

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

In re DURA PHARMACEUTICALS, INC.  
SECURITIES LITIGATION

Master File No. 99-CV-0151-JLS (WMc)

This Document Relates To: ALL ACTIONS

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION**

If you purchased or acquired Dura Pharmaceuticals, Inc. (“Dura”) common stock, Dura 3.5% Convertible Notes issued pursuant to the July 25, 1997 public offering due July 15, 2002 (“Convertible Notes”) or call or put options (collectively “Dura Securities”) between April 15, 1997 and February 24, 1998, inclusive (the “Settlement Class Period”), and are not otherwise excluded, you could receive a payment from the proposed settlement of a securities class action.

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

- The settlement resolves a lawsuit entitled *In re Dura Pharmaceuticals, Inc. Securities Litigation*, Master File No. 99-CV-0151-JLS (WMc) (the “Litigation”). The Litigation concerns allegations that investors purchased or acquired Dura Securities at allegedly artificially inflated prices as a result of Defendants’ dissemination of allegedly materially false and misleading statements.
- The settlement provides for a fund of fourteen million dollars (\$14,000,000) plus interest earned (“Settlement Fund”) for the benefit of investors who purchased or acquired Dura Securities during the Settlement Class Period.
- Your legal rights are affected whether or not you act. Read this notice carefully.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

|                     |   |
|---------------------|---|
| SUBMIT A CLAIM FORM | The only way to get a payment.  |
| EXCLUDE YOURSELF    | Get no payment. This is the only option that allows you to ever be part of any other lawsuit about the legal claims in this case.           |
| OBJECT              | Write to the Court about why you do not like the Settlement, the Plan of Allocation, or counsel’s request for attorneys’ fees and expenses. |
| GO TO A HEARING     | Ask to speak in Court concerning the fairness of the settlement.  |
| DO NOTHING          | Get no payment. Give up rights.   |

- 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. Payments will be made if the Court approves the settlement and after potential appeals are resolved. Please be patient.

**SUMMARY NOTICE**

**Securities and Time Period:**

The Settlement relates to Dura Securities. In order to be considered part of the Settlement Class,<sup>1</sup> you must have purchased or acquired Dura Securities during the Settlement Class Period, and not be otherwise excluded. On December 31, 2001, Dura was merged into and with Elan Pharmaceuticals, Inc., a wholly-owned U.S. subsidiary of Elan Corporation, plc. (“Elan”).

**Settlement Fund and Lead Plaintiffs’ Statement of Recovery:**

The settlement fund consists of fourteen million dollars (\$14,000,000) plus interest earned. Your recovery will depend on the number of Dura Securities you purchased or acquired, and the timing of those transactions. It will also depend on the number of valid claim forms that members of the Settlement Class submit and the amount of such claims. Assuming that all of the investors who purchased or acquired Dura Securities during the Settlement Class Period and suffered damages participate in this settlement, Lead Counsel estimates that the estimated average distribution will be approximately: \$0.63 per share of Dura common stock; and \$7.79 per Convertible Note before the deduction of court-approved fees and expenses as described in Question 17 below and the cost of notice and claims administration. Historically, less than all eligible investors submit claims, resulting in higher average distributions per share.

Defendants disagree with Lead Plaintiffs on the potential liability of Defendants and on the average amount of damages per share, if any, that would be recoverable if the Lead Plaintiffs were to prevail on each claim alleged. The Defendants deny that they are liable in any respect or that Lead Plaintiffs suffered any injury. The issues on which the parties disagree include, but are not limited to: (1) whether the statements made or facts allegedly omitted were material, false, misleading, or whether the Defendants are otherwise liable under the securities laws for those statements or omissions; (2) the appropriate economic model for determining the amount by which the prices of Dura Securities were allegedly artificially inflated (if at all) during the Settlement Class Period; (3) the amount by which the prices of Dura Securities were allegedly artificially inflated (if at all) during the Settlement Class Period; (4) the effect of various market forces influencing the trading prices of Dura Securities at various times during the Settlement Class Period; (5) the extent to which external factors, such as general market and industry conditions, influenced the trading prices of Dura Securities at various times during the Settlement Class Period; (6) the extent to which the various matters that Lead Plaintiffs alleged were materially false or misleading influenced (if at all) the trading prices of Dura Securities at various times during the Settlement Class Period; (7) the extent to which the various allegedly adverse material facts that Lead Plaintiffs alleged were omitted influenced (if at all) the trading prices of Dura Securities at various times during the Settlement Class Period.

**Fees and Expenses:**

At the Settlement Hearing, Coughlin Stoia Geller Rudman & Robbins LLP, Bernstein Litowitz Berger & Grossmann LLP, and Cohen Milstein Sellers & Toll PLLC (“Lead Counsel”) will request the Court award attorneys’ fees of 25% of the Settlement Fund, plus payment of expenses not to exceed \$1.25 million, which were incurred in connection with the Litigation, plus interest thereon. If the amounts requested are awarded by the Court, the average cost per share of Dura common stock will be \$0.22 and the average cost per Convertible Note will be \$1.65. This compensation will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses. To date, Lead Counsel have not received any payment for their services in conducting the Litigation nor have counsel been paid for their expenses incurred.

<sup>1</sup> All capitalized terms not otherwise defined in this document shall have the meaning provided in the Stipulation of Settlement dated March 20, 2009 (“Stipulation”).

## Deadlines:

The following is a list of deadlines by which you must take any action you wish to take with respect to the settlement:

|   |                          |
|---|--------------------------|
| <b>SUBMIT CLAIM:</b>                            | <b>NOVEMBER 12, 2009</b> |
| <b>REQUEST EXCLUSION:</b>                       | <b>NOVEMBER 3, 2009</b>  |
| <b>FILE OBJECTION:</b>                          | <b>NOVEMBER 3, 2009</b>  |
| <b>COURT HEARING ON FAIRNESS OF SETTLEMENT:</b> | <b>DECEMBER 3, 2009</b>  |

## More Information:

Further information regarding the Litigation and this Notice may be obtained by contacting the Claims Administrator In re Dura Pharmaceuticals, Inc. Securities Litigation, Claims Administrator, c/o A.B. Data, Ltd., PO Box 170500, Milwaukee, WI 53217-8042, or call **866-905-8124** toll free. You may also contact Lead Counsel Rick Nelson, Shareholder Relations, Coughlin Stoya Geller Rudman & Robbins LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, 800-449-4900; David R. Stickney, Bernstein Litowitz Berger & Grossmann LLP, 12481 High Bluff Drive, Suite 300, San Diego, CA 92130, 858-793-0070; or Daniel S. Sommers, Cohen Milstein Sellers & Toll PLLC, 1100 New York Avenue, N.W., West Tower, Suite 500, Washington, DC 20005-3964, 202-408-4600.

## BASIC INFORMATION

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

You or someone in your family may have purchased or acquired Dura Securities during the Settlement Class Period.

The Court directed that you be sent this Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves it and after objections and appeals (if there are any) are resolved, an administrator appointed by the Court will make the payments that the settlement allows.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Southern District of California, and the case is known as *In re Dura Pharmaceuticals, Inc. Securities Litigation*, Master File No. 99-CV-0151-JLS (WMC). The individuals representing plaintiffs and the Settlement Class are Baldev S. Gill, Larry Morgan IRA, Leonid S. Shvartsman, Roberta Speck and Brent Vogt ("Lead Plaintiffs"). The defendants are Dura, Cam L. Garner, James W. Newman and Walter F. Spath ("Defendants").

### 2. What is this lawsuit about?

This case was brought as a class action alleging that Defendants made false and misleading statements, about the development of the Spiros drug delivery system for Albuterol, a new type of asthma inhaler, and the sales of Ceclor CD, an antibiotic drug prescribed to treat respiratory illnesses. Defendants deny that they did anything wrong.

On and after January 27, 1999, plaintiffs initiated this Litigation by filing several securities class actions in the United States District Court for the Southern District of California (the "Court"). On March 30, 1999, pursuant to a stipulation, the Court entered an Order consolidating the related cases under the caption *In re Dura Pharmaceuticals, Inc. Sec. Litig.*, Civ. No. 99-0151 JM. On June 17, 1999, the Court entered an Order appointing Michael Broudo, Baldev S. Gill, Larry Morgan IRA, Leonid S. Shvartsman, Neil Siskind, Roberta Speck and Brent Vogt as Lead Plaintiffs pursuant to 15 U.S.C. § 78u-4(b)(3)(B) and approved their selection of Lead Counsel.

On October 7, 1999, Lead Plaintiffs filed their Consolidated and Amended Complaint ("Amended Complaint") alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") against Defendants and certain other parties related to Spiros and Ceclor CD. On November 22, 1999, Defendants moved to dismiss the Amended Complaint pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6) and the Private Securities Litigation Reform Act of 1995 ("PSLRA"). On July 11, 2000, the Court entered an Order granting Defendants' motion to dismiss without prejudice and setting forth guidelines for further amendment.

On September 25, 2000, Lead Plaintiffs filed their Second Amended Consolidated Complaint ("SACC"). On November 22, 2000, Defendants again moved to dismiss the SACC pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6) and the PSLRA. On November 2, 2001, the Court entered an Order, granting Defendants' motion to dismiss with prejudice. On November 6, 2001, the Court entered a Final Judgment and Order of Dismissal.

Lead Plaintiffs appealed the Final Judgment and Order of Dismissal to the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit reversed and remanded the case to the District Court. Defendants petitioned the United States Supreme Court for a *writ of certiorari*. After full briefing and argument, the Supreme Court reversed the Ninth Circuit's decision and remanded the case to the Ninth Circuit for further proceedings consistent with its opinion. The Ninth Circuit remanded the case to the District Court and directed that Lead Plaintiffs be afforded an opportunity to amend their complaint, *inter alia*, in a manner that complied with the Supreme Court's decision.

On August 26, 2005, Lead Plaintiffs filed the Third Amended Consolidated Complaint ("TACC"). On October 11, 2005, Defendants moved to dismiss the TACC pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6), the PSLRA, and the Supreme Court's decision. On June 2, 2006, Judge Lorenz entered an Order, granting in part and denying in part Defendants' dismissal motion. The Court found that the TACC's allegations regarding Spiros failed to meet the PSLRA's pleading requirements, but that the TACC's allegations regarding Ceclor CD properly stated a claim against certain defendants. The Court afforded Lead Plaintiffs leave to amend the Spiros allegations.

On July 21, 2006, Lead Plaintiffs filed the Fourth Consolidated Amended Complaint ("FCAC"). On September 5, 2006, Defendants moved to dismiss the FCAC. On February 20, 2008, the Court entered an Order, granting in part without prejudice and denying in part Defendants' dismissal motion. The Court dismissed Lead Plaintiffs' claims under Section 10(b) regarding Spiros against certain defendants and upheld those claims against others. The Court also dismissed Lead Plaintiffs' Section 10(b) claim regarding Ceclor CD against one

defendant. Rather than amend further, Lead Plaintiffs chose to pursue the following claims: (1) Section 10(b) against Dura and Garner relating to Spiros; (2) Section 10(b) against Dura, Garner, Newman and Spath relating to Ceclor CD; and (3) Section 20(a) against Garner, Newman and Spath relating to both Spiros and Ceclor CD. On May 16, 2008, Defendants answered the FCAC.

On October 14 and 15, 2008, the parties participated in a two-day mediation session in San Francisco with mediator Antonio Piazza. In advance of this mediation, the parties prepared detailed mediation statements. In their mediation statements and at the mediation, the parties presented their respective views regarding the merits of the Litigation as well as their views concerning available defenses, the evidence and damages analyses. After extensive arm's-length negotiations, the parties reached the proposed agreement to settle the Litigation, subject to approval by the board of directors of Elan and subject to Court approval. On December 5, 2008, the Elan Board approved the settlement.

### **3. Why is this Litigation a class action?**

In a class action, one or more people called class representatives (in this case the Lead Plaintiffs) sue on behalf of people who have similar claims. All of these people and/or entities are a class or members of the class. One court resolves the issues for all members of the class, except for those who exclude themselves from the class. United States District Judge Janis L. Sammartino is in charge of this class action.

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

The Court did not decide in favor of Lead Plaintiffs or Defendants. Instead, the lawyers for both sides of the lawsuit have negotiated a settlement, with the assistance of a highly respected mediator, Antonio Piazza, that they believe is in the best interests of their respective clients. The settlement allows both sides to avoid the risks and cost of lengthy and uncertain litigation and the uncertainty of a trial and appeals, and permits Settlement Class Members to be compensated without further delay. The Lead Plaintiffs and their attorneys believe that the settlement is in the best interest of all Settlement Class Members.

### **WHO IS IN THE SETTLEMENT**

To see if you will get money from this settlement, you first have to decide if you are a Settlement Class Member.

### **5. How do I know if I am part of the settlement?**

The Settlement Class includes all Persons who purchased or acquired Dura Securities between April 15, 1997 and February 24, 1998, inclusive, including but not limited to those purchasers who acquired their Dura Securities during the Settlement Class Period and held such Dura Securities after September 23, 1998, November 4, 1998 and December 4, 1998.

### **6. Are there exceptions to being included in the Settlement Class?**

Yes. Excluded from the Settlement Class are Defendants, members of the families of the individual defendants, any parent, subsidiary, affiliate, partner, officer, executive or director of any Defendant, any entity in which any such excluded party has a controlling interest and the legal representatives, affiliates, heirs, successors, or assigns of any such excluded persons. Also excluded from the Settlement Class are those Persons who timely and validly request exclusion from the Settlement Class.

### **7. I'm still not sure if I am included.**

If you still are not sure whether you are included, you can ask for free help. You can call **866-905-8124** or visit [durasecuritieslitigation.com](http://durasecuritieslitigation.com) for more information or you can call Rick Nelson at 619-231-1058 or David Stickney, at 858-793-0070 or Daniel Sommers at 202-408-4600, or you can fill out and return the claim form described in Question 10 to see if you qualify.

### **THE SETTLEMENT BENEFITS**

### **8. What does the settlement provide?**

The Settlement Fund consists of fourteen million dollars (\$14,000,000). These funds will be distributed to eligible settlement members of the Settlement Class who send in valid claim forms, after payment of Lead Counsel's court-approved legal fees and expenses and any award to Lead Plaintiffs for their time, expense and effort in representing the Settlement Class, and the expenses and the costs of claims administration, including the costs of printing and mailing this Notice and the cost of publishing newspaper notice.

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

Your share of the fund will depend on the number of Dura Securities represented by valid claim forms that members of the Settlement Class send in and the amount of those claims, how many Dura Securities you held, and when you bought and sold them. A claim will be calculated as follows:

The Settlement Fund less taxes, notice and administration costs, attorneys' fees and litigation expenses ("Net Settlement Fund") will be distributed to Settlement Class Members who submit valid, timely Proof of Claim forms ("Claimants") under the Plan of Allocation (the "Plan") described below. The Plan provides that Claimants will be eligible to participate in the distribution of the Net Settlement Fund only if Claimants have a net investment loss on all transactions in Dura Securities during the Settlement Class Period.

For purposes of determining the amount a Claimant may recover under the Plan, Lead Counsel conferred with their damage consultants and the Plan reflects an assessment of the damages that they believe could have been recovered had Lead Plaintiffs prevailed at trial.

To the extent there are sufficient funds in the Net Settlement Fund, each Claimant will receive an amount equal to the Claimant's "Claim," as defined below. If, however, (and as is more likely) the amount in the Net Settlement Fund is not sufficient to permit payment of the total Claim of each Claimant, then each Claimant shall be paid the percentage of the Net Settlement Fund that each Claimant's claim bears to the total of the claims of all Claimants. Payment in this manner shall be deemed conclusive against all Claimants.

The Plan of Allocation has been prepared by Lead Plaintiffs and Lead Counsel with the assistance of a damages consultant. Defendants do not agree with the characterization that any damages were suffered by Lead Plaintiffs or the Settlement Class. Notwithstanding the Plan of Allocation, Defendants further do not agree with Lead Plaintiffs that damages associated with post-class period disclosures are cognizable or recoverable under the securities laws.

## Common Stock Purchasers

A claim for Settlement Class Members who purchased or acquired Dura common stock during the Settlement Class Period will be calculated as follows:

**The allocation for the Common Stock is based on the following market-adjusted price declines:**

|                     |                   |
|---------------------|-------------------|
| February 25, 1998:  | \$14.63 per share |
| September 23, 1998: | \$3.12 per share  |
| November 4, 1998:   | \$2.78 per share  |
| December 4, 1998:   | \$2.11 per share  |

For shares of Dura common stock that were **purchased from April 15, 1997, through February 24, 1998**, and

- a) sold prior to February 25, 1998, the claim per share is \$0;
- b) sold from February 25, 1998 through September 22, 1998, the claim per share is the lesser of: a) the purchase price per share less the sales price per share; or b) \$14.63 per share (February 25, 1998 price decline);
- c) sold from September 23, 1998 through November 3, 1998, the claim per share is the lesser of: a) the purchase price per share less the sales price per share; or b) \$17.75 per share (February 25, 1998 and September 23, 1998 price declines);
- d) sold from November 4, 1998 through December 3, 1998, the claim per share is the lesser of: a) the purchase price per share less the sales price per share; or b) \$20.53 per share (February 25, 1998, September 23, 1998 and November 4, 1998 price declines);
- e) retained at the end of December 3, 1998, the claim per share is the lesser of: a) the purchase price per share less \$10.87 price per share (December 4, 1998 closing price); or b) \$22.64 per share (February 25, 1998, September 23, 1998, November 4, 1998 and December 4, 1998 price declines).

## Convertible Notes Purchasers

A claim for Settlement Class Members who purchased or acquired Convertible Notes during the Settlement Class Period will be calculated as follows:

**The allocation for the Convertible Notes is based on the following price decline per \$1,000 par value Convertible Notes:**

|                     |                                     |
|---------------------|-------------------------------------|
| February 25, 1998:  | \$161.02 per \$1,000 par value Note |
| September 23, 1998: | \$24.81 per \$1,000 par value Note  |
| November 4, 1998:   | \$23.28 per \$1,000 par value Note  |
| December 4, 1998:   | \$6.88 per \$1,000 par value Note   |

For Convertible Notes that were **purchased from April 15, 1997, through February 24, 1998**, and

- a) sold prior to February 25, 1998, the claim per \$1,000 par value Note is \$0;
- b) sold from February 25, 1998 through September 22, 1998, the claim per \$1,000 par value Convertible Note is the lesser of: a) the purchase price per \$1,000 par value Convertible Note less the sales price per \$1,000 par value Convertible Note; or b) \$161.02 per \$1,000 par value Convertible Note (February 25, 1998 price decline);
- c) sold from September 23, 1998 through November 3, 1998, the claim per \$1,000 par value Convertible Note is the lesser of: a) the purchase price per \$1,000 par value Convertible Note less the sales price per \$1,000 par value Convertible Note; or b) \$185.83 per \$1,000 par value Convertible Note (February 25, 1998 and September 23, 1998 price declines);
- d) sold from November 4, 1998 through December 3, 1998, the claim per \$1,000 par value Convertible Note is the lesser of: a) the purchase price per \$1,000 par value Convertible Note less the sales price per \$1,000 par value Convertible Note; or b) \$209.11 per \$1,000 par value Convertible Note (February 25, 1998, September 23, 1998 and November 4, 1998 price declines);
- e) retained at the end of December 3, 1998, the claim per \$1,000 par value Convertible Note is the lesser of: a) the purchase price per \$1,000 par value Convertible Note less \$70.04 price per \$1,000 par value Convertible Note (December 4, 1998 closing price); or b) \$215.99 per \$1,000 par value Convertible Note (February 25, 1998, September 23, 1998, November 4, 1998 and December 4, 1998 price declines).

## Call Option Purchasers\*

A claim for Settlement Class Members who purchased Dura call options during the Settlement Class Period will be calculated as follows:

For call options on Dura common stock purchased from 4/15/1997 through 2/24/1998, and

- a) owned at the end of 2/24/1998, the claim per call option is the difference between the price paid for the call option less the proceeds received upon the settlement of the call option contract;
- b) not owned at the end of 2/24/1998, the claim per call option is \$0.

For call options on Dura common stock written from 4/15/1997 through 2/24/1998, the claim per call option is \$0.

## Put Option Sellers\*

A claim for Class Members who sold Dura put options during the Settlement Class Period will be calculated as follows:

For put options on Dura common stock written from 4/15/1997 through 2/24/1998, and

- a) owned at the end of 2/24/1998, the claim per put option is the difference between the amount paid upon settlement of the put option contract less the initial proceeds received upon the sale of the put option;
- b) not owned at the end of 2/24/1998, the claim per Put Option is \$0.

For put options on Dura common stock purchased from 4/15/1997 through 2/24/1998, the claim per put option is \$0.

\*The settlement proceeds available to the option holders under the Plan of Allocation are limited to one percent (1%) of the Net Settlement Fund.

For Settlement Class Members who held Dura Securities at the beginning of the Settlement Class Period or made multiple purchases or sales during the Settlement Class Period, the first in, first out (“FIFO”) method will be applied to such holdings, purchases, and sales for purposes of calculating a claim. Under the FIFO method, sales of Dura Securities held at the beginning of the Settlement Class Period will be matched in chronological order, first against those Dura Securities held at the beginning of the Settlement Class Period. The remaining sales of Dura Securities during the Settlement Class Period will then be matched in chronological order, against like Dura Securities purchased during the Settlement Class Period.

Investment gains achieved in connection with transactions in Dura Securities will be offset against losses suffered in connection with transactions in Dura Securities in calculating Claimants’ investment losses. Although short sales and put purchases will have no recognized loss under the Plan of Allocation, any recognized gain attributable to such short sales or put purchases will be used to offset recognized losses from other transactions. Furthermore, market gains or losses attributable to short sales or put purchases will be calculated as part of the market gain or loss calculation.

Dura Securities acquired by means of a gift, inheritance, or operation of law shall only be considered if the shares in question were purchased during the Settlement Class Period by the donor, decedent, or transferor, and the donor, decedent, or transferor does not submit a Claim Form with respect to the shares. In such instances, please provide documentation of the original purchase, if available, and the transfer. Your claim, however, will not be denied solely because you are unable to produce documentation of the original purchase.

If you acquired Dura common stock through the exercise of a warrant or option, your purchase price for purposes of the plan of allocation is the strike price on the day of the share acquisition.

For all Dura Securities, the Court has reserved jurisdiction to allow, disallow or adjust the claim of any Settlement Class Member on equitable grounds.

Payment pursuant to the Plan shall be conclusive against all Claimants. No Person shall have any claim against Lead Counsel, Lead Plaintiffs, the Claims Administrator, Defendants and their Related Parties, or any Person designated by Lead Counsel based on distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation, or further order(s) of the Court. All Settlement Class Members who fail to complete and file a valid and timely Proof of Claim and Release form shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the releases given.

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

##### **10. How can I get a payment?**

To qualify for a payment, you must send in a claim form. A claim form is enclosed with this Notice. Read the instructions carefully, fill out the form, include all the documents the form asks for, sign it, and mail it in the enclosed envelope postmarked no later than **November 12, 2009**.

##### **11. When would I get my payment?**

The Court will hold a Settlement Hearing on **December 3, 2009**, to decide whether to approve the settlement. If Judge Sammartino approves the settlement, there could be appeals. It is always uncertain if or when these appeals will be resolved favorably for the settlement. Resolving them can take time, perhaps more than a year. It also takes time for all the claim forms to be processed. If there are no appeals and depending on the number of claims submitted, the settlement administrator could distribute the Settlement Fund as early as nine months after the Settlement Hearing. Please be patient.

##### **12. What am I giving up to get a payment or stay in the Settlement Class?**

Unless you exclude yourself, you are staying in the Settlement Class, and that means you cannot sue, or be part of any other lawsuit against the Defendants about the same issues or the claims that were or could have been raised in the Litigation. To receive the payment under the settlement, if the settlement is approved, you must release all “Released Claims” against Defendants and their “Related Parties” (as defined below).

“**Released Claims**” means all rights, demands, liabilities, claims (including “Unknown Claims” as defined in the Stipulation) and causes of action of every nature and description whatsoever, at law or in equity, accrued or unaccrued, whether known or unknown, whether or not concealed or hidden, whether fixed or contingent, liquidated or un-liquidated, matured or un-matured, whether class or individual in nature and whether arising under federal, state, common or foreign law, including, without limitation, claims for negligence, gross negligence, recklessness, breach of duty of care and/or breach of duty of loyalty, fraud, misrepresentation, mismanagement, breach of fiduciary duty, that Lead Plaintiffs or any member of the Settlement Class asserted, or could have asserted, arising out of, or relating to, directly or indirectly, the purchase or acquisition of Dura Securities during the Settlement Class Period, and the facts, matters, allegations, transactions, events, disclosures, statements, acts or omissions which were alleged or that could have been alleged in the Complaint.

“**Related Parties**” means, with respect to each Defendant, the immediate family members, heirs, executors, administrators, successors, assigns, present and former employees, officers, directors, attorneys, legal representatives, insurers, reinsurers, and agents of each of them, and any person or entity which is or was related to or affiliated with any Defendant or in which any Defendant has or had a controlling interest and the present and former parents, subsidiaries, divisions, affiliates, predecessors, successors, employees, officers, directors, attorneys, assigns, legal representatives, insurers, reinsurers, and agents of each of them.

#### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

##### **13. How do I exclude myself from the settlement?**

You can exclude yourself from the settlement. If you do not want a payment from the settlement, but you want to keep any right to sue Dura, or any of the Defendants or any of the Related Parties about the claims you would otherwise be releasing in this settlement, then you must take steps to exclude yourself from the settlement. This is called excluding yourself or is sometimes referred to as opting out of the class.

To exclude yourself, you must send a letter by mail saying that you want to be excluded from *In re Dura Pharmaceuticals, Inc. Securities Litigation*. You must submit all your transactions in Dura Securities during the period between April 15, 1997 and February 24, 1998, inclusive and the dates and prices of such transactions. Be sure to also include your name, address, telephone number, and your signature. You must mail your exclusion request postmarked no later than **November 3, 2009**, to:

**IN RE DURA PHARMACEUTICALS, INC. SECURITIES LITIGATION**  
**EXCLUSIONS**  
**CLAIMS ADMINISTRATOR**  
**C/O A.B. DATA, LTD.**  
**PO BOX 170500**  
**MILWAUKEE, WI 53217-8042**

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. Also, you will not be legally bound by anything that happens in this lawsuit, and you would not be prevented by this settlement from suing Defendants and their Related Parties for the Released Claims in the future. However, if you exclude yourself and bring your own lawsuit, you would be subject to all the risks of litigation, including the risk that your lawsuit would be rejected because you filed it too late.

If you do not file your request for exclusion on time, you will be legally bound by all the proceedings in this Litigation, including all court orders and judgments in the Litigation, even if you have a lawsuit pending against the Released Persons that covers Released Claims, or if you subsequently start a lawsuit or an arbitration or any other proceedings against any of the Released Persons that are covered by the Released Claims.

**14. If I do not exclude myself, can I sue Defendants for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Defendants or their Related Parties for the claims that this settlement resolves. Remember, the exclusion deadline is **November 3, 2009**.

**15. If I exclude myself, can I get money from this settlement?**

No. If you exclude yourself, do not send in a claim form to ask for any money. Once you exclude yourself, you will receive no cash payment even if you also submit a claim form, unless you withdraw your notice of exclusion before the deadline.

**THE LAWYERS REPRESENTING YOU**

**16. Do I have a lawyer in this case?**

Lead Plaintiffs and the Settlement Class are represented by the law firms of Coughlin Stoia Geller Rudman & Robbins LLP, Bernstein Litowitz Berger & Grossmann LLP, and Cohen Milstein Sellers & Toll PLLC. These lawyers are collectively called Lead Counsel. You will not be charged for these lawyers' work. If you want to be represented by your own lawyer, you may hire one at your own expense.

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

At the Settlement Hearing, Lead Counsel will request the Court to award attorneys fees of 25% of the Settlement Fund, plus payment of expenses not to exceed \$1.25 million, which were incurred in connection with the Litigation, plus interest thereon. This compensation will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses. To date, Lead Counsel have not received any payment for their services in conducting the Litigation nor have counsel been paid for their expenses incurred.

**OBJECTING TO THE SETTLEMENT**

**18. How do I tell the Court that I do not like the Settlement?**

If you're a member of the Settlement Class (and you have not excluded yourself), you can object to the proposed settlement if you do not like any part of it. You can give reasons why you think the Court should not approve the settlement, the Plan of Allocation or the request for attorneys' fees and expenses. The Court will consider your views. To object, you must send a signed letter saying that you object to the proposed settlement in "*In re Dura Pharmaceuticals, Inc. Securities Litigation*, Master File No. 99-CV-0151-JLS (WMe), (United States District Court for the Southern District of California)." Your letter must include your name, address, telephone number and your original signature (no copies). You must also include all your transactions in Dura Securities during the Settlement Class Period and the dates and prices of such transactions. Mail the objection postmarked no later than **November 3, 2009**, to:

Clerk of the Court  
United States District Court for the Southern District of California  
880 Front Street, Room 4290  
San Diego, CA 92101-8900

PAUL, HASTINGS, JANOFSKY & WALKER LLP  
CHRISTOPHER H. McGRATH  
4747 Executive Drive, 12<sup>th</sup> Floor  
San Diego, CA 92121

COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP  
JEFFREY D. LIGHT  
655 West Broadway, Suite 1900  
San Diego, CA 92101

You may object either on your own or through an attorney that you hire at your own expense. If you do hire an attorney to represent you, your attorney must file a notice of appearance with the clerk of the court and deliver a copy of that notice to Lead Counsel and Defendants' counsel no later than **November 3, 2009**.

If you do not follow the directions in this notice for objecting to the settlement, you will forfeit all rights that you may have to object to and/or appeal this settlement unless the Court orders otherwise. You will be bound by the orders and judgments in this lawsuit.

**19. What is the difference between objecting to the settlement and excluding myself from the settlement?**

Objecting is telling the Court that you do not like something about the proposed settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer applies to you.

## **THE COURT'S SETTLEMENT HEARING – SCHEDULED FOR DECEMBER 3, 2009**

The Court will hold a hearing to decide whether to approve the proposed settlement. You may attend, but you do not have to.

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

The Court will hold a hearing at **1:30 p.m. on December 3, 2009**, at the United States District Court for the Southern District of California, located at 940 Front Street, San Diego, CA 92101-8900, in Courtroom 6 (“Settlement Hearing”). At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court will also decide whether to approve the Plan of Allocation, and the payment of fees, costs and expenses to Lead Counsel, including the awards to Lead Plaintiffs to compensate them for their time and effort in this case. We do not know how long the hearing will take or whether the Court will make its decision about the settlement on that day or sometime later.

### **21. Do I have to come to the hearing?**

Settlement Class Members do not need to appear at the hearing or take any other action to indicate that they approve of the settlement. Lead Counsel will answer questions the Court may have about the settlement. But if you would like to attend the hearing, you are welcome to do so, at your own expense. If you send an objection, you do not have to come to Court to talk about it. The Court will consider your written objection, as long as you mailed your objection in on time (see response to Question 18). You may also pay your own lawyer to attend, but it is not necessary.

### **22. May I speak at the hearing?**

If you object to the settlement, you may ask the Court for permission to speak at the hearing. To do so, you must include with your objection (see response to Question 18) a statement saying that it is your “Notice of Intention to Appear in *In re Dura Pharmaceuticals, Inc. Securities Litigation*.” Persons who intend to object to any part of the settlement and wish to present evidence at the hearing must also include in their written objection the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing.

**You cannot speak at the Settlement Hearing if you exclude yourself from the settlement.**

### **IF YOU DO NOTHING**

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

If you do nothing, you will not receive any payments from this settlement. However, unless you exclude yourself, you will not be able to start a lawsuit, or be part of any other lawsuit against the Defendants or their Related Parties about the Released Claims in this case ever again.

### **GETTING MORE INFORMATION**

### **24. Are there more details about the proposed settlement?**

This notice summarizes the proposed settlement. More details are in a Stipulation of Settlement dated March 20, 2009 (the “Stipulation”), which has been filed with the Court. You can inspect a copy of the Stipulation at the office of the Clerk of the United States District Court for the Southern District of California, 880 Front Street, Room 4290, San Diego, CA 92101-8900, during regular business hours or at [durasecuritieslitigation.com](http://durasecuritieslitigation.com).

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

For additional, detailed information concerning the matters involved in this lawsuit, you may inspect the pleadings, the orders of the Court, and other papers filed in this lawsuit at the office of the Clerk of the United States District Court for the Southern District of California, 880 Front Street, Room 4290, San Diego, CA 92101-8900, during regular business hours.

You can also contact (1) the Claims Administrator at: *In re Dura Pharmaceuticals, Inc. Securities Litigation* Claims Administrator, c/o A.B. Data, Ltd. PO Box 170500 Milwaukee, WI 53217-8042; or (2) Lead Counsel Rick Nelson, Shareholder Relations, Coughlin Stoia Geller Rudman & Robbins LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, 800-449-4900; David R. Stickney, Bernstein Litowitz Berger & Grossmann LLP, 12481 High Bluff Drive, Suite 300, San Diego, CA 92130, 858-793-0070; or Daniel S. Sommers, Cohen Milstein Sellers & Toll PLLC, 1100 New York Avenue, N.W., West Tower, Suite 500, Washington, DC 20005-3964, 202-408-4600. **Please do not call the Court or the Clerk of the Court for additional information about the settlement.**

### **26. Special notice to nominees**

Nominees who purchased or otherwise acquired Dura Securities for beneficial owners who are Settlement Class Members are directed to: (a) request within fourteen (14) days of receipt of this Notice additional copies of this Notice and the Claim Form from the Claims Administrator for such beneficial owners; or (b) send a list of the names and addresses of such beneficial owners to the Claims Administrator within fourteen (14) days after receipt of this Notice. If a nominee elects to send this Notice to beneficial owners, such nominee is directed to mail this Notice within fourteen (14) days of receipt of the copies of the Notice from the Claims Administrator, and upon such mailing, the nominee shall send a statement to the Claims Administrator confirming that the mailing was made as directed, and the nominee shall retain the list of names and addresses for use in connection with any possible future notice to the Settlement Class.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for or advancement of reasonable administrative costs actually incurred or expected to be incurred in connection with forwarding the Notice and which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Claims Administrator.

By Order of the United States District Court for the Southern District of California.

Dated: July 31, 2009.