

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

In re:

NEW ENGLAND COMPOUNDING
PHARMACY, INC.,

Debtor.

Chapter 11

Case No. 12-19882-HJB

**BALLOT FOR ACCEPTING OR REJECTING THE
FIRST AMENDED JOINT CHAPTER 11 PLAN OF NEW ENGLAND COMPOUNDING
PHARMACY, INC., PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

CLASS D TORT CLAIMS

**PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS FOR
COMPLETING BALLOTS CAREFULLY BEFORE COMPLETING THE BALLOT**

**THIS BALLOT MUST BE ACTUALLY RECEIVED BY MAY 5, 2015 AT 4:00 P.M.
(EASTERN PREVAILING TIME) (THE “VOTING DEADLINE”)**

The Plan Proponents have sent this Ballot to you because our records indicate that you are a holder of a Class D Claim, and accordingly, you have a right to vote to accept or reject the *First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.* [Docket No. 1154] (as may be amended or supplemented from time to time and including all exhibits or supplements thereto, the “Plan”).¹

Your rights are described in the *Disclosure Statement for First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.* [Docket No. 1155] (as may be amended or supplemented from time to time and including all exhibits and supplements thereto, the “Disclosure Statement”) and the *Order (I) Approving the Adequacy of the Amended Joint Disclosure Statement; (II) Approving Solicitation and Notice Procedures With Respect to Confirmation of the Plan Proponents’ First Amended Joint Plan of Reorganization; (III) Approving the Form of Various Ballots and Notices in Connection Therewith; (IV) Scheduling Certain Dates With Respect Thereto; and (V) Granting Related Relief* [Docket No. 1181] (the “Disclosure Statement Order”). The Disclosure Statement, the Plan, the Disclosure Statement Order, and certain other materials contained in the Solicitation Package are included in the

¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan, Disclosure Statement (as defined herein) or the Disclosure Statement Order (as defined herein).

packet you are receiving with this Ballot. If you need to obtain additional solicitation materials, you may contact Donlin, Recano, & Co., Inc., the claims and noticing agent retained in the Chapter 11 Cases (the “Claims and Noticing Agent”) by: (a) accessing the website for the Claims and Noticing Agent at <http://www.drcdrx.com/cases/caseinfo/necp>; (b) writing to the Claims and Noticing Agent by First Class Mail at P.O. Box 2034, Murray Hill Station, New York, NY 10156-0701, Re: New England Compounding Pharmacy, Inc., Attn: Voting Department; (c) writing to the Claims and Noticing Agent by Hand Delivery or Overnight Mail at 6201 15th Ave, Brooklyn, NY 11219, Re: New England Compounding Pharmacy, Inc., Attn: Voting Department; or (d) calling the Claims and Noticing Agent at (212) 771-1128. You may also obtain solicitation materials for a fee via PACER at <http://www.mab.uscourts.gov>. The Court has approved the Disclosure Statement as containing adequate information, as required under section 1125 of the Bankruptcy Code. Court approval of the Disclosure Statement does not indicate approval of the Plan by the Court. This Ballot may not be used for any purpose other than to vote to accept or reject the Plan. If you believe you have received this Ballot in error, please contact the Claims and Noticing Agent at the address or telephone number set forth above.

THE PLAN CONTAINS RELEASES AND INJUNCTIONS FOR THE BENEFIT OF THE DEBTOR AND ITS ESTATE, THE ESTATE REPRESENTATIVE(S) AND CERTAIN THIRD PARTIES DESCRIBED IN SECTION 3.4 OF THE DISCLOSURE STATEMENT AND SCHEDULES 1.121 AND 1.167 TO THE PLAN. IF THE PLAN IS CONFIRMED, ALL PERSONS AND ENTITIES WILL BE BOUND BY THE RELEASE PROVISIONS OF SECTION 10.05 OF THE PLAN AND THE INJUNCTIONS PROVIDED FOR IN SECTION 10.06 OF THE PLAN. SUCH RELEASES AND INJUNCTIONS OPERATE TO FOREVER DISCHARGE AND BAR ANY AND ALL PERSONS AND ENTITIES FROM ASSERTING ANY AND ALL CLAIMS, DEBTS, OBLIGATIONS, DEMANDS, LIABILITIES, SUITS, JUDGMENTS, DAMAGES, RIGHTS AND CAUSES OF ACTION ARISING FROM ACTS OR OMISSIONS IN ANY WAY RELATED TO NECC OR THE DRUGS IT PRODUCED AGAINST THE DEBTOR AND ITS ESTATE, THE ESTATE REPRESENTATIVE(S), THE SHAREHOLDER AND AFFILIATE RELEASED PARTIES, AND THE THIRD PARTIES DESCRIBED IN SECTION 3.4 OF THE DISCLOSURE STATEMENT AND SCHEDULES 1.121 AND 1.167 TO THE PLAN. ALL PARTIES IN INTEREST SHOULD REVIEW CAREFULLY SECTIONS 10.05 AND 10.06 OF THE PLAN, TOGETHER WITH SECTIONS 3.4, 12.5 AND 12.6 OF THE DISCLOSURE STATEMENT, AND PARTIES IN INTEREST ENTITLED TO VOTE ON THE PLAN SHOULD REVIEW THOSE SECTIONS PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN.

You may wish to seek legal advice concerning the Plan and the Plan’s classification and treatment of your Claim. Your Claim has been placed in Class D under the Plan. If you hold Claims in more than one Class, you will receive a Ballot for each Class in which you are entitled to vote.

If the Claims and Noticing Agent does not **actually receive** your Ballot on or before the Voting Deadline, which is May 5, 2015, at 4:00 p.m. (Eastern Prevailing Time), and if the

Voting Deadline is not extended, your vote will not count. **If the Court confirms the Plan, it will bind you regardless of whether you vote.**

Item 1. Injury Category and Amount of Claim

For the purposes of voting to accept or reject the plan, the undersigned hereby certifies that as of the Voting Record Date, March 6, 2015, the undersigned was the holder of a Class D Tort Claim against the Debtor based on one of the following categories of injury or loss. Please check the appropriate basis for your claim. Check only one box.

- ☐ **Meningitis, stroke, and/or infection (including vertebral osteomyelitis, discitis, sacroiliitis, phlegmon, abscess, and/or arachnoiditis), RESULTING IN THE DEATH OF THE CLAIMANT WHOSE ESTATE OR OTHER REPRESENTATIVE IS SUBMITTING THIS BALLOT after exposure to a contaminated NECC product. Weight of claim for voting purposes only: 120 points**
- ☐ **Meningitis, stroke, and/or infection (including vertebral osteomyelitis, discitis, sacroiliitis, phlegmon, abscess, and/or arachnoiditis), NOT RESULTING IN THE DEATH OF THE CLAIMANT after exposure to a contaminated NECC product. Weight of claim for voting purposes only: 80 points**
- ☐ **Symptoms of headache, word-finding difficulty, nausea/vomiting, fever, neck stiffness or pain, back pain, photophobia, lack of appetite, urine retention, slurred speech, limb weakness, numbness, and/or pain at injection site and a lumbar puncture, MRI, or CT guided biopsy after exposure to a contaminated NECC product. Weight of claim for voting purposes only: 10 points**
- ☐ **Exposure to a contaminated NECC product and other injury or loss. Weight of claim for voting purposes only: 2 points**
- ☐ **No exposure to a contaminated NECC product but other loss (i.e., a spouse's loss of consortium). Weight of claim for voting purposes only: 1 point.**

Item 2. Vote on Plan

The holder of the Class D Claim set forth in Item 1 votes to (please check one):

<u>ACCEPT THE PLAN</u> <input type="checkbox"/>	<u>REJECT THE PLAN</u> <input type="checkbox"/>
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Any Ballot that is executed by the holder of a Claim, but that indicates both an acceptance and a rejection of the Plan or does not indicate either an acceptance or rejection of the Plan, will not be counted.

Item 3. Certifications

By signing this Ballot, the undersigned certifies to the Court and the Plan Proponents:

1. that either: (a) the claimant is the holder of the Class D Claim(s) being voted; or (b) the claimant is an authorized signatory for a claimant that is a holder of the Class D Claim(s) being voted;
2. that the claimant has been exposed to a contaminated NECC product or suffered a loss of consortium so that such claimant holds a Tort Claim, as defined in the Plan and described in the Disclosure Statement;
3. that the claimant meets the criteria for the injury or loss level asserted on this Ballot;
4. that the claimant has received a copy of the Disclosure Statement, the Plan, and the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;
5. that the claimant has cast the same vote with respect to all Class D Claims;
6. that no other Ballots with respect to the amount of the Class D Claim(s) identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Claim(s), that any such Ballots dated earlier are hereby revoked;
7. that the claimant acknowledges that a vote to accept the Plan constitutes an acceptance of the treatment of such Claimant's Class D Claim(s);
8. that the claimant understands and, if accepting the Plan, agrees with the treatment provided for its Claim(s) under the Plan; and
9. that the claimant acknowledges and agrees that the Plan Proponents may make conforming changes to the Plan to the extent provided by Bankruptcy Rule 3019 as may be reasonably necessary; provided, that the Plan Proponents will not re-solicit acceptances or rejections of the Plan in the event of such conforming changes.

Name of Claimant: _____

(Please print or type)

Social Security or Federal Tax ID Number: _____

Signature: _____

Name of Signatory: _____

Representative Capacity (if other than Claimant)²: _____

Title: _____

Address: _____

Date Completed: _____

**PLEASE COMPLETE, SIGN, AND DATE THE BALLOT AND RETURN IT
PROMPTLY IN THE RETURN ENVELOPE PROVIDED. YOUR BALLOT MUST BE
ACTUALLY RECEIVED BY THE VOTING DEADLINE, WHICH IS
4:00 P.M. (EASTERN PREVAILING TIME) ON MAY 5, 2015.**

² If you are completing this Ballot on behalf of another person, indicate your relationship with such person and the capacity in which you are signing. You must also provide additional information or documentation with respect to such relationship. Please see the attached Instructions for Completing Ballots at paragraph 7 and Sections 15.2 and 15.3 of the Disclosure Statement.

INSTRUCTIONS FOR COMPLETING BALLOTS

1. The Plan Proponents are soliciting the votes of holders of Claims with respect to the Plan attached as Exhibit A to the Disclosure Statement. Capitalized terms used in the Ballot or in these instructions (the “Ballot Instructions”) but not otherwise defined therein or herein shall have the meaning set forth in the Plan, the Disclosure Statement, or the Disclosure Statement Order, as applicable.
2. The Court may confirm the Plan and thereby bind you by the terms of the Plan. Please review the Disclosure Statement for more information.
3. To ensure that your vote is counted, you must: (a) complete the Ballot; (b) indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Ballot; and (c) sign and return the Ballot to the address set forth on the enclosed pre-addressed envelope. The Voting Deadline for the receipt of Ballots by the Claims and Noticing Agent is **4:00 p.m. (Eastern Prevailing Time) on May 5, 2015**. Your completed Ballot must be received by the Claims and Noticing Agent on or before the Voting Deadline.
4. You must vote all of your Claims within a particular Class either to accept or reject the Plan and may not split your vote. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, if a claimant has multiple Claims within the same Class, the Plan Proponents may, in their discretion, aggregate the Claims of any particular claimant within a Class for the purpose of counting votes.
5. If a Ballot is received after the Voting Deadline, it will not be counted unless the Plan Proponents determine otherwise. The method of delivery of Ballots to the Claims and Noticing Agent is at the election and risk of each claimant. Except as otherwise provided herein, such delivery will be deemed made only when the Claims and Noticing Agent actually receives the originally executed Ballot. Instead of effecting delivery by mail, it is recommended, though not required, that holders use an overnight or hand delivery service. In all cases, claimants should allow sufficient time to assure timely delivery. Delivery of a Ballot to the Claims and Noticing Agent by facsimile, e-mail or any other electronic means shall not be valid. No Ballot should be sent to any of the Debtor, the Debtor’s agents (other than the Claims and Noticing Agent), or the Plan Proponents or their financial or legal advisors, and if so sent will not be counted.
6. If multiple Ballots are received from the same claimant with respect to the same Claim prior to the Voting Deadline, the last dated valid Ballot timely received will supersede and revoke any earlier dated Ballots.
7. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan. Accordingly, at this time, claimants should not surrender certificates or instruments representing or evidencing their

Claims, and neither the Debtor nor the Claims and Noticing Agent will accept delivery of any such certificates or instruments surrendered together with a Ballot. Please be sure to sign and date your Ballot. If you are signing a Ballot in your capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, you should indicate such capacity when signing and, if requested by the Claims and Noticing Agent, the Debtor, the Plan Proponents, or the Court, must submit proper evidence to the requesting party to so act on behalf of such claimant. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Ballot.

8. If you hold Claims in more than one Class under the Plan or in multiple accounts, you may receive more than one Ballot coded for each different Class or account. Each Ballot votes only your Claims indicated on that Ballot. Please complete and return each Ballot you received.
9. The following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant; (b) any Ballot cast by a Party that does not hold a Claim in a Class that is entitled to vote on the Plan; (c) any unsigned Ballot; (d) any Ballot not marked to accept or reject the Plan; (e) any Ballot marked both to accept and reject the Plan; and (f) any Ballot submitted by any claimant not entitled to vote pursuant to the Solicitation Procedures.
10. If you believe you have received the wrong Ballot, you should contact the Claims and Noticing Agent immediately.

PLEASE MAIL YOUR BALLOT PROMPTLY!

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, PLEASE CONTACT THE CLAIMS AND NOTICING AGENT AT:

<u>If by First Class Mail:</u>	<u>If by Hand Delivery or Overnight Mail:</u>
Donlin, Recano & Company, Inc. Re: New England Compounding Pharmacy, Inc. Attn: Voting Department P.O. Box 2034, Murray Hill Station New York, NY 10156-0701	Donlin, Recano & Company, Inc. Re: New England Compounding Pharmacy, Inc. Attn: Voting Department 6201 15 th Ave Brooklyn, NY 11219
<u>If by E-Mail</u>	<u>If by Phone</u>
balloting@donlinrecano.com	(212) 771-1128