

## If you bought MiraLax directly from Braintree Laboratories, Inc., you could get a payment from a class action settlement.

*A federal court authorized this notice. It is not a solicitation from a lawyer.*

- The purpose of this notice is to alert you to the existence of a Class Action Lawsuit (the “Lawsuit”) brought by Direct Purchasers of MiraLax (polyethylene glycol 3350) against Defendant Braintree Laboratories, Inc. (“Braintree”), and giving you the opportunity to exclude yourself from the Lawsuit by taking action within 45 days of the mailing of this Notice. The Lawsuit asserts that Braintree violated antitrust laws relating to the sale of MiraLax, which was previously a prescription drug. Braintree has denied any wrongdoing.
- This notice is also to inform you that the Court has certified, in light of settlement, a class of certain entities that purchased MiraLax directly from Braintree at any time between December 23, 2003 and December 1, 2006 (the “Class” or the “Direct Purchaser Class”), and that a settlement between the Class and Braintree has been reached that will provide a cash payment of \$17,250,000.00 to resolve the Class’s claims against Braintree (the “Settlement Fund”).
- The Court has scheduled a hearing to decide whether to approve of the Settlement, the plan for allocating the Settlement Fund to Class Members (summarized in response to Question 8 below), and Class Counsel’s request for reimbursement of costs and payment of attorneys’ fees out of the Settlement Fund. That hearing is scheduled for May 31, 2012 at 4:30 p.m. before Chief U.S. District Court Judge Sue L. Robinson in Courtroom 4B at the United States District Court for the District of Delaware, J. Caleb Boggs Federal Building, 844 N. King Street, Wilmington, Delaware 19801-3569.
- Your legal rights are affected whether you act or don’t act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>SUBMIT A CLAIM FORM AS PROMPTLY AS POSSIBLE</b>	You do not need to do anything now to retain your right to seek a share of the Settlement Fund. But if the Settlement with Braintree is approved and you are a Class Member, at a later date, you will need to complete, sign and return a Claim Form to obtain a share of the Settlement Fund.
<b>EXCLUDE YOURSELF</b>	You will not share in the Settlement, you will not be legally bound by anything that happens in this Lawsuit, and you may be able to sue (or continue to sue) Braintree in the future about the legal issues in this case.
<b>OBJECT</b>	Write to the Court about why you do not like the Settlement.
<b>GO TO A HEARING</b>	Ask to speak to the Court about the fairness of the Settlement with Braintree.

- 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 with Braintree, and if it does not, the lawyers will need to prove the claims against Braintree at trial.

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## **BASIC INFORMATION**

### **1. Why did I get this notice?**

You received this notice because according to available records, you may have purchased MiraLax directly from Braintree at some point between December 23, 2003 and December 1, 2006, and therefore you may be a member of the Class certified by the Court in light of Settlement.

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

Plaintiffs allege that Braintree violated federal antitrust laws by engaging in an unlawful scheme to delay or block the market entry of less expensive, generic versions of MiraLax. Plaintiffs allege that this unlawful scheme involved: (1)

improperly listing Patent No. 5,710,183 (the “183 Patent”) in the “Orange Book,” a document maintained by the Food and Drug Administration (“FDA”); and (2) filing and pursuing sham litigation against a potential generic competitor. A copy of the Plaintiffs’ Consolidated Amended Class Action Complaint, filed on October 2, 2009 (the “Complaint”) is available at [www.miralax.hrsclaims.com](http://www.miralax.hrsclaims.com). Plaintiffs allege that Braintree’s conduct violated the antitrust laws, and delayed the availability of less expensive, generic versions of MiraLax. Plaintiffs further allege that they and the other members of the Class were injured as a result of Braintree’s illegal acts by paying more for polyethylene glycol 3350 products than they would have paid otherwise and/or from being unable to purchase less expensive, generic versions of polyethylene glycol 3350.

Braintree denies all these allegations, including that any Plaintiff or Class Member is entitled to damages or other relief. The Settlement is not an admission of wrongdoing by Braintree. No trial has been held.

Following investigation of relevant facts and extensive negotiations with Braintree, the Class Representatives (defined below), on behalf of the Class, entered into a Settlement Agreement with Braintree. The terms of the Settlement, which is subject to final approval by the Court, are set forth in written a Settlement Agreement dated January 5, 2012 (the “Settlement Agreement”). The Settlement Agreement provides that Braintree will pay \$17,250,000.00 in cash to the Class in exchange for a release of all claims against the Released Parties (as defined in the Settlement Agreement) related to the conduct alleged in the Class Action. The Settlement Agreement is available for review at a website established by the Court appointed Claims Administrator, Heffler, Radetich & Saitta LLP ([www.miralax.hrsclaims.com](http://www.miralax.hrsclaims.com)). The Settlement Agreement contains the full text of the release for your review.

THE COURT HAS NOT DECIDED WHETHER BRAINTREE VIOLATED ANY LAWS. THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF PLAINTIFFS’ CLAIMS OR THE DEFENSES ASSERTED BY BRAINTREE.

The class action is known as *Rochester Drug Co-Operative, Inc., et al. v. Braintree Labs., Inc.*, Civil Action No. 07-cv-142 (D. Del.). Judge Sue L. Robinson of the United States District Court for the District of Delaware is overseeing this class action.

### 3. Why is this lawsuit a class action?

In a class action, one or more entities called “Class Representatives” sued on behalf of other entities with similar claims. In this case, the Class Representatives are Rochester Drug Co-operative, Inc., Meijer, Inc., Meijer Distribution, Inc., and Louisiana Wholesale Drug Company, Inc.

The Class Representatives and the entities on whose behalf they have sued are together a “Class” or “Class Members.” They are also called the “Plaintiffs.” Their attorneys are called “Plaintiffs’ Counsel” or “Class Counsel.”

The company that has been sued is called the Defendant. In this case, the Defendant is Braintree.

In a class action lawsuit, one court resolves the issues for everyone in the class, except for those Class Members who exclude themselves from the class. The Court, by order dated February 6, 2012, certified a Class in this case in light of Settlement. A copy of the Court’s order may be found at [www.miralax.hrsclaims.com](http://www.miralax.hrsclaims.com).

The Court determined that, in light of the Settlement, this lawsuit can be a class action because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. Specifically, the Court has found that:

- The number of Class Members is so numerous that joining them all into one suit is impractical.
- Members of the Class share common legal or factual issues relating to the claims in this case.
- The claims of the Class Representatives are typical of the claims of the rest of the Class.
- The Class Representatives and the lawyers representing the Class will fairly and adequately protect the Class’s interests.
- The common legal questions and facts predominate over questions affecting only individual members of the Class, and this class action will be more efficient than individual lawsuits.

#### 4. Has the Court identified Class Claims, Issues, or Defenses?

Judge Robinson has identified, in light of the Settlement, the following class-wide issues:

(a) Whether the conduct challenged by the Class as anticompetitive in the Complaint constituted unlawful acquisition or maintenance of monopoly power or violated Section 2 of the Sherman Act, 15 U.S.C. § 2;

(b) Whether Braintree's challenged conduct caused antitrust injury-in-fact to the Class, in the nature of overcharges; and

(c) What the amount of overcharge damages are, if any, owed to the Class in the aggregate under Section 4 of the Clayton Act, 15 U.S.C. § 15.

#### 5. Why is there a settlement with Braintree?

The Plaintiffs and Braintree were preparing to proceed with the litigation and eventually to go to trial, but they have now agreed to the Settlement. By settling, both sides avoid the risk of trial and the continued costs of litigation. The Class obtains compensation and avoids the delays of continued litigation, and the risk that continued litigation ultimately would result in less or no compensation. The Class Representatives and Class Counsel believe that the proposed Settlement is fair, adequate, and reasonable and in the best interests of the Class.

### WHO IS IN THE CLASS AND SETTLEMENT

To see if you will get money from the settlement with Braintree, you first have to decide if you are a Class Member.

#### 6. Am I part of the Class and the Settlement with Braintree?

You are in the Class if you are a person or entity in the United States or U.S. territories who purchased MiraLax directly from Braintree at any time from December 23, 2003 through December 1, 2006 (the "Class Period"). Excluded from the Class are Braintree and its officers, directors, management, employees, subsidiaries, or affiliates, and all federal government entities.

If you are not sure whether you are included, you may call or write to the Court appointed Claims Administrator or the lawyers in this case at the telephone numbers or addresses listed in Question 14 below. **The Claims Administrator is: Heffler, Radetich & Saitta LLP, c/o MiraLax Settlement, 1515 Market Street, Suite 1700, Philadelphia, PA 19102.** If you wish to exclude yourself from the Class, please refer to Question 11.

### THE SETTLEMENT BENEFITS—WHAT YOU GET

#### 7. What does the settlement with Braintree provide?

Braintree has agreed to pay \$17,250,000.00 in cash into a Settlement Fund. The costs of this Notice and of administering the Settlement Fund will be paid out of this Fund. Plaintiffs' Counsel will apply to the Court for an award of attorneys' fees (of up to one-third of the Settlement Fund), litigation expenses, and service awards to the three Class Representatives of up to \$60,000 each for their service to the Class. After the foregoing costs are deducted, the bulk of these funds (the "Net Settlement Fund") will be divided among Class Members.

In exchange, Braintree will be released and discharged from all antitrust and similar claims relating to the conduct at issue in the Class Action. The full text of the release is included in the Settlement Agreement, available at [www.miralax.hrsclaims.com](http://www.miralax.hrsclaims.com).

#### 8. How much will my payment be?

Your share of the Net Settlement Fund will depend on the amount of MiraLax in units you directly purchased from Braintree during the Class Period. Generally, those who purchased more MiraLax during that period will get a higher recovery.

The Net Settlement Fund will be distributed to the Claimants *pro rata* based on purchase volumes in units during the Class Period. None of the Net Settlement Fund will revert to the Defendant. If fewer than 100% of the Class members submit claim forms, you could get a larger *pro rata* share.

#### 9. How can I get a payment?

If the Settlement is approved by the Court, all Class Members will receive a Claim Form to request a *pro rata* share of the Settlement Fund. You may be asked to verify the accuracy of the information in the claim form (which will include an estimate of your direct purchases during the Class Period drawn from Braintree's sales database), and to sign and return the form according to the directions on the form.

#### 10. When would I get my payment?

Payment is conditioned on several matters, including the Court's approval of the Settlement and upon any appeal being final (and no longer subject to any appeals to any court). Upon satisfaction of various conditions, the Net Settlement Fund will be allocated to Class Members on a *pro rata* basis pursuant to the plan of allocation approved by the Court as soon as possible after final approval has been obtained for the Settlement. If there is an appeal of the Settlement's final approval, the appeal could take several years to resolve. Any accrued interest on the Net Settlement Fund will be included, *pro rata*, in the amount paid to the Class Members. The Settlement Agreement may be terminated on several grounds, including if the Court does not approve the Settlement or materially modifies it. Also, the Settlement may be terminated if certain specified Class Members choose to exclude themselves from the Class, or if the aggregate level of MiraLax purchases by Class Members seeking to exclude themselves from the Class exceeds a certain share of the total Class purchases as set out in a separate agreement between Braintree and Plaintiffs that will not be filed with the Court unless the Court orders otherwise. If the Settlement Agreement is terminated, the Lawsuit will proceed as if the Settlement had not been reached. Further, the total amount of the Settlement may be reduced if the Class members who opt out represent a certain percentage of all unit sales of MiraLax that Defendant sold to the Class during the Class Period. If this occurs, and Defendant chooses not to terminate the Settlement, Defendant shall be refunded from the Escrow Account a *pro rata* portion of the Settlement Funds.

### EXCLUDING YOURSELF FROM THE CLASS AND THE SETTLEMENT

#### 11. Can I get out of the Settlement?

Yes, if you exclude yourself from the Class on or before 45 days from the date of this notice. To exclude yourself, you must send a letter via first class U.S. mail saying that you want to exclude yourself from *Rochester Drug Co-Operative, Inc., et al. v. Braintree Laboratories, Inc.*, Civil Action No. 07-142 (D. Del.). Be sure to include your name, address, telephone number, and your signature. Mail the exclusion to the Claims Administrator at the following address: **Heffler, Radetich & Saitta LLP, c/o MiraLax Settlement, 1515 Market Street, Suite 1700, Philadelphia, PA 19102**. Your letter requesting exclusion must be postmarked no later than **April 12, 2012**.

If you ask to be excluded from the Class, you will not get to share in the Settlement. You will not be legally bound by anything that happens in this Lawsuit, including the Settlement, and you may be able to sue (or continue to sue) Braintree in the future about the legal issues in this case.

If you exclude yourself so you can start or continue your own lawsuit against Braintree, you should talk to your own lawyer soon, because your claims will be subject to a statute of limitations, which means that your claims will expire if you do not take timely action. You need to contact your own lawyer about this issue.

If you do not exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Braintree about the legal issues in this case. All of the Court's orders will apply to you and legally bind you. You will also be bound by the Settlement with Braintree, if the Court grants final approval, and the final judgment entered in the case.

#### 12. If I don't exclude myself, can I sue Braintree for the same thing later?

No. If you remain in the Class and share in the Settlement, you give up your right to sue Braintree. That is called "releasing" your claims and potential claims relating to your purchases of MiraLax from Braintree. The full text of the release is included in the Settlement Agreement.

If you have your own pending lawsuit, speak to your lawyer in that case immediately, because you must exclude yourself from this Class to continue your own lawsuit. Remember the exclusion deadline is April 12, 2012.

### HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

#### 13. How can I get a payment?

**You do not need to do anything at this time to keep the right to seek a share of the total Settlement Fund.** However, you must complete, sign and return the Claim Form in order to receive a payment from the Net Settlement Fund. You will receive a claim form in the mail at a later date.

### THE LAWYERS REPRESENTING YOU

#### 14. Do I have a lawyer in this case?

The lawyers listed below have been appointed by the Court as Class Counsel. They are experienced in handling similar cases against other companies. The lawyers are:

Eric L. Cramer  
Berger & Montague, P.C.  
1622 Locust Street  
Philadelphia, PA 19103  
(215) 875-3000  
[www.bergermontague.com](http://www.bergermontague.com)

Linda P. Nussbaum  
Grant & Eisenhofer, P.A.  
485 Lexington Ave.  
New York, NY 10017  
(646) 722-8500  
[www.gelaw.com](http://www.gelaw.com)

Bruce E. Gerstein  
Garwin Gerstein & Fisher, LLP  
1501 Broadway, Suite 1416  
New York, NY 10036  
(212) 398-0055  
[www.garwingerstein.com](http://www.garwingerstein.com)

#### 15. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel are working on your behalf. However, if you wish to do so, you may retain your own lawyer at your own expense.

#### 16. How will the lawyers be paid?

If the Court approves the Settlement, the Court will be asked to approve a fee to the lawyers of no more than one-third of the Settlement Fund plus reimbursement to the lawyers for the costs and expenses they have paid to litigate the case. You will not have to pay these fees, costs and expenses out of your own pocket. If the Court grants Class Counsel's requests, these amounts would be deducted from the Settlement Fund. Class Counsel also will apply for incentive or service awards to the three Class Representatives for their services to the Class of up to \$60,000 each. Class Counsel's application for an award of attorneys' fees, reimbursement of expenses and incentive awards to the Class Representatives will be filed with the Court and made available for download and/or viewing on or before March 19, 2012 on the internet sites maintained by Class Counsel listed above, and on the following website of the Claims Administrator: [www.miralax.hrsclaims.com](http://www.miralax.hrsclaims.com). These papers will also be available at the office of the Clerk of the United States District Court for the District of Delaware, J. Caleb Boggs Federal Building, 844 N. King Street, Room 4209, Unit 18, Wilmington, Delaware 19801-3569, during normal business hours.

### OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement with Braintree or some part of it, and/or the application for attorneys' fees, costs, and expenses, and/or the service awards. If you exclude yourself from the Class, however, you can not object to the Settlement or application for fees, costs, expenses and service awards.

#### 17. How do I tell the Court that I do not like the Settlement with Braintree?

If you are a Class Member (and have not excluded yourself), you can object to the Settlement if you do not like any part of it. 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 in *Rochester Drug Co-Operative, Inc., et al. v. Braintree Labs., Inc.*, Civil Action No. 07-cv-142 (D. Del.). Be sure to include your name, address, telephone number, your signature, and the reasons you object to the Settlement. Mail the objection to all of the following:

Eric L. Cramer  
Berger & Montague, P.C.  
1622 Locust Street  
Philadelphia, PA 19103  
(215) 875-3000

*Attorney for the Class*

Linda P. Nussbaum  
Grant & Eisenhofer, P.A.  
485 Lexington Ave.  
New York, NY 10017  
(646) 722-8500

*Attorney for the Class*

Bruce E. Gerstein  
Garwin Gerstein & Fisher, LLP  
1501 Broadway, Suite 1416  
New York, NY 10036  
(212) 398-0055

*Attorney for the Class*

Michelle D. Miller  
Wilmer Cutler Pickering  
Hale and Dorr, LLP  
60 State Street  
Boston, MA 02109  
(617) 526-6000

*Attorney for Braintree Laboratories,  
Inc.*

Clerk of the United States District  
Court for the  
District of Delaware  
J. Caleb Boggs Federal Building  
Room 4109, Unit 18  
844 N. King Street  
Wilmington, DE 19801-3569

Your objection **must be postmarked no later than April 12, 2012**, or 45 days from the date of this Notice.

#### THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and, if you have not excluded yourself from the Class, you may ask to speak, but you do not have to.

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

The Court will hold a Fairness Hearing at **4:30 p.m. on May 31, 2012**, in Courtroom 4B at the United States District Court for the District of Delaware, J. Caleb Boggs Federal Building, 844 N. King Street, Wilmington, Delaware 19801-3569. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

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

No. Class Counsel will answer questions that Judge Robinson may have. But you are welcome to come 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 mail your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary. Moreover, attendance is not necessary to receive a *pro rata* share of the Net Settlement Fund.

#### 20. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter via first class U.S. mail saying that it is your "Notice of Intention to Appear in *Rochester Drug Co-Operative, Inc., et al. v. Braintree Labs., Inc.*, Civil Action No. 07-cv-142 (D. Del.)." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than **April 12, 2012**, and must be sent to the

Clerk of the Court, Class Counsel and Braintree's counsel, at the addresses set forth in the response to Question 17. You cannot speak at the hearing if you excluded yourself as a Class Member.

### **IF YOU DO NOTHING**

#### **21. What happens if I do nothing at all?**

If you are a Class Member and you do nothing, you will participate in the Settlement as described in this notice, if the Settlement is approved. However, you will need to complete, sign and return the Claim Form that will be mailed to you at a later date in order to obtain a payment.

### **GETTING MORE INFORMATION**

#### **22. How do I get more information?**

If you have questions about this case or want to get additional information, you may call or write to, or visit the websites of, any of the lawyers listed in answer to Question 14 or you may call the Settlement Administrator toll-free at 877-852-8872. This is only a summary of the proposed Settlement and is qualified in its entirety by the terms of the actual Settlement Agreement. A copy of the Settlement Agreement, including the releases, is on public file with the United States District Court for the District of Delaware, J. Caleb Boggs Federal Building, 844 N. King Street, Wilmington, Delaware 19801-3569 during normal business hours and is also available for download and/or viewing at [www.miralax.hrsclaims.com](http://www.miralax.hrsclaims.com).

**PLEASE DO NOT WRITE OR CALL THE COURT  
OR THE CLERK'S OFFICE FOR INFORMATION.**

DATE: February 27, 2012

BY THE COURT  
Honorable Sue L. Robinson  
United States District Judge

**IMPORTANT COURT DOCUMENT**