

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

In re: NEXIUM (ESOMEPRAZOLE) ANTITRUST
LITIGATION

MDL No. 2409

Civil Action No. 1:12-md-02409-WGY

This Document Relates To:

All Cases

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION FOR REIMBURSEMENT OF EXPENSES, PAYMENT OF
ADMINISTRATION AND NOTICE COSTS, AND AWARDING
INCENTIVE AWARDS TO THE CLASS REPRESENTATIVES FOR
THE DIRECT PURCHASER CLASS AND END-PAYOR CLASS**

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I. INTRODUCTION

The Direct Purchaser Class, the Individual Retailer Plaintiffs, and the End-Payor Class (collectively, “Plaintiffs”),¹ respectfully submit this memorandum in support of their motion for an order, subject to the finality of Plaintiffs’ respective Settlement Agreements with Teva Pharmaceutical Industries Ltd. and Teva Pharmaceuticals USA, Inc. (“Teva”):

- a. reimbursing \$3,655,083.31 (three million, six hundred fifty-five thousand, eighty-three dollars and thirty-one cents) to Direct Purchaser Class Plaintiffs’ counsel for expenses incurred in the prosecution of this case through trial;
- b. reimbursing \$2,665,627.36 (two million, six hundred sixty-five thousand, six hundred twenty-seven dollars and thirty-six cents) to Individual Retailer Plaintiffs’ counsel for expenses incurred in the prosecution of this case through trial;

¹ “Plaintiffs” are, collectively (a) American Sales Company, LLC, Meijer, Inc. and Meijer Distribution, Inc., Value Drug Company, Burlington Drug Company Inc., and Rochester Drug Co-Operative, Inc. on behalf of themselves and the certified Direct Purchaser Class (collectively, the “Direct Purchaser Class”); (b) United Food and Commercial Workers Unions and Employers Midwest Health Benefits Fund, Allied Services Division Welfare Fund, Fraternal Order of Police Miami Lodge 20 Insurance Trust Fund, New York Hotel Trades Council & Hotel Assoc. of New York City, Inc. Health Benefits Fund, Laborers International Union of North America Local 35 Health Care Fund, International Brotherhood of Electrical Workers Local 595 Health and Welfare Fund, Laborers International Union of North America Local 17 Health Care Fund, International Union of Machinists and Aerospace Workers District No. 15 Health Fund, Michigan Regional Council of Carpenters Employee Benefits Fund, and A.F. of L-A.G.C. Building Trades Welfare Plan, on behalf of themselves and the certified End-Payor Class (collectively, the “End-Payor Class”); (c) CVS Pharmacy Inc., Rite Aid Corporation and Rite Aid Hdqtrs Corp., The Jean Coutu Group (PJC) USA, Inc., Maxi Drug, Inc., d/b/a Brooks Pharmacy and Eckerd Corporation, Walgreen Co., HEB Grocery Company LP, Safeway Inc., SuperValu, Inc., The Kroger Co., and Giant Eagle, Inc. (collectively, the “Individual Retailer Plaintiffs”).

- c. reimbursing \$2,563,288.86 (two million, five hundred sixty-three thousand, two hundred eighty-eight dollars and eighty-six cents) to End-Payor Class Plaintiffs' counsel for expenses incurred in the prosecution of this case through trial;
- d. paying \$4,443.80 (four thousand four hundred forty-three dollars and eighty cents) to cover the unpaid Direct Purchaser Class notice expenses incurred in connection with the Teva Settlement;
- e. paying \$1,500.00 (one thousand five hundred dollars) to cover the unpaid annual escrow fee incurred in connection with the Teva Settlement;
- f. paying \$1,479,423.04 (one million, four hundred seventy-nine thousand, four hundred twenty-three dollars and four cents) to cover the End-Payor Class administrative and notice expenses associated with this litigation the Teva Settlement;
- g. awarding incentive awards of \$50,000.00 (fifty thousand dollars) to each of the five Direct Purchaser Class Representatives: (1) American Sales Company, LLC; (2) Meijer, Inc. and Meijer Distribution, Inc.; (3) Value Drug Company; (4) Burlington Drug Company Inc.; and (5) Rochester Drug Co-Operative, Inc., from the proceeds of the Teva Settlement Fund allocated to the Direct Purchaser Class; and
- h. awarding service awards of \$5,000.00 (five thousand dollars) to each of the ten End-Payor Class Representatives: (1) United Food and Commercial Workers Unions and Employers Midwest Health Benefits Fund; (2) Fraternal Order of Police of Miami Lodge 20, Insurance Trust Fund; (3) New York Hotel Trades Council & Hotel Association of New York City, Inc. Health Benefits Fund; (4)

Laborers International Union of North America Local 35 Health Care Fund; (5) International Brotherhood of Electrical Workers Local 595 Health and Welfare Fund; (6) Laborers International Union of North America Local 17 Health Care Fund; (7) International Association of Machinists and Aerospace Workers District No. 15 Health Fund; (8) A.F. of L. – A.G.C. Buildings Trades Welfare Plan; (9) Michigan Regional Council of Carpenters Employee Benefits Fund; and (10) Allied Services Division Welfare Fund, from the proceeds of the Teva Settlement Fund allocated to the End-Payor Purchaser Class;

from the proceeds of the Teva Settlement Fund.² The balance in the Teva Settlement Fund as of September 9, 2015 is \$24,004,760.83 (twenty-four million, four thousand, seven hundred sixty dollars and eighty-three cents). *See* Declaration of the Court-appointed Escrow Agent, Michael Rosenbaum of Berdon Claims Administration LLC Regarding Escrow Account (“Rosenbaum Decl.”).

The Direct Purchaser Class and End-Payor Class have moved separately for final approval of their respective settlements with Teva. *See* ECF Nos. 1558, 1565.³

When additional costs and expenses under paragraph 5(c) of the Plaintiffs’ respective Settlement Agreements become known, Plaintiffs will make further applications for disbursements from the Teva Settlement Fund.

² The Teva Settlement Fund includes all interest earned since deposit of the Settlement Fund Amount of \$24,000,000.00 (twenty-four million dollars). *See* Rosenbaum Decl.

³ The End-Payor Class moved for incentive awards to Class Representatives from the amount of the Teva Settlement Fund allocated to the End-Payor Class on September 9, 2015. ECF No. 1562.

II. PLAINTIFFS' SETTLEMENTS WITH TEVA

On November 24, 2014, after over two years of vigorously contested litigation, intermittent periods of intense arm's-length settlement negotiations by telephone and in person, and more than a month into trial, Plaintiffs reached agreements in principle to settle their claims in this litigation against Teva.⁴

The trial continued against AstraZeneca LP, and AstraZeneca AB ("AstraZeneca"), and Ranbaxy Pharmaceuticals, Inc., Ranbaxy Inc., Ranbaxy Laboratories Ltd. ("Ranbaxy") (collectively, the "non-settling Defendants") for another two weeks, until the jury returned a verdict in the non-settling Defendants' favor on December 5, 2014.⁵ Plaintiffs moved for a new trial,⁶ and by Order dated August 7, 2015, this Court denied the motion.⁷ Plaintiffs have filed a notice of appeal and moved for entry of final judgment.⁸

The terms of Plaintiffs' settlements with Teva were the result of months of negotiation, and on April 1, 2015, each of the Direct Purchaser Class, the Individual Retailer Plaintiffs, and the End-Payor Class signed separate settlement agreements with Teva (the "Teva Settlements").⁹

⁴ Plaintiffs had previously settled with Dr. Reddy's Laboratories, Ltd. and Dr. Reddy's Laboratories, Inc. (collectively "DRL") on the eve of trial. *See* ECF Nos. 1092, 1093, 1098, 1102, 1103, and 1140.

⁵ *See* ECF No. 1545 at 36-38.

⁶ ECF Nos. 1450, 1453.

⁷ *See* ECF No. 1545. By the same Order, this Court also denied the End-Payor Class and American Sales Company, LLC's Motion for a Permanent Injunction. ECF Nos. 1457, 1484.

⁸ ECF Nos. 1546, 1547, 1548, 1555.

⁹ The Direct Purchaser Class Plaintiffs' Settlement Agreement with Teva was filed as Exhibit 1 to ECF No. 1513-1. The End-Payor Class Plaintiffs' Settlement Agreement with Teva was filed as Exhibit 1 to ECF No. 1514-1.

On June 12, 2015, this Court preliminarily approved the Direct Purchaser Class and End-Payor Class settlements with Teva.¹⁰

A. Relevant Terms of the Teva Settlement Agreements.

Plaintiffs' settlements with Teva provide for a single payment of \$24 million (the "Teva Settlement Fund Amount") to the three groups of plaintiffs in exchange for dismissal with prejudice of Plaintiffs' claims against Teva and certain releases from Plaintiffs as set forth fully in the respective Settlement Agreements.¹¹ Subject to the finality of Plaintiffs' respective Settlement Agreements with Teva, paragraph 5 of each settlement provides that Plaintiffs may seek an order from the Court seeking, *inter alia*, the following from the Teva Settlement Fund:

(1) the costs and expenses incurred by Plaintiffs' counsel through trial, as approved by the Court; and

(2) any and all administrative and notice expenses associated with this litigation or the Teva Settlement.¹²

¹⁰ ECF No. 1536, 1537, 1540.

¹¹ The releases from the Direct Purchaser Class are set forth fully in paragraph 9 of the Direct Purchaser Class Settlement Agreement. ECF No. 1513-1 at ¶ 9. The releases from the End-Payor Class are set forth fully in paragraph 9 of the End Payor Class Settlement Agreement. ECF No. 1514-1 at ¶ 9.

¹² ECF No. 1513-1 at ¶ 5(c) (Direct Purchaser Class Settlement Agreement), 1514-1 at ¶ 5(c) (End-Payor Class Settlement Agreement). In addition, the Direct Purchaser Class settlement provides that they may seek, from the portion of the Settlement Fund allocated to the Direct Purchaser Class, (1) incentive awards to Direct Purchaser Class Representatives, and (2) that the remainder be allocated to Direct Purchaser Class Members according to a proposed Plan of Allocation, as approved by the Court. The End-Payor Class settlement similarly provides for payment, solely from the End-Payor Class's portion of the Settlement Fund, of service awards to each of the End-Payor Class Plaintiffs.

In addition, the Direct Purchaser Class settlement provides that they may seek, from the portion of the Settlement Fund allocated to the Direct Purchaser Class, (1) incentive awards to Direct Purchaser Class Representatives, and (2) that the remainder be allocated to Direct Purchaser Class Members according to a proposed Plan of Allocation, as approved by the Court. The End-Payor Class settlement similarly provides for payment, solely from the End-Payor Class's portion of the Settlement Fund, of service awards to each of the End-Payor Class Plaintiffs.¹³

B. There Have Been No Objections From Any Direct Purchaser Class or End-Payor Class Member to Counsel's Request for Reimbursement of Expenses.

On June 26, 2015, all members of the Direct Purchaser Class were sent notice directly via first-class mail of the Direct Purchaser Class settlement with Teva, including the terms listed above. *See* ECF No. 1516 (Declaration of Rebecca A. Blake of Rust Consulting, Inc. Regarding Notice of Proposed Settlements, attaching a copy of the mailed notice). The notice also advised Class members of their right to object to the Class settlement with Teva in whole or in part. *Id.* The deadline for Class objections expired on August 10, 2015. *See id.* at Ex. 1. To date, no member of the Direct Purchaser Class has objected to the Teva Settlement. *See* ECF No. 1560 (Joint Declaration of Lead Counsel for the Direct Purchaser Class) at ¶ 21.

End-Payor Class Plaintiffs utilized an experienced notice administrator, Kurtzman Carson Consultants LLC, to administer the notice plan approved by the Court, which was designed to reach virtually all third-party payor ("TPP") members of the End-Payor Class and in excess of 80% of consumer members of the End-Payor Class ("Notice Plan").¹⁴ The Notice Plan incorporated

¹³ ECF No. 1514-1 at ¶ 12.

¹⁴ Decl. of Markham Sherwood on Notice Procedures ("Sherwood Decl."), attached as Ex.

the terms listed above and consisted of, among other things, 1) direct first-class mail notice to approximately 48,000 TPPs; 2) banner notices on the websites of *HR Magazine* and *National Underwriter Life and Health*; 3) publication in *National Underwriter Life and Health's* Life Health Pro Daily eNewsletter; 4) for consumers, summary publication notice in *People* and *Parade*; and 5) targeted website banner advertisements that generated over 117 million unique impressions.¹⁵ The deadline for Class objections expired on August 10, 2015. No member of the End-Payor Class has objected to the Teva Settlement.

III. SUMMARY OF LITIGATION EXPENSES

A. Expenses Incurred Through the End of Trial

Plaintiffs' counsel spent \$8,883,999.53 (eight million, eight hundred eighty-three thousand, nine hundred ninety-nine dollars and fifty-three cents) in upfront out-of-pocket expenses in the prosecution of this highly complex antitrust case through the end of trial. A large part of individual law firm expenses were in the form of contributions to the Nexium Litigation Funds held by (a) the Direct Purchaser Class and the Individual Retailer Plaintiffs,¹⁶ and (b) the End-Payor Class,¹⁷ to cover the majority of the expenses incurred in prosecuting this action. The litigation fund expenses are summarized in the following charts:¹⁸

1 to the Decl. of Kenneth A. Wexler in Supp. of End-Payor Class Pls.' Mot. for Final Approval of Proposed Class Action Settlements with Teva and DRL, ¶¶ 2, 13.

¹⁵ Sherwood Decl. ¶¶ 4, 5, 8-10; *see also id.* Exs. A-E.

¹⁶ *See* Second Declaration of Thomas M. Sobol in Support of Plaintiffs' Motion for Reimbursement of Expenses and Creation of a Fund for Future Litigation Expenses (filed contemporaneously herewith) (summarizing litigation fund contributions made by the individual firms representing the Direct Purchaser Class and Individual Retailer Plaintiffs and the expenses paid from the litigation fund).

¹⁷ *See* Exhibit 19, Declaration of Kenneth A. Wexler in Support of Plaintiffs' Motion for Reimbursement of Expenses and Creation of a Fund for Future Litigation Expenses (discussing

| DIRECT PURCHASER CLASS AND INDIVIDUAL RETAILER PLAINTIFFS NEXIUM LITIGATION FUND EXPENSES | AMOUNT |
|--|------------------------|
| Court Reporters | \$ 136,192.28 |
| Data Storage | \$ 127,586.73 |
| Document Production | \$ 128,206.82 |
| Expert Fees | \$ 2,967,921.12 |
| Graphic Design | \$ 76,338.05 |
| Messengers | \$ 1,713.80 |
| Research | \$ 1,637.35 |
| Subpoena/Process Servers | \$ 24,407.88 |
| Telephone | \$ 2,145.69 |
| Travel/Hotels/Meals | \$ 27,077.60 |
| Trial Consultants | \$ 206,113.67 |
| Other - Equipment rentals, office supplies, legal books, etc. | \$ 26,324.33 |
| TOTAL | \$ 3,725,665.32 |

litigation fund contributions made by End-Payor Counsel and detailing the expenses paid from the litigation fund).

¹⁸ The difference between the amount respectfully requested for reimbursement and the total of litigation fund contributions is comprised of additional expenses incurred by the individual firms that were not provided for by the litigation fund. The total reimbursement amount sought by the firms representing the Direct Purchaser Class for expenses incurred through trial is \$3,655,083.31. The total reimbursement amount sought by the firms representing the Individual Retailer Plaintiffs for expenses incurred through trial is \$2,665,627.36. *See* Declaration of Lead Counsel for the Direct Purchaser Class, Bruce E. Gerstein, David F. Sorensen, and Thomas M. Sobol (“Direct Purchaser Lead Counsel Decl.”). The individual firm affidavits, attached hereto as Exhibits 2-14 for firms representing the Direct Purchaser Class and Exhibits 16-18 for firms representing the Individual Retailer Plaintiffs identify these expenditures.

| END-PAYOR CLASS PLAINTIFFS' NEXIUM LITIGATION FUND EXPENSES | AMOUNT |
|--|-------------------------------------|
| Appellate Brief Filings | \$1,966.00 |
| Claims Administration | \$319.83 |
| Document Hosting | \$102,551.41 |
| Document Production | 6,880.60 |
| Document Review | 21,928.05 |
| Experts/Consulting | 1,478,353.92 |
| Transcripts | 67,241.93 |
| Trial Consulting | 34,225.77 |
| Trial Document Production | 43,229.74 |
| Trial IT Team | 4,765.22 |
| Trial Visuals | 42,600.11 |
| TOTAL | \$1,804,062.58 ¹⁹ |

B. Expenses Incurred for Notice and Administration

Plaintiffs' counsel incurred or are now obligated to pay \$1,485,366.84 in administrative and notice expenses associated with this litigation and the Teva Settlement, including costs to inform Class Members of the Teva Settlement, their rights to object, and the deadlines for doing so:

¹⁹ End-Payor Class Plaintiffs seek a total of \$2,563,288.86 in expenses incurred in prosecuting this action through trial. In addition to the Litigation Fund Expenses detailed in this table, End-Payor Class Counsel collectively expended an additional \$759,226.28 in expenses incident to prosecuting this litigation through trial. These expenses are detailed further in the sworn declarations of End-Payor Counsel. *See* Exhibits 18-36.

| | |
|---|------------------------------|
| Direct Purchaser Class Notice (unpaid balance) | \$4,443.80 ²⁰ |
| End-Payor Class Notice (unpaid balance) | \$1,479,423.04 ²¹ |
| Escrow Fee | \$1,500.00 ²² |
| Total: | \$1,485,366.84 |

IV. ARGUMENT

A. Plaintiffs' Counsel's Expenses Are Reasonable and Were Necessarily Incurred to Achieve the Benefit Obtained.

Counsel who have created a common fund for the benefit of a class are entitled to be reimbursed for their out-of-pocket expenses that were “reasonable” and “necessary to bring the action to a climax.”²³ The categories of expenses for which Plaintiffs' Counsel seek reimbursement here are the type of expenses routinely and necessarily charged to hourly-fee paying clients and, therefore, should be reimbursed out of the Teva Settlement Fund. Specifically, Plaintiffs' Counsel's expenses of \$8,883,999.53 (eight million, eight hundred eighty-three thousand, nine hundred ninety-nine dollars and fifty-three cents) reflect costs expended for purposes of prosecuting this litigation, including expert fees; document reproduction costs; costs associated with computerized research and the creation of electronic document databases; travel and lodging expenses; the costs of trial and deposition transcripts;

²⁰ See Exhibit 15 (invoices from Rust Consulting Inc. and Berdon Claims Administration).

²¹ See Declaration of Kenneth A. Wexler in Support of Plaintiffs' Motion for Reimbursement of Expenses and Creation of a Fund for Future Litigation Expenses, ¶ 12.

²² *Id.*

²³ *In re Fidelity/Micron Sec. Litig.*, 167 F.3d 735,737 (1st Cir. 1999) (“lawyers whose efforts succeed in creating a common fund for the benefit of a class are entitled not only to reasonable fees, but also to recover from the fund, as a general matter, expenses, reasonable in amount, that were necessary to bring the action to a climax”).

and the costs of conducting a six-week jury trial. Reimbursement of similar expenses is routinely permitted.²⁴ The payment of notice and administration costs is similarly routinely allowed.²⁵

B. Incentive Awards to the Direct Purchaser Class Representatives Should Be Made Because Their Efforts Were Instrumental to Obtaining Recoveries for Persons Other than Themselves.

Direct Purchaser Class Representatives, ASC, Meijer, Value, Burlington, and RDC stepped forward in 2012 to challenge Defendants' agreements to delay generic competition for Nexium, which caused them and all others similarly situated to pay artificially-inflated prices for Nexium. The Class Representatives put forth the time and effort to assist Class Counsel in taking this case through more than one month of trial prior to the instant settlement with Teva – without any guaranteed recovery.

²⁴ *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-0085 (FSH), 2005 U.S. Dist. LEXIS 27013, at *49-50 (D.N.J. Nov. 9, 2005) (citing *Oh v. AT&T Corp.*, 225 F.R.D. 142, 154 (D.N.J. 2004)) (finding the following expense to be reasonable: “(1) travel and lodging, (2) local meetings and transportation, (3) depositions, (4) photocopies, (5) messengers and express services, (6) telephone and fax, (7) Lexis/Westlaw legal research, (8) filing, court and witness fees, (9) overtime and temp work, (10) postage, (11) the cost of hiring a mediator, and (12) NJ Client Protection Fund-pro hac vice.”). *See also In re Prandin Direct Purchaser Antitrust Litig.*, 2015 U.S. Dist. LEXIS 5964, at *17 (approving “reasonable and necessary” expenses); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 U.S. Dist. LEXIS 91661, at *11 (same); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d at 751 (same); *In re Tricor Direct Purchaser Antitrust Litig.*, 2009 U.S. Dist. LEXIS 133251, at *17 (same).

²⁵ *Resnick v. Frank (In re Online DVD-Rental Antitrust Litig.)*, 779 F.3d 934, 940-41 (9th Cir. Cal. 2015) (citing administration and notice costs of roughly \$4.5 million and affirming the district court's approval of the settlement); *In re Certaineed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 225 (E.D. Pa. 2014) (approving plaintiffs' request for payments from the settlement fund to the claims administrator in the amount of \$1,369,695.42 (as of January 29, 2014) and not in excess of an additional \$571,468.00); *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 263 (D. Del. 2002) (finding the notice and administrative costs incurred—\$2,058,294.60—were fair and reasonable and should be paid out of the settlement fund).

Courts have long held that private class action suits are critical in enforcing the antitrust laws for the protection of the public. *See, e.g., Am. Soc. of Mech. Engineers v. Hydrolevel Corp.*, 456 U.S. 556, 573 n.10 (1982) (noting “private suits are an important element of the Nation’s antitrust enforcement effort”). Here, because no government agency had come forward to challenge the conduct at issue in this litigation, by filing suit, the Direct Purchaser Class Representatives played key roles in attempting to curb anticompetitive conduct by pharmaceutical companies and vindicate the antitrust laws.

The Direct Purchaser Class Representatives’ efforts on behalf of entities other than themselves should not go unrecognized. It is through the Class Representatives’ suits and the work they contributed in the litigation, among other things, that two dozen or so other similarly-situated direct purchasers of Nexium will receive their *pro rata* share of the Teva settlement fund allocated to the Direct Purchaser Class. Indeed, numerous courts have found it appropriate to recognize named class plaintiffs for the benefits they have conferred on a class of plaintiffs, and the amount requested here is in line with typical awards in other similar direct purchaser pharmaceutical antitrust cases.²⁶

²⁶ *See, e.g., In re Neurontin Antitrust Litig.*, Civil Action No. 02-1830 (FSH), Dkt No. 114 at ¶ 31 (D.N.J. Aug. 6, 2014) (awarding \$100,000 to two class representatives); *In re Nifedipene Antitrust Litig.*, MDL No. 1515, Civil Action No. 1:03-MC-223 (RJL), Dkt No. 333 at ¶ 3 (D.D.C. Jan. 31, 2011) (awarding \$60,000 to each of four class representatives, for a total of \$240,000 in incentive awards); *Meijer, Inc. et al. v. Barr Pharmaceuticals, Inc.*, Civ. Action No. 05-2195 (CKK), Dkt. No. 210 at ¶ 17 (D.D.C. Apr. 20, 2009) (approving \$50,000 to each of five class representatives for a total of \$250,000 in incentive awards); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 347 (E.D. Pa. 2007) (\$75,000 incentive award); *In re Lupron Mktg. & Sales Practices Litig.*, MDL No. 1430, 2005 U.S. Dist. LEXIS 17456, at *24-25 (D. Mass. Aug. 17, 2005) (awarding a total of \$100,000 to named plaintiffs and noting that “the named plaintiffs participated actively in the litigation...”); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 535-36 (E.D. Mich. 2003) (awarding \$75,000 to each of two corporate class representatives).

The Direct Purchaser Class Representatives actively pursued the class's interests by filing suit on behalf of all direct purchasers and undertaking the responsibilities attendant upon them as representative plaintiffs, including actively assisting in the preparation and prosecution of the case by collecting and producing documents and data, preparing for and giving depositions and agreeing to participate and participating in what turned out to be a six week trial, turning their attention away from their businesses of working as a wholesaler of pharmaceutical products.²⁷

The Notice of Proposed Settlements sent via direct first-class mail to each Direct Purchaser Class Member informed Class members that Class Counsel would seek incentive awards of \$50,000.00 to each of the five Direct Purchaser Class Representatives (ASC, Meijer, Value, Burlington, and RDC), to be paid out of the portion of the Teva Settlement Fund allocated to the Direct Purchaser Class. *See* ECF No. 1561 at Ex. 1 (Notice of Settlement to the Direct Purchaser Class) at p. 5.²⁸ Significantly, no class member objected to the proposed incentive awards of \$50,000.00 to each of the five class representatives. *See* ECF No. 1560 at ¶ 21.

Accordingly, the Direct Purchaser Class respectfully requests that each of the five Direct Purchaser Class Plaintiffs be awarded incentive awards in the amount of \$50,000.00 each from the portion of the Teva Settlement Fund to be allocated to the Direct Purchaser Class.

²⁷ *See* Exhibit A (Declaration of Susan Segura in Support of Direct Purchaser Plaintiffs' Motion for Incentive Awards, dated September 15, 2015); Exhibit B (Declaration of Peter Kohn in Support of Direct Purchaser Plaintiffs' Motion for Service Awards, dated September 14, 2015); Exhibit C (Declaration of David S. Nalven in Support of Direct Purchaser Plaintiffs' Motion for Service Awards, dated September 15, 2015); Exhibit D (Declaration of David P. Germaine in Support of Direct Purchaser Plaintiffs' Motion for Service Awards, dated September 14, 2015) (filed contemporaneously herewith).

²⁸ The incentive awards to each of the Class Representatives were also expressly contemplated by the parties in the Settlement Agreement. *See also* ECF No. 1513-1 at ¶12.

V. THE SERVICE AWARDS TO THE END-PAYOR CLASS REPRESENTATIVES SHOULD BE AWARDED.

For the reasons set forth in the End-Payor Class Plaintiffs' previously filed motion requesting service awards for the End-Payor Class Representatives,²⁹ the End-Payor Class respectfully requests that each of the ten End-Payor Class Representatives be awarded service awards in the amount of \$5,000.00 each from the portion of the Teva Settlement Fund allocated to the End-Payor Class.

VI. CONCLUSION

For the foregoing reasons, this Court should enter an order, subject to the finality of Plaintiffs' respective Settlement Agreements with Teva:

- a. reimbursing \$3,655,083.31 (three million, six hundred fifty-five thousand, eighty-three dollars and thirty-one cents) to Direct Purchaser Class Plaintiffs' counsel for expenses incurred in the prosecution of this case through trial;
- b. reimbursing \$2,665,627.36 (two million, six hundred sixty-five thousand, six hundred twenty-seven dollars and thirty-six cents) to Individual Retailer Plaintiffs' counsel for expenses incurred in the prosecution of this case through trial;
- c. reimbursing \$2,563,288.86 (two million, five hundred sixty-three thousand, two hundred eighty-eight dollars and eighty-six cents) to End-Payor Class Plaintiffs' counsel for expenses incurred in the prosecution of this case through trial;

²⁹ ECF Nos. 1562, 1563, 1564.

- d. paying \$4,443.80 (four thousand four hundred forty-three dollars and eighty cents) to cover the unpaid Direct Purchaser Class notice expenses incurred in connection with the Teva Settlement;
- e. paying \$1,500.00 (one thousand five hundred dollars) to cover the unpaid annual escrow fee incurred in connection with the Teva Settlement;
- f. paying \$1,479,423.04 (one million, four hundred seventy-nine thousand, four hundred twenty-three dollars and four cents) to cover the End-Payor Class administrative and notice expenses associated with this litigation and the Teva Settlement;
- g. awarding incentive awards of \$50,000.00 (fifty thousand dollars) to each of the five Direct Purchaser Class Representatives: (1) American Sales Company, LLC; (2) Meijer, Inc. and Meijer Distribution, Inc.; (3) Value Drug Company; (4) Burlington Drug Company Inc.; and (5) Rochester Drug Co-Operative, Inc., from the proceeds of the Teva Settlement Fund allocated to the Direct Purchaser Class; and
- h. awarding service awards of \$5,000.00 (five thousand dollars) to each of the ten End-Payor Class Representatives: (1) United Food and Commercial Workers Unions and Employers Midwest Health Benefits Fund; (2) Fraternal Order of Police of Miami Lodge 20, Insurance Trust Fund; (3) New York Hotel Trades Council & Hotel Association of New York City, Inc. Health Benefits Fund; (4) Laborers International Union of North America Local 35 Health Care Fund; (5) International Brotherhood of Electrical Workers Local 595 Health and Welfare Fund; (6) Laborers

International Union of North America Local 17 Health Care Fund; (7) International Association of Machinists and Aerospace Workers District No. 15 Health Fund; (8) A.F. of L. – A.G.C. Buildings Trades Welfare Plan; (9) Michigan Regional Council of Carpenters Employee Benefits Fund; and (10) Allied Services Division Welfare Fund, from the proceeds of the Teva Settlement Fund allocated to the End-Payor Purchaser Class; from the proceeds of the Teva Settlement Fund.

Plaintiffs request that the aforementioned costs and expenses be disbursed by the Escrow Agent only to Garwin Gerstein & Fisher LLP for allocation among the Direct Purchaser Class, End-Payor Class, and Individual Retailer Plaintiffs.

Dated: September 28, 2015

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CERTIFICATE OF SERVICE

I, Bruce E. Gerstein, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: September 28, 2015

/s/ Bruce E. Gerstein