsuit or released by the Settlement Agreement. If you submitted a claim in 2019, your claim will automatically be evaluated for eligibility to receive a payment if the proposed settlement is approved.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the settlement.

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## BASIC INFORMATION

**1. Why was this Notice issued?**

A federal Court authorized this Notice because you have a right to know about the proposed settlement of this class action lawsuit and about all of your options before the Court decides whether to grant final approval to the settlement. This Notice explains the lawsuit, the settlement, your legal rights, what benefits are available, and who can get them.

Judge Madeline Cox Arleo of the United States District Court for the District of New Jersey is overseeing this class action. The case is known as *In re Thalomid and Revlimid Antitrust Litigation*, Case No. 2:14-cv-06997. The individuals and entities that filed this lawsuit are called the "Plaintiffs" and the company they sued, Celgene Corporation ("Celgene"), is called the "Defendant."

**2. What is this lawsuit about?**

The lawsuit is about the prescription drugs Thalomid and Revlimid. Plaintiffs claim that Celgene acted to delay the availability of less expensive generic versions of the drugs. The Plaintiffs claim that these actions denied uninsured consumers, insured consumers, and third-party payors ("TPPs"), like insurers that paid for Thalomid and Revlimid, the benefits of competition and caused them to pay higher prices for these drugs than they otherwise would have.

The Defendant denies all of the claims and allegations made in the lawsuit.

**3. What is a class action?**

In a class action, one or more people or entities called Class Representatives or Plaintiffs sue on behalf of other people or entities with similar claims. The people and entities included in the class action are called a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

The Class Representatives in this lawsuit are International Union of Bricklayers and Allied Craft Workers Local 1 Health Fund, the City of Providence, International Union of Operating Engineers Local 39 Health and Welfare Trust Fund, The Detectives' Endowment Association, New England Carpenters Health Benefits Fund, and David Mitchell.

**4. Why is there a settlement?**

The Court did not decide in favor of the Plaintiffs or Defendant. Instead, the Plaintiffs and Defendant agreed to a settlement. This way, they avoid the cost and burden of a trial and the people and entities allegedly affected can get benefits. The Class Representatives and their attorneys think the settlement is best for all Settlement Class Members.

**WHO IS INCLUDED IN THE SETTLEMENT****5. How do I know whether my entity is part of the settlement?**

The settlement includes both consumers and TPPs. TPPs are included in the settlement if they paid for some or all of the purchase price of Thalomid or Revlimid (for use by their members, employees, insureds, participants, or beneficiaries) in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee any time before [preliminary approval date], and are not listed as excluded from the settlement in question 6. Members, employees, insureds, participants, or beneficiaries must be located in one of these states *or* requested to have the prescription filled while located in one of these states, *or* your billing department must have been located in one of these states, *or* the pharmacy to which payments were made must have been located in one of these states.

Consumers are also included in the settlement if they purchased or paid for some or all of the purchase price of Thalomid or Revlimid (for personal or family use) in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee any time before [preliminary approval date].

Together, the consumers and TPPs described above are called "Settlement Class Members."

**6. Are there exceptions to being included?**

Yes. The settlement does not include: (1) Celgene and its officers, directors, management, employees, parents, subsidiaries, or Affiliates; (2) Federal or state governmental entities, except cities, towns, or municipalities with self-funded prescription drug plans; (3) Persons or entities who only purchased Revlimid or Thalomid for purposes of resale directly from Celgene or its Affiliates; (4) Fully insured health plans; (5) Stop-loss insurers; (6) The judges in this Action and any members of their immediate families; and (7) the excluded entities listed in the table appearing on the final page of this notice.

**7. What if I am still not sure whether my entity is part of the settlement?**

If you are not sure whether you are included, call 1-866-446-1551, go to [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com), or write to one of the lawyers listed in Question 18 below.

**THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY****8. What does the settlement provide?**

A \$34 million Settlement Fund has been established by Celgene in this settlement. After deducting Court-approved attorneys' fees and expenses, and the costs of settlement notice and administration, 5.5% of the net Settlement Fund will be made available to Settlement Class Members who purchased Thalomid, of which 15.5% will be allocated to consumer Settlement Class Members and 84.5% will be allocated to TPP Settlement Class Members. The remaining 94.5% of the net Settlement Fund will go to Revlimid purchasers, of which 13.5% will be made available to consumer Settlement Class Members and 86.5% will be made available to TPP Settlement Class Members. This allocation is based on Plaintiffs' expert's damage calculations.

**9. How much will my entity's payment be?**

Your entity's share of the net Settlement Fund will depend on the total amount of money it spent on qualifying purchases of Thalomid and Revlimid and the total amount of money other TPP Settlement Class Members—that file a valid Claim Form—spent on qualifying purchases of Thalomid and Revlimid. All TPP Settlement Class Members will receive their share of the allotted net Settlement Fund in proportion to their total dollars spent. You are not responsible for calculating the amount your entity may be entitled to receive under the settlement. This calculation will be determined based on the information you provide on your Claim Form and the supporting documentation you submit.

A copy of the Plan of Allocation, which details how payments will be calculated, is available at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com).

**10. Why is there a new settlement with Celgene about Thalomid and Revlimid?**

Celgene originally entered into a settlement with a class of Thalomid and Revlimid purchasers in 2019, but it exercised its right to rescind that settlement under the terms of that settlement agreement. That settlement agreement no longer exists; this settlement replaces that one. If you submitted a claim to participate in the 2019 settlement, you do not need to submit a new claim to participate in this settlement.

**HOW TO GET A SETTLEMENT PAYMENT—SUBMITTING A CLAIM FORM****11. How does my entity get a payment?**

If you submitted a claim to participate in the 2019 Thalomid/Revlimid settlement, you do not need to submit a new Claim Form. The claims administrator will use the Claim Form you previously submitted to calculate the amount you are owed. If you wish to correct your claim or if you have made additional purchases of Thalomid or Revlimid since submitting your claim, you may submit a Supplemental Claim Form to include those purchases. If you did not previously submit a claim, you must complete and submit a Claim Form by **[date], 2020**. If you received this notice in the mail and you previously submitted a claim, please see the attached Supplemental Claim Form to verify the records and add any additional purchases made from August 1, 2019 through [preliminary approval date]. Claims may be submitted online or downloaded for printing and submission via U.S. Mail at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com). Claim Forms and instructions are also available by calling 1-866-446-1551 or by writing to *In re Thalomid and Revlimid Antitrust Litigation* Settlement Administrator, P.O. Box 43143, Providence, RI 02940-3143.

**12. When would my entity get its payment?**

The Court will hold a hearing at ##:00 on [date], 2020 to decide whether to grant final approval to the settlement. If the Court approves the settlement, there may be appeals. It is always uncertain whether appeals will be filed and, if so, how long it will take to resolve them. The net Settlement Fund will be distributed to Settlement Class Members as soon as possible, if and when the Court grants final approval to the settlement.

**13. What if my entity's name or address changes after I submit a Claim Form, but before it receives payment?**

If your entity's name or address needs to be corrected, you must send a letter to the Settlement Administrator, *In re Thalomid and Revlimid Antitrust Litigation* Settlement Administrator, P.O. Box 43143, Providence, RI 02940-3143.

**14. What rights is my entity giving up to get a payment and stay in the Settlement Class?**

Unless you exclude your entity, it is staying in the Settlement Class. If the settlement is approved and becomes final, all of the Court's orders will apply to your entity and legally bind it. Your entity won't be able to sue, continue to sue, or be part of any other lawsuits against Celgene and certain related parties for any claim made in this lawsuit or released by the Settlement Agreement, but it will be able to submit a Claim Form to receive a payment from this settlement. The rights your entity is giving up are called Released Claims.

**15. What are the Released Claims?**

Generally, if and when the Settlement Agreement becomes final, Settlement Class Members will permanently release Celgene—and its predecessors, successors, subsidiaries, parents, affiliates, divisions, and departments (including but not limited to the Bristol-Myers Squibb Company)—and each of their respective officers, directors, employees, agents, attorneys, servants, and representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing (the "Released Parties") from any and all claims, counterclaims, demands, actions, potential actions, suits, and causes of action, losses, obligations, damages, matters and issues of any kind or nature whatsoever, and liabilities of any nature, including without limitation claims for costs, expenses, penalties, and attorneys' fees, whether class, individual, or otherwise, that the Settlement Class Members, their predecessors, successors, subsidiaries, parents, affiliates, divisions, and departments, and each of their respective officers, directors, employees, agents, attorneys, servants, and representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, ever had or now has directly, representatively, derivatively or in any other capacity against any of the Released Parties, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, accrued or unaccrued, matured or unmatured, disclosed or undisclosed, apparent or unapparent, liquidated or unliquidated, or claims that have been, could have been, or in the future might be asserted in law or equity, on account of or arising out of or resulting from or in any way related to any conduct regardless of where it occurred at any time prior to the Effective Date (the date on which all of the following have occurred (1) the Settlement Agreement is approved by the Court; (2) the Court enters a final approval order, entering a final judgment of dismissal with prejudice against Plaintiffs and members of the Settlement Class who have not timely excluded themselves from the Settlement Class; and (3) the time for appeal or to seek permission to appeal from the Court's approval of the Settlement Agreement and entry of a final judgment has expired or, if appealed, approval of the Settlement Agreement and the final judgment has been affirmed in its entirety by the court of last resort and the appeal is no longer subject to further appeal or review) concerning the purchase, reimbursement for and/or payment for some or all of the purchase price for Thalomid or Revlimid in any form, including without limitation, claims based in whole or in part on the facts, occurrences, transactions, or other matters alleged in the Action, or otherwise the subject of the Action, which arise under any antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, unjust enrichment, civil conspiracy law, or any other law, code, rule, or regulation of any country or jurisdiction worldwide,

including under federal or state law, and regardless of the type or amount of damages claimed, from the beginning of time through the Effective Date.

Settlement Class Members will not release any claims for product liability, breach of warranty, breach of contract, or tort of any kind (other than a breach of contract, breach of warranty or tort based on any factual predicate in this action), a claim arising out of violation of Uniform Commercial Code, or personal or bodily injury.

The specific claims you will be releasing are described in paragraph 23 of the Settlement Agreement, available at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com).

#### **EXCLUDING YOUR ENTITY FROM THE SETTLEMENT**

If you want your entity to keep the right to sue or continue to sue Celgene for any claim made in this lawsuit or released by the Settlement Agreement, and your entity does not want to receive a payment from this settlement, you must take steps to get out of the settlement. This is called excluding your entity from, or opting out of, the settlement.

##### **16. How do I get my entity out of the settlement?**

TPPs that want to be excluded from the Settlement Class must email and mail a written request for exclusion to the Settlement Administrator. Your request for exclusion must include: (1) the entity name and address; (2) the name of the entity representative; (3) the name of this case, *In re Thalomid and Revlimid Antitrust Litigation*, Case No. 2:14-cv-06997; (4) a statement, signed by an authorized representative, that your entity is a Settlement Class Member and you wish for it to be excluded from the Settlement Class; (5) data sufficient to establish your entity's relevant Thalomid and Revlimid purchases or payments, measured in number of prescriptions, number of pills, and dollars paid for by the entity, and aggregated on a monthly basis for each of Thalomid and Revlimid, and each state in which the relevant purchases or payments were made. Exclusion requests must be emailed and mailed to the Settlement Administrator at the postal and email addresses below and postmarked no later than **[date], 2020**:

*In re Thalomid and Revlimid Antitrust Litigation*  
Settlement Administrator  
P.O. Box 43143  
Providence, RI 02940-3143  
[info@thalomidrevlimidlitigation.com](mailto:info@thalomidrevlimidlitigation.com)

A separate exclusion request must be filed by each TPP electing to be excluded from the Settlement Class. Any TPP included in the Settlement Class that does not submit a valid request for exclusion providing all necessary information will be bound by the terms of the settlement.

##### **17. If I exclude my entity, will it still get a payment from this settlement?**

No. If you exclude your entity, you are telling the Court that it does not want to be part of the Settlement Class in this settlement. Your entity can only get a payment if it stays in the Settlement Class and submits a Claim Form.

##### **18. If I do not exclude my entity, can it sue Celgene for the same claims later?**

No. Unless you exclude yourself, you are giving up the right to sue Celgene for the claims that this settlement resolves. You must exclude yourself from *this* lawsuit to start or continue with your own lawsuit or be part of any other lawsuit against Celgene.

#### **THE LAWYERS REPRESENTING YOU**

##### **19. Does my entity have a lawyer in this case?**

Yes. Judge Arleo appointed Hausfeld LLP, Block & Leviton LLP and Hach Rose Schirripa & Cheverie LLP to represent your entity and other Settlement Class Members as "Settlement Class Counsel." These law firms and their lawyers are experienced in handling similar cases. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

##### **20. How will the lawyers be paid?**

Settlement Class Counsel will ask the Court for attorneys' fees of up to 33 and one-third percent of the \$34 million Settlement Fund, and reimbursement of their expenses (up to \$4 million). The Court may award less than these amounts. All of these amounts, as well as the costs associated with administering the settlement and service awards to the Class Representatives (\$10,000 each, if approved), will be paid from the Settlement Fund before making payments to Settlement Class Members who submit valid Claim Forms.

The application for an award of attorneys' fees and reimbursement of costs and expenses will be filed with the Clerk of the United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Room 4015, Newark, New Jersey 07101. After it is filed, it will also be available at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com).

#### **OBJECTING TO THE SETTLEMENT**



You can tell the Court if your entity does not agree with the settlement or any part of it.

## 21. How do I tell the Court that my entity does not like the settlement?

If you are a TPP Settlement Class Member, you can object to the settlement if you do not like it or a portion of it (including the request for attorneys' fees and costs—see Question 20). You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter via First Class U.S. mail saying that you object to the settlement of *In re Thalomid and Revlimid Antitrust Litigation*, Case No. 2:14-cv-06997. Your objection must also include: (1) your entity's name; (2) address; (3) telephone number; (4) signature; (5) a statement indicating that your entity is a member of the TPP Settlement Class and is not listed in the table as excluded; and (6) the reasons why you object to the settlement. Email and mail your objection to [info@thalomidrevlimidlitigation.com](mailto:info@thalomidrevlimidlitigation.com) and all three addresses below postmarked on or before **[date] 2020**.

Clerk of the Court	Settlement Class Counsel	Defense Counsel
Clerk of the United States District Court for the District of New Jersey Martin Luther King Building & U.S. Courthouse 50 Walnut Street, Room 4015 Newark, NJ 07101	Melinda R. Coolidge Hausfeld LLP 1700 K Street, NW Suite 650 Washington, DC 20006 <a href="mailto:mcoolidge@hausfeld.com">mcoolidge@hausfeld.com</a>	John E. Schmidtlein Williams & Connolly LLP 725 12th Street NW Washington, DC 20005 <a href="mailto:JSchmidtlein@wc.com">JSchmidtlein@wc.com</a>

## 22. May I come to Court to speak about my entity's objection?

Yes. You or your entity's attorney may speak at the Fairness Hearing about your objection. To do so, in addition to the information above, your objection must also include: (1) a statement that it is your "Notice of Intention to Appear in front of Judge Arleo at the Fairness Hearing *In re Thalomid and Revlimid Antitrust Litigation*, Case No. 2:14-cv-06997"; (2) an outline of your positions and the reasons for them; and (3) copies of any supporting documents or briefs you want the Court to consider. Remember, your objection must be postmarked by **[date], 2020** and sent to all three addresses in Question 21.

## 23. What is the difference between objecting to the settlement and asking to be excluded from it?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Settlement Class (do not exclude your entity). Excluding your entity is telling the Court that it does not want to be part of the Settlement Class. If you exclude your entity, it cannot object because the settlement no longer affects it.

### THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

## 24. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at ##:00 on [date], 2020 at the United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. It will also consider whether to approve: (1) the amount and proposed distribution of the Settlement Fund; (2) Settlement Class Counsel's application for an award of attorneys' fees and disbursement of expenses and costs; and (3) the service awards to be paid to the Class Representatives. If there are objections, the Court will consider them. Judge Arleo will listen to people who have asked to speak at the hearing (see Question 22 above). After the hearing, the Court will decide whether to approve the settlement.

## 25. Do I have to come to the hearing?

No. Settlement Class Counsel will answer any questions Judge Arleo may have. However, you are welcome to come to the hearing at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but that is not necessary.

## 26. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing (see Question 22 above).

### IF YOU DO NOTHING

## 27. What happens if I do nothing at all?

If you are a TPP Settlement Class Member and you do nothing, your entity will give up the rights explained in Question 15, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Celgene for any claim made in this lawsuit or released by the Settlement Agreement. In addition, your entity will not receive a payment (unless you previously submitted a Claim Form) from the net Settlement Fund.



## GETTING MORE INFORMATION

**28. How do I get more information?**

This Notice summarizes the proposed settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are or will be available by: (1) writing to one of the law firms listed in Question 19; (2) going to [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com); or (3) writing to the Settlement Administrator, *In re Thalomid and Revlimid Antitrust Litigation* Settlement Administrator, P.O. Box 43143, Providence, RI 02940-3143. Publicly-filed documents can also be obtained by visiting the office of the Clerk of the United States District Court for the District of New Jersey or reviewing the Court's online docket.

**Excluded Entities****A**

Accountable Care Options, LLC,  
c/o MSP Recovery Claims, Series LLC  
Aetna, Inc.  
Aetna, Inc. Self-Funded Groups  
All Savers Insurance Co.  
All Savers Life Insurance Co. of California  
AmeriChoice of New Jersey, Inc.  
AMERIGROUP Community Care of New Mexico, Inc.  
AMERIGROUP District of Columbia, Inc.  
AMERIGROUP Florida, Inc.  
AMERIGROUP Insurance Co. (TX)  
AMERIGROUP Iowa, Inc.  
AMERIGROUP IPA of New York, LLC  
AMERIGROUP Kansas, Inc.  
AMERIGROUP Louisiana, Inc.  
AMERIGROUP Maryland, Inc.  
AMERIGROUP Nevada, Inc.  
AMERIGROUP New Jersey, Inc.  
AMERIGROUP Partnership Plan, LLC  
AMERIGROUP Tennessee, Inc.  
AMERIGROUP Texas, Inc.  
AMERIGROUP Washington, Inc.  
AMGP Georgia Managed Care Co., Inc.  
Anthem Blue Cross Life and Health Insurance Co.  
Anthem Health Plans, Inc.  
Anthem Health Plans of Kentucky, Inc.  
Anthem Health Plans of Maine, Inc.  
Anthem Health Plans of New Hampshire, Inc.  
Anthem Health Plans of Virginia, Inc.  
Anthem, Inc.  
Anthem, Inc. Self-Funded Group  
Anthem Insurance Companies, Inc.  
Anthem Kentucky Managed Care Plan, Inc.  
Arizona Physicians IPA, Inc.  
ATH Holding Co., LLC  
AvMed, Inc., c/o MSP Recovery Claims, Series LLC

**B**

Better Health, Inc.  
Blue Cross and Blue Shield Association  
Blue Cross and Blue Shield of Florida, Inc.  
Blue Cross and Blue Shield of Florida, Inc. Self-Funded Groups  
Blue Cross and Blue Shield of Georgia, Inc.  
Blue Cross and Blue Shield of North Carolina  
Blue Cross and Blue Shield of North Carolina Self-Funded Groups  
Blue Cross and Blue Shield of Rhode Island  
Blue Cross and Blue Shield of Rhode Island Self-Funded Groups  
Blue Cross and Blue Shield of Vermont  
Blue Cross and Blue Shield of Vermont Self-Funded Groups  
Blue Cross Blue Shield Healthcare Plan of Georgia, Inc.  
Blue Cross Blue Shield of Kansas City  
Blue Cross Blue Shield of Kansas City Self-Funded Groups  
Blue Cross Blue Shield of Massachusetts  
Blue Cross Blue Shield of Massachusetts Self-Funded Groups  
Blue Cross Blue Shield of Minnesota  
Blue Cross Blue Shield of Minnesota Self-Funded Groups  
Blue Cross Blue Shield of Tennessee, Inc.  
Blue Cross Blue Shield of Tennessee, Inc. Self-Funded Groups  
Blue Cross Blue Shield of Wisconsin  
Blue Cross of California  
Blue Cross of California Partnership Plan, Inc.  
Blue Shield of California  
Blue Shield of California Self-Funded Groups

**I**

Independent Health  
Interamerican Medical Center Group LLC,  
c/o MSP Recovery Claims, Series LLC

**M**

MAMSI Life and Health Insurance Company  
Matthew Thornton Health Plan, Inc.  
MCCI Group Holdings, LLC, c/o MSP Recovery Claims, Series LLC  
MD-Individual Practice Association, Inc.  
Medica HealthCare Plans, Inc.  
Medica Health Plans of Florida, Inc.  
Medical Consultants Management, LLC,  
c/o MSP Recovery Claims, Series LLC  
Medical IPA of the Palm Beaches, Inc.,  
c/o MSP Recovery Claims, Series LLC  
Medical Mutual  
MVP Health Care  
MVP Health Care Self-Funded Groups

**N**

National Pacific Dental, Inc.  
Neighborhood Health Partnership, Inc.  
Nevada Pacific Dental

**O**

Optimum Choice, Inc.  
Optum360 Services, Inc.  
OptumRx Group Holdings, Inc.  
OptumRx, Inc.  
Oxford Health Insurance, Inc.  
Oxford Health Plans (CT), Inc.  
Oxford Health Plans (NJ), Inc.  
Oxford Health Plans (NY), Inc.

**P**

PacifiCare Life Assurance Company  
PacifiCare Life and Health Insurance Company  
PacifiCare of Arizona, Inc.  
PacifiCare of Colorado, Inc.  
PacifiCare of Nevada, Inc.  
Peninsula Health Care, Inc.  
Peoples Health, Inc.  
Physician Access Urgent Care Group, LLC,  
c/o MSP Recovery Claims, Series LLC  
Physicians Health Choice of Texas, LLC  
Priority Health Care, Inc.  
Preferred Care Partners, Inc.  
Preferred Medical Plan, Inc., c/o MSP Recovery Claims, Series LLC  
Preferred Primary Care, LLC, c/o MSP Recovery Claims, Series LLC  
Premera Blue Cross  
Premera Blue Cross Self-Funded Groups  
Priority Health  
Priority Health Self-Funded Groups  
Professional Health Choice, Inc., c/o MSP Recovery Claims, Series LLC

**R**

Risk Watchers, Inc., c/o MSP Recovery Claims, Series LLC  
Rocky Mountain HealthCare Options, Inc.  
Rocky Mountain Health Maintenance Organization, Incorporated  
Rocky Mountain Hospital and Medical Service, Inc.

**S**

Sierra Health and Life Insurance Company, Inc.  
Simply Healthcare Plans, Inc.  
Symphonix Health Insurance, Inc.

**T**

Transatlantic Healthcare, LLC, c/o MSP Recovery Claims, Series LLC  
Trinity Physicians, LLC, c/o MSP Recovery Claims, Series LLC

Biocon Limited  
 Broward Primary Partners, LLC,  
 c/o MSP Recovery Claims, Series LLC

**C**

CareFirst BlueChoice, Inc.  
 CareFirst of Maryland, Inc.  
 CareFirst of Maryland, Inc. BlueChoice Self-Funded Groups  
 Care Improvement Plus of Texas Insurance Company  
 Care Improvement Plus South Central Insurance Company  
 Care Improvement Plus Wisconsin Insurance Company  
 CareMore Health Plan  
 CareMore Health Plan of Nevada  
 CareMore, LLC  
 Centene Corporation  
 CFA, LLC  
 Cigna Health and Life Insurance Company  
 Cigna Health and Life Insurance Company Self-Funded Groups  
 Clinica Las Mercedes, c/o MSP Recovery Claims, Series LLC  
 Community Health Providers, Inc.,  
 c/o MSP Recovery Claims, Series LLC  
 Community Insurance Company  
 Compcare Health Services Insurance Corporation

**D**

Dental Benefit Providers of California, Inc.  
 Dental Benefit Providers of Illinois, Inc.

**E**

EmblemHealth  
 EmblemHealth Self-Funded Groups  
 Empire HealthChoice Assurance, Inc.  
 Empire HealthChoice HMO, Inc.

**F**

Fallon Community Health Plan, Inc.,  
 c/o MSP Recovery Claims, Series LLC  
 Family Physicians Group, Inc. d/b/a Family Physicians of Winter  
 Park, Inc.,  
 c/o MSP Recovery Claims, Series LLC

**G**

Golden Rule Insurance Company  
 Government Employees Health Association  
 Group Health Inc., c/o MSP Recovery Claims, Series LLC  
 Group Hospitalization and Medical Services, Inc.

**H**

Harken Health Insurance Company  
 Harvard Pilgrim Health Care, Inc.  
 Harvard Pilgrim Health Care, Inc. Self-Funded Groups  
 Hawaii Medical Service Association  
 Hawaii Medical Service Association Self-Funded Groups  
 Health Care Advisor Services, Inc.,  
 c/o MSP Recovery Claims Series LLC  
 Health Care Service Corporation  
 Health Care Service Corporation Self-Funded Groups  
 Health First Health Plans, Inc.,  
 c/o MSP Recovery Claims, Series LLC  
 Health Insurance Plan of Greater NY,  
 c/o MSP Recovery Claims, Series LLC  
 HealthKeepers, Inc.  
 HealthPartners, Inc.  
 HealthPartners, Inc. Self-Funded Groups  
 Health Plan of Nevada, Inc.  
 HealthPlus, LLC  
 HealthSun Health Plans, Inc.  
 Healthy Alliance Life Insurance Company  
 Highmark Blue Cross Blue Shield  
 HMO Colorado, Inc.  
 HMO Missouri, Inc.  
 Horizon Blue Cross Blue Shield of New Jersey  
 Humana, Inc.  
 Humana, Inc. Self-Funded Groups  
 Hygea Health Holdings, Inc.,  
 c/o MSP Recovery Claims, Series LLC

Tufts Associated Health Plans, Inc.  
 Tufts Associated Health Plans, Inc. Self-Funded Groups

**U**

UHC of California  
 UNICARE Health Insurance Company of Texas  
 UNICARE Health Insurance Company of the Midwest  
 UNICARE Health Plan of Kansas, Inc.  
 UNICARE Health Plan of West Virginia, Inc.  
 UNICARE Health Plans of Texas, Inc.  
 UNICARE Health Plans of the Midwest, Inc.  
 Unimerica Life Insurance Company of New York  
 Unison Health Plans of Delaware, Inc.  
 United HealthCare Services, Inc.  
 UnitedHealth Group Incorporated / Optum360 Services, Inc.  
 UnitedHealthcare Benefits of Texas, Inc.  
 UnitedHealthcare Benefits Plan of California  
 UnitedHealthcare Community Plan, Inc.  
 UnitedHealthcare Community Plan of California, Inc.  
 UnitedHealthcare Community Plan of Georgia, Inc.  
 UnitedHealthcare Community Plan of Ohio, Inc.  
 UnitedHealthcare Community Plan of Texas, Inc.  
 UnitedHealthcare Insurance Company  
 UnitedHealthcare Insurance Company of Illinois  
 UnitedHealthcare Insurance Company of New York  
 UnitedHealthcare Insurance Company of the River Valley  
 UnitedHealthcare Insurance Designated Activity Company  
 UnitedHealthcare Integrated Services, Inc.  
 UnitedHealthcare Life Insurance Company  
 UnitedHealthcare of Alabama, Inc.  
 UnitedHealthcare of Arizona, Inc.  
 UnitedHealthcare of Arkansas, Inc.  
 UnitedHealthcare of Colorado, Inc.  
 UnitedHealthcare of Florida, Inc.  
 UnitedHealthcare of Georgia, Inc.  
 UnitedHealthcare of Illinois, Inc.  
 UnitedHealthcare of Kentucky, Ltd.  
 UnitedHealthcare of Louisiana, Inc.  
 UnitedHealthcare of Mississippi, Inc.  
 UnitedHealthcare of New England, Inc.  
 UnitedHealthcare of New Mexico, Inc.  
 UnitedHealthcare of New York, Inc.  
 UnitedHealthcare of North Carolina, Inc.  
 UnitedHealthcare of Ohio, Inc.  
 UnitedHealthcare of Oklahoma, Inc.  
 UnitedHealthcare of Pennsylvania, Inc.  
 UnitedHealthcare of Texas, Inc.  
 UnitedHealthcare of the Mid-Atlantic, Inc.  
 UnitedHealthcare of the Midlands, Inc.  
 UnitedHealthcare of the Midwest, Inc.  
 UnitedHealthcare of Utah, Inc.  
 UnitedHealthcare of Washington, Inc.  
 UnitedHealthcare of Wisconsin, Inc.  
 UnitedHealthcare Plan of the River Valley, Inc.  
 USABLE Mutual Insurance Company  
 d/b/a Arkansas Blue Cross and Blue Shield

**V**

Verimex IPA, LLC, c/o MSP Recovery Claims, Series LLC  
 Vidamax Medical Center (Fictitious name) for St. Jude Medical Group Corp.,  
 c/o MSP Recovery Claims, Series LLC

**W**

WellCare Health Plans, Inc.  
 WellCare Health Plans, Inc. Self-Funded Groups  
 Wellmark Blue Cross and Blue Shield  
 Wisconsin Collaborative Insurance Company

United States District Court for the District of  
New Jersey

**MUST BE POSTMARKED  
OR FILED  
ELECTRONICALLY ON  
OR BEFORE  
DATE**

*In re Thalomid and Revlimid  
Antitrust Litigation*  
Case No. 2:14-cv-06997

FOR OFFICIAL USE ONLY

**\*ABDCA99999\***

**THIRD-PARTY PAYOR SUPPLEMENTAL CLAIM FORM**

Use Blue or Black Ink Only

**ATTENTION: THIS FORM IS TO BE FILLED OUT ONLY ON BEHALF OF A THIRD-PARTY PAYOR,  
NOT INDIVIDUAL CONSUMERS**

**TO UPDATE YOUR PURCHASE HISTORY FOR THIS SETTLEMENT, YOU MUST COMPLETE AND SUBMIT THIS CLAIM FORM.**

**THIRD-PARTY PAYOR SUPPLEMENTAL CLAIM FORM**

**YOUR CLAIM MUST BE POSTMARKED OR FILED ELECTRONICALLY ON OR BEFORE MONTH DATE**

**Mail your claim to:**

*In re Thalomid and Revlimid Antitrust Litigation*  
Settlement Administrator  
P.O. Box 43143  
Providence, RI 02940-3143

**OR**

**Submit a Claim Form online at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com)**

**Section A: General Information**

The Settlement Administrator will use this information for all communications regarding this Claim Form. If this information changes, you MUST notify the Settlement Administrator in writing at the address above.

Company or Health Plan Name

Contact Name

Address 1

Address 2

Floor/Suite

City

State

Zip Code

Area Code - Telephone Number

Tax Identification Number

Email Address

List all other names by which your company or health plan has been known and any other Federal Employer Identification Numbers ("FEINs") you have used before Date (use a separate sheet if necessary).



☐ Health Insurance Company/HMO ☐ Self-Insured Employee Health Plan ☐ Self-Insured Health & Welfare Fund

☐ Other (Explain)

### Section B: Authorized Agent Only

The Settlement Administrator will use this information for all communications regarding this Claim Form. If this information changes, you MUST notify the Settlement Administrator in writing at the address above.

\* As an Authorized Agent, please check how your relationship with the Settlement Class Member(s) is best described:

☐ Third-Party Administrator  
☐ Pharmacy Benefits Manager  
☐ Other (Explain):

Authorized Agent's Company Name

Contact Name

Address

Floor/Suite

City

State

Zip Code

Area Code - Telephone Number

Authorized Agent's Tax Identification Number

Email Address

Please list the name, address and FEIN of every Settlement Class Member (*i.e.*, Company or Health Plan) for whom you have been duly authorized to submit this Claim Form (attach additional sheets to this Claim Form as necessary). Alternatively, you may submit the requested list of Settlement Class Member names, addresses, and FEINs in an electronic format, such as Excel or a tab-delimited text file. Please contact the Settlement Administrator to determine what formats are acceptable.

SETTLEMENT CLASS MEMBER'S NAME & (IF AVAILABLE) ADDRESS

SETTLEMENT CLASS MEMBER'S FEIN


**Section C: Purchase Information**

Provide the amount of money you spent on each drug for prescriptions filled before Date for use by your members, employees, insureds, participants, or beneficiaries in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee. Include purchases made on behalf of members, employees, insureds, participants, or beneficiaries located in one of these states or those that requested to have the prescription filled while located in one of these states, purchases processed in a billing department located in one of these states, or payments made to pharmacies located in one of these states.

Our records show that you previously claimed the following total purchases of qualifying prescriptions of Thalomid and Revlimid before August 1, 2019.

SETTLEMENT CLASS MEMBER NAME	TOTAL AMOUNT SPENT ON THALOMID	TOTAL AMOUNT SPENT ON REVLIMID
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$

IF THESE RECORDS ARE CORRECT, AND YOU HAVE NOT MADE ANY FURTHER PURCHASES, YOU DO NOT NEED TO SUBMIT ANOTHER CLAIM FORM TO BE CONSIDERED FOR DISTRIBUTION.

IF OUR RECORDS ARE INCORRECT, PLEASE AMEND HERE:

SETTLEMENT CLASS MEMBER NAME	TOTAL AMOUNT SPENT ON THALOMID	TOTAL AMOUNT SPENT ON REVLIMID
	\$	\$
	\$	\$

	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$

**New Purchases**

Provide the amount of money you spent on each drug for prescriptions filled between August 2, 2019 and [new preliminary approval date] for use by your members, employees, insureds, participants, or beneficiaries in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee. Include purchases made on behalf of members, employees, insureds, participants, or beneficiaries located in one of these states or those that requested to have the prescription filled while located in one of these states, purchases processed in a billing department located in one of these states, or payments made to pharmacies located in one of these states.

SETTLEMENT CLASS MEMBER NAME	TOTAL AMOUNT SPENT ON THALOMID	TOTAL AMOUNT SPENT ON REVLIMID
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$

**Section D: Documentation**

**You do not need to provide any documentation at this time.** However, the Settlement Administrator may ask for additional proof of purchase.

**Section E: Certification**

I have read and am familiar with the contents of this Claim Form. I certify that the information provided by me is true, correct and complete to the best of my knowledge. I further certify that I am submitting this information on behalf of myself or a Settlement Class Member for whom I serve in the capacity of an authorized agent.

I hereby submit to the jurisdiction of the United States District Court for the District of New Jersey for all purposes connected with this Claim Form, including resolution of disputes relating to this Claim Form.

**I certify that the above information supplied by the undersigned is true and correct to the best of my knowledge and that this**

Claim Form was executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Signature

Print or Type Name

Electronically file or mail the completed Claim Form postmarked on or before **[date], 2020**, to the following address:

*In re Thalomid and Revlimid Antitrust Litigation*

Settlement Administrator

P.O. Box 43143

Providence, RI 02940-3143

**REMINDER CHECKLIST:**

1. Please complete and sign the above Supplemental Claim Form.
2. Keep a copy of your Supplemental Claim Form and supporting documentation for your records.
3. If you would also like acknowledgement of receipt of your Supplemental Claim Form, please complete the form online or mail this form via Certified Mail, Return Receipt Requested.
4. If you move and/or your name changes, please send your new address and/or your new name or contact information to the Settlement Administrator via the Settlement Website or U.S. Mail.

**MUST BE POSTMARKED  
OR FILED  
ELECTRONICALLY ON  
OR BEFORE  
DATE**

United States District Court for the District of  
New Jersey

**FOR OFFICIAL USE ONLY**

**\*ABDCA99999\***

*In re Thalomid and Revlimid  
Antitrust Litigation*  
Case No. 2:14-cv-06997

**THIRD-PARTY PAYOR CLAIM FORM**

Use Blue or Black Ink Only

**ATTENTION: THIS FORM IS TO BE FILLED OUT ONLY ON BEHALF OF A THIRD-PARTY PAYOR,  
NOT INDIVIDUAL CONSUMERS**

**TO QUALIFY TO RECEIVE A PAYMENT FROM THIS SETTLEMENT, YOU MUST COMPLETE AND SUBMIT THIS CLAIM FORM.**

**THIRD-PARTY PAYOR CLAIM FORM**

**YOUR CLAIM MUST BE POSTMARKED OR FILED ELECTRONICALLY ON OR BEFORE DATE**

**Mail your claim to:**

*In re Thalomid and Revlimid Antitrust Litigation*  
Settlement Administrator  
P.O. Box 43143  
Providence, RI 02940-3143

**OR**

**Submit a Claim Form online at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com)**

**Section A: General Information**

The Settlement Administrator will use this information for all communications regarding this Claim Form. If this information changes, you **MUST** notify the Settlement Administrator in writing at the address above.

Company or Health Plan Name

Contact Name

Address 1

Address 2

Floor/Suite

City

State

Zip Code

Area Code - Telephone Number

Tax Identification Number

Email Address



List all other names by which your company or health plan has been known and any other Federal Employer Identification Numbers ("FEINs") you have used before Date (use a separate sheet if necessary).

☐ Health Insurance Company/HMO
 ☐ Self-Insured Employee Health Plan
 ☐ Self-Insured Health & Welfare Fund

☐ Other (Explain)

### Section B: Authorized Agent Only

The Settlement Administrator will use this information for all communications regarding this Claim Form. If this information changes, you MUST notify the Settlement Administrator in writing at the address above.

\* As an Authorized Agent, please check how your relationship with the Settlement Class Member(s) is best described:

☐ Third-Party Administrator

☐ Pharmacy Benefits Manager

☐ Other (Explain):

Authorized Agent's Company Name

Contact Name

Address

Floor/Suite

City

State

Zip Code

Area Code - Telephone Number

Authorized Agent's Tax Identification Number

Email Address

Please list the name, address and FEIN of every Settlement Class Member (*i.e.*, Company or Health Plan) for whom you have been duly authorized to submit this Claim Form (attach additional sheets to this Claim Form as necessary). Alternatively, you may submit the requested list of Settlement Class Member names, addresses, and FEINs in an electronic format, such as Excel or a tab-delimited text file. Please contact the Settlement Administrator to determine what formats are acceptable.

SETTLEMENT CLASS MEMBER'S NAME & (IF AVAILABLE) ADDRESS

SETTLEMENT CLASS MEMBER'S FEIN

Toll-Free Telephone: 1-866-446-1551

Website: [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com)

**Section C: Purchase Information**

Provide the amount of money you spent on each drug for prescriptions filled before [preliminary approval date] for use by your members, employees, insureds, participants, or beneficiaries in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee. Include purchases made on behalf of members, employees, insureds, participants, or beneficiaries located in one of these states or those that requested to have the prescription filled while located in one of these states, purchases processed in a billing department located in one of these states, or payments made to pharmacies located in one of these states.

SETTLEMENT CLASS MEMBER NAME	TOTAL AMOUNT SPENT ON THALOMID	TOTAL AMOUNT SPENT ON REVLIMID
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$

**Section D: Documentation**

**You do not need to provide any documentation at this time.** However, the Settlement Administrator may ask for additional proof of purchase.

**Section E: Certification**

I have read and am familiar with the contents of this Claim Form. I certify that the information provided by me is true, correct and complete to the best of my knowledge. I further certify that I am submitting this information on behalf of myself or a Settlement Class Member for whom I serve in the capacity of an authorized agent.

I hereby submit to the jurisdiction of the United States District Court for the District of New Jersey for all purposes connected with this Claim Form, including resolution of disputes relating to this Claim Form.

**I certify that the above information supplied by the undersigned is true and correct to the best of my knowledge and that this**

Claim Form was executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Signature

Print or Type Name

Electronically file or mail the completed Claim Form postmarked on or before **[Date], 2020** to the following address:

*In re Thalomid and Revlimid Antitrust Litigation*

Settlement Administrator

P.O. Box 43143

Providence, RI 02940-3143

**REMINDER CHECKLIST:**

1. Please complete and sign the above Claim Form.
2. Keep a copy of your Claim Form and supporting documentation for your records.
3. If you would also like acknowledgement of receipt of your Claim Form, please complete the form online or mail this form via Certified Mail, Return Receipt Requested.
4. If you move and/or your name changes, please send your new address and/or your new name or contact information to the Settlement Administrator via the Settlement Website or U.S. Mail.

LEGAL NOTICE

**Entities that paid for the prescription drug  
Thalomid or Revlimid may be affected by, and could get  
a payment from, a new \$34 million class action settlement.**

A new (March 2020) settlement has been reached with Celgene Corporation (“Celgene”) in a class action lawsuit about whether it acted unlawfully to keep generic versions of Thalomid and Revlimid off the market. Celgene denies all of the claims in the lawsuit. The Plaintiffs and Celgene have agreed to the settlement to avoid the cost and risk of a trial.

**Who’s Included?** The settlement includes people and entities who paid for some or all of the purchase price of Thalomid or Revlimid in any form before [preliminary approval date], in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee, for personal or family use or for their families, or their members, employees, insureds, participants, or beneficiaries (“Settlement Class Members”). A list of entities excluded from the settlement class can be found at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com).

There are two groups included in the settlement: consumers and third-party payors (“TPPs”).

**What Does the Settlement Provide?** A \$34 million Settlement Fund has been established by Celgene. After deducting Court-approved attorneys’ fees and expenses, and the costs of settlement notice and administration, portions of the net Settlement Fund will be made available to consumer Settlement Class Members, and portions of the net Settlement Fund will be made available to TPP Settlement Class Members. These amounts will be based on Plaintiffs’ expert’s damages calculations.

Payments will be based on the total amount of money spent on qualifying Thalomid and Revlimid prescriptions and the total number of claims filed. TPPs will receive their share of the TPP portion of the net Settlement Fund in proportion to their total dollars spent.

**How Do You Get a Payment?** If you submitted a claim to participate in the 2019 class action settlement with Celgene, you do not need to, but you can, submit a Supplemental Claim Form for additional purchases made from August 1, 2010. Otherwise you must submit a Claim Form postmarked or filed electronically by **[date], 2020**. Claims may be submitted online or downloaded for mailing at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com). Claim forms and instructions are also available by calling 1-866-446-1551 or by writing to *In re Thalomid and Revlimid Antitrust Litigation* Settlement Administrator, P.O. Box 43143, Providence, RI 02940-3143.

**Your Other Options.** If your entity is included in the settlement and it does nothing, its rights will be affected and it will not get a payment (unless it previously submitted a Claim Form). If you do not want your entity to be legally bound by the settlement, you must exclude it from the settlement postmarked by **[date], 2020**. Unless you exclude your entity, it will not be able to sue or continue to sue Celgene for any claim made in this lawsuit or released by the Settlement Agreement. If your entity stays in the settlement, it may object to the settlement or ask for permission for an authorized representative or its lawyer to appear and speak at the hearing—at your entity’s cost—but it does not have to. Objections and requests to appear are due by **[date], 2020**. More information about these options is in the detailed notice available at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com).

**1-866-446-1551**

**[www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com)**

## **Exhibit 2**

**Entities that paid for the prescription drug **THALOMID** or **Revlimid** may be affected by, and could get a payment from, a new \$34 million class action settlement.**



## **Exhibit 3**

# If you purchased the prescription drugs Thalomid or Revlimid, your rights may be affected, and you could get a payment from a new class action settlement.

*A federal Court authorized this Notice. It is not a solicitation from a lawyer.*

- A new (March 2020) settlement has been reached with Celgene Corporation (“Celgene”) in a class action lawsuit about whether it acted to keep generic versions of Thalomid and Revlimid off the market. This Notice is for:
  - **Consumers who paid for Thalomid or Revlimid.**
- Celgene has agreed to settle the lawsuit for \$34 million.
- You may be included in this settlement if you paid for all or some of the purchase price of Thalomid or Revlimid in any form—for use by you or your family—in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee any time before [the preliminary approval date].
- Your rights are affected whether you act or don’t act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
<b>SUBMIT A CLAIM FORM</b> DEADLINE: [DATE, 2020]	Unless you already submitted a claim, this is the only way you will receive any payment from the settlement with Celgene. If you submitted a claim to participate in the 2019 class action settlement with Celgene, you do not need to, but you can, submit a supplemental claim for additional purchases made after August 1, 2019. You will also give up the right to sue Celgene in a separate lawsuit about the claims this settlement resolves.
<b>ASK TO BE EXCLUDED</b> DEADLINE: [DATE, 2020]	<p>If you decide to exclude yourself, you will keep the right to sue Celgene in a separate lawsuit about the claims this settlement resolves, but you give up the right to get a payment from this settlement.</p> <p>This is the only option that allows you to sue, continue to sue, or be part of another lawsuit against Celgene related to the legal claims released by this settlement.</p>
<b>OBJECT TO THE SETTLEMENT</b> DEADLINE: [DATE, 2020]	If you do not exclude yourself from the settlement, you may object to it by writing to the Court about why you don’t like the settlement.
<b>GO TO A HEARING</b> ON: [DATE, 2020]	You may object to the settlement and ask the Court for permission to speak at the Fairness Hearing about your objection.
<b>DO NOTHING</b>	If you are a Settlement Class Member (see Questions 5 and 6, below), you are automatically part of the settlement. If you do nothing, you will not get a payment from this settlement (unless you previously submitted a Claim Form) and you will give up the right to sue, continue to sue, or be part of another lawsuit against Celgene for any claim made in this lawsuit or released by the Settlement Agreement. If you submitted a claim in 2019, your claim will automatically be evaluated for eligibility to receive a payment if the proposed settlement is approved.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the settlement.



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**BASIC INFORMATION****1. Why was this Notice issued?**

A federal Court authorized this Notice because you have a right to know about the proposed settlement of this class action lawsuit and about all of your options before the Court decides whether to grant final approval to the settlement. This Notice explains the lawsuit, the settlement, your legal rights, what benefits are available, and who can get them.

Judge Madeline Cox Arleo of the United States District Court for the District of New Jersey is overseeing this class action. The case is known as *In re Thalomid and Revlimid Antitrust Litigation*, Case No. 2:14-cv-06997. The individuals and entities that filed this lawsuit are called the “Plaintiffs” and the company they sued, Celgene Corporation (“Celgene”), is called the “Defendant.”

**2. What is this lawsuit about?**

The lawsuit is about the prescription drugs Thalomid and Revlimid. Plaintiffs claim that Celgene acted to delay the availability of less expensive generic versions of the drugs. The Plaintiffs claim that these actions denied uninsured consumers, insured consumers, and third-party payors (“TPPs”), like insurers that paid for Thalomid and Revlimid, the benefits of competition and caused them to pay higher prices for these drugs than they otherwise would have.

The Defendant denies all of the claims and allegations made in the lawsuit.

**3. What is a class action?**

In a class action, one or more people or entities called Class Representatives or Plaintiffs sue on behalf of other people or entities with similar claims. The people and entities included in the class action are called a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

The Class Representatives in this lawsuit are International Union of Bricklayers and Allied Craft Workers Local 1 Health Fund, the City of Providence, International Union of Operating Engineers Local 39 Health and Welfare Trust Fund, The Detectives’ Endowment Association, New England Carpenters Health Benefits Fund, and David Mitchell.

**4. Why is there a settlement?**

The Court did not decide in favor of the Plaintiffs or Defendant. Instead, the Plaintiffs and Defendant agreed to a settlement. This way, they avoid the cost and burden of a trial and the people and entities allegedly affected can get benefits. The Class Representatives and their attorneys think the settlement is best for all Settlement Class Members.

**WHO IS INCLUDED IN THE SETTLEMENT****5. How do I know whether I am part of the settlement?**

The settlement includes both consumers and TPPs. You are included in the settlement as a consumer if you purchased or paid for some or all of the purchase price of Thalomid or Revlimid (for use by you or your family) in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee any time before [preliminary approval date]. You must have resided in, submitted a payment in, or your pharmacy must have been located in one of these states when you paid for the drugs.

TPPs (such as health insurers and employee benefit plans) are included in the settlement if they paid for some or all of the purchase price of Thalomid or Revlimid (for use by their members, employees, insureds, participants, or beneficiaries) in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee any time before [preliminary approval date], and are not on the list of excluded entities on the website at the bottom of this page.

Together, the consumers and TPPs described above are called “Settlement Class Members”.

**6. Are there exceptions to being included?**

Yes. The settlement does not include: (1) Celgene and its officers, directors, management, employees, parents, subsidiaries, or Affiliates; (2) Federal or state governmental entities, except cities, towns, or municipalities with self-funded prescription drug plans; (3) Persons or entities who only purchased Revlimid or Thalomid for purposes of resale directly from Celgene or its Affiliates; (4) Fully insured health plans; (5) Stop-loss insurers; (6) The judges in this Action and any members of their immediate families; and (7) the entities listed as excluded at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com).

**7. What if I am still not sure whether I am part of the settlement?**

If you are not sure whether you are included, call 1-866-446-1551, go to [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com) or write to one of the lawyers listed in Question 18 below.

**THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY****8. What does the settlement provide?**

A \$34 million Settlement Fund has been established by Celgene in this settlement. After deducting Court-approved attorneys' fees and expenses, and the costs of settlement notice and administration, 5.5% of the net Settlement Fund will be made available to Settlement Class Members who purchased Thalomid, of which 15.5% will be allocated to consumer Settlement Class Members and 84.5% will be allocated to TPP Settlement Class Members. The remaining 94.5% of the net Settlement Fund will go to Revlimid purchasers, of which 13.5% will be made available to consumer Settlement Class Members and 86.5% will be made available to TPP Settlement Class Members. This allocation is based on Plaintiffs' expert's damage calculations.

**9. How much will my payment be?**

Your share of the net Settlement Fund will depend on the total amount of money you spent on qualifying purchases of Thalomid and Revlimid and the total amount of money other consumer Settlement Class Members—that file a valid Claim Form—spent on qualifying purchases of Thalomid and Revlimid. All consumer Settlement Class Members will receive their share of the allotted net Settlement Fund in proportion to their total dollars spent. You are not responsible for calculating the amount you may be entitled to receive under the settlement. This calculation will be determined based on the information you provide on your Claim Form and the supporting documentation you submit.

A copy of the Plan of Allocation, which details how payments will be calculated, is available at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com).

**10. Why is there a new settlement with Celgene about Thalomid and Revlimid?**

Celgene originally entered into a settlement with a class of Thalomid and Revlimid purchasers in 2019, but it exercised its right to rescind that settlement after various entities opted out of the settlement. That settlement agreement no longer exists; this settlement replaces that one. If you submitted a claim to participate in the 2019 settlement, you do not need to submit a new claim to participate in this settlement.

**HOW TO GET A SETTLEMENT PAYMENT—SUBMITTING A CLAIM FORM****11. How do I get a payment?**

If you submitted a claim to participate in the 2019 Thalomid/Revlimid settlement, you do not need to submit a new Claim Form. The claims administrator will use the Claim Form you previously submitted to calculate the amount you are owed. If you wish to correct your claim or if you have made additional purchases of Thalomid or Revlimid since submitting your claim you may submit a Supplemental Claim Form to include those purchases. If you did not previously submit a claim, you must complete and submit a Claim Form by **[date], 2020**. If you received this notice in the mail and you previously submitted a claim, please see the attached Supplemental Claim Form to verify the records and add any additional purchases made from August 1, 2019 through [preliminary approval date]. Claims may be submitted online or downloaded for printing and submission via U.S. Mail at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com). Claim Forms and instructions are also available by calling 1-866-446-1551 or by writing to *In re Thalomid and Revlimid Antitrust Litigation* Settlement Administrator, P.O. Box 43143, Providence, RI 02940-3143.

**12. When would I get my payment?**

The Court will hold a hearing at ##:00 on [date], 2020 to decide whether to grant final approval to the settlement. If the Court approves the settlement, there may be appeals. It is always uncertain whether appeals will be filed and, if so, how long it will take to resolve them. The net Settlement Fund will be distributed to Settlement Class Members as soon as possible, if and when the Court grants final approval to the settlement.

**13. What if my name or address changes after I submit a Claim Form, but before I receive my payment?**

If your name or address needs to be corrected, you must send a letter to the Settlement Administrator *In re Thalomid and Revlimid Antitrust Litigation* Settlement Administrator, P.O. Box 43143, Providence, RI 02940-3143.

#### 14. What rights am I giving up to get a payment and stay in the Settlement Class?

Unless you exclude yourself, you are staying in the Settlement Class. If the settlement is approved and becomes final, all of the Court's orders will apply to you and legally bind you. You won't be able to sue, continue to sue, or be part of any other lawsuit against Celgene and certain related parties for any claim made in this lawsuit or released by the Settlement Agreement, but you will be able to submit a Claim Form to receive a payment from this settlement. The rights you are giving up are called Released Claims.

#### 15. What are the Released Claims?

Generally, if and when the Settlement Agreement becomes final, Settlement Class Members will permanently release Celgene—and its predecessors, successors, subsidiaries, parents, affiliates, divisions, and departments (including but not limited to the Bristol-Myers Squibb Company), and each of their respective officers, directors, employees, agents, attorneys, servants, and representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing (the "Released Parties") from any and all claims, counterclaims, demands, actions, potential actions, suits, and causes of action, losses, obligations, damages, matters and issues of any kind or nature whatsoever, and liabilities of any nature, including without limitation claims for costs, expenses, penalties, and attorneys' fees, whether class, individual, or otherwise, that the Settlement Class Members, their predecessors, successors, subsidiaries, parents, affiliates, divisions, and departments, and each of their respective officers, directors, employees, agents, attorneys, servants, and representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, ever had or now has directly, representatively, derivatively or in any other capacity against any of the Released Parties, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, accrued or unaccrued, matured or unmatured, disclosed or undisclosed, apparent or unapparent, liquidated or unliquidated, or claims that have been, could have been, or in the future might be asserted in law or equity, on account of or arising out of or resulting from or in any way related to any conduct regardless of where it occurred at any time prior to the Effective Date (the date on which all of the following have occurred (1) the Settlement Agreement is approved by the Court; (2) the Court enters a final approval order, entering a final judgment of dismissal with prejudice against Plaintiffs and members of the Settlement Class who have not timely excluded themselves from the Settlement Class; and (3) the time for appeal or to seek permission to appeal from the Court's approval of the Settlement Agreement and entry of a final judgment has expired or, if appealed, approval of the Settlement Agreement and the final judgment has been affirmed in its entirety by the court of last resort and the appeal is no longer subject to further appeal or review) concerning the purchase, reimbursement for and/or payment for some or all of the purchase price for Thalomid or Revlimid in any form, including without limitation, claims based in whole or in part on the facts, occurrences, transactions, or other matters alleged in the Action, or otherwise the subject of the Action, which arise under any antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, unjust enrichment, civil conspiracy law, or any other law, code, rule, or regulation of any country or jurisdiction worldwide, including under federal or state law, and regardless of the type or amount of damages claimed, from the beginning of time through the Effective Date.

Settlement Class Members will not release any claims for product liability, breach of warranty, breach of contract, or tort of any kind (other than a breach of contract, breach of warranty or tort based on any factual predicate in this action), a claim arising out of violation of Uniform Commercial Code, or personal or bodily injury.

The specific claims you will be releasing are described in paragraph 23 of the Settlement Agreement, available at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com).

### EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue Celgene for any claim made in this lawsuit or released by the Settlement Agreement, and you do not want to receive a payment from this settlement, you must take steps to get out of the settlement. This is called excluding yourself or opting out of the settlement.

#### 16. How do I get out of the settlement?

Consumers who want to be excluded from the Settlement Class must email and mail a written request for exclusion to the Settlement Administrator. Your request for exclusion must include: (1) your name and address; (2) the name of this case, *In re Thalomid and Revlimid Antitrust Litigation*, Case No. 2:14-cv-06997; (3) a statement that you are a Settlement Class Member and you wish to be excluded from the Settlement Class; and (4) your signature. Your request for exclusion must be emailed and mailed to the Settlement Administrator at the postal and email addresses below and postmarked no later than **[date], 2020**:

*In re Thalomid and Revlimid Antitrust Litigation*

Settlement Administrator  
P.O. Box 43143  
Providence, RI 02940-3143  
info@thalomidrevlimidlitigation.com

**17. If I exclude myself, can I still get a payment from this settlement?**

No. If you exclude yourself, you are telling the Court that you don't want to be part of the Settlement Class in this settlement. You can only get a payment if you stay in the Settlement Class and submit a Claim Form.

**18. If I do not exclude myself, can I sue Celgene for the same claims later?**

No. Unless you exclude yourself, you are giving up the right to sue Celgene for the claims that this settlement resolves. You must exclude yourself from *this* lawsuit to start or continue with your own lawsuit or be part of any other lawsuit against Celgene.

**THE LAWYERS REPRESENTING YOU****19. Do I have a lawyer in this case?**

Yes. Judge Arleo appointed Hausfeld LLP, Block & Leviton LLP and Hach Rose Schirripa & Cheverie LLP to represent you and other Settlement Class Members as "Settlement Class Counsel." These law firms and their lawyers are experienced in handling similar cases. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**20. How will the lawyers be paid?**

Settlement Class Counsel will ask the Court for attorneys' fees of up to 33 and one-third percent of the \$34 million Settlement Fund, and reimbursement of their expenses (up to \$4 million). The Court may award less than these amounts. All of these amounts, as well as the costs associated with administering the settlement and service awards to the Class Representatives (\$10,000 each, if approved), will be paid from the Settlement Fund before making payments to Settlement Class Members who submit valid Claim Forms.

The application for an award of attorneys' fees and reimbursement of costs and expenses will be filed with the Clerk of the United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Room 4015, Newark, New Jersey 07101. After it is filed, it will also be available at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com).

**OBJECTING TO THE SETTLEMENT**

You can tell the Court if you don't agree with the settlement or any part of it.

**21. How do I tell the Court that I do not like the settlement?**

If you are a Settlement Class Member, you can object to the settlement if you do not like it or a portion of it (including the request for attorneys' fees and costs—see Question 20). You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter via First Class U.S. mail saying that you object to the settlement of *In re Thalomid and Revlimid Antitrust Litigation*, Case No. 2:14-cv-06997. Your objection must also include: (1) your name; (2) address; (3) telephone number; (4) signature; and (5) the reasons why you object to the settlement. Email and mail your objection to [info@thalomidrevlimidlitigation.com](mailto:info@thalomidrevlimidlitigation.com) and all three addresses below postmarked on or before **[date], 2020**.

Clerk of the Court	Settlement Class Counsel	Defense Counsel
Clerk of the United States District Court for the District of New Jersey Martin Luther King Building & U.S. Courthouse 50 Walnut Street, Room 4015 Newark, NJ 07101	Melinda R. Coolidge Hausfeld LLP 1700 K Street, NW Suite 650 Washington, DC 20006 <a href="mailto:mcoolidge@hausfeld.com">mcoolidge@hausfeld.com</a>	John E. Schmidlein Williams & Connolly LLP 725 12th Street NW Washington, DC 20005 <a href="mailto:JSchmidlein@wc.com">JSchmidlein@wc.com</a>



**22. May I come to Court to speak about my objection?**

Yes. You or your attorney may speak at the Fairness Hearing about your objection. To do so, in addition to the information above, your objection must also include: (1) a statement that it is your "Notice of Intention to Appear in front of Judge Arleo at the Fairness Hearing *In re Thalomid and Revlimid Antitrust Litigation*, Case No. 2:14-cv-06997"; (2) an outline of your positions and the reasons for them; and (3) copies of any supporting documents or briefs you want the Court to consider. Remember, your objection must be postmarked by [date], **2020** and sent to all three addresses in Question 21.

**23. What is the difference between objecting to the settlement and asking to be excluded from it?**

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Settlement Class (do not exclude yourself). Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you cannot object because the settlement no longer affects you.

**THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

**24. When and where will the Court decide whether to approve the settlement?**

The Court will hold a Fairness Hearing at #:00 on [date], 2020 at the United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. It will also consider whether to approve: (1) the amount and proposed distribution of the Settlement Fund; (2) Settlement Class Counsel's application for an award of attorneys' fees and disbursement of expenses and costs; and (3) the service awards to be paid to the Class Representatives. If there are objections, the Court will consider them. Judge Arleo will listen to people who have asked to speak at the hearing (see Question 22 above). After the hearing, the Court will decide whether to approve the settlement.

**25. Do I have to come to the hearing?**

No. Settlement Class Counsel will answer any questions Judge Arleo may have. However, you are welcome to come to the hearing at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but that is not necessary.

**26. May I speak at the hearing?**

Yes. You may ask the Court for permission to speak at the Fairness Hearing (see Question 22 above).

**IF YOU DO NOTHING****27. What happens if I do nothing at all?**

If you are a Settlement Class Member and you do nothing, you will give up the rights explained in Question 15, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Celgene for any claim made in this lawsuit or released by the Settlement Agreement. In addition, you will not receive a payment (unless you previously submitted a Claim Form) from the net Settlement Fund.

**GETTING MORE INFORMATION****28. How do I get more information?**

This Notice summarizes the proposed settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are or will be available by: (1) writing to one of the law firms listed in Question 19; (2) going to [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com); or (3) writing to the Settlement Administrator *In re Thalomid and Revlimid Antitrust Litigation* Settlement Administrator, P.O. Box 43143, Providence, RI 02940-3143. Publicly-filed documents can also be obtained by visiting the office of the Clerk of the United States District Court for the District of New Jersey or reviewing the Court's online docket.

**MUST BE POSTMARKED  
OR FILED  
ELECTRONICALLY ON  
OR BEFORE  
DATE**

United States District Court for the District of  
New Jersey

**FOR OFFICIAL USE ONLY**

**\*ABDCA99999\***

*In re Thalomid and Revlimid  
Antitrust Litigation*  
Case No. 2:14-cv-06997

**CONSUMER SUPPLEMENTAL CLAIM FORM**

Use Blue or Black Ink Only

**TO UPDATE YOUR PURCHASE HISTORY FOR THIS SETTLEMENT, YOU MUST COMPLETE AND SUBMIT THIS CLAIM FORM.**

**CONSUMER SUPPLEMENTAL CLAIM FORM**

**YOUR CLAIM MUST BE POSTMARKED OR FILED ELECTRONICALLY ON OR BEFORE MONTH DATE**

**Mail your claim to:**

*In re Thalomid and Revlimid Antitrust Litigation*  
Settlement Administrator  
P.O. Box 43143  
Providence, RI 02940-3143

**OR**

**Submit a Claim Form online at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com).**

**Section A: General Information**

The Settlement Administrator will use this information for all communications regarding this Claim Form. If this information changes, you **MUST** notify the Settlement Administrator in writing at the address above.

Settlement Class Member Name (*i.e.*, the person that paid for Thalomid or Revlimid)

Street Address

City

State

Zip Code

Daytime/Preferred Telephone Number

E-Mail Address\*

Complete Only If Applicable: Agent/Legal Representative Submitting this Form on Behalf of the Settlement Class Member:

Street Address

City

State

Zip Code

Daytime Telephone Number

E-Mail Address\*

\*By providing your e-mail address, you authorize the Settlement Administrator to use it in providing you with information relevant to this

### Section B: Purchase Information

If different than the total listed below, provide the amount of money you spent on each drug for prescriptions filled before [new preliminary approval date] for use by you or your family. Only include purchases made in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee. In other words, you had to reside in, submit a payment in, or your pharmacy had to be located in one of these states when you paid for the drugs. If the total listed below is correct, please proceed to the following section.

THALOMID	TOTAL
The records show the following total amount of money spent on qualifying prescriptions of Thalomid before August 1, 2019.	\$(amount)
If the amount listed above is incorrect, provide the correct amount in the box to the right.	\$

REVLIMID	TOTAL
The records show the following total amount of money spent on qualifying prescriptions of Revlimid before August 1, 2019.	\$(amount)
If the amount listed above is incorrect, provide the correct amount in the box to the right.	\$

### New Purchases

Provide the amount of money you spent on each drug for prescriptions filled before Date for use by you or your family IF THE AMOUNTS ARE DIFFERENT THAN THE AMOUNTS ON RECORD. Only include purchases made in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee. In other words, you had to reside in, submit a payment in, or your pharmacy had to be located in one of these states when you paid for the drugs.

THALOMID	TOTAL
Provide the total amount of money spent on qualifying prescriptions of Thalomid before [Date] (only if different from the amount listed above)	\$

REVLIMID	TOTAL
Provide the total amount of money spent on qualifying prescriptions of Revlimid before [Date] (only if different from the amount listed above)	\$

IF THE ABOVE RECORDS ARE CORRECT, AND YOU HAVE NOT MADE ANY FURTHER PURCHASES, YOU DO NOT NEED TO SUBMIT ANOTHER CLAIM FORM TO BE CONSIDERED FOR DISTRIBUTION.

### Section C: Note Regarding Documentation

You do not need to provide any documentation at this time. However, the Settlement Administrator may ask for additional proof of purchase.

### Section D: Certification

I have read and am familiar with the contents of this Claim Form. I certify that the information provided by me is true, correct and complete to the best of my knowledge. I further certify that I am submitting this information on behalf of myself or a Settlement Class Member for whom I serve in the capacity of an authorized agent.



I hereby submit to the jurisdiction of the United States District Court for the District of New Jersey for all purposes connected with this Claim Form, including resolution of disputes relating to this Claim Form.

I certify that the above information supplied by the undersigned is true and correct to the best of my knowledge and that this Claim Form was executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Signature

Print or Type Name

Electronically file or mail the completed Claim Form postmarked on or before **[date], 2020**, to the following address:

*In re Thalomid and Revlimid Antitrust Litigation*  
Settlement Administrator  
P.O. Box 43143  
Providence, RI 02940-3143

**REMINDER CHECKLIST:**

1. Please complete and sign the above Supplemental Claim Form.
2. Keep a copy of your Supplemental Claim Form and supporting documentation for your records.
3. If you would also like acknowledgement of receipt of your Supplemental Claim Form, please complete the form online or mail this form via Certified Mail, Return Receipt Requested.
4. If you move and/or your name changes, please send your new address and/or your new name or contact information to the Settlement Administrator via the Settlement Website or U.S. Mail.

**MUST BE POSTMARKED  
OR FILED  
ELECTRONICALLY ON  
OR BEFORE  
DATE**

United States District Court for the District of  
New Jersey

**FOR OFFICIAL USE ONLY**

**\*ABDCA99999\***

*In re Thalomid and Revlimid  
Antitrust Litigation*  
Case No. 2:14-cv-06997

**CONSUMER CLAIM FORM**

Use Blue or Black Ink Only

**TO QUALIFY TO RECEIVE A PAYMENT FROM THIS SETTLEMENT, YOU MUST COMPLETE AND SUBMIT THIS CLAIM FORM.**

**CONSUMER CLAIM FORM**

**YOUR CLAIM MUST BE POSTMARKED OR FILED ELECTRONICALLY ON OR BEFORE DATE**

**Mail your claim to:**

*In re Thalomid and Revlimid Antitrust Litigation*  
Settlement Administrator  
P.O. Box 43143  
Providence, RI 02940-3143

**OR**

**Submit a Claim Form online at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com).**

**Section A: General Information**

The Settlement Administrator will use this information for all communications regarding this Claim Form. If this information changes, you **MUST** notify the Settlement Administrator in writing at the address above.

Settlement Class Member Name (*i.e.*, the person that paid for Thalomid or Revlimid)

Street Address

City

State

Zip Code

Daytime/Preferred Telephone Number

E-Mail Address\*

Complete Only If Applicable: Agent/Legal Representative Submitting this Form on Behalf of the Settlement Class Member:

Street Address

City

State

Zip Code

Daytime Telephone Number

E-Mail Address\*

\*By providing your e-mail address, you authorize the Settlement Administrator to use it in providing you with information relevant to this

### Section B: Purchase Information

Provide the amount of money you spent on each drug for prescriptions filled before [new preliminary approval date] for use by you or your family. Only include purchases made in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee. In other words, you had to reside in, submit a payment in, or your pharmacy had to be located in one of these states when you paid for the drugs.

THALOMID	TOTAL
Provide the total amount of money spent on qualifying prescriptions of Thalomid before [Date].	\$

REVLIMID	TOTAL
Provide the total amount of money spent on qualifying prescriptions of Revlimid before [Date].	\$

### Section C: Note Regarding Documentation

**You do not need to provide any documentation at this time.** However, the Settlement Administrator may ask for additional proof of purchase.

### Section D: Certification

I have read and am familiar with the contents of this Claim Form. I certify that the information provided by me is true, correct and complete to the best of my knowledge. I further certify that I am submitting this information on behalf of myself or a Settlement Class Member for whom I serve in the capacity of an authorized agent.

I hereby submit to the jurisdiction of the United States District Court for the District of New Jersey for all purposes connected with this Claim Form, including resolution of disputes relating to this Claim Form.

**I certify that the above information supplied by the undersigned is true and correct to the best of my knowledge and that this Claim Form was executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.**

Signature

Print or Type Name

Electronically file or mail the completed Claim Form postmarked on or before **[date], 2020**, to the following address:

*In re Thalomid and Revlimid Antitrust Litigation*  
Settlement Administrator  
P.O. Box 43143  
Providence, RI 02940-3143

### REMINDER CHECKLIST:

1. Please complete and sign the above Claim Form.
2. Keep a copy of your Claim Form and supporting documentation for your records.
3. If you would also like acknowledgement of receipt of your Claim Form, please complete the form online or mail this form via Certified Mail, Return Receipt Requested.
4. If you move and/or your name changes, please send your new address and/or your new name or contact information to the Settlement Administrator via the Settlement Website or U.S. Mail.

## **Exhibit 4**

LEGAL NOTICE

**If you purchased the  
prescription drugs  
Thalomid or Revlimid, your  
rights may be affected, and  
you could get a payment  
from a new \$34 million  
class action settlement.**

A new (March 2020) settlement has been reached with Celgene Corporation (“Celgene”) in a class action lawsuit about whether it acted to keep generic versions of Thalomid and Revlimid off the market. Celgene denies all of the claims in the lawsuit. The Plaintiffs and Celgene have agreed to the settlement to avoid the cost and risk of a trial.

**Who’s Included?** The settlement includes people and entities who paid for some or all of the purchase price of Thalomid or Revlimid in any form before [preliminary approval date], in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee, for personal use or for their families, or their members, employees, insureds, participants, or beneficiaries (“Settlement Class Members”).

There are two groups included in the settlement: consumers and third-party payors (“TPPs”).

**What Does the Settlement Provide?** A \$34 million Settlement Fund has been established by Celgene. After deducting Court-approved attorneys’ fees and expenses, and the costs of settlement notice and administration, portions of the net Settlement Fund will be made available to consumer Settlement Class Members, and portions of the net Settlement Fund will be made available to TPP Settlement Class Members. These amounts will be based on Plaintiffs’ expert’s damages calculations. Payments will be based on the total amount of money spent on qualifying Thalomid and Revlimid prescriptions and the total number of claims filed. Consumers will receive their share of the consumer portion of the net Settlement Fund in proportion to their total dollars spent.

**How Do You Get a Payment?** If you submitted a claim to participate in the 2019 class action settlement with Celgene, you do not need to, but you can, submit a Supplemental Claim Form for additional purchases made from August 1, 2019. Otherwise, you must submit a Claim Form by [date], 2020. Claims may be submitted online or downloaded for mailing at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com). Claim Forms and instructions are also available by calling 1-866-446-1551 or by writing to *In re Thalomid and Revlimid Antitrust Litigation* Settlement Administrator, P.O. Box 43143, Providence, RI 02940-3143.

**Your Other Options.** If you are included in the settlement and do nothing, your rights will be affected and you won’t get a payment (unless you previously submitted a Claim Form). If you don’t want to be legally bound by the settlement, you must exclude yourself from it by [date], 2020. Unless you exclude yourself, you won’t be able to sue or continue to sue Celgene for any claim made in this lawsuit or released by the Settlement Agreement. If you stay in the settlement (i.e., don’t exclude yourself), you may object to it or ask for permission for you or your own lawyer to appear and speak at the hearing—at your own cost—but you don’t have to. Objections and requests to appear are due by [date], 2020. More information about these options is in the detailed notice available at [www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com).

**1-866-446-1551**  
**[www.ThalomidRevlimidLitigation.com](http://www.ThalomidRevlimidLitigation.com)**

## **Exhibit 5**

**If you purchased the prescription drugs **THALOMID** or **Revlimid**, you could get a payment from a new \$34 million class action settlement.**



**If you purchased the prescription drugs **THALOMID** or **Revlimid**, you could get a payment from a new \$34 million class action settlement.**





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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**HIGHLY CONFIDENTIAL  
SUBJECT TO PROTECTIVE ORDER**

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civil No. 14-6997 (MCA) (MAH)**

**DECLARATION OF JEFFREY J. LEITZINGER, PH.D.  
Related to Proposed Allocation Plan and  
Net Settlement Fund Allocation**

**Econ ONE Research, Inc.**

**April 7, 2020**

550 South Hope St., Suite 800  
Los Angeles, CA 90071

1. I am the same Jeffrey J. Leitzinger that previously submitted several expert reports and a declaration in this matter.<sup>1</sup> A summary of my experience and qualifications was contained in my previous reports. Econ One is being compensated for the time I spend on this matter at my normal and customary rate of \$850 per hour. Econ One also is being compensated for time spent by my research staff on this matter at their normal and customary hourly rates.
2. In my August 14, 2019 Declaration, I provided shares of total damages for the settlement class states attributable to purchases of Thalomid versus Revlimid, as well as the share of damages as to each of those drugs represented by third-party payors (TPPs) as compared with consumers. I now have been asked by counsel for the settlement class to use data regarding opt-out volumes produced by the opt-out TPPs (listed in Exhibit 1) and recalculate those shares after first removing TPP damages from each calculation representing the share of opt-out volumes relative to total TPP purchases.
3. Rounding to the nearest half percent, the recalculated shares are as follows:
  - a. The adjusted shares of total damages are 5.5 percent for Thalomid and 94.5 for Revlimid.
  - b. The adjusted shares of Thalomid damages are 84.5 percent for TPPs and 15.5 percent for consumers.
  - c. The adjusted shares of Revlimid damages are 86.5 percent for TPPs and 13.5 percent for consumers.
4. The foregoing is true and correct to the best of my knowledge and belief.



Jeffrey J. Leitzinger, Ph.D.  
April 7, 2020

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<sup>1</sup> See Expert Report of Jeffrey J. Leitzinger, Ph.D., dated October 2, 2017; Supplement to Expert Report of Jeffrey J. Leitzinger, Ph.D., dated November 30, 2017; Rebuttal Expert Report of Jeffrey J. Leitzinger, Ph.D., dated May 18, 2018; Expert Report of Jeffrey J. Leitzinger, Ph.D., dated June 18, 2018; Rebuttal Report of Jeffrey J. Leitzinger, Ph.D., dated October 29, 2018; Supplemental Report of Jeffrey J. Leitzinger, Ph.D., dated December 14, 2018; Supplemental Rebuttal Report of Jeffrey J. Leitzinger, Ph.D., dated February 15, 2019; Declaration of Jeffrey J. Leitzinger, Ph.D., dated August 14, 2019.

**Exhibit 1**  
**In Re: Thalomid and Revlimid Antitrust Litigation**  
**List of Additional Materials Reviewed Since my August 14, 2019 Declaration**

**Data**

19-4386 - Celgene Opt-out Detail report (REVLIMID).csv  
19-4386 - Celgene Opt-out Detail report (THALOMID).csv  
19-4386 Celgene Opt-Out Report Data Summary.xlsx  
Aetna (Medicaid) - Fully Insured 1.xlsb  
Aetna (Medicaid) - Fully Insured 2.xlsb  
Aetna (Medicare) - Fully Insured.xlsx  
Aetna (Medicare) - Self Funded.xlsx  
Anthem - EDWARD THALOMID\_SUBMISSION\_ASO.xlsx  
Anthem - EDWARD THALOMID\_SUBMISSION\_FI.xlsx  
Atty Format-BCBSTs Fully Insured Claims.xlsx  
Atty Format-BCBSTs Self Funded Group List with EINs.xlsx  
Atty Format-BCBSTs Self Insured Claims.xlsx  
BCBSA - Thalomid and Revlimid 1.xlsx  
BCBSA - Thalomid and Revlimid 2.xlsx  
BCBSKC - FI Claims\_Revlimid-Thalomid.xlsx  
BCBSKC ASO Claims\_ Revlimid-Thalomid.xlsx  
BCBSMN - Fully Insured.xlsx  
BCBSMN - Self Funded.xlsx  
BCBS-NC Amisys Thalomid and Revlimid.xlsx  
BCBS-NC EDW Thalomid and Revlimid.xlsx  
BCBS-VT Thalomid Revlimid.xlsb  
Carefirst - ASO.xlsx  
Centene Thalomid\_Revlimid Claims.xlsx  
Cigna (215) - Fully Insured 1.xlsx  
Cigna (215) - Fully Insured 2.xlsx  
Cigna (215) - Self Funded 1.xlsx  
Cigna (215) - Self Funded 2.xlsx  
Cigna (216) - Fully Insured 1.xlsx  
Cigna (216) - Fully Insured 2.xlsx  
Cigna (518) - Fully Insured 1.xlsx  
Cigna (518) - Fully Insured 2.xlsx  
Cigna (518) - Self Funded 1.xlsx  
Cigna (518) - Self Funded 2.xlsx  
Cigna (519) - Fully Insured 1.xlsx  
Cigna (519) - Fully Insured 2.xlsx  
Cigna (Medicare) - Fully Insured.xlsx  
FL Blue Revlimid ASO claims to send.xlsx  
FL Blue Revlimid Ins claims to send.xlsx  
FL Blue Thalomid ASO claims to send.xlsx  
FL Blue Thalomid Ins claims to send.xlsx  
GEHA CVS Claims Data Pull for Thalomid-Revlimid.xlsx  
GEHA ESI Thalomid Revlimid Claims Data Pull.xlsb

**Exhibit 1**

**In Re: Thalomid and Revlimid Antitrust Litigation**

**List of Additional Materials Reviewed Since my August 14, 2019 Declaration**

Harvard Pilgrim Revlimid Claims.xlsx  
Harvard Pilgrim Thalomid Claims.xlsx  
Hawaii Medical Services Association\_Revlimid and Thalomid - 1999 - 20191110\_Fully Insured.xlsx  
HCSC\_REVLIMID\_Rx\_clms\_ASO.xlsx  
HCSC\_REVLIMID\_Rx\_clms\_Ins.xlsx  
HCSC\_THALOMID\_Rx\_clms\_ASO.xlsx  
HCSC\_THALOMID\_Rx\_clms\_Ins.xlsx  
Health Partners Thalomid\_Revlimid\_12\_2019.xlsx  
Health PartnersThalomid\_Revlimid\_12\_2019.txt  
Highmark Fully Insured.xlsx  
Horizon Commercial.xlsx  
Humana - ASO.xlsx  
Humana - FI.xlsx  
Independent Health - Revlimid Claims.csv  
Independent Health - Thalomid Claims.csv  
Letter from Biocon Limited to Settlement Administrator dated 11/29/2019  
Letter from United Health Care Group to Settlement Administrator dated 12/2/2019  
MVP\_Thalomid and Revlimid Final 120519 V2.xlsx  
NJH Revlimid and Thalomid (Horizon).xlsx  
Premera - Fully Insured.xlsx  
Premera- Self Funded.xlsx  
Priority Health Revlimid Data 11.27.19.xlsx  
Priority Health Thalomid Data 12.09.19.xlsx  
Revlimid and Thalomid - 1999-20191129 - Non-Self-Insured.txt  
Revlimid and Thalomid - 1999-20191129 - Self-Insured.txt  
SIMPLY\_THALOMID\_SUBMISSION.xlsx  
Thalomid\_BCBSMA.xlsx  
TMN-100289347\_Hawaii Med Services Assoc Self-Funded Group Purchase Data.xlsx  
Tufts FI\_Revlimid\_Thalomid Deliverable.xlsx  
Tufts SI\_Revlimid\_Thalomid Deliverable.xlsx  
Tufts THPP\_Revlimid\_Thalomid Deliverable.xlsx  
Tufts TMP\_Revlimid\_Thalomid Deliverable.xlsx  
USAbile Revlimid Data.xlsx  
USAbile Thalomid Data.xlsx  
Wellmark - Fully Insured.xlsx

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civ. No. 14-6997 (MCA) (MAH)**

**[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION  
TO DISTRIBUTE NOTICE TO THE SETTLEMENT CLASS, APPOINT  
NOTICE AND CLAIMS ADMINISTRATOR, AND FOR APPROVAL OF  
THE PLAN OF ALLOCATION**

Upon consideration of Plaintiffs' Unopposed Motion to Distribute Notice to the Settlement Class, Appoint Notice and Claims Administrator, and For Approval of the Plan of Allocation (the "Motion"), it is hereby **ORDERED** as follows:

1. The Motion is hereby **GRANTED**.

Notice Distribution

2. The Notice Program set forth in the Motion, including the forms of Notice and Claim Forms attached as exhibits thereto, satisfy the requirements of Fed. R. Civ. P. 23 and due process, and are therefore approved. Non-material modifications to the exhibits may be made without further order of the Court. The Notice and Claims Administrator is directed to carry out the Notice Program in

conformance with the Settlement and to perform all other tasks that the Settlement requires.

3. The Court finds that the form, content, and method of giving notice to the Settlement Class as described in the Motion and exhibits: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Fed. R. Civ. P. 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class members.

4. On or before \_\_\_\_\_, 2020 [approximately 10 days from the entry of this Order], Settlement Class Counsel shall cause the notices, in substantially the same form as the Exhibits referenced above, to begin to be sent and published in the manner and in and through the media outlets and other media enumerated in the Declaration of Carla Peak. Settlement Class Counsel shall also provide a copy of the notices to all persons who request it and shall post a copy of the notices on the internet at the address identified in the notices. Settlement Class Counsel shall

notify Defendant Celgene Corporation of all class members who elect to opt out of the Settlement or object to the Settlement within 5 days of the deadline for the same.

5. At least 10 days before the date fixed by the Court for the Fairness Hearing, Settlement Class Counsel shall cause to be filed with the Clerk of this Court a declaration by the person under whose general direction the publication of notice was made, showing that publication was made in accordance with this Order.

Appointment of Notice and Claims Administrator

6. The Court hereby appoints KCC, LLC as Notice and Claims Administrator for the Settlement. Interim Co-Lead Class Counsel are “authorized to expend funds from the [Settlement Fund] for the payment of the costs of notice, payment of taxes, and settlement administration costs.” ECF No. 290 at ¶ 10.

Plan of Allocation

7. The Court finds that the proposed Plan of Allocation is fair, reasonable, and adequate under the circumstances and fairly compensates Settlement Class members based upon the scope of the release Defendant has provided as set forth in the Settlement Agreement.

8. The Court approves the Claims Forms attached as Exhibits 1 and 3 to the Declaration of Carla Peak.



Fairness Hearing

9. A Fairness Hearing shall take place before the Court on \_\_\_\_\_, 2020 [no earlier than 133 days from entry of this Order] at \_\_\_\_\_ a.m./p.m. before the Hon. Madeline Cox Arleo, U.S.D.J., at the Martin Luther King, Jr. Federal Building and Courthouse, 50 Walnut Street, Newark, New Jersey, to determine, among other things, whether: (a) the proposed Settlement Class should be finally certified for settlement purposes pursuant to Fed. R. Civ. P. 23; (b) the Settlement should be finally approved as fair, reasonable, and adequate and, in accordance with the terms of the Settlement, all claims in the litigation should be dismissed with prejudice; (c) Settlement Class members should be bound by the releases set forth in the Settlement; (d) a to-be filed, proposed final approval order and judgment should be entered; (e) class counsel's to-be-filed application for an award of attorneys' fees, costs, and expenses should be approved; and (f) the to-be-filed application for Service Awards should be approved. Any other matters the Court deems necessary and proper will also be addressed at the hearing.

10. Any member of the Settlement Class may request to be excluded therefrom; such request of exclusion must be made no later than 118 days after entry of this Order and must otherwise comply with the requirements set forth in the notices distributed to Settlement Class members. Any Settlement Class Member who does not timely seek exclusion from the Settlement Class and who

wishes to object to the terms of the proposed Settlement must do so in writing and must otherwise comply with the requirements set forth in the notices distributed to Settlement Class members, and must do so no later than 118 days after entry of this Order.

11. Class Counsel shall submit their final approval motion and their application for fees, costs, and expenses, and the application for Service Awards, 80 days after entry of this Order. Class Counsel shall post a copy of any motion for fees, costs, and expenses, and any supporting papers, on the settlement website within 24 hours after filing such materials with the Court. By no later than 5 days prior to the Fairness Hearing, responses shall be filed, if any, to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses, and for Service Awards, shall be filed.

12. Any Settlement Class Member that has not timely and properly excluded itself from the Settlement Class in the manner described above, may appear at the Fairness Hearing in person or by counsel and be heard, to the extent allowed by the Court, regarding the proposed Settlement; provided, however, that no Settlement Class Member that has elected to exclude itself from the Settlement Class shall be entitled to object or otherwise appear, and, further provided, that no Settlement Class Member shall be heard in opposition to the Settlement unless the

Settlement Class Member complies with the requirements of this Order pertaining to objections.

Summary of Deadlines

13. The Settlement shall be administered according to its terms pending the Fairness Hearing. Deadlines arising under the Settlement and this Order include, but are not limited to, the following:

- Notice Commencement Deadline: \_\_\_\_\_, 2020 [10 days after entry of this Order];
- Application for Attorneys' Fees, Expenses, and Service Awards ("Fee Application"): \_\_\_\_\_, 2020 [80 days after entry of this Order];
- Motion for Final Approval of the Settlement ("Final Approval Motion"): \_\_\_\_\_, 2020 [80 days after entry of this Order];
- Objection and Opt-Out Deadline: \_\_\_\_\_, 2020 [118 days after entry of this Order];
- Replies in Support of Final Approval Motion and Fee Application: \_\_\_\_\_, 2020 [5 days before the Fairness Hearing];
- Fairness Hearing: \_\_\_\_\_, 2020 [133 days after entry of this Order, or as soon thereafter as is convenient for the Court]; and
- Claims Deadline: \_\_\_\_\_, 2020 [148 days after entry of this Order].

**IT IS SO ORDERED this \_\_ day of \_\_\_\_\_, 2020.**

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U.S.D.J.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civil No. 14-6997 (MCA) (MAH)**

**CERTIFICATE OF SERVICE**

I, Katie R. Beran, counsel for Plaintiffs, do hereby certify that Plaintiffs filed and served on all counsel electronically via the Court's CM/ECF system the following:

- Unopposed Motion to Distribute Notice to the Settlement Class, Appoint Notice and Claims Administrator, and For Approval of the Plan of Allocation;
- Memorandum of Law in Support;
- Declaration of Carla Peak and accompanying exhibits;
- Declaration of Dr. Jeffrey J. Leitzinger and accompanying exhibit; and
- Proposed Order.

Date: April 27, 2020

s/ Katie R. Beran  
Katie R. Beran